IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2026] SGHCR 31

Originating Application No 9 of 2026 (Summons No 1526 of 2026)

Between

(1) Samsung E&A (Thailand) Co., Ltd
(2) Saipem Singapore Pte. Ltd

… *Claimants*

And

(1) Linklaters LLP
(2) Linklaters Singapore Pte. Ltd.
(3) Linklaters (a Hong Kong Partnership)
(4) Thai Oil Public Company Limited

… *Defendants*

JUDGMENT

[Civil Procedure — Production of documents — Materiality of documents]
[Civil Procedure — Production of documents — Private or internal correspondence — Special case exception]
[Civil Procedure — Production of documents — Privileged documents — Implied waiver]
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Samsung E&A (Thailand) Co, Ltd and another
v
Linklaters LLP and others

[2026] SGHCR 31

General Division of the High Court — Originating Application No 9 of 2026
(Summons No 1526 of 2026)
AR Chong Fu Shan
3, 15 and 27 July 2026

4 August 2026 Judgment reserved.

AR Chong Fu Shan:

Introduction

1 HC/SUM 1526/2026 ("SUM 1526") is an application by the claimants ("Claimants") in HC/OA 9/2026 ("OA 9") to compel the defendants ("Defendants") to produce 34 categories of documents. In OA 9, the Claimants are applying for injunctions to disqualify the first to third defendants, who are solicitors of an international law firm operating across jurisdictions, from acting for the fourth defendants in an arbitration.

2 SUM 1526 was heavily contested in many respects. Arguments raised included whether a Singapore court has the supervisory power to restrain solicitors from acting in a Singapore-seated arbitration based on conflict of interest; the materiality of the documents sought; whether the documents were protected by legal advice privilege; whether there was waiver of that privilege;

whether judicial inspection should be ordered; and whether this is a special case for the production of internal and private correspondence.

3 I allow the application in part for the reasons that follow. As aspects of this judgment mention information that is confidential and redacted in OA 9, the judgment is issued to the parties in unredacted form but published with redactions.

Facts

The parties

4 The first claimant, Samsung E&A (Thailand) Co., Ltd. ("Samsung Thailand"), is a company incorporated in Thailand engaged in engineering, procurement, construction, project management and commissioning services for energy, oil and gas projects. The second claimant, Saipem Singapore Pte. Ltd. ("Saipem Singapore"), is a company incorporated in Singapore providing engineering services for the design, construction and operation of complex infrastructure and plants in the energy sector. Together, the Claimants form part of a consortium ("Consortium") that also includes Petrofac South East Asia Pte. Ltd. ("PSEAL") and PSS Netherlands B.V. ("PSSBV"), which are co-claimants in the underlying arbitration but are not parties to OA 9.

5 The first, second, and third defendants are Linklaters LLP ("Linklaters UK"), Linklaters Singapore Pte. Ltd. ("Linklaters Singapore"), and Linklaters (a Hong Kong Partnership) ("Linklaters HK") (collectively, "Linklaters"), being the various entities through which the Linklaters international law firm operates across different jurisdictions. The fourth defendant, Thai Oil Public Company Limited ("Thai Oil"), is a company incorporated in Thailand and publicly listed on the Stock Exchange of Thailand. Thai Oil is the respondent in

the underlying arbitration. Linklaters has advised Thai Oil on the Project since before the EPC Contract was signed, with the Thai Oil team ("Linklaters Thai Oil team") comprising lawyers across its London, Singapore and Hong Kong offices.

The EPC Contract and Parent Company Guarantees

6 On 19 October 2018, Thai Oil entered into a contract ("EPC Contract") with the Consortium for the design, engineering and construction and delivery of a complete and operational project known as the Clean Fuel Project (the "Project"), a large-scale oil refinery upgrade in Thailand. Under the EPC Contract, each of the Consortium members are jointly and severally liable to Thai Oil for "the performance of the Contract and any and all obligations to be performed or amounts to be paid by the Consortium or by any of the Consortium Members".

7 Further, the EPC Contract required each company comprising the Consortium to provide to Thai Oil "Parent Company Guarantees", which would be issued by the ultimate parent company of each of the Consortium members. Three set of Parent Company Guarantees were issued accordingly:

(a) Samsung E&A Co., Ltd. ("Samsung Parent"), the parent company of Samsung Thailand, gave two parent company guarantees in favour of Thai Oil: one dated 18 November 2018 in respect of Samsung Thailand's performance of the EPC Contract, and another also dated 18 November 2018 in respect of PSSBV's performance of the EPC Contract.

(b) Saipem S.p.A. ("Saipem Parent"), the parent company of Saipem Singapore, gave parent company guarantees in favour of Thai Oil, including: one dated 14 November 2018 in respect of Saipem Singapore's performance of the EPC Contract, and another also dated 14 November 2018 in respect of PSSBV's performance of the EPC Contract.

(c) Petrofac Limited, the parent company of PSEAL, gave parent company guarantees in favour of Thai Oil, including: one dated 30 October 2018 in respect of Petrofac Limited's performance of the EPC Contract, and another also dated 30 October 2018 in respect of PSSBV's performance of the EPC Contract.

The commencement of the EPC Arbitration

8 The Project encountered significant difficulties over the course of its execution. Disputes arose between Thai Oil and the Consortium concerning, among other things, the causes of delay and additional costs, scope changes, and the entitlement of the Consortium to additional time and payment. In February 2025, the Claimants commenced arbitration proceedings against Thai Oil administered by the Singapore International Arbitration Centre ("EPC Arbitration"). The EPC Arbitration was based on an arbitration agreement in the EPC Contract, which designated Singapore as the seat of arbitration. PSEAL and PSSBV were later joined as claimants to the EPC Arbitration. The Claimants' claims are estimated at approximately US$1.7 billion. In April 2025, Thai Oil purported to terminate the EPC Contract, relying in part on a "Parent Company Trigger Event" arising from the insolvency of Petrofac Limited, the ultimate parent company of PSEAL. Thai Oil has advanced counterclaims estimated at approximately US$3.88 billion.

Petrofac's financing difficulties and the Restructuring

9 Separately, Petrofac Limited had been experiencing financial difficulties since as early as September 2023 and pursued a restructuring of its liabilities ("Restructuring"). A potential restructuring was first announced in high level terms by way of a public announcement dated 27 September 2024, and the restructuring was then formally announced on 23 December 2024. A potential restructuring was first announced in high level terms by way of a public announcement dated 27 September 2024, and the restructuring was then formally announced on 23 December 2024. During this process, Thai Oil participated as Petrofac Limited's single largest creditor by virtue of the counterclaims advanced in the EPC Arbitration. Thai Oil voted against Petrofac Limited's restructuring plan and Petrofac Limited ultimately went into administration on 28 October 2025, with James Robert Bennett and Matthew James Cowlishaw of Teneo Financial Advisory Limited ("Teneo") appointed as Joint Administrators. Additionally, PSEAL was placed into interim judicial management on 9 May 2025 and judicial management on 7 July 2025.

10 Throughout the Restructuring, Linklaters acted for Petrofac Limited and Petrofac International (UAE) LLC ("PIUL"), a subsidiary of Petrofac Limited and a 36% shareholder in PSSBV. Linklaters has also, at all material times, acted for Thai Oil in the EPC Arbitration. From October 2023, Linklaters was also instructed to advise and act for Petrofac Limited and the Petrofac group ("Petrofac Group" or "Petrofac entities") in relation to negotiations with Samsung Thailand, Saipem Singapore and their parent companies; it should be noted that Linklaters was previously engaged by Petrofac Limited in November 2021 in a refinancing and capital raise ("November 2021 Refinancing"). The Petrofac team within Linklaters ("Linklaters Petrofac team") comprised lawyers in its London office, drawn from its Restructuring and Insolvency, Litigation,

Arbitration and Investigations, Banking, and Corporate departments. Linklaters was therefore, at all material times, acting concurrently for Thai Oil in the EPC Arbitration and for the Petrofac Group in connection with the Restructuring.

Linklaters's management of the potential conflict

11 Around the time when Linklaters UK was instructed by Petrofac Limited in October 2023, a letter of engagement dated 14 November 2023 was signed. The letter stated that the scope of Linklaters's engagement was limited to contingency planning for Petrofac Limited in relation to itself and to any of its subsidiaries as required, and "other matters connected with or in relation to the financial position of Petrofac Limited and the Group". The primary point of contact at Linklaters UK in relation to the Restructuring was Matthew Harding ("Mr Harding") (a Partner in the Restructuring and Insolvency team), supported by Christopher Stevenson ("Mr Stevenson") (a Partner in the Litigation, Investigations and Arbitration team) and Tom Thorne (a Partner in the Corporate team).

12 In March 2024, Petrofac Limited asked Linklaters UK to review the underlying documentation in relation to the Project. Following this, Linklaters UK quickly informed Petrofac Limited that Linklaters had identified a potential conflict through their prior engagement advising Thai Oil on the Project. On or around 22 March 2024, Mr Harding informed Petrofac Limited that as a result of Linklaters' prior role acting for Thai Oil on the Project, Linklaters could not advise Petrofac Limited or the Petrofac Group in relation to any dispute with Thai Oil or any claims related to the Project. Simmons & Simmons LLP ("Simmons"), who were the Petrofac Group's retained litigation advisers on other matters, were engaged by the Petrofac Group on these matters instead and Mr Harding promptly facilitated a briefing of Simmons on elements of the

Restructuring that would be relevant to their role. The Petrofac Group subsequently engaged Simmons in March 2024 as its legal advisers in respect of the Project and the EPC Arbitration.

13 On the same day (*ie*, 22 March 2024), Linklaters also implemented information barriers between the Linklaters Petrofac team and the Linklaters Thai Oil team to protect each client's confidential information held in electronic form. According to Linklaters, the information barriers mean that those working in the Linklaters Petrofac team cannot access any information on the Thai Oil matter, and *vice versa*. Any attempted unauthorised access would be detected and restricted, and centrally investigated and managed by the Linklaters's Legal and Risk team. The General Counsel of Linklaters, Mr Matthew Middleditch ("Mr Middleditch") has deposed on affidavit that there are no reports of attempted unauthorised access.[1] Mr Stevenson also sent an email on 8 October 2024 reminding the Linklaters Petrofac team of the arrangements agreed with Petrofac and highlighting the importance of confidentiality (this was the only email of such reminders that was disclosed).[2] Further, Mr Harding's affidavit evidence is that he and Mr Stevenson were in "regular communication with [Linklaters's] Legal and Risk team to manage [the conflict] and ensure that all efforts were made to ensure that the appropriate measures were kept in place".[3]

14 By an email dated 3 May 2024, Linklaters informed Thai Oil that it would not be able to advise Thai Oil in relation to Petrofac's financial matters.[4] The email referred to earlier discussions between Linklaters and Thai Oil, but

[1] Middleditch A1 at para 27.3.

[2] Middleditch A1 at para 27.4.

[3] Harding A1 at para 80.

[4] Middleditch A1 at p 176.

such communications have not been disclosed. Nevertheless, Linklaters,[5] the Petrofac Group[6] and Thai Oil[7] have stated on affidavit that Thai Oil and the Petrofac Group agreed to the limitation on Linklaters's retainers. However, the documents disclosed by the Defendants in this regard consist only of one-way communications from Linklaters to Thai Oil (including an email dated 16 January 2025 from Linklaters to Peangpanor Boonklum, a director of Thai Oil, who was appointed by PTT Public Company Limited ("PTT"), a 45.03% shareholder of Thai Oil). No documents from Thai Oil or the Petrofac Group evidencing their agreement or consent to the information barriers and limitation of retainer have been disclosed.

15 Following the limitation of Linklaters' retainer, Thai Oil appointed Polaris Advisory Asia Pte. Ltd. ("Polaris") to advise on the Petrofac Group's "financial matters due to conflicts".[8] Thai Oil subsequently appointed Humphries Kerstetter LLP ("Humphries Kerstetter") from around January 2025 to advise on the Restructuring and Thai Oil's position, rights, and options as a creditor of Petrofac Limited.

16 In November 2025, Thai Oil commenced four separate arbitrations against Samsung Parent and Saipem Parent under the Parent Company Guarantees issued in connection with the EPC Contract. I pause to note that the Claimants highlight that Thai Oil did not commence any corresponding arbitration against Petrofac Limited under the parent company guarantees issued by it, notwithstanding that Petrofac Limited had issued guarantees in respect of

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5 Middleditch A1 at para 18.3

6 Redding A1 at para 11.

7 Arkhanin A1 at para 17.

8 Middleditch A1 at p 176.

both PSEAL's and PSSBV's performance of the EPC Contract and despite Petrofac Limited having previously indicated its intention to pursue such proceedings. The Defendants' explanation is that it was commercially rational not to pursue an insolvent entity and that Petrofac Limited was not a party to the EPC Contract.

Claimants' discovering the conflict and taking steps to disqualify Linklaters

17 The issue of conflict first came to the attention of the Claimants in or around October 2024, when they identified that Linklaters was acting for both Thai Oil in the EPC Arbitration and for the Petrofac entities in the Restructuring. Mayer Brown International LLP (the Claimants' advisers in the Restructuring), King & Spalding LLP (Samsung Thailand's former lawyers in the EPC Arbitration), Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") (Samsung Thailand's present lawyers in the EPC Arbitration), and Three Crowns LLP ("Three Crowns") (Saipem Singapore's lawyers in the EPC Arbitration) wrote to Linklaters stating that Linklaters's conflict was causing concern and asked on what basis Linklaters was able to act in both capacities simultaneously.

18 Around November and December 2025, extensive correspondence ensued between WilmerHale and Three Crowns on the one hand, and Linklaters on the other. In that correspondence, the Claimants called upon Linklaters to withdraw from acting for Thai Oil in the EPC Arbitration. Linklaters declined to do so, maintaining that no conflict of interest arose and that any risk of prejudice was adequately addressed by information barriers erected within the firm between the Linklaters Thai Oil team and the Linklaters Petrofac team.

19 During the course of that correspondence, it emerged that Mr Harding had joined a call on 3 November 2025 with WilmerHale and Three Crowns to

discuss coordination on handover and litigation support issues relating to the EPC Arbitration. According to the Claimants, lawyers from the Linklaters Petrofac team may have drafted or commented on documents relating to litigation support for the EPC Arbitration. The Claimants contend that these matters directly contradicted Linklaters' assurances that the Linklaters Thai Oil team and the Linklaters Petrofac team were operating in complete separation from one another.

20 Having failed to resolve the matter through correspondence, the Claimants raised the conflict issue before the Tribunal in the EPC Arbitration at the First Procedural Hearing. The Tribunal acknowledged the seriousness and urgency of the matter. It noted that there was an advantage in the issue being determined by a court rather than by the Tribunal itself, given that the resolution of the issue would likely require consideration of privileged and confidential information that it would be inappropriate for the Tribunal to receive. The Tribunal accordingly indicated that it would be preferable for the matter to be dealt with by way of court proceedings.

21 The Claimants thereafter commenced OA 9 seeking, among other relief, injunctions disqualifying Linklaters from continuing to act for Thai Oil in the EPC Arbitration.

The parties' cases in OA 9 and SUM 1526

Claimants

22 The first ground is that Linklaters is in a position of an actual and irreconcilable conflict of interest by reason of its concurrent representation of Thai Oil and the Petrofac entities. They submit that Thai Oil and the Petrofac entities are not merely unrelated clients whose interests happen to diverge on

discrete matters. Rather, their interests are directly and fundamentally adverse to one another in relation to the very same dispute. Thai Oil's counterclaims in the EPC Arbitration, estimated at US$3.88 billion, constitute the single most significant liability facing the Petrofac group in the Restructuring. The restructuring plan that Linklaters was promoting on behalf of Petrofac Limited expressly sought to compromise and release those very liabilities. Linklaters was therefore simultaneously advancing Thai Oil's claims in the arbitration and working to discharge those same claims in the Restructuring. The Claimants submit that this is not a case of a technical or theoretical conflict capable of being managed by information barriers, but a case of Linklaters acting on both sides of the same fundamental dispute.

23 The second ground is that Linklaters has come into possession of the Consortium's confidential, commercially sensitive and privileged information in the course of its representation of the Petrofac entities, and that there is a real and sensible possibility that this information may be disclosed or misused to the detriment of Samsung Thailand and Saipem Singapore. Linklaters itself acknowledged in its letter of 5 December 2025 that it had come into possession of such information. The source and nature of that information is significant: PSEAL was the lead Consortium member during the formative years of the Project and holds a substantial body of documents and information directly relevant to the key issues in the EPC Arbitration, including the causes of delay, the Consortium's internal assessments, its claims strategy, and its evaluation of Thai Oil's counterclaims. The Claimants submit that the information barriers described by Linklaters are inadequate to address this risk, both because they were described only belatedly and in general terms, and because the conduct of Linklaters's own personnel demonstrated that those barriers had already been breached or were incapable of being maintained given the interconnection between the two matters.

24 The Claimants further submit that the prejudice they face is not confined to the risk of misuse of confidential information. They contend that Linklaters's dual representation has compromised their ability to communicate freely and cooperate with the Petrofac entities on matters relevant to the EPC Arbitration, given that any such communication risks being tainted by Linklaters's position on both sides. They also contend that Linklaters's inside knowledge of the Petrofac restructuring gives Thai Oil forensic advantages that cannot be neutralised by any lesser remedy than disqualification.

25 In respect of the production application in SUM 1526, the Claimants argue that the documents sought are material to the issues of breach of confidence and conflict of interest:

(a) On breach of confidence and whether there is a real and sensible risk of misuse, the Claimants submit that the issues include: (i) what is the information within the possession or control of Linklaters; (ii) whether this information is confidential; (iii) what measures have been taken to prevent the flow of information to the Linklaters Thai Oil team; (iv) whether such measures have been adequate to ameliorate the default position that information flows within a firm.

(b) With respect to whether the proper administration of justice requires Linklaters to be restrained from acting, in the interests of the protection of the integrity of the judicial process including the appearance of justice, the issues include (i) the extent to which Linklaters's respective retainers for Thai Oil and the Petrofac entities were limited; (ii) the extent to which Linklaters's respective retainers can even be limited; (iii) what measures have been taken to prevent the flow of information to the Linklaters Thai Oil team; (iv) whether such measures have been adequate to ameliorate the default position that information flows within a firm.

26 The Claimants argue that production should be ordered as it is undesirable for OA 9 to be decided on the state of the current evidence, which is based on averments on affidavit which are "uncorroborated" and "unsupported" by documentary evidence.[9] For many categories of internal documents sought, the Claimants also highlight that this is a case of informational asymmetry which would fall within the "special case" exception.

27 On the assertions of privilege relied on by the Defendants, the Claimants submit that the Defendants have failed to particularise and furnish evidence for why certain documents are privileged, and that this justifies heightened scrutiny in respect of the Defendants' assertions of privilege. Further, the Claimants suggest that where there is a dispute over whether documents are privileged, the Court has the power to inspect the documents to ascertain if they are privileged. Judicial inspection can also be accompanied with a "Hollander order", which is an order that alleged privileged material be disclosed to a confidentiality club for the applicant's solicitors to ascertain if the documents are privileged. Finally, in respect of some of the categories sought, the Claimants also assert that the Defendants have waived privilege by disclosing certain documents in OA 9.

Defendants

28 The Defendants contend that the issue in OA 9 is whether "there is a real and sensible possibility of Samsung Thailand and Saipem Singapore's confidential and privileged information being disclosed or misused".[10] It is not

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9 SUM 1526 Summary Table, Column E, para 15.

10 Ko and Federici A1 at para 6.

the Claimants' case that there has been actual or suspected disclosure or misuse of confidential and privileged information belonging to the Claimants by Linklaters's Petrofac team (whether innocently or maliciously). Linklaters denies that it possesses the Consortium's confidential, commercially sensitive, and privileged information relating to the Project. Linklaters's information relating to the Project is generic only and does not go into the merits of any party's position in the EPC Arbitration. Further, the Defendants contend that there is no real and sensible possibility of the Claimants' confidential and privileged information being disclosed and/or misuse as measures were put in place to prevent disclosure and/or misuse of any confidential information belonging to the Claimants. In any event, the legal test does not extend to disclosure; rather, the concern for breach of confidentiality is misuse.

29 Further, in so far as the Claimants rely on its assertion of conflict of interest, civil courts are not the appropriate forum for a determination of whether there is a conflict of interests under a solicitor's legal professional conduct rules, especially in the context of an application for an injunction. In any event, Linklaters's concurrent representation of Thai Oil and the Petrofac entities does not constitute an actual conflict of interest because both Thai Oil and Petrofac Limited have agreed to Linklaters's respective retainers being limited. Further, Petrofac Limited appointed Simmons to advise them in relation to the Project and the EPC Arbitration, while Thai Oil appointed Humphries Kerstetter to advise them on the Restructuring and Thai Oil's position, rights and options as a creditor of Petrofac Limited.

30 In respect of SUM 1526, the Defendants submit that the documents sought are immaterial to OA 9 and that the requests amount to a fishing expedition, effectively seeking disclosure of Linklaters's entire files for both Petrofac and Thai Oil, the vast majority of which would be immaterial,

irrelevant, unnecessary, and in most instances privileged and confidential. The Defendants further submit that the requests are misconceived in their framing, as some of the categories sought do not even address the Claimants' stated concern: namely, the leakage of confidential and privileged information from the Linklaters Petrofac Team to the Linklaters Thai Oil Team, and thereafter to Thai Oil; instead, they instead capture entirely irrelevant flows of information, such as communications from Thai Oil to Petrofac or from Petrofac to the Linklaters Petrofac Team, neither of which is of any concern to the Claimants or relevant to OA 9. The Defendants also note that the Claimants have not even exhaustively identified the confidential and privileged documents or information said to be at risk, despite this being their burden to establish, and that in the absence of such identification, materiality cannot be established in relation to most if not all of the categories sought.

31 The requests are said to be a further attempt to prove actual misuse of confidential information, a case which the Claimants do not in fact advance in OA 9 and which therefore cannot justify the production sought. Finally, the Defendants submit that the evidence before the court already comprises affidavits filed by representatives of Petrofac, Thai Oil, Simmons, and Teneo. Together with third party confirmations, these are sufficient to demonstrate that there is no real and sensible possibility of misuse of the Claimants' privileged and confidential information, and that the inference to be drawn from the evidence is that it was not necessary for Linklaters to have received any information confidential to the Claimants in the first place.

32 The Defendants also assert privilege in respect of many of the categories sought and deny that there has been implied waiver of privilege as, among other

reasons, it is not for Linklaters as *solicitors* to waive that privilege.[11] Furthermore, as a matter of principle, professional conduct rules governing solicitors are not intended to govern civil proceedings between private parties, and the proper forum for determining whether such rules have been breached is the Law Society through its disciplinary processes, not the court.

33 The Defendants further highlight that the Claimants were neither clients nor former prospective clients of Linklaters in relation to the Project. The burden of proving a real and sensible possibility of misuse rests on the Claimants, and where information is lawfully possessed and there is no intention to improperly use or disclose it, no breach of confidence arises.

Issues to be determined

34 The broad issues that arise for determination in SUM 1526 include:

(a) what the material issues in OA 9 are, including whether allegations of conflict of interest are material;

(b) whether this is a special case for the production of internal or private correspondence;

(c) whether legal advice privilege attaches to the documents sought and whether such privilege was waived; and

(d) whether an order for judicial inspection or a Hollander order should be made for documents in respect of which privilege is asserted.

[11] Notes of Evidence dated 15 July 2026 at p 128.

General principles governing production applications

35 Order 11 r 3(1) of the Rules of Court 2021 ("ROC 2021") requires an applicant seeking specific production to establish that: (a) there is sufficient evidence that the documents exist which the other party has not disclosed; (b) the documents sought are material to the issues in the action; and (c) there is sufficient evidence that the requested documents are or have been in the possession or control of the other party (*Eng's Wantan Noodle Pte Ltd and another v Eng's Char Siew Wantan Mee Pte Ltd* [2023] SGHCR 17 ("*Eng's Wantan Noodle*") at [48]).

The requirement of materiality

36 In relation to the requirement of materiality, it will be satisfied if there is a "demonstrable nexus" between the requested documents and at least one of the issues as determined by reference to the pleaded cases of the parties. The requested documents have a significant bearing on an issue in the case such that it could potentially affect the court's ultimate decision (*Eng's Wantan Noodle* at [49]). In *DFD v DFE and another* [2025] 3 SLR 362 ("*DFD*") (at [26]), it was observed that the "issues in the case" for the purpose of O 11 r 3(1) are identified with reference to the factual positions taken by the parties in support of their respective cases in the legal proceeding with which the production of documents is requested. The "issues in the case" are also identified from written statements in which the parties set out all the relevant facts which they intend to rely on and make good in the legal proceeding. In proceedings commenced by originating applications, ordinarily, the closest functional equivalent of pleadings would be the affidavits filed by the parties in support of or responding to the application (*DFD* at [26]). For completeness, while the Claimants sought to argue that that the materiality requirement differed between production applications commenced by originating claim and those commenced by

originating application, there is nothing in the ROC 2021 that suggests that the materiality requirement should be applied less rigorously to production applications commenced within an originating application.

37 Implicit in the statements of principle in *Eng's Wantan Noodle* and *DFD* is that an issue identified in their pleadings or affidavits must be a *material issue*, in the sense that the resolution of that issue would likely affect the claim, defence or the relief sought. This is a corollary to the trite rule that each pleading must contain, and contain only, the material facts on which the party pleading relies for his claim or defence; expressed another way, the pleading "must contain material facts and not just any fact" (*Hyflux Ltd (in compulsory liquidation) and others v KPMG LLP* [2024] SGHC 176 at [5], citing *Multi-Pak Singapore (in receivership) v Intraco* [1992] 2 SLR(R) 382). It follows that if an issue identified by a party seeking production is immaterial to the claim, defence or relief sought, production cannot be ordered in respect of that issue even if the documents sought have a demonstrable nexus to that identified issue.

38 What constitutes a material issue is determined by reference to the requirements to succeed in a claim or defence or to obtain a specific relief. On a broader level, this requires parties to be clear in their pleadings or affidavits about what their cases are, the causes of action and their constituent elements, and the reliefs sought, which would in turn shed light on the material issues that are in play.

39 In particular, specific production will not be ordered to aid a non-existent cause of action. This principle was illustrated in *Manuchar Steel Hong Kong Limited v Star Pacific Line Pte Ltd* [2014] SGHC 181, where the applicant sought pre-action discovery of all documents relating to the hire, use or operation of a vessel by the respondent or its servants or agents. The applicant

wanted the documents to determine if the respondent was part of a single economic entity with another company, SPL Shipping Limited. The applicant hoped to use the information in the documents to commence proceedings against the respondent to enforce two arbitral awards which it had obtained against the SPL Shipping Limited.

40 Lee Kim Shin JC dismissed the application. One of the grounds was that the applicant could not establish that its intended cause of action against the respondent was recognised at law under either the International Arbitration Act (Cap 143A, 2002 Rev Ed) or general company law. The court observed that the authorities established "beyond doubt" that an arbitral award cannot impose enforceable obligations on strangers to an arbitration agreement, and hence the applicant's attempt to enforce the arbitral awards against the respondent was not viable at law (at [76]). It followed that the court could not order pre-action production in support of that intended cause of action (at [78]–[79]).

41 Likewise, in *Aquariva Pte Ltd v Gezel Group Pte Ltd and another* [2017] SGHCR 14, the plaintiff sought pre-action discovery to investigate a claim in "fraud". The assistant registrar dismissed the application and observed that "the law does not recognise a free-standing cause of action in fraud *per se*" (at [25]). The plaintiff then relied on fraudulent trading under s 340(1) of the Companies Act, but the court held that winding-up proceedings or proceedings against the company were a pre-condition (at [30]). That decision was an example where production was not ordered because the intended cause of action plainly did not exist.

42 While these decisions were situated under the Rules of Court (2014 Rev Ed) and were pre-action discovery applications, I am of the view that the same principle applies to specific production applications under the ROC 2021, and

even more so given the more stringent production requirements under the present rules.

Exception to private and internal documents

43 In some situations, notwithstanding that documents may be found by the court to be material, production should generally not be ordered if the documents sought are a party's private or internal correspondence, unless it is a "special case" or "such correspondence are known adverse documents" (O 11 r 5(2) of the ROC 2021). The purpose of preventing private or internal correspondence from being subject to production orders generally is that such documents "ultimately have little probative value" and that production of such documents is "highly intrusive". On the second reason, it has been observed that a party who sues or is sued in court does not thereby give up his right to privacy and confidentiality in his documents and communications (*Cachet Multi Strategy Fund SPC on behalf of Cachet Special Opportunities SP v Feng Shi and others* [2024] SGHCR 8 ("*Cachet*") at [53])

44 As for what the terms mean, "private" correspondence refers to communications which are intended to be private as between the persons who correspond with each other, whereas "internal" correspondence refers to correspondence that is internal to the party from which the document is requested, such as emails between individuals and/or departments in the organisation not intended to be received by persons outside the party. The two categories of private and internal correspondence can overlap; a document can be both private and internal at the same time (*Cachet* at [55]).

45 Notwithstanding the general prohibition against production orders being made in respect of private and internal correspondence, a production may still

be made in a special case. As for what amounts to a "special case", the court in *Cachet* opined (at [57]):

> 57 …
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> (a) The term "special case" should be interpreted with the Ideals set out in O 3 r 1 in mind. The court should discern the Ideals that may be particularly important or relevant to the nature of the proceeding or the type of application at hand: *CZD* at [19]; *Grab Rentals* at [18]; *Practice Guide* at para 11.017.
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> (b) The term "special case" should also be interpreted having regard to any relevant accompanying or related rules in the ROC 2021: *CZD* at [20].
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> (c) The usage of the term "special case" does not *ipso facto* mean that the rule in the ROC 2021 is more restrictive than its predecessor in the ROC 2014. Regard must be had to how exactly the rules differ, both in terms of content and wording: *Wang Piao* at [8]–[11].
>
> (d) It may be unwise to articulate a strict or exhaustive definition of a "special case" since this would limit room for "flexibility and good sense should a rare case emerge": *Grab Rentals* at [14]–[15], citing the CJC Report (see [51] above). The word "special" evokes notions of exceptionality, peculiarity and distinctiveness, and suggests that some circumstance that is beyond the ordinary ought to be present. The identification of a special case is in the final analysis dependent on the circumstances of the case: *Grab Rentals* at [15].

46 In *Invest Partners Capital Group Pte Ltd v Deutsche Bank AG* [2026] SGHCR 36, the court opined that one instance in which the court may be prepared to find a "special case" is where a producing party's reliance on the proscription against the production of "private or internal documents" leads to a perverse result that is unintended by the design of the ROC 2021 and runs contrary to the Ideals therein (at [49]). That being said, the court emphasised that information asymmetry alone cannot warrant the finding of a "special case". This is because implicit in the notion of information asymmetry is that one party lacks knowledge of certain facts or lacks evidence which are exclusive to the other party in the litigation. That, in itself, should not justify production especially since the ROC 2021 imposes a new regime which operates on the

principle that parties litigate on the strength of their cases (at [50]). I agree with this view.

Principles governing legal advice privilege

47 Notwithstanding that documents may be found to be material, production should not be ordered if they are protected by privilege. Unlike the rules prohibiting the production of internal or private documents, there are no exceptions to warrant production if a document is found to be privileged and that privilege has not been waived. In light of the issues raised in SUM 1526, I turn to briefly discuss the principles governing the scope of legal advice privilege, what particulars are needed to establish that privilege, implied waiver, and procedural mechanisms to address disputed assertions of privilege such as judicial inspection and Hollander orders, which were argued in relation to the vast majority of categories in SUM 1526.

Scope of the privilege

48 The right to legal advice privilege is statutorily expressed in ss 128, 128A and 131 of the Evidence Act 1893 (2020 Rev Ed) ("EA"), which provide as follows:

> **Professional communications**
>
> **128.**—(1) No advocate or solicitor is at any time permitted, unless with his or her client's express consent, to disclose any communication made to him or her in the course and for the purpose of his or her employment as such advocate or solicitor by or on behalf of his or her client, or to state the contents or condition of any document with which he or she has become acquainted in the course and for the purpose of his or her professional employment, or to disclose any advice given by him or her to his or her client in the course and for the purpose of such employment.
>
> (2) Nothing in this section protects from disclosure —

(*a*) any such communication made in furtherance of any illegal purpose;

(*b*) any fact observed by any advocate or solicitor in the course of his or her employment as such showing that any crime or fraud has been committed since the commencement of his or her employment.

…

Communications with legal counsel in entity

128A.—(1) A legal counsel in an entity is not at any time permitted, except with the entity's express consent, to disclose any communication made to him or her in the course and for the purpose of his or her employment as such legal counsel, or to state the contents or condition of any document with which he or she has become acquainted in the course and for the purpose of his or her employment as such legal counsel, or to disclose any legal advice given by him or her to the entity, or to any officer or employee of the entity, in the course and for the purpose of such employment.

(2) Nothing in subsection (1) protects from disclosure —

(*a*) any such communication made in furtherance of any illegal purpose;

(*b*) any fact observed by any legal counsel in an entity in the course of his or her employment as such legal counsel showing that any crime or fraud has been committed since the commencement of his or her employment as such legal counsel;

(*c*) any such communication made to the legal counsel which was not made for the purpose of seeking his or her legal advice; or

(*d*) any document which the legal counsel was made acquainted with otherwise than in the course of and for the purpose of seeking his or her legal advice.

…

Confidential communications with legal advisers

131.—(1) No one may be compelled to disclose to the court any confidential communication which has taken place between him or her and his or her legal professional adviser unless he or she offers himself or herself as a witness, in which case he or she may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he or she has given, but no others.

> (2) In subsection (1) and section 129, "legal professional adviser" means —
>
> (*a*) an advocate or solicitor; or
>
> (*b*) in the case of any communication which has taken place between any officer or employee of an entity and a legal counsel employed, or deemed under section 128A(4) or (5) to be employed, by the entity in the course and for the purpose of seeking his or her legal advice as such legal counsel, that legal counsel.

49 Despite the codification of legal advice privilege in ss 128, 128A and s 131 of the EA, it is worth highlighting that common law principles on legal advice privilege remain relevant in Singapore, provided that they are not inconsistent with the EA (*Mah Kiat Seng v Attorney-General and others* [2022] 3 SLR 890 at [49]–[53]). In *RB Investments Pte Ltd v Jason Aleksander Kardachi and others* [2023] SGHC 274 ("*RB Investments*"), the General Division of the High Court ("General Division") emphasised that common law principles can supplement the statutory provisions in the EA concerning legal advice privilege, provided that they align with the rationale and spirit of that privilege (at [25]).

50 Legal advice privilege exists to ensure full, free and frank communication between clients and their legal advisers, which is crucial for the effective administration of justice. In *RB Investments,* the General Division emphasised that legal advice privilege supports access to justice by protecting the confidentiality of communications with lawyers, allowing clients to seek legal advice without fear of disclosure (at [27]).

51 To fall under the protection of legal advice privilege, the party asserting privilege must establish on a *prima facie* basis that the communications in respect of which privilege is asserted were made for the purpose of obtaining legal advice, and are confidential in nature (*Skandinaviska Enskilda Banken Ab*

(Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and other appeals [2007] 2 SLR 367 ("*Skandinaviska*") at [32], [33] and [35]). The scope of this privilege extends broadly to communications made confidentially for the purposes of legal advice, including those that are part of a continuum of communication between the solicitor and client. The passage below, as set out in the English Court of Appeal decision of *Balabel v Air India* [1998] 1 Ch 317 (at 330), was cited with approval by the Court of Appeal in *Skandinaviska* (at [47]):

> Although originally confined to advice regarding litigation, the privilege was extended to non-litigious business. Nevertheless, despite that extension, the purpose and scope of the privilege is still to enable legal advice to be sought and given in confidence. *In my judgment, therefore, the test is whether the communication or other document was made confidentially for the purposes of legal advice. Those purposes have to be construed broadly*. Privilege obviously attaches to a document conveying legal advice from solicitor to client and to a specific request from the client for such advice. But it does not follow that all other communications between them lack privilege. In most solicitor and client relationships, especially where a transaction involves protracted dealings, advice may be required or appropriate on matters great or small at various stages. There will be *a continuum of communication and meetings* between the solicitor and client. … Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach. A letter from the client containing information may end with such words as "please advise me what I should do". But, even if it does not, there will usually be implied in the relationship an overall expectation that the solicitor will at each stage, whether asked specifically or not, tender appropriate advice. *Moreover, legal advice is not confined to telling the client the law; it must include advice as to what should prudently and sensibly be done in the relevant legal context.*
>
> [emphasis added in *Skandinaviska*]

This passage illustrates the contextual approach to legal advice privilege, protecting communications which are reasonably expected to be kept confidential to ensure full and frank discussion.

52 Two other principles are also relevant in this application. First, legal advice privilege extends to advice received from foreign lawyers acting as legal advisers, and common law rules of privilege pertaining to foreign lawyers will continue to apply in so far as they are not inconsistent with the provisions of the EA (*CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Polimet Pte Ltd and others* [2015] SGHC 325 at [58]). At common law, the position is set out in *International Business Machines Corp and another v Phoenix International (Computers) Ltd* [1995] 1 All ER 413, where the English High Court held that legal advice privilege protected communications that existed between US attorneys and the defendant, which set out the legal position in the UK and the strategy to adopt in relation to the contemplated proceedings. In that case, Aldous J held "the correct approach is to look at the substance and reality of the document, the circumstances in which it came into existence also its purpose" (at 429). The communications were found to be privileged, being "advice given by lawyers in circumstances where litigation was contemplated to enable the recipient to decide what strategy to adopt, both from a legal and business standpoint" (at 429).

53 Secondly, legal advice privilege extends to the communications with in-house counsel. That is made clear by the enactment of s 128A of the EA. Further, that privilege applies not only to communications between in-house counsel qualified in Singapore but also in respect of in-house counsel who are qualified elsewhere. While the Claimants' counsel disputed this point at the hearing, I do not accept that submission. In s 131(2) of the EA, "legal professional adviser" is defined to mean: (a) "advocate and solicitor"; or (b) "in the case of any communication which has taken place between any officer or employee of an entity and a legal counsel employed, or deemed under section 128A(4) or (5) to be employed, by the entity in the course and for the

purpose of seeking his or her legal advice as such legal counsel, that legal counsel".

54 The term "legal counsel" is defined in s 3(7) of the EA to mean, among other persons in certain public offices, "a person (by whatever name called) who is an employee of an entity employed to undertake the provision of legal advice or assistance in connection with the application of the law or any form of resolution of legal disputes". No mention is made of any requirement for the "legal counsel" mentioned in s 3(7) of the EA to be qualified in Singapore, or for the legal counsel to only render advice on Singapore law. This broad definition stands in contrast to the references to "advocate or solicitor" in other parts of the EA, which in its plain and ordinary meaning refers to advocates or solicitors of the Supreme Court of Singapore (see s 2(1) of the Legal Profession Act 1966 (2020 Rev Ed)). If Parliament had intended for in-house counsel advising on foreign law to be excluded from the ambit of ss 128A(1) and 131(1) of the EA, it would have expressly included a carve out.

55 Accordingly, in so far as the Defendants' assertions of legal advice privilege related to advice from foreign lawyers and foreign-qualified in-house counsel, those facts did not prevent privilege from attaching.

Particulars required from a party asserting privilege

56 Another issue raised in SUM 1526 relates to the sufficiency of particulars provided by the Defendants in asserting legal advice privilege. In this regard, I respectfully adopt the principles as summarised in *Wesley Widjaja v Ng Wei San (alias Oei Wei San alias Wilson Hasan Widjaja) and others* [2025] SGHCR 32 ("*Wesley Widjaja*") (at [68]):

(a) Where the production of documents has been applied for or ordered, and a party seeks to withhold those documents on the ground that they are privileged, he should state in his response affidavit that he is resisting production on this ground, and identify the relevant head of privilege. Ideally, privilege should be raised in response to the application for production itself.

(b) The party asserting privilege bears the legal burden of proving, at least on a *prima facie* basis, that the preconditions for privilege to subsist are present in respect of the documents over which privilege is asserted.

(c) To discharge that burden, the party asserting privilege must place before the court sufficient facts and evidence to support its claim that the preconditions for the relevant head of privilege are met – at least on a *prima facie* basis, and albeit without disclosing the allegedly privileged material itself. Where the party asserting privilege has chosen not to depose those facts on affidavit, he will need to try to persuade the court that there is sufficient basis, on the undisputed facts, for the court to accept that privilege is established.

(d) If the party asserting privilege succeeds in discharging his legal burden, the tactical burden shifts to the party seeking production to adduce material to rebut this *prima facie* case. It may do so by arguing that the facts put forward by the party asserting privilege do not support the claim of privilege, or by putting forth other facts that contradict or undermine the factual basis on which privilege is asserted. However, the statement of facts on affidavit by the party asserting privilege will generally be conclusive, unless it is plain and obvious that this is erroneous or incomplete, or that the documents are for some other reason not protected by privilege.

57 In *Wesley Widjaja*, the court held that the respondents' assertion of privilege fell far short of what was expected because their affidavits only contained a bare assertion that the dispute documents were "protected by legal advice and/or litigation privilege". The respondents had taken the position that a category of the disputed documents sought were protected by privilege because their solicitors had been copied in all the correspondence and communications constituting that category. However, there were no further facts and evidence to support the respondents' claim that the preconditions for the head(s) of privilege they wished to rely on were met, even on a *prima facie* basis. It was also unclear who those solicitors were until it was clarified at the hearing (at [70]–[71]).

58 I also agree with the court's suggestion in *Wesley Widjaja* that the following particulars that should be furnished by a party asserting privilege as a matter of good practice (at [65]), agreeing with the views expressed in Colin Liew, *Legal Professional Privilege* (Academy Publishing, 2nd Ed, 2023) ("*Colin Liew*") at paras 3.98 and 3.100–3.103:

> … An assertion that a communication or document is protected by legal professional privilege will almost certainly have to be supported by *evidence*, typically by way of an affidavit, *that the substantive requirements of the head of legal professional privilege in question (or perhaps both) have been satisfied.*
>
> …
>
> … [A]ffidavits claiming privilege should be "*specific enough to show something of the deponent's analysis of the documents or, in the case of a claim to litigation privilege, the purpose for which they were created*", and it is desirable that they should refer to such contemporary material as is possible without disclosing the very materials for which privilege is claimed.
>
> …

> Thus, it would be good practice for the affidavit to state clearly which head of legal professional privilege is being relied upon. *If legal advice privilege, the confidential character of the advice should be explained, together with an identification of who gave the advice and to whom it was given, and the context in which it was given and its purpose. As for litigation privilege, it should similarly be shown that the creation of the communication was for the dominant purpose of use in or in connection with actual or pending litigation.*
>
> [emphasis added in *Wesley Widjaja*]

59 For completeness, I note that there is a suggestion in *Wesley Widjaja* that the affidavit of the party asserting privilege "should address all documents that the production order relates to (or should address a particular disputed category of documents in its entirety), and not merely a subset of the documents" (at [61] and [63], citing *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Co, Ltd and another* [2024] SGHC 308 ("*Wuhu (HC)*") (at [81]–[86]). In this regard, I am of the respectful view that this requirement should be applied in a context-specific manner in production applications. The observation in *Wuhu (HC)* was not made in the context of allegations of privilege arising in a production application at first instance; rather, the question was whether the respondent had failed to fully comply with the unless order that had been made against it arising from a breach of a production order.

60 In my view, there should be a distinction in the approach that the court should take in a production application vis-à-vis an unless order application stemming from the alleged breach of a production order, or the further breach of an unless order for production. In the former case, the court is asked to consider and scrutinise an applicant's request for the first time, and in the latter case, the court would have already decided that the requirements for ordering production were met, and determined that the scope of the production order was appropriate. The latter scenario requires a more exacting standard because a

respondent is asked to explain why the production order, which was already determined by the court to be appropriate, was not complied with. In contrast, where a production application is being determined for the first time, it may not be appropriate to require a respondent to specific each and every document in respect of which it is asserting privilege, as the scope of documents that are requested may be unduly broad or immaterial to begin with. To provide an example, it would be unsatisfactory for an applicant seeking production to frame its requests extremely broadly to include large portions of privileged material, thereby shifting the onus and placing a respondent in an unfairly prejudicial position where it has to particularise each privileged document that falls within the scope of the request and provide details to such an exacting standard. This cannot be how the production regime under the ROC 2021 is intended to operate. The suggestions in *Wesley Widjaja* should be viewed as best practices that should be complied with as much as practicable where the interests of justice require, not rigid criteria to be enforced without regard to the specific context of the production application.

61 The common concern in both *Wuhu (HC)* (at [87]) and *Wesley Widjaja* (at [62]) appears to be the potential for a respondent to rely on the plain and obvious standard as set out in *Lutfi Salim bin Talib and another v British and Malayan Trustees Ltd* [2024] SGHC 85 ("*Lutfi*") to avoid its production obligations. Indeed, the notion of fair play and preventing an abuse of process should be the relevant touchstone for determining whether a respondent has provided a satisfactory explanation for its assertion of privilege. What would be considered satisfactory in a production application would depend, among other things, on how broadly the category is framed and the nature of the documents sought. If a category of documents sought is too broad and would include a significant volume of immaterial documents, the applicant should be invited to narrow its request to provide the respondent a fair opportunity of providing a

complete response to the applicant's request. Furthermore, where it is obvious from the context of the request and the undisputed facts that the requested documents would be privileged, it would be easier for a respondent to discharge its onus.

62 This contextual approach is illustrated in the Court of Appeal's decision in *ARX v Comptroller of Income Tax* [2016] 5 SLR 590. The appellant had restructured its Singapore operations and incorporated a new subsidiary. The respondent, who was the Comptroller of Income Tax, had paid approximately $9.6m in tax refunds to the subsidiary, but subsequently took the view that the restructuring arrangement was a tax avoidance agreement. After unsuccessful attempts to recover the tax refund through the assessment of additional sums in tax, the respondent commenced a suit against the appellant and its subsidiary to recover the tax refunds. In a supporting affidavit to an application to serve the writ of summons on the appellant out of jurisdiction, the respondent's employee deposed that the suit was not time-barred as the respondent had only concluded that the restructuring arrangement was a tax avoidance arrangement on a certain date. The deponent referred to the fact that the respondent had sought and obtained advice from lawyers from his in-house legal department.

63 The appellant entered an appearance in the suit and applied for production of the legal advice, arguing that it was not privileged. It advanced three broad arguments, namely, that (a) communications with in-house legal counsel were not protected by legal professional privilege before the passage of the Evidence (Amendment) Act 2012 (Act 4 of 2012); (b) the prerequisites necessary for privilege to be asserted under the common law had not been satisfied; (c) even if the advice was privileged, privilege had been waived. The High Court did not order the production of the legal advice but ordered that the respondent was to elect whether he was relying merely on the fact that the advice

had been given or was seeking to rely upon the contents of the advice. If it was the former, the respondent would have to file a supplemental affidavit to confirm that it was not relying on the "substance or contents" of the advice. If it was the latter, the respondent would have to produce the advice. The appellant appealed, reprising the same arguments it had presented in the High Court and also arguing that the High Court had erred in law by failing to render a decision on the application for production and had, instead, left it to the respondent to "decide for himself" what the outcome of the application should be.

64 On the second issue of whether the prerequisites necessary for privilege at common law had been satisfied, the appellant submitted that that burden had not been discharged because the respondent had not adduced any positive evidence either of the confidential nature of the communications or of the independence of the lawyers who rendered the advice. The Court of Appeal disagreed with that submission (at [43]) and endorsed (at [44]) the approach of the Supreme Court of Victoria in *Australian Hospital Care (Pindari) Pty Ltd v Duggan (No 2)* [1999] VSC 131, where Gillard J opined that "once the client swears the affidavit of documents claiming legal professional privilege in a way which leads the court to the conclusion that the claim is properly made, then the prima facie position is that the legal adviser was acting independently at the relevant time"; further, "if any other party to the litigation disputes the claim for legal professional privilege then it has the evidentiary burden of establishing facts which prima facie rebut the presumption" (at [67]–[68]). Additionally, the Court of Appeal in *ARX* opined that if the court was still not satisfied, it would be open to the court to look behind the affidavit to the documents themselves to ascertain if privilege was rightly asserted and the court would reach a decision after examining the evidence (at [46], citing the Supreme Court of Queensland in *Aquila Coal Pty Ltd v Bowen Central Coal Pty Ltd* [2013] QSC 82).

65 Applying these principles to the facts, the Court of Appeal in *ARX* held that the respondent's assertion of privilege was sufficient in the context of that case, and explained as follows (at [47]–[50]):

> 47 … With that, we turn to the facts of this case, and to Ms Ng's 2nd Affidavit in particular. As a starting point, it is important to remember that Ms Ng had filed this affidavit in response to Ms Ong's allegation that the Respondent must have formed the view that the Corporate Restructuring and Financing Arrangement was a tax avoidance arrangement within the meaning of s 33 of the ITA *before* 7 April 2008 (see above at [9]–[10]). Ms Ng's response was that the Respondent conducted an audit to inquire into the Subsidiary's affairs in July 2007 as part of its "review of cases which involved claims (and payments of) significant amounts of tax refunds". In the subsequent paragraphs of her affidavit, she set out in detail the steps which were taken in the audit into the "full circumstances of the [Corporate Restructuring and Financing Arrangement]". ***She explained that after collecting all the relevant documents, the Respondent sought advice from its Law Division*** (see above at [10]).
>
> 48 Viewed against this background, ***it is clear that the Respondent had approached the Law Division for legal advice – this much was clear from the context, as Ms Ng was trying to explain (specifically) how the Respondent had come to form the view that there was a tax avoidance arrangement within the meaning of the ITA***. From the manner in which Ms Ng's 2nd Affidavit was structured, there was no suggestion that the Law Division (and the Appellant never suggested otherwise) was involved in any of the investigative aspects of the task. ***Instead, its role appeared to us to be limited only to the rendering of legal advice***. In our judgment, these points, when coupled with the proviso at the end of para 17 of Ms Ng's 2nd Affidavit where she asserted that privilege subsisted in the Advice and had not been waived, sufficed to present a *prima facie* case that the Advice was privileged.
>
> 49 To be fair, more could perhaps have been done, and it was clear that the Respondent realised this as well, for in a later affidavit sworn by Ms Ng on 27 April 2015 ("Ms Ng's 9th Affidavit") in reply to a separate application taken out by the Subsidiary for discovery of, among other things, the Advice, she included the following paragraph in her affidavit:
>
> > The Law Division comprises in-house legal officers whose work is concerned with providing independent

> legal input and advice and dealing with legal issues on a confidential basis.
>
> 50 The Appellant had said much about the circumstances under which this affidavit came to be filed and whether it was proper for this to be taken into account for the purposes of the present appeal, but we will put that aside for the present. ***The point, it seemed to us, was simply this. The position in the authorities suggest that while the legal onus lies on the party asserting privilege to demonstrate that the preconditions for privilege to subsist are present, the bar (at least to make out a prima facie case) is not high and we were satisfied that it had been crossed in this case. The Appellant had not – in response – adduced any material to rebut this prima facie case.*** It had not said, for example, that the officers from the Law Division of IRAS might not have been acting in their capacity as professional legal advisers in rendering the Advice, nor had it been asserted that the Advice had not been communicated confidentially. If the Appellant's complaint was simply that there were no specific averments in Ms Ng's 2nd Affidavit that the communications were "confidential" and that the Law Division was "independent", then it seemed to us that the objection was not so much one of substance as it was about form and we would reject it. For good order, we accept that a paragraph such as that which was found in Ms Ng's 9th Affidavit should have been included in her 2nd Affidavit, but we preferred to take a broader view of things in this case and accepted that the requirements for the assertion of privilege were satisfied.
>
> [emphasis added]

66 The passage above underscores the importance of undertaking a fact-sensitive exercise to determine the sufficiency of a respondent's assertion of privilege. In *ARX*, it was evident – at least on a *prima facie* basis – that the advice in question was privileged because: (a) the deponent of the affidavit that referred to the advice was trying to explain how the respondent came to the view that the appellant was involved in a tax avoidance arrangement after seeking advice from the respondent's Law Division; (b) there was no suggestion that the Law Division provided anything other than legal advice; (c) there was an assertion on affidavit that privileged subsisted and had not been waived. The Court of Appeal opined that these points alone would have sufficed to present a

prima facie case that the advice was privileged. Nevertheless, the Court of Appeal observed that "more could perhaps have been done", and the respondent had realised this and had further clarified on affidavit that the Law Division comprised in-house legal officers whose work was concerned with providing independent legal input and advice and dealing with legal issues on a confidential basis (at [49]). However, the initial lack of clarification, and the mere fact that more could have been said in that particular context, were not fatal, and did not detract from the core principle that where "the preconditions for privilege to subsist are present, the bar (at least to make out a *prima facie* case) is not high" (at [50]).

67 I further observe that while *ARX* was decided under the Rules of Court (2014 Rev Ed), I do not think that the position under the ROC 2021 necessarily imposes a more onerous standard for respondents in production applications. I reiterate that whether satisfactory particulars pertaining to an assertion of privilege have been provided is a fact-sensitive question. Further, while more particulars should be required if it is not obvious on a *prima facie* standard why certain documents are privileged, the plain and obvious test should not be turned on its head by requiring respondents to go beyond a *prima facie* standard to establish privilege. This would denude the plain and obvious test by shifting from applicants the primary burden of disproving privilege on a plain and obvious standard. Moreover, to require a respondent asserting privilege to go into too much detail may be self-defeating, as excessive particularity may disclose the substance of what privilege is meant to protect, as the other parties to the litigation may be able to infer the advice given, the respondent's concerns, and the potential weaknesses in the respondent's case.

Implied waiver of privilege

68 I turn to discuss the principles on implied waiver of privilege, which the Claimants raise in respect of many categories of documents in this application.

69 The starting point is that privilege is a right to resist the compulsory disclosure of information, and like all rights, it can be waived. In *ARX*, the Court of Appeal held (at [64]) that fairness is the theme that runs through the doctrine of implied waiver. However, it is not "fairness at large" that drives the operation of the doctrine of implied waiver. The Court of Appeal observed in *ARX* that "[m]ere unfairness, in the sense of a disadvantage accruing to one side due to the withholding of information on the ground of privilege, can never be the touchstone by which the court determines whether there has been an implied waiver of privilege" (at [64], citing the English Court of Appeal decision of *Paragon Finance plc (formerly National Home Loans Corporation plc) and others v Freshfields (a firm)* [1999] 1 WLR 1183 at 1194 ("*Paragon Finance*") *per* Lord Bingham CJ (as he then was)). This is because while there is always some unfairness in allowing information to be withheld on the ground of privilege, the balance between disclosure and privilege has long been struck in favour of preserving privilege (*ARX* at [64]).

70 Instead, implied waiver is concerned with a certain scenario where it would be unfair and inconsistent for a party to only disclose aspects of privileged documents that are advantageous to it and seek haven under the cloak of privilege in respect of evidence that is disadvantageous. The Court of Appeal described the guiding principle as follows (*ARX* at [65]):

> 65 The doctrine of implied waiver has always been concerned with fairness of a very particular sort. The principle of the matter, simply put, is that a party cannot have his cake and eat it. If a party voluntarily puts privileged material before the court, he cannot rely on the advantageous aspects of it to

> advance his case but claim privilege in respect of the other less advantageous aspects of the documents for fear that it might damage his case. In *AG (NT) v Maurice*, Deane J explained it as follows (at 42–43):
>
>> Waiver of legal professional privilege by imputation or implication of law is based on notions of fairness. It occurs in circumstances where a person has used privileged material in such a way that it would be unfair for him to assert that legal professional privilege rendered him immune from procedures pursuant to which he would otherwise be compellable to produce or allow access to the material which he has elected to use to his own advantage.

71 The inquiry should not be approached simplistically. It is "not every case of inconsistent conduct that will warrant a finding of implied waiver" (*ARX* at [67]). Indeed, not all references to the fact of the receipt of legal advice will need to a finding of implied waiver. Much would depend on the precise facts and context of the case, and non-exhaustive factors include: (a) what has been disclosed and the materiality of the information in the context of the present proceedings; (b) the circumstances under which the disclosure took place; (c) whether it may be said (albeit only as a relevant factor as opposed to a single test) that the party had "relied" or "deployed" the advice to advance his case; and (d) whether it can be said that there is a risk that an incomplete and misleading impression had been given (*ARX* at [69]).

72 Further, privilege may only be waived by the *client*, not the solicitors. This was a point that arises in SUM 1526, as the Claimants argue that the "Defendants" – comprising Linklaters LLP, Linklaters Singapore, Linklaters HK and Thai Oil – had waived legal advice privilege. Given the reference to all Defendants, it is unclear which of the Defendants had waived privilege. If the argument is that Linklaters had waived privilege, this would clearly not get off the ground. At the hearing, the Claimants' counsel argued that one cannot avoid waiver simply by having Linklaters LLP, Linklaters Singapore, Linklaters HK

disclose privileged documents on affidavit, and further, all Defendants are represented by the same set of counsel in OA 9. With respect, it is still important to be clear on who holds the right against disclosure, and consequently who can waive that right. The court cannot conclude that privilege has been waived by a person who does not even possess the right.

Judicial inspection and Hollander orders

73 As mentioned above (at [64]), if there is uncertainty as to whether a document is privileged, judicial inspection remains an option in appropriate circumstances.

74 In *Skandinaviska*, the Court of Appeal observed that a major difficulty faced by the court in situations involving legal professional privilege is that the claim is invariably based on affidavit evidence. Much time and costs would be devoted by the parties in persuading the court on what the legal and factual position should be. Judicial inspection would save time and money for the parties, and "might be an effective and practical 'middle ground' which ensures that the claim to legal professional privilege is not abused", therefore "ensuring that the competing public policy that all available evidence ought to be disclosed is fulfilled to the fullest extent possible" (*Skandinaviska* at [102]).

75 The Court of Appeal observed that there were authorities to suggest that judicial inspection should only be ordered where there is "real doubt" over whether a document is privileged (*Skandinaviska* at [104]), citing the English Court of Appeal decision of *Westminster Airways Ltd v Kuwait Oil Co Ltd* [1951] 1 KB 134 ("*Westminster Airways*"), where Jenkins LJ observed (at 146):

> [T]here is nothing in the rule, or in the authorities, to constrain the court to hold that, in every case where a claim to privilege

> is made and disputed, the party seeking production is entitled to come to the court and (as it were) demand as of right that the court should go behind the oath of the opposite party and itself inspect the documents. The question whether the court should inspect the documents is one which is a matter for the discretion of the court, and primarily for the judge of first instance. Each case must depend on its own circumstances; **but if, looking at the affidavit, the court finds that the claim to privilege is formally correct, and that the documents in respect of which it is made are sufficiently identified and are such that, prima facie, the claim to privilege would appear to be properly made in respect of them, then, in my judgment, the court should, generally speaking, accept the affidavit as sufficiently justifying the claim without going further and inspecting the documents.**
>
> This approach was accepted by the New Zealand Court of Appeal in *Taranaki Co-operative Diary Company Limited v Rowe* [1970] NZLR 895, where Turner J, delivering the judgment of court said (at 904), "[t]he jurisdiction to inspect the documents of one party without disclosing what is in them to the other is perhaps one to be *conservatively exercised*" [emphasis added]. Subsequently, Cooke J (as he then was), in the New Zealand Court of Appeal decision of *Guardian Royal Assurance v Stuart* ([76] *supra*) observed thus (at 599):
>
> As in previous cases in this Court (see *Konia v Morley*, *Environmental Defence Society Inc v South Pacific Aluminium Ltd (No 2)* [1981] 1 NZLR 153 and *Fletcher Timber Ltd v Attorney-General* [1984] 1 NZLR 290) *inspection of the documents by the Judges has proved illuminating. High Court Judges now appear to be adopting this practice quite commonly in disputed privilege claims. Experience suggests that its advantage in being likely to lead to a more just decision outweighs the disadvantage that only the Judge and not* the other side sees the documents if the claim to privilege is upheld. Accordingly, in the field of legal professional privilege at least, I think that *in general a Judge who is in any real doubt and is asked by one of the parties to inspect should not hesitate to do so.*
>
> [emphasis added in italics in *Skandinaviska*; emphasis added in bold]

The emphasised portions of this passage indicate that the starting point is that affidavits should generally be conclusive of the matter and the court will generally not look behind the affidavits. Nevertheless, it may be helpful for the court to order for judicial inspection where there is "real doubt" about whether the documents requested are privileged.

76 *Skandinaviska* was a decision that pre-dated the ROC 2021 that affirmed the court's power to inspect documents, although it should be exercised conservatively and in cases of real doubt. In *Wesley Widjaja*, which was decided under the ROC 2021, the court opined that there were several reasons why a court faced with a disputed claim of legal professional privilege should decline to inspect the documents over which privilege is asserted, even where inspection is requested by either or both parties, and especially in proceedings governed by the ROC 2021 (at [97]):

> (a) First, there is some doubt over whether s 164 of the EA applies in the context of an interlocutory application like the present. Section 2(1) of the EA provides that Parts 1 to 3 of the EA (within which s 164 is found) do not apply to "affidavits presented to any court or officer", which may be interpreted (although not without some difficulty) to mean that they do not apply to interlocutory proceedings: see *Lippo* at [40] and the discussion of this issue in *Colin Liew* at paras 2.168 to 2.181. A further difficulty is that, while O 24 r 13(2) of the ROC 2014 provided that the court could inspect a document over which privilege from production was claimed for the purpose of deciding the validity of that claim, the ROC 2021 contains no equivalent provision – a point also noted in *Colin Liew* at para 3.115.
>
> (b) Second, it is for the party asserting privilege to prove, at least on a *prima facie* basis, that the preconditions for privilege to subsist are present in respect of the documents over which privilege is asserted. The party seeking the production of those documents then has an opportunity to attempt to rebut this *prima facie* case, and both parties can make and respond to one another's submissions with reference to the material placed before the court. Where, however, the court inspects the documents and arrives at a determination on whether they are privileged on the basis of that inspection, the party seeking production would not have been given an opportunity to argue the matter fully. This concern was noted by the High Court in *Comptroller of Income Tax v ARW and another (Attorney-General, intervener)* [2017] SGHC 180 at [121].

> (c) Third, inspecting the documents over which privilege is asserted would undermine the conclusiveness of affidavits in response to production applications under O 11 r 3 of the ROC 2021 by requiring the court to go behind those affidavits and examine the documents for itself. Such an approach would seem to run counter to the approach set out in *Lutfi*, as discussed at [55] and [67] above.

77 To the extent that the quoted passage suggests that judicial inspection is *no longer* remain available under the ROC 2021, I respectfully disagree for the following reasons:

(a) First, it is not clear how the introduction of the ROC 2021 derogated from or removed a power that was previously available to the court. While the ROC 2021 did not expressly mention judicial inspection, there is no indication in either the *Civil Justice Commission Report* (29 December 2017) (Chairperson: Justice Tay Yong Kwang) or the *Report of the Civil Justice Review Committee* (2018) (Chairperson: Indranee Rajah SC) that suggested that the court's power to order judicial inspection is abrogated.

(b) Secondly, the court's power to order judicial inspection originated from its inherent powers (see *Grant v Downs* (1976) 11 ALR 577 and 588–589), and there is no indication that s 2(1) of the EA intended to derogate from that. Even assuming *arguendo* that s 164 of the EA does not apply to interlocutory applications, it does not follow that the court does not have the power at common law to order judicial inspection in production applications. On the contrary, if the court's power to order judicial inspection in production applications is not addressed by the EA, it is even more arguable that it is not inconsistent with the EA and is not repealed by s 2(2) of the EA, which provides that "[a]ll rules of evidence not contained in any written law, *so far as such* *rules are inconsistent with any of the provisions of this Act*, are repealed" [emphasis added]. In any event, it is doubtful if the power to order judicial inspection can be regarded as a rule of *evidence* that would fall within the ambit of s 2(2) of the EA, as opposed to being a rule of *procedure*.

(c) Thirdly, the concern about the party seeking production not being able to argue the matter fully if the court were to inspect the document without hearing from that party may be considerably better than the court deciding to simply order production where issues of privilege are not clearly resolved, which may cause substantial prejudice to the party asserting privilege or to a party who holds the privilege. In any event, the concern may be ameliorated by a "Hollander order" in appropriate cases, which is discussed subsequently in this judgment.

(d) Finally, the concern about judicial inspection undermining the conclusiveness of affidavits may be ameliorated by exercising the discretion to order judicial inspection conservatively and only where there is a real doubt as to whether a document is privileged but ordering the production of that potentially privileged document may cause irreparable prejudice to a party if privileged information is revealed to the requesting party.

78 Nevertheless, I am of the view that judicial inspection is a discretion that should be exercised cautiously, having regard to the Ideals set out in the ROC 2021. In this regard, the Claimants submit that academic commentary has observed that the Singapore cases adopted the "serious doubt" [the term used in the Claimants' submissions] standard from the prevailing English standard, and that English law has overruled the standard of "serious doubt" (Colin Liew,

Legal Professional Privilege (Academy Publishing, 2nd Ed, 2023) at paras 3.116–3.118). The Claimants submit that the English Court of Appeal has held in *WH Holding Ltd and another company v E20 Stadium LLP* [2018] EWCA Civ 2652 ("*WH Holding*") (at [39]–[40]) that inspection is a "matter of general discretion", and that relevant factors would include: (a) the nature of the privilege claimed; (b) the number of documents involved and (c) their potential relevance to the issues.

79 In *WH Holding*, the English Court of Appeal considered the issues of whether internal corporate emails discussing a commercial settlement proposal were protected by litigation privilege, and when a court may inspect documents to test a disputed claim of privilege. The appellants and the respondent were in dispute over the number of seats the respondent was entitled to use at the London Olympic Stadium. During disclosure, the respondent redacted six internal emails exchanged among its board members and shareholders. The emails discussed a proposed commercial settlement of the dispute.

80 The respondent claimed litigation privilege in respect of those six documents and the appellants applied for the court to inspect the documents. The English High Court rejected that application, holding that documents created for the dominant purpose of formulating and proposing a settlement could attract litigation privilege. On appeal, the English Court of Appeal held that the documents concerned only commercial settlement discussions and did not obtain or reveal relevant advice or information. Accordingly, the claim to litigation privilege failed (at [18]).

81 While not necessary, the English Court of Appeal went further to address the correct approach to judicial inspection. The court considered the decision of Beatson J in *West London Pipeline and Storage Ltd v Total UK*

[2008] 2 CLC 258 ("*West London*"), where he opined that the court should not go behind the affidavits unless it was "reasonably certain" that the claim to privilege is erroneous, the evidence of the person or entity which directed the creation of the communications or documents over which privilege is claimed is incorrect, or the other evidence before the court shows that the affidavit is incorrect or incomplete on the material points (at [86(3)]). Beatson J further opined that where the court is not satisfied on the basis of the affidavit and the other evidence before it that the right to withhold inspection is established, it may among other things order a further affidavit to deal with matters which the earlier affidavit does not cover or on which it is unsatisfactory; order cross-examination of the makers of the affidavits; or it may inspect the documents. Beatson J opined that inspection should be a solution of "last resort" because of the danger of looking at documents out of context at the interlocutory stage, which should not be undertaken unless "there is credible evidence that those claiming privilege have either misunderstood their duty, or are not to be trusted with the decision making, or there is no reasonably practical alternative" (at [86(4)(c)]).

82 The English Court of Appeal disagreed with the restrictive formulation in *West London*, opining that inspection is a "matter of general discretion", although the court should be cautious about doing so and should be alive to the dangers of looking at documents out of context. The discretion must be exercised in accordance with the overriding objective, which requires balancing dealing with cases justly, proportionately and at proportionate cost and allocating an appropriate share of the court's resources. Among the factors which will be relevant to the exercise of the discretion are: (a) the nature of the privilege claimed; (b) the number of documents involved; and (c) their potential relevance to the issues (at [39]).

83 In my view, the approach in *WH Holding* is not inconsistent with that taken in *Skandinaviska*. First, it is not suggested in either decision that judicial inspection should be the norm whenever the issue of privilege is contested. Secondly, both cases indicate that the discretion should be exercised carefully and conservatively (*Skandinaviska* at [104]; *WH Holding* at [39]). Thirdly, neither case espoused a rigid test but emphasised that each case must depend on its specific facts (*Skandinaviska* at [104]; *WH Holding* at [39]). There is nothing in *Skandinaviska* that suggests that the discretion will only be exercised in cases where the court is "reasonably certain" that the claim to privilege is erroneous. Indeed, if the court can already reach that conclusion on the evidence before it, it should generally order the production of that document instead of ordering judicial inspection.

84 In the context of production applications under the ROC 2021, I respectfully agree with the non-exhaustive factors in *WH Holdings* (at [39]), mentioned at [82] above, and add that these factors would have to be considered in conjunction with the Ideals set out in O 3 r 1(2) of the ROC 2021. To illustrate, judicial inspection of an entire category should not be ordered if the documents requested are so broad in scope that the request effectively denies the respondent a fair opportunity to particularise its claim of privilege. In such an instance, judicial inspection would not be cost effective because it would still require a respondent to locate and produce each document in that category, leaving parties to litigate over the issue of privilege in respect of many documents. This would increase the time and costs of proceedings. In such a scenario, the onus would be on the requesting party to scope its request to properly identify the requested documents and show that the documents are material to the issues in the case (O 11 r 3(1) of the ROC 2021). If the requesting party fails to do so, and the court is unable to identify a specific subset of

documents that would be material, the court should dismiss the requested category altogether.

85 Finally, I do not think that the existence of a discretion to order judicial inspection is inconsistent with the plain and obvious test set out in *Lutfi*. The plain and obvious test would be engaged if the party asserting privilege can establish on a *prima facie* basis that the requested documents are privileged. In that case, the court should generally not go behind the affidavits. However, where a respondent is unable to even make out a *prima facie* case in respect of all the documents in respect of which privilege is claimed, and the court believes that this may be possibly be due to imprecision in the drafting of the affidavits or the impracticability of responding to the entire request owing to its scope, judicial inspection remains an option.

86 If issues of privilege cannot be easily resolved by judicial inspection alone without the benefit of the requesting party's solicitors' views, it has been suggested that the court may order that the documents be disclosed to a confidentiality club comprising the applicant's solicitors, with an undertaking that the confidential information is not to be communicated to the applicant. This is known as a "Hollander order", named after Charles Hollander KC, who proposed that disputed documents be reviewed at first instance by the solicitors of the party asserting privilege (see, *eg*, Charles Hollander *KC*, *Documentary Evidence* (12th Edn, Sweet & Maxwell, 2021) at para 10-15).

87 While there is no reported decision in Singapore discussing a Hollander order, an illustration of its use in a production application is found in *Recovery Partners GP Limited and Another v Rukhadze and Others* [2021] EWHC 1621 (Comm) ("*Recovery Partners*"), where one category of the disputed documents related to litigation updates. The English High Court did not accept that updates

on litigation, without more, attracted privilege (at [62]). In particular, the court rejected the argument that the sole fact that the update was provided by a lawyer meant that the starting point should be that the communication was likely to contain privileged material (at [63]). The court opined that there was an implausibility in entire passages in those documents being privileged (at [64]), because there would be matters which were "vanilla" accounts of what has happened, and other aspects which contained or evidenced legal advice. The court ordered the unredacted documents to be provided directly and confidentially to the lawyers of the requesting parties, for them to cross-check the redactions (at [66]–[67]).

88 Not long after *Recovery Partners* was decided, the English High Court had another opportunity to consider Hollander orders in *JSC Commercial Bank Privatbank v Kolomoisky and others* [2022] EWHC 868 (Ch). The claimant alleged that the defendants had fraudulently misappropriated approximately US$1.9 billion. The first defendant disclosed over 6,000 WhatsApp messages, but many were heavily redacted on the basis that the redacted passages were either irrelevant, confidential or privileged. The claimant sought a Hollander order, among other relief. Trower J opined (at [10]):

> Where the court has doubts as to whether the redactions have been properly made, there are several solutions that have been adopted. One is to order that the redactions be reconsidered in light of the court's ruling with or without a more specific statement as to why a redaction has been made. A second is that the documents be provided confidentially to the inspecting parties' lawyers – i.e., the Hollander order described above – a solution adopted by Cockerill J in *Recovery Partners GP Limited v Rukhadze* [2021] EWHC 1621 (Comm), [65]-[67]. A third is the approach adopted by Snowden J in *WH Holding*, where he decided (at [36]) to inspect the documents himself. The court will often be reluctant to take that course, although it is sometimes the only practical way forward: see Snowden J's discussion of *Bank Austria AG v Price Waterhouse* [1997] CLY 464 and *Atos Consulting v Avis plc* [2007] EWHC 323 (TCC) at paras [33] to [35] and [40] of his judgment in *WH Holding*.

89 Trower J declined to grant a Hollander order and observed that the solicitors acting for the party seeking inspection are involved in proceedings against the first defendant in other jurisdictions, a factor which is capable of giving rise to difficulties if they as a firm came under disclosure obligations elsewhere (at [36]). In the circumstances, Trower J held that the appropriate relief was to order the solicitors acting for the first defendant to carry out a full re-review of all redactions. They were ordered to prepare a schedule which identifies in relation to each WhatsApp message in respect of which redaction is sought to be maintained, the names of the recipient, the date and time of the message and a generic description of the subject matter of the exchange without disclosing any of what the first defendant's solicitors were satisfied amounts to irrelevant and confidential information (at [38]). Trower J appreciated that this would be time-consuming, but the very limited disclosure from the first defendant and the nature and complexity of the case rendered it reasonable and proportionate (at [39]).

90 In my view, a Hollander order may be a useful tool but it comes with the risk of further unauthorised disclosure beyond the confidentiality club. Before the making of such an order, it may be necessary for the court to be satisfied of the measures that will be put in place to guard against unauthorised disclosure. Nevertheless, as it will ultimately not be necessary to make a Hollander order in this application, I say no more on this issue.

Decision

The material issues in OA 9

91 Before examining the respective categories, I consider the material issues in OA 9. The Claimants broadly advance two grounds: (a) a "conflict of interest" ground by virtue of Linklaters's concurrent representation of the

Petrofac entities and Thai Oil; and (b) the other based on the real and sensible possibility of misuse of confidential information.

92 On the conflict of interest ground, a preliminary objection raised by the Defendants is that civil courts are not the appropriate forum for a determination of whether there is a conflict of interests under a solicitor's legal professional conduct rules, especially in the context of an application for an injunction. In this regard, they rely on *Harsha Rajkumar Mirpuri (Mrs) née Subita Shewakram Samtani v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 ("*Harsha*") and submit that the conflict of interest issue is a non-starter.

93 However, *Harsha* does not stand for the proposition that a factual issue of whether there is a conflict of interest can never be relevant to deciding whether a solicitor should be restrained from acting. In *Harsha*, a threshold issue was whether the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ("PCR") governed applications for an injunction to restrain a law firm or a lawyer from acting. The High Court held that codes of conduct for legal practitioners were not intended to govern civil proceedings between private parties, and the PCR itself could not be the governing law (at [18]). However, the High Court recognised that a conflict of interest can be an "analytical tool" for determining whether the court's supervisory jurisdiction over its own solicitors can be engaged (at [83]); in this regard, the test is whether "there is an actual or reasonably perceived risk that the proper administration of justice would be prejudiced unless the lawyer in question is removed" (at [81]). This view was endorsed by the Court of Appeal in *Lim Oon Kuin and others v Rajah & Tann Singapore LLP and another appeal* [2022] 2 SLR 280 (at [64]–[65]).

94 On the Claimants' reliance on the court's supervisory jurisdiction (as a distinct ground from breach of confidence), I do not think that the Claimants are advancing a ground that is obviously non-existent such that there is no reasonable cause of action. In this regard, the Court of Appeal in *DMZ v DNA* [2025] 2 SLR 398 has held that Article 5 of the UNCITRAL Model Law on International Commercial Arbitration as adopted in Singapore ("Model Law"), which provides that "[i]n matters governed by this Law, no court shall intervene except where so provided in this Law", does not preclude the exercise of the court's supervisory jurisdiction over Singapore-seated arbitration in matters not governed by the Model Law (at [29]). As the International Arbitration Act 1994 (2020 Rev Ed) and the Model Law do not provide rules on the removal of solicitors in an arbitration, it is at least arguable that court intervention in this regard may be permitted. The Claimants' position is that the test is whether a fair-minded, reasonably informed member of the public would conclude that the proper administration of justice requires that the legal practitioner be restrained from acting, in the interests of the protection of the integrity of the arbitral process, including the appearance of justice.[12]

95 Nevertheless, I do not think the issue of conflict of interest *per se* is material in OA 9. To begin with, it should be observed that the Claimants have alleged a conflict of interest arising between Linklaters's concurrent representation of the Petrofac entities and Thai Oil. In the Claimants' first supporting affidavit in OA 9, they aver:

> 26. As set out above, Linklaters represents Petrofac Limited and PIUL in their restructuring efforts, which included compromising and releasing any and all liabilities under the Parent Company Guarantees or otherwise in relation to the Project. Linklaters also represents Thai Oil in the EPC Arbitration, despite the fact that Thai Oil, on the one hand, and

[12] SUM 1526 Summary Table, Colum E at para 7.

the Petrofac entities, on the other hand, have directly adverse interests.

…

38. It will also be obvious that Thai Oil, on the one hand, and the Petrofac entities, on the other hand, have diametrically opposing interests with respect to the Project and the EPC Arbitration.

> a. Petrofac Limited — which is the ultimate parent company of the Petrofac group of companies — provided Parent Company Guarantees in respect of [PSEAL]'s and PSSBV's performance of the EPC Contract.
>
> b. Further, PIUL, ultimately owned by Petrofac Limited, is a 36% shareholder in PSSBV.
>
> c. In the EPC Arbitration, the Consortium has advanced claims with an estimated value of US$1.7 billion against Thai Oil. On the other hand, Thai Oil has advanced counterclaims with an estimated value of US$3.88 billion against the Consortium, including [PSEAL] and PSSBV, relating to obligations the performance of which Petrofac Limited guaranteed under its parent company guarantees.
>
> d. As mentioned above, the interests of each of the Consortium members are aligned with one another: under Clause 9.1 of the EPC Contract, each of the Consortium members are jointly and severally liable to Thai Oil for "the performance of the Contract and any and all obligations to be performed or amounts to be paid by the Consortium or by any of the Consortium Members".
>
> e. Thai Oil issued letters of demand dated 4 May 2024 under the Parent Company Guarantees to Petrofac Limited which Petrofac Limited stated was [redacted] to its restructuring process. …
>
> f. We understand that Thai Oil voted against Petrofac Limited's restructuring plan (see the English High Court decision of *In the matter of Petrofac Limited and another* [2025] EWHC 1250 (Ch) at [3], class [5]).

39. Importantly, the dispute between the parties in relation to the Project is inextricably linked to the restructuring and insolvency matters involving the Petrofac Group, and in particular Petrofac Limited and PIUL, which Linklaters also acts for.

…

> 85. We are also verily advised and believe that Linklaters' concurrent representation of Thai Oil and the Petrofac entities with ***directly adverse interests*** (see [26] above) on ***inextricably related matters*** (see [39] above) constitutes a conflict of interest under the relevant Singapore, English and Hong Kong rules of professional conduct, such that Linklaters Singapore, Linklaters UK and Linklaters HK are duty bound to cease acting in the EPC Arbitration, and that, consequently, Thai Oil should be restrained from engaging Linklaters Singapore, Linklaters UK and Linklaters HK to advise and act for it in connection with the EPC Arbitration.
>
> [emphasis added]

96 From the passages above, the Claimants assert that Thai Oil and the Petrofac entities have "directly adverse interests" and that Linklaters are representing both on "inextricably related matters". The Claimants appear to be arguing that because: (a) Thai Oil has advanced claims against PSEAL and PSSBV whose interests are aligned with the Claimants; (b) Petrofac Limited ultimately owns PSEAL and PSSBV, and PIUL is a shareholder of PSSBV; (c) and Linklaters represents Petrofac Limited and PIUL, there is a conflict of interest because Thai Oil's claims against PSEAL and PSSBV would affect the financial position of Petrofac Limited and PIUL, which Linklaters was concurrently seeking to improve, and thus Linklaters should be restrained from acting for Thai Oil in the EPC Arbitration.

97 However, the difficulty in understanding the formulation above is that Linklaters has not undertaken any duties to act for the Claimants which would come into conflict with their duties owed to Thai Oil, and which would prevent Linklaters from discharging their duties to act in the best interests of the Claimants; nor is it alleged that it is Linklaters's own interests that would come into conflict with the Claimants' interests. The Claimants have not explained how the divergent interests between the Petrofac entities and Thai Oil *per se*, and Linklaters's concurrent representation in different but related matters, would have a bearing on or be analytically relevant to whether the arbitral

process would be unfair or be seen to be unfair to the Claimants. This is especially since none of the Petrofac entities (including PSEAL and PSSBV) have raised any issue or are seeking to restrain Linklaters from acting for Thai Oil in the EPC Arbitration.

98 Reading the Claimants' first supporting affidavit as a whole, I am of the view that the Claimants' central complaint in OA 9, which they aver justifies the exercise of the court's supervisory jurisdiction, pertains to whether confidential information belonging to the Claimants could fall into the hands of the Linklaters Thai Oil team and Thai Oil, not conflict of interest *per se*. This is evidenced in the Claimants' first supporting affidavit in OA 9 (at paras 110–112):

> 110. Based on the information and documents within the possession of Samsung Thailand and Saipem Singapore (see [108] above), there is a real risk of the Linklaters Thai Oil team being privy to confidential, privileged and commercially sensitive information, whether inadvertently or otherwise. The alleged information barriers put in place by Linklaters do even not come close to ameliorating the real risk of the Consortium's confidential, privileged and commercially sensitive information coming into possession of the Linklaters team representing Thai Oil.
>
> 111. Such a real risk prejudices the integrity of the EPC Arbitration in at least two ways:
>
>> a. It requires the Samsung Thailand and Saipem Singapore to advance their case against Thai Oil in circumstances where ***Thai Oil may gain, or may already have gained, an unfair advantage through access to the Consortium's confidential, privileged and commercially sensitive information.***
>>
>> b. The fact that this risk exists also has ***constrained Samsung Thailand and Saipem Singapore from sharing confidential and privileged information with the Petrofac entities represented by Linklaters*** since the EPC Arbitration has commenced. As discussed in the next section, this has severely limited the ability of Samsung Thailand and Saipem Singapore to present their case and places them at a disadvantage.

> …
>
> 112. The real risk that the Consortium's confidential, privileged and commercially sensitive information may be disclosed to the Linklaters lawyers and staff representing Thai Oil fundamentally impedes the ability of Samsung Thailand and Saipem Singapore to collaborate with Petrofac entities to advance their claims and address Thai Oil's counterclaims in the EPC Arbitration. ***Such impediment stands as an independent reason as to why Linklaters ought to be restrained from acting in the EPC Arbitration in order to protect the integrity of the EPC Arbitration and prevent confidence in the administration of justice from being undermined.***
>
> [emphasis added]

99 Accordingly, I am of the view that in so far as the Claimants use the term "conflict of interest" as a distinct ground from breach of confidence to object to Linklaters's concurrent representation, the core questions in OA 9 regarding the exercise of the court's supervisory jurisdiction are: (a) whether there is a risk that confidential information belonging to the Claimants could fall into the hands of the Linklaters Thai Oil team and Thai Oil, and (b) whether the Claimants' confidential information could be misused by Thai Oil, such that Linklaters should be restrained from acting for Thai Oil in the EPC Arbitration. These two questions are also material to the Claimants' cause of action in breach of confidence, in respect of which the parties are aligned that the test is whether there is a real and sensible possibility of misuse of the Claimants' confidential information, which was set out by the Court of Appeal in *LVM Law Chambers LLC v Wan Hoe Keet and another and another matter* [2020] 1 SLR 1083 (at [15]).

100 On the factual indicia that may be probative of the sufficiency of information barriers, I agree with the Claimants that the English High Court decision of *Georgian American Alloys, Inc and others & White & Case LLP and another* [2014] EWHC 94 (Comm) may being illustrative of the factors that

would determine whether information barriers are sufficient. This case involved a successful application by the claimants to obtain a permanent injunction against White & Case to prevent the firm from acting for another person in a litigation pursued against the ultimate owners of the claimants. White & Case had previously acted for the claimants, who suspected misuse of their confidential information in the subsequent litigation by another team in White & Case.

101 In resisting the application, White & Case had disclosed several details, including the number of lawyers and staff working on each team, the exact number of lawyers in one team who overlapped with the other team in one particular office, as well as alleged interviews with the members of the teams concerned. There was also a review of every document stored on White & Case's electronic document system under the claimants' client number, amounting to 382 documents, and there was no evidence of unauthorised access (at [55]–[66]). Nevertheless, applying the test in *Bolkiah v KPMG (a firm)* [1999] 2 AC 222 ("*Bolkiah*") which governs the former-client-solicitor situation and requires the lawyers to instead show that there is no risk of disclosure, the court found that White & Case had not succeeded in showing that there was no risk of past or future unauthorised use of the confidential information. Factors that the court considered was that the information barriers were not always in place, the possibility of oral disclosures, and the overlap in the physical location of the two teams (at [84]–[86]).

102 While the Defendants argue that *Bolkiah* is not applicable in the present case because the Claimants are not *former clients* of Linklaters, the distinction merely relates to the burden of proof. The key factual question across both the *Bolkiah* situation and OA 9 remains whether there is a risk of disclosure and misuse. Nevertheless, I should highlight that the fact that there was extensive

information disclosed in *White & Case* does not mean that production should be ordered in SUM 1526 to the same extent. In *White & Case*, the disclosure of such information by White & Case was voluntary; whereas in SUM 1526, whether a production order should be made (and to what extent) would depend on whether the conditions for the making of such an order are met.

Documents sought against Linklaters

103 I now turn to each of the respective categories of documents sought.

Category 1

104 Category 1 seeks (reproduced verbatim for this category and all categories that follow): Any emails, letters, messages, correspondence or other communications in or around September to November 2023 between (i) Petrofac Limited and/or any other entities in the Petrofac group of companies (the “Petrofac Group”); and (ii) Linklaters UK, Linklaters Singapore and/or Linklaters HK in relation to Petrofac Limited and/or any other Petrofac Group entity’s engagement of Linklaters UK, Linklaters Singapore and Linklaters HK in relation to the matters set out in the engagement letter dated 14 November 2023.

105 The Claimants argue that the documents are material to determining the scope of Linklaters’s engagement. The broad scope of the term, “other matters connected with or in relation to the financial position of Petrofac Limited and the Group”, in the engagement letter likely captures advice on the Project and the dispute with Thai Oil, and Linklaters’s selective disclosure of the engagement letter creates an incomplete picture. The documents will show what Petrofac actually asked Linklaters to advise on and whether Project-related matters fell within the retainer in practice. Further, the documents are not

privileged as retainer letters are generally not privileged and Linklaters's bare assertion of privilege is insufficient. There has also been implied waiver given Linklaters's selective disclosure of the engagement letter. A Hollander order coupled with judicial inspection can address any residual privilege concerns. The documents are plainly material given the significant informational asymmetry, and this is a special case warranting production.

106 The Defendants submit that the documents are covered by legal advice privilege (O 11 r 5(3)). They are also private correspondence not subject to a production order (O 11 r 5(2)). The documents are not material to OA 9 as the central issue is real and sensible possibility of misuse, not conflict *per se*. The category is framed too broadly and could capture Linklaters's entire client file. The scope of engagement has already been described in affidavits.

107 Category 1 is dismissed:

(a) First, it is unclear how advice on matters pertaining to the "financial position of Petrofac Limited and the Group" (as set out in the 14 November 2023 engagement letter) would likely be material to whether there is disclosure or misuse of the Claimants' confidential information relating to the Project. This assumes that (i) matters pertaining to the "financial position of Petrofac Limited and the Group" would likely relate to the Project; and (ii) the documents sent by the Petrofac entities would likely shed light on whether Linklaters is in possession of the Claimants' confidential information. Even assuming the first assumption to be true by virtue of Thai Oil being Petrofac Limited's largest creditor, it is unclear how the second assumption holds true.

(b) Secondly, it is also not clear why correspondence relating to other entities in the Petrofac Group *at large* would be material to question of whether there is a real and sensible possibility of misuse of the Claimants' confidential information relating to the Project. Apart from PSSBV and PSEAL, no other Petofac entities were involved in the Project.

(c) Further, I observe that, in the Claimants' argument that the Defendants have not sufficiently particularised their defence of privilege, it would be overly onerous of them to do so given the broad nature of this request. On whether there has been implied waiver of privilege, Moreover, just because an engagement letter setting out the scope of the retainer in general terms has been disclosed, it does not mean that the disclosing party has waived privilege. In any event, legal advice privilege belongs to the respective clients (*ie*, "Petrofac Limited and/or any other entities in the Petrofac group of companies"), and it is not for the Defendants to waive that privilege.

(d) Finally, these documents would in any event be private documents. Given my conclusion on materiality, I do not need to decide if this is a special case justifying production.

Category 2

108 Category 2 seeks: The engagement letter(s) between (i) Petrofac Limited and/or any other Petrofac Group entity; and (ii) Linklaters UK, Linklaters Singapore and/or Linklaters HK in relation to the November 2021 Refinancing.

109 The Claimants submit that the documents are material to determining the scope of Linklaters's engagement in the November 2021 Refinancing, which

overlapped with Thai Oil's ongoing engagement of Linklaters. No engagement letter has been disclosed for this matter, unlike for the Restructuring. The Refinancing coincided with settlement negotiations between Thai Oil and the Consortium. Further, the documents are not privileged as retainer letters are generally not privileged, and in any event, implied waiver applies given Linklaters's disclosure of the 14 November 2023 engagement letter and/or this is a special case under O 11 r 5(2)(*a*). The documents are material given the overlap between the Refinancing and Linklaters's representation of Thai Oil on the Project. The Defendants' bare assertions should be tested against contemporaneous documents.

110 The Defendants submit that there was no separate engagement between the Petrofac Group and Linklaters Singapore/Linklaters HK. Also, the documents are covered by legal advice privilege and are private correspondence under O 11 r 5(2). Moreover, the documents are not material as the November 2021 Refinancing was purely financial and had no bearing on the Project. The category has no temporal limit and is framed too broadly.

111 Category 2 is dismissed:

(a) It is not plain and obvious that separate retainers between Linklaters HK and Linklaters Singapore existed.

(b) Furthermore, it is not clear how the issue of the scope of Linklaters's engagement in the November 2021 Refinancing, would be material to whether there is a real and sensible possibility of the misuse of the Claimants' confidential information relevant to the EPC Arbitration. The fact that the Refinancing coincided with settlement negotiations between Thai Oil and the Consortium is neither here nor there in relation to the question of whether there is risk of unauthorised disclosure or misuse of the Claimants' confidential information relating to the Project and the EPC Arbitration.

(c) Given these conclusions, it is not necessary for me to decide whether there has been an implied waiver of privilege. Nevertheless, I observe that even if the Petrofac Limited engagement letter dated 14 November 2023 has been disclosed, it is not Linklaters to waive the legal advice privilege that Petrofac Limited and/or the Petrofac Group holds.

(d) The engagement letter(s) would also be private correspondence. Given my decision on materiality, I do not need to decide if this is a special case justifying production.

Category 3

112 Category 3 seeks: Any emails, letters, messages, correspondence or other communications from October 2023 to date between (i) Petrofac Limited, Petrofac International (UAE) LLC [PIUL], Petrofac International Limited, Petrofac Facilities Management Limited, Petrofac (Malaysia-PM304) Limited and/or any other Petrofac Group entity; and (ii) Linklaters Singapore and/or Linklaters HK discussing the scope of Linklaters Singapore's and/or Linklaters HK's engagement in relation to the financial restructuring of the Petrofac Group (the "Restructuring"), including but not limited to engagement letters, as well as any variation, expansion, or limitation of the scope of such engagement.

113 The Claimants submit that Linklaters Singapore and HK have been advising on the Restructuring, including Singapore and Hong Kong law matters. However, no engagement letters or contemporaneous communications have been disclosed for these offices. The documents will shed light on the nature and extent of advice provided and whether it overlapped with the Project.

Further, it is now clear that Linklaters Singapore and Linklaters HK acted on the Restructuring. Even without separate engagement letters, written records of the scope of work would exist. The Claimants also argue that the documents are not privileged and, in any event, implied waiver applies; further, issues of privilege can also be dealt with through judicial inspection coupled with a Hollander order. The documents are material given the informational asymmetry and the absence of information barriers between October 2023 and March 2024.

114 The Defendants submit that Linklaters Singapore and Linklaters HK were not separately instructed, consistent with Linklaters's standard international engagement practice. Further, the documents are covered by legal advice privilege and are private correspondence. The category is also too broad and insufficiently particularised.

115 Category 3 is dismissed:

(a) It is not clear how Linklaters's scope of engagement relating to the Restructuring would have a material bearing on whether Linklaters obtained the Claimants' confidential information relating to the Project and the merits of the EPC Arbitration, and in turn the real and sensible possibility of the misuse of the Claimants' confidential information relevant to the EPC Arbitration.

(b) Further, the Defendants deny that the requested documents are within their possession or control given that Linklaters Singapore and/or Linklaters HK were not separately instructed by entities in the Petrofac Group. The Claimants have not shown that it is plain and obvious that the documents in Category 3 exist and are the possession or control of the Defendants. The Claimants have also not provided any evidence to suggest that "[e]ven if there are no separate letters of engagement, one would expect there to be written records setting out the scope of work that Linklaters Singapore and Linklaters HK were engaged for".

Category 4

116 Category 4 seeks: Any emails, letters, messages, correspondence or other communications in or around January to April 2024 between (i) Petrofac Limited and/or the Petrofac Group and (ii) Linklaters UK discussing the request of Petrofac Limited and/or the Petrofac Group to review the underlying documentation in relation to the Project, including any documents or materials (including but not limited to memoranda, file notes, attendance notes and/or meeting minutes) pertaining to the "discussion on Friday morning regarding our conflict position in respect of Thai Oil" as referred to the email dated 24 March 2024 from Matthew Harding to Sandra Redding (the "24 March 2024 Email"), as well as any emails, letters, messages, correspondence or other communications between (i) Petrofac Limited and/or the Petrofac Group and (ii) Linklaters UK referring to, responding to, discussing, commenting on, forwarding, acknowledging, or otherwise arising out of the 24 March 2024 Email.

117 The Claimants submit that the documents are directly relevant to the scope of Linklaters's engagement in relation to the Project and whether Linklaters had already engaged with Project documentation before imposing the limitation on 24 March 2024. The documents will reveal the nature of Petrofac's request, the extent of Linklaters's review, and the basis on which Linklaters identified its conflict position with Thai Oil. The documents are not privileged and in any event implied waiver applies. In so far as they are private correspondence, this is a special case under O 11 r 5(2)(*a*). The documents are

plainly material as they go to whether Linklaters had been exposed to Project-related matters before information barriers were implemented.

118 The Defendants submit that the documents are covered by legal advice privilege and are private correspondence. Further, the documents are not material because the scope of engagement has already been addressed in affidavits. Moreover, Linklaters is not required to disclose documents to prove a negative.

119 Category 4 is dismissed:

(a) The communications between Petrofac Limited and/or the Petrofac Group and Linklaters UK in relation to the request for Linklaters UK to review the underlying documentation in relation to the Project are covered by legal advice privilege because they would form part of the continuum of communications for the purpose of Petrofac Group seeking legal advice "as part of [Linklaters UK's] work on the financial restructuring".[13]

(b) Moreover, the privilege does not belong to Linklaters, but to Petrofac Limited and/or the Petrofac Group, and the Defendants cannot waive that privilege. In any event, I do not regard the mere reference to a request to review the Project documentation as being a broader waiver to reveal the nature of Petrofac's request, the extent of Linklaters's review, and the basis on which Linklaters identified its conflict position with Thai Oil.

[13] Redding A1 at para 10.

(c) Further, I observe that the documents would be private as between Linklaters UK and the Petrofac Group.

Category 5

120 Category 5 seeks: Any emails, letters, messages, correspondence or other communications in or around March and April 2024 between (i) members of the Linklaters Petrofac team and (ii) members of the "Legal and Risk team" or "risk and conflicts team" of Linklaters in relation to Linklaters not advising "[Petrofac Limited] or its subsidiaries on their respective rights under any of the Clean Fuels Project documentation or in relation to any disputes concerning the Project".

121 The Claimants submit that the documents are directly relevant to Linklaters's internal decision-making process leading to the 24 March 2024 email. Mr Harding expressly refers to discussions with the internal risk and conflicts team. The documents will reveal what information was placed before the conflicts team, the nature of Linklaters's involvement with the Project, and the reasoning behind the decision to limit the scope of advice. The documents are material as they go to whether any substantive review of the Project documentation had been undertaken before information barriers were implemented. This is a special case justifying production of internal correspondence. The Claimants also submit that the documents are not privileged as Linklaters has not identified who in the Legal and Risk team was involved or asserted that they were acting independently. Implied waiver also applies given Linklaters's reliance on the alleged discussions with the risk team.

122 The Defendants submit that the documents are covered by legal advice privilege as they were created for the purpose of obtaining/giving legal advice, including from in-house counsel. The documents are internal correspondence

not subject to a production order under O 11 r 5(2) and no special case has been established. The documents are also not material to the real and sensible possibility of misuse.

123 Category 5 is dismissed:

(a) While I agree that these documents may be probative of whether Linklaters had already engaged with or was exposed to Project-related matters prior to 24 March 2024, I am satisfied that there is a *prima facie* case that the documents are protected by legal advice privilege. The sought document would form part of the continuum of communications for the purpose of seeking legal advice from the "Legal and Risk team" / "risk and conflicts team" on whether Linklaters is in a position to advise the Petrofac Group on their rights under the Project.

(b) I am also not satisfied that there has been an implied waiver of privilege. The fact that Linklaters disclosed that it had sought legal advice does not mean that it has waived its right to reveal the specific contents of that legal advice, or the specific facts provided to its legal advisers that led to the advice.

(c) Further, these documents would be internal documents. Given my conclusions above, it is unnecessary for me to conclude if this is a special case requiring the production of internal documents.

Category 6

124 Category 6 seeks: The engagement letter(s) between (i) Petrofac Limited and/or any other Petrofac Group entity and/or Linklaters; and (ii) Simmons & Simmons LLP ("Simmons"); as well as any emails, letters, messages, correspondence or other communications, including internal minutes or notes

of meetings, in or around March and April 2024 between the Linklaters Petrofac team and Simmons discussing (i) the "briefing of Simmons on elements of the Restructuring that would be relevant to their role" which Mr Harding facilitated; (ii) the measures agreed upon between Linklaters and Simmons in relation to the treatment of issues pertaining to the Project.

125 The Claimants submit that the engagement letters are relevant to Simmons's role and the steps taken to manage conflicts and whether Linklaters's engagement of Simmons resolves the conflict. The Defendants rely on Simmons' engagement to argue there is no conflict, but there is no clarity on Simmons' role or who gives Simmons instructions. The documents will reveal the nature of information shared with Simmons, the scope of Simmons's engagement, and the conflict management measures agreed between Linklaters and Simmons. Further, the documents are not privileged as the scope of retainers and measures agreed between Linklaters and Simmons do not entail the giving of legal advice. Linklaters's position is internally incoherent if it never advised on the Project but still needed to brief Simmons on the Restructuring. Additionally, implied waiver applies. In so far as these are private documents, this is a special case under O 11 r 5(2)(a).

126 The Defendants submit that the documents are not material as Simmons's role has been set out in affidavits. Moreover, the documents are covered by legal advice privilege as Linklaters acted as a conduit for Petrofac. The documents are also private correspondence and not subject to a production order.

127 Category 6 is dismissed. It is unclear how the documents would have any material bearing on the breach of confidence issue, given the Petrofac

Group's evidence that Linklaters did not advise on the Project.[14] In any event, the Claimants have not established how the engagement letters are likely to shed light on whether Linklaters actually advised in relation to the Project. The documents would also be private as between the Petrofac Group and Simmons. Given my conclusions on materiality, it is not necessary to determine if this is a special case justifying the disclosure of private documents. I do not need to make a finding of whether the documents are privileged.

Category 7

128 Category 7 seeks: Any emails, letters, messages, correspondence or other communications from around 24 March 2024 to date between the Petrofac Group entities for which Linklaters was acting and Linklaters in which (i) they accepted that Linklaters would not advise the Petrofac entities in relation to the Project and any dispute with Thai Oil; (ii) they consented to Linklaters using separate and distinct teams to advise and represent Thai Oil on the one hand and the Petrofac entities on the other hand; and (iii) they consented to the use of information barriers to protect confidential information.

129 The Claimants submit that a key plank of the Defendants' defence is that Petrofac and Thai Oil agreed to the limitation of Linklaters's retainers, removing any conflict. However, apart from only one-way emails from Linklaters to Petrofac, no documentary evidence of Petrofac's agreement or consent has been disclosed. The documents are material to the precise terms of Petrofac's consent and its understanding of the conflict arrangements, and this is a special case justifying production. This also is a special case under O 11 r 5(2)(a) as Petrofac's consent lies at the very heart of OA 9.

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[14] Redding A1 at paras 13 and 15.

130 The Defendants submit that the documents are private correspondence and not subject to a production order under O 11 r 5(2). The documents are not material as Petrofac's consent to information barriers is a term in Linklaters's standard terms of business, confirmed by Petrofac Limited on affidavit and by a letter from Simmons. In any event, the category is framed too broadly.

131 Category 7 is dismissed. On the question of whether there is a real and sensible possibility of misuse of the Claimants' confidential information, it is unclear why the safeguards and measures implemented by Linklaters would require the Petrofac entities' approval, such that their approval would be material to OA 9. In any event, the Petrofac Group has independently confirmed that its consent has been given.[15] Given my conclusions on materiality, it is not necessary to determine if this is a special case justifying the disclosure of private documents. I do not need to make a finding of whether the documents are privileged.

Category 8 [redacted]

132 [This paragraph is redacted]

133 [This paragraph is redacted]

134 [This paragraph is redacted]

135 [This paragraph is redacted]

Category 9 [redacted]

136 [This paragraph is redacted]

15 Redding A1 at paras 11 and 18.

137 [This paragraph is redacted]

138 [This paragraph is redacted]

139 [This paragraph is redacted]

Category 10

140 Category 10 seeks: The engagement letter(s) between (i) Teneo and (ii) Linklaters UK, Linklaters Singapore and/or Linklaters HK in relation to the scope of Linklaters UK's, Linklaters Singapore's and/or Linklaters HK's engagement in relation to the administration of Petrofac Limited (the "Administration").

141 The Claimants submit that while Linklaters relies on the onset of Administration and its representation of Teneo to argue there is no longer a conflict, no evidence of the scope of Linklaters's engagement with Teneo has been disclosed. Petrofac may still receive significant sums from the Consortium's claims against Thai Oil through its shareholdings. The documents are material to establishing the precise scope of Linklaters's engagement with Teneo and whether any limitation was clearly defined and maintained. The documents also go to the heart of the issue of whether there is a real and sensible possibility of misuse of confidential information. Further, engagement letters are generally not privileged and implied waiver applies because Linklaters has disclosed the 14 November 2023 engagement letter. In so far as the documents are private, this is a special case.

142 The Defendants submit that the documents are covered by legal advice privilege and are private correspondence. The documents are not material as Teneo has confirmed that Linklaters is not acting in relation to the Project or

EPC Arbitration, and Simmons has been engaged for those matters. Moreover, the category is overly broad as it has no temporal limit.

143 Category 10 is dismissed:

(a) I am not satisfied that the engagements letters are material. Teneo has already independently confirmed that (a) "Linklaters aren't acting in relation to the CFP project or the arbitration for the Joint Administrators to deal with these aspects of the administration"; and that "the Administrators and their team will not send [Linklaters] any confidential (potentially or otherwise) information relating to the Thai Oil arbitration or the [Project]".[16] It is not evident why there is reason for the court to disbelieve Teneo, conclude that the engagement letter is material, and order further production.

(b) In any event, the engagement letters would be private as between Linklaters and Teneo, and given my conclusion on materiality, it is unnecessary to decide if the special case exception is met.

Category 11

144 Category 11 seeks: Any information or material received by the Linklaters Petrofac team from Teneo from October 2025 onwards concerning Thai Oil, the Project and/or the EPC Arbitration.

145 The parties repeat their submissions made in respect of Categories 9 and 10. The Defendants add that the broad scope of the request would inevitably capture publicly available information.

16 Middleditch A1 at p 31.

146 Category 11 is dismissed. Linklaters has confirmed that since Petrofac Limited's administration, they "no longer receive any information relating to the Clean Fuels Project".[17] Further, Teneo has confirmed that (a) "Linklaters aren't acting in relation to the CFP project or the arbitration for the Joint Administrators to deal with these aspects of the administration"; and that "the Administrators and their team will not send [Linklaters] any confidential (potentially or otherwise) information relating to the Thai Oil arbitration or the [Project]".[18] It is unlikely that the relevant documents exist or are in the possession or control of Linklaters.

Category 12

147 Category 12 seeks: The engagement letter(s) between (i) Petrofac Services Limited (in administration), Petrofac Treasury UK Limited (in administration) and/or Petrofac International Limited (in administration): and (ii) Linklaters UK, Linklaters Singapore and/or Linklaters HK in relation to the administration of the relevant entity.

148 The Claimants submit that Linklaters, including Linklaters Singapore and Linklaters HK, continues to advise certain Petrofac Group entities in administration. The engagement letters are material to ascertaining the scope of Linklaters's engagement with these entities and whether that scope was varied in practice. Linklaters should not be permitted to rely on unsubstantiated assertions that these matters have no bearing on the Project. The documents are also not privileged and even if they are, implied waiver applies. In any case, the Defendants' assertion of privilege can be dealt with by judicial inspection

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17 Harding A1 at para 81.

18 Middleditch A1 at p 31.

coupled with a Hollander order. In so far as these are private documents, this is a special case justifying production.

149 The Defendants submit that there was no separate engagement letter between the listed entities and Linklaters Singapore and/or Linklaters HK. Further, the documents are covered by legal advice privilege and are private correspondence. The documents are not material as there is no link between these entities and the Project has been established.

150 Category 12 is dismissed:

(a) The Claimants have not established how the scope of Linklaters's engagement with Petrofac Services Limited (in administration), Petrofac Treasury UK Limited (in administration) and/or Petrofac International Limited (in administration) has any bearing on whether Linklaters will come into contact with the Claimants' confidential information and whether there is a real and sensible possibility that the Linklaters Thai Oil team will misuse the Claimants' confidential information such that they should be restrained from acting for Thai Oil in the EPC Arbitration.

(b) Further, the Defendants have denied that there were separate engagement letters between the Petrofac entities listed in this category and Linklaters Singapore and/or Linklaters HK. The Claimants have not sought to establish on a plain and obvious standard that these documents exist.

(c) As for the engagement letter(s) between Petrofac Services Limited (in administration), Petrofac Treasury UK Limited (in administration) and/or Petrofac International Limited (in administration): and Linklaters UK, these are private documents. Given my conclusion on materiality, it is unnecessary to reach any conclusion on whether this is a special case and whether the engagement letters are privileged, save that I observe that it is not for Linklaters to waive legal advice privilege.

Category 13 [redacted]

151 [This paragraph is redacted]

152 [This paragraph is redacted]

153 [This paragraph is redacted]

154 [This paragraph is redacted]

Category 14

155 Category 14 seeks: Any emails, letters, messages, correspondence or other communications to members of the Linklaters Petrofac team from around 19 November 2025 concerning the closure of the existing Petrofac Limited matter file and opening of a new matter.

156 The Claimants submit that the documents are directly relevant to how Linklaters structured and managed its engagement following the Administration. The closure and opening of matter files would reflect the reorganisation of Linklaters's engagement and is relevant to assessing whether the separation was substantive and effective, and whether information from the original matter was carried over. This is a special case justifying production of internal correspondence.

157 The Defendants argue that the documents are internal correspondence and not subject to a production order, and no special case has been established. The documents are not material as the file closure was purely administrative as the engaging entity changed from Petrofac Limited to Teneo. Further, the category is framed too broadly and has no temporal limit.

158 Category 14 is dismissed:

(a) In so far as the request seeks to address whether information barriers between the Linklaters Petrofac team and Linklaters Thai Oil team continued to be maintained following the Petrofac Limited's administration, the request is framed too broadly and would include purely internal or administrative documents that have no bearing on the information barriers or the terms of Linklaters's engagement.

(b) Further, the Claimants have also not provided a reason to suspect that the terms of the information barriers or the terms of Linklaters's engagement have changed following Petrofac Limited's administration. Accordingly, I am not persuaded that ordering production of internal documents in this regard would be appropriate.

Category 15

159 Category 15 seeks: Any emails, letters, messages, correspondence or other communications to members of the Linklaters Petrofac team from around 19 November 2025 in relation to separate matters having been "opened for certain of the entities in the Group by which Linklaters were engaged to continue to act".[19] At the hearing, the Claimants' counsel indicated that they

[19] Harding A1 at para 88.

were willing to limit the scope of this category to the administrative files on the opening and closing of matters.

160 The parties repeat their submissions made in respect of Category 14. The Defendants further submit that the Claimants have not explained how work for other Petrofac group entities has any bearing on the Project.

161 Category 15 is dismissed. It is not clear how the fact of separate matters having been "opened for certain of the entities in the Group by which Linklaters were engaged to continue to act" is material to the breach of confidence issue in OA 9. I reiterate my reasons set out in Category 14 above.

Category 16

162 Category 16 seeks: Any emails, letters, messages, correspondence or other communications from around 3 May 2024 onwards between Thai Oil and Linklaters in which (i) Thai Oil accepted that Linklaters would not advise Thai Oil in relation to the Restructuring; (ii) Thai Oil consented to Linklaters using separate and distinct teams to advise and represent Thai Oil on the one hand and the Petrofac Group on the other hand; and (iii) Thai Oil consented to the use of information barriers to protect confidential information and to Linklaters not disclosing to Thai Oil confidential information about Petrofac Group.

163 The Claimants submit that a key plank of the Defendants' defence is that Thai Oil agreed to the limitation of Linklaters's retainer, removing any conflict. However, only one-way emails from Linklaters to Thai Oil have been disclosed and there is no documentary evidence of Thai Oil's agreement or consent. The documents are material to the precise terms of Thai Oil's consent and its understanding of the conflict arrangements. Notably, Thai Oil was not informed of the information barriers until May 2024, two months after they were

implemented. The documents are also not privileged as it is unclear why Thai Oil's consent to the limitation of its retainer would entail the giving of legal advice. In any event, implied waiver applies and concerns of privilege can be dealt with by judicial inspection coupled with a Hollander order. In so far as the documents are private correspondence, this is a special case for ordering production.

164 The Defendants submit that the documents are covered by legal advice privilege and are private correspondence. The documents are not material because Thai Oil has confirmed by way of affidavit that it accepted the limitation and does not expect Linklaters to disclose Petrofac's confidential information. The category is framed too broadly and has no temporal limit.

165 Category 16 is dismissed:

(a) I am not satisfied that the documents in this category are material. It is not apparent why Thai Oil's consent is necessary for: (i) the Linklaters Petrofac team to not disclose confidential information to the Linklaters Thai Oil team, and thereafter (ii) for the Linklaters Thai Oil team not to disclose the Claimants' confidential information to Thai Oil.

(b) Further, a representative from Thai Oil has already confirmed on affidavit in June 2026 that Thai Oil has accepted the limitation and does not expect Linklaters to disclose Petrofac's confidential information.[20] This further reduces the necessity of the request.

20 Arkhanin A2 at paras 17 and 29.

Category 17

166 Category 17 seeks: Any emails, letters, messages, correspondence or other communications from around 16 January 2025 onwards between Linklaters and PTT Public Company Limited ("PTT") and/or Peangpanor Boonklum in which (i) PTT and/or Peangpanor Boonklum agreed that Linklaters would not advise Thai Oil in relation to the Restructuring and (ii) PTT and/or Peangpanor Boonklum agreed that Linklaters would use separate and distinct teams to advise and represent Thai Oil on the one hand and the Petrofac group on the other hand.

167 The date of 16 June 2025 as referred to in the category relates to an email to PTT by Linklaters sent on that date which states:

> Dear Khun Peangpanor
>
> Khun Bandhit has requested that we share our confirmation that we sent to Thai Oil on 3 May 2024 with respect to Thai Oil's request to Linklaters to advise Thai Oil on Petrofac's restructuring which we informed Thai Oil at that time that we are unable to advise Thai Oil with respect to Thai Oil's restructuring due to conflicts. We have confirmed in our email of 3 May 2024 that our role in advising Thai Oil with respect to the EPC Contract, including disputes relating to the EPC Contract, remains unchanged.
>
> …

168 The parties repeat their submissions in respect of Category 16. In relation to this category, the Claimants also submit that the 16 January 2025 email to PTT is relied upon by Linklaters as evidence of agreement to the limitation of its retainer, but no reply evidencing agreement has been disclosed. PTT is a significant shareholder of Thai Oil.[21] Based on public records, PTT is a significant shareholder of Thai Oil with a 45.03% shareholding. It would

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21 Middleditch A1 at p 178.

appear that PTT, as a significant shareholder of Thai Oil, appointed Peangpanor Boonklum to the board of directors of Thai Oil, and Peangpanor Boonklum received the email in her capacity as a director at that time.

169 Category 17 is dismissed. I reiterate all my reasons in Category 16.

Category 18

170 Category 18 seeks: Any emails, letters, messages, correspondence or other communications in or before May 2024 between Thai Oil and Linklaters which prompted Linklaters to inform Thai Oil that it would not be able to advise in relation to the Petrofac Group's financial matters and any emails, letters, messages, correspondence or other communications whereby Linklaters subsequently informed Thai Oil accordingly.

171 The parties repeat their submissions in respect of Category 16. The Claimants submit in relation to this category that the documents are material to the circumstances in which Linklaters's scope of engagement with Thai Oil was limited. The 3 May 2024 email refers to earlier discussions, but no explanation has been given as to what prompted it. Additionally, Thai Oil was not informed of the conflict until May 2024, two months after information barriers were implemented in March 2024.

172 Category 18 is dismissed. I am not persuaded that the circumstances behind what prompted the 3 May 2024 email would be probative of whether there is a real and sensible possibility of misuse of the Claimants' confidential information. For completeness, I observe that the Claimants argued in respect of Category 28 (which mirrors Category 18) that the communications would reveal the circumstances that prompted Linklaters to identify the issue, the information available to Linklaters at the time, and the considerations that

informed the eventual decision to restrict the scope of its retainer.[22] However, it is unclear how the scope of the Linklaters Thai Oil team's retainer has any relevance to whether the Claimants' confidential information was obtained or whether there is a risk of misuse. Accordingly, I find no reason to order the production of private correspondence.

Category 19

173 Category 19 seeks:

> Any documents or materials (including but not limited to memoranda, policy documents, emails, letters, correspondence or other communications, file notes, attendance notes, compliance records, training materials, organisational charts, access logs, and records of system permissions) from around March 2024 to date evidencing, referring or relating to any information barriers within Linklaters UK, Linklaters Singapore and/or Linklaters HK, including but not limited to:
>
> (i) the establishment, implementation, and maintenance of such information barriers;
>
> (ii) any policies, protocols, or procedures governing the information barriers;
>
> (iii) the identification of personnel subject to, or protected by, such measures;
>
> (iv) any monitoring, auditing, or enforcement of such measures (including any breaches or suspected breaches);
>
> (v) the access logs in relation to the access of information on the representation of Thai Oil in the EPC Arbitration, the Restructuring and the November 2021 Refinancing;
>
> (vi) any communications or documents evidencing the effectiveness or otherwise of such measures;
>
> (vii) the policies, protocols or procedures in relation to "appropriate steps to protect relevant hard copy documentation";
>
> (viii) the policies, protocols or procedures in relation to the physical separation between Mr Weiniger and Mr Stevenson;

22 Summary Table in SUM 1526, Column E at para 241(b).

> (ix) the policies, protocols or procedures in relation to the physical separation between members of the London Litigation, Arbitration and Investigation practice who are in the Linklaters Petrofac and Thai Oil teams;
>
> (x) the policies, protocols or procedures in relation to the physical separation of the Linklaters Petrofac team and the Linklaters Thai Oil team in the Singapore and Hong Kong offices;
>
> (xi) the "further practical steps beyond standard measures" to protect Petrofac's and Thai Oil's information.

174 The Claimants submit that the information barriers are a central plank of Linklaters's defence, yet no contemporaneous documentary evidence of their establishment, implementation, or maintenance has been disclosed. They submit that Linklaters's assertions are vague and unsubstantiated: it has not identified the personnel subject to the barriers, given particulars of the appropriate steps for hard copy documents, or addressed physical separation in Singapore and Hong Kong. This is also a special case justifying production of internal correspondence.

175 The Defendants submit that some of the documents sought are internal to Linklaters and not subject to a production order. Further, the documents requested are not material to OA 9 and do not go towards the real and sensible possibility of the Claimants' confidential information being misused. The Claimants have also not taken issue with the sufficiency of Linklaters's information barriers and there is therefore no connection with the request for documents and the facts pleaded. The request is also too broad.

176 Category 19 is allowed in part. To begin with, I do not agree with the Defendants' submission that the Claimants have not taken issue with the sufficiency of Linklaters's information barriers. The Claimants' first supporting affidavit filed in OA 9 expressly stated that the "alleged information barriers put in place by Linklaters do not even come close to ameliorating the real risk of

the Consortium's confidential, privileged and commercially sensitive information coming into possession of the Linklaters team representing Thai Oil".[23] Further, I agree with the Claimants that the sufficiency of Linklaters's information barriers is not only material but a "central plank" of the Defendants' case.

177 I also agree that this is a special case for ordering the production of internal documents. This is a case where the internal processes of Linklaters (specifically its information barriers) and how documents move within Linklaters are key facts pertaining to the Claimants' cause of action in breach of confidence. In OA 9, the sufficiency of the information barriers would likely provide a direct answer to the issue of whether there is a real and sensible possibility of the Claimants' confidential information being misused by Thai Oil in the EPC Arbitration. The Defendants have also not raised any specific prejudice that cannot be compensated by costs should they prevail in OA 9. If production were not ordered at all in this respect, it would be wholly perverse.

178 Nevertheless, given that the documents are internal to Linklaters, I am of the view that the production order should not be unduly intrusive. Production should only be ordered to the extent necessary, which in the context of OA 9 is the sufficiency of the information barriers in place, and specifically, barriers preventing the flow of information from the Linklaters Petrofac team to the Linklaters Thai Oil team. Accordingly, I order the production of documents expressly setting out or explaining:

> (a) the policies, protocols, or procedures governing the terms of the information barriers to prevent the flow of information from the

[23] Ko and Federici A1 at para 110.

Linklaters Petrofac team to the Linklaters Thai Oil team, including measures such as the physical separation of personnel, the protection of documentation, and personal undertakings by Linklaters personnel;

(b) the identification of personnel in the Linklaters Thai Oil team and Linklaters Petrofac team who are presently subject to the information barriers, and who have ever been subject to the information barriers;

(c) the time periods in which the identified personnel were/are subject to the information barriers;

(d) whether there has been any unauthorised access or attempted unauthorised access; and

(e) any "further practical steps beyond standard measures"[24] to protect the Claimants' confidential information.

Category 20

179 Category 20 seeks: Any emails, letters, messages, correspondence or other communications from March 2024 to date informing members of the Linklaters Thai Oil team of the information barrier (including new members added to the team from time to time), including but not limited to communications in or around February 2025 informing Mr Weiniger and the other members of the Linklaters Thai Oil team of the information barrier.

180 The Claimants repeat their submissions in respect of Category 19, and submit that the Thai Oil team members should have been informed of the

[24] Middleditch A1 at para 27.4

information barriers in order for it to be established, implemented and maintained. The documents are material to the extent to which the Consortium's confidential information may have pass through the barriers. This is also a special case justifying the production of internal documents.

181 The Defendants submit that some of the documents sought are internal to Linklaters and not subject to a production order. The documents are also not material to the issues in OA 9 and too broad. The Defendants repeat their submission that the Claimants have not taken issue with the sufficiency of information barriers.

182 Category 20 is dismissed. These documents relating to the sufficiency of the information barriers to prevent the flow of information from the Linklaters Petrofac team and the Linklaters Thai Oil team has been addressed in respect of my order in Category 19, and would identify new members subject to the information barriers. I do not think it is necessary to make a separate order in respect of Category 20.

Category 21

183 Category 21 seeks: Any emails, letters, messages, correspondence or other communications from March 2024 to date informing members of the Linklaters Petrofac team of the information barrier (including new members added to the team from time to time).

184 The parties repeat their submissions in respect of Category 20.

185 Category 21 is dismissed for the same reason as Category 20.

Category 22

186 Category 22 seeks: Any emails, letters, messages, correspondence or other communications from late 2023 to date evidencing the identities of all the members of the Linklaters Petrofac team who have worked on the Restructuring and/or the November 2021 Refinancing from time to time.

187 The Claimants submit that Linklaters has not identified the specific personnel subject to the information barriers. Without knowing the composition of the respective teams, the Claimants cannot assess the potential for misuse. The relevant considerations include the number of personnel involved, whether team memberships changed, and whether team members worked together on other matters. The documents are also not subject to legal advice privilege. In so far as these are internal documents, this is a special case justifying a production order.

188 The Defendants submit that some documents are covered by legal advice privilege and are private correspondence not subject to a production order under O 11 r 5(2). Further, no special case has been established which would justify the production of internal documents. The documents are also unnecessary because Claimants have already set out their case on the relevant personnel in their first supporting affidavit in OA 9. Finally, the category is framed too broadly.

189 Category 22 is allowed in part. In my view, the request is framed too broadly: (a) it is unnecessary to seek documents evidencing even the solicitors whom the Claimant knows to be acting in relation to the Restructuring; and (b) the relevance of the November 2021 Refinancing to the Project and the EPC Arbitration is not clear. Nevertheless, I am of the view that the identities of the solicitors who have worked on the Restructuring are material to the risk of cross-

contamination of potentially confidential information. I also note the clarification by the Claimants' counsel that the request is not meant to ask for every document evidencing the identities of solicitors,[25] but only "any" documents that can shed light on their identities.

190 Accordingly, I order the production of any emails, letters, messages, correspondence or other communications from October 2023 to date that are sufficient to evidence the identities of all members of the Linklaters Petrofac team who have worked on the Restructuring from time to time and who are not already identified by the Claimants in the first supporting affidavit in OA 9.

191 To the extent that some of the documents that fall within the scope of the production order may be privileged, those do not need to be disclosed if there are non-privileged documents available. Alternatively, Linklaters may produce the documents with the necessary redactions. In so far as the documents are internal and/or private correspondence, Linklaters may redact information that is irrelevant to the identities of those individuals. In my view, this is a special case justifying production, given that (a) facts directly pertaining to how the information barriers are managed would likely be strongly probative; and (b) the order is proportionate and not unduly intrusive.

Category 23

192 Category 23 seeks: Any emails, letters, messages, correspondence or other communications from December 2017 to date evidencing the identities of all the members of the Linklaters Thai Oil team who have worked on the representation of Thai Oil from time to time.

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[25] NE dated 15 July 2026 at p 180.

193 The parties repeat the submissions for Category 22. The Claimants submit that without identifying the composition of the Linklaters Thai Oil team, the Claimants cannot assess the information that has been passed through the information barrier. Further, without a clear understanding of all the Linklaters lawyers and staff that worked on each matter, the time during which they worked on the matter, and whether these lawyers and staff might work together on other, unrelated matters, the Claimants cannot assess the potential for misuse.

194 The Defendants submit that the category has an especially broad scope and an extremely voluminous number of documents could be caught. Materiality has also not been established in relation to all documents which could be caught within this category. Further, the Claimants' case on the relevant personnel who have been involved in advising and acting for Thai Oil has been set out in their first supporting affidavit.

195 Category 23 is allowed in part. I am of the view that the identities of the Linklaters Thai Oil team are material to the risk of cross-contamination of information (including the possibility that solicitors who were previously working for the Linklaters Petrofac team may subsequently work on the Thai Oil matter especially before the information barriers were established). Nevertheless, the scope of the request is too broad: (a) there is no good reason why the temporal scope of the request should start in 2017, even though the Claimants are only seeking documents from late 2023 in respect of Category 22; and (b) there is no reason why the documents should include the identities of the solicitors that the Claimants have already identified.

196 Accordingly, I order the production of any emails, letters, messages, correspondence or other communications from October 2023 to date evidencing the identities of all the members of the Linklaters Thai Oil team who have

worked on the representation of Thai Oil from time to time and who are not already identified by the Claimants in the first supporting affidavit in OA 9.

197 The same qualifications in Category 22 apply: the order only obliges the production of "any" documents that can shed light on their identities. To the extent that some of the documents that fall within the scope of the production order may be privileged, those do not need to be disclosed if there are non-privileged documents available. Alternatively, Linklaters may produce the documents with the necessary redactions. In so far as the documents are internal and/or private correspondence, Linklaters may redact information that is irrelevant to the identities of those individuals.

Category 24

198 Category 24 seeks: Any emails, letters, messages, correspondence or other communications between any of the members of the Linklaters Petrofac team and any of the members of the Linklaters Thai Oil team discussing Thai Oil and/or the Project and/or the Petrofac Group's financial situation and Restructuring, (i) from late 2023 to 24 March 2024; and (ii) from 24 March 2024 to date.

199 The Claimants repeat their submissions in respect of Category 19 and submit that the documents are the very documents that would show whether the Consortium's confidential information passed through the information barrier. The Claimants explain that the documents concern matters that underpin the relationships between the relevant parties and the matters on which Linklaters was engaged. This is a special case justifying production of internal correspondence. The documents are also not privileged as communications between internal teams do not involve communications to or from clients for

the purpose of obtaining legal advice. In any event, the Defendants' assertion of privilege can be dealt with by judicial inspection and/or a Hollander order.

200 The Defendants submit that the documents are internal correspondence not subject to a production order under O 11 r 5(2), and the Claimants have not established a special case justifying production. The category is also framed too broadly, and the documents are not material to whether there is a real and sensible possibility of misuse.

201 Category 24 is allowed in part:

(a) First, the category is framed too broadly. The scope of any correspondence "discussing Thai Oil and/or the Project and/or the Petrofac Group's financial situation and Restructuring" could cover a wide range of private and internal correspondence that are unlikely to be probative. It is also unclear how communications on "Thai Oil" or the "Petrofac Group's financial situation and Restructuring" generally, as opposed to the Project specifically, will be probative of whether there is a risk that confidential information relating to the Project will be disclosed to Thai Oil and misused.

(b) Secondly, the Claimants have no basis to suggest that there was any communication between the Linklaters Thai Oil team and the Linklaters Petrofac team "discussing Thai Oil and/or the Project and/or the Petrofac Group's financial situation and Restructuring" after the information barrier was set up on 24 March 2024.

(c) Nevertheless, I accept that the period before the information barriers were set up (*ie*, prior to 24 March 2024) is crucial to understanding whether there is a risk that confidential information flowed from the Linklaters Petrofac team to the Linklaters Thai Oil team during that period, and consequently, whether there is a risk of misuse.

202 Accordingly, I order the production of any emails, letters, messages, correspondence or other communications between any of the members of the Linklaters Petrofac team and any of the members of the Linklaters Thai Oil team discussing the Project from late 2023 to 24 March 2024. While the general position is that production should not be ordered in respect of internal documents, I am satisfied that this is a special case. The documents if they exist would be highly probative of whether the five-month period between October 2023 and March 2024, when there were no information barriers, gives risk to any risk of inadvertent disclosure and misuse of the Claimants' confidential information. Further, the temporal period of the order is scoped narrowly and, ideally, there would be little to no documents that would fall within the scope of this order.

Category 25

203 Category 25 seeks: Any emails, letters, messages, correspondence or other communications from around March 2024 to date between (i) the Linklaters Petrofac team (including Matthew Harding and/or Chris Stevenson); and (ii) members of the Legal and Risk team / risk and conflicts team of Linklaters discussing or concerning the "efforts ... made to ensure that the appropriate measures were kept in place".

204 The Claimants repeat their submissions in Category 19. In respect of this category, the Claimants highlight that Mr Harding avers that he and Mr Stevenson were in regular communication with the "Legal and Risk team"

to ensure appropriate measures were kept in place,[26] but no contemporaneous documentary evidence has been disclosed. The documents are material to whether the measures were in fact implemented and maintained, and whether the information barrier was effective. This is a special case justifying production of internal correspondence. The documents are also not privileged as it is unclear why efforts to ensure appropriate measures were kept in place would be privileged. Implied waiver also applies given Linklaters's reliance on the alleged communications with the risk team. In any event, judicial inspection and/or a Hollander order can address concerns about privilege.

205 The Defendants submit that the documents are covered by legal advice privilege as they were created for the purpose of obtaining/giving legal advice from in-house counsel. Further, the documents are internal correspondence and no special case has been established. Moreover, the documents are not material to the real and sensible possibility of misuse.

206 Category 25 is dismissed. While documents directly pertaining to the measures that were implemented to prevent the flow of confidential information from the Linklaters Petrofac team to the Linklaters Thai Oil team are material, it does not follow that all internal communications with the Legal and Risk team discussing or concerning the "efforts ... made to ensure that the appropriate measures were kept in place" would be material. In so far as this request is intended for the Claimants to ascertain the sufficiency of measures that were implemented, this purpose would be adequately covered by the production order made in respect of Category 19, which is targeted to the specific measures that were implemented as opposed to merely internal communications discussing

26 Harding A1 at para 80 and Tab 28.

those measures. I decline to make a separate production order in respect of Category 25.

Category 26

207 Category 26 seeks: Any emails, letters, messages, correspondence or other communications from around March 2024 to date between (i) the Linklaters Thai Oil team; and (ii) members of the Legal and Risk team / risk and conflicts team of Linklaters discussing or concerning the "efforts ... made to ensure that the appropriate measures were kept in place".

208 The parties repeat their submissions in respect of Category 25. The Claimants also submit that given Mr Harding's evidence that he and Mr Stevenson were in regular communication with the Legal and Risk team, one would expect similar communications to have taken place with the Thai Oil team.

209 Category 26 is dismissed for the same reasons as Category 25.

Category 27

210 Category 27 seeks: Any emails, letters, messages, correspondence or other communications from around March 2024 to date sent to members of the Linklaters Petrofac team and the Linklaters Thai Oil team discussing (i) the "potential" conflict of interest; (ii) confidentiality in respect of Petrofac and Thai Oil matters; (iii) what issues the respective team could and could not advise on as a result; and/or (iv) the information barriers between the Linklaters Petrofac and Linklaters Thai Oil team.

211 The Claimants repeat their submissions in respect of Categories 19, 25 and 26. In particular, the Claimants are seeking production of the documents

based on Mr Harding's evidence that "[he] and [his] colleagues at Linklaters who advised [Petrofac Limited] were extremely conscious of the potential conflict" and that "Mr Stevenson sent an email to our team to remind them of the potential conflict, the need to adopt confidentiality in respect of all matters relating to Petrofac and the information barriers that were in place between the Linklaters Petrofac and Linklaters Thai Oil teams".[27]

212 The Defendants repeat their submissions in respect of Category 25 and submit that those apply *mutatis mutandis*.

213 Category 27 is dismissed for the same reasons as Categories 25 and 26.

Documents sought against Thai Oil

Category 28

214 Category 28 seeks: Any emails, letters, messages, correspondence or other communications in or before May 2024 between Thai Oil and Linklaters which prompted Linklaters to inform Thai Oil that it would not be able to advise in relation to Petrofac's financial matters and any emails, letters, messages, correspondence or other communications whereby Linklaters subsequently informed Thai Oil accordingly.

215 Category 28 mirrors Category 18, except that the documents are also sought against Thai Oil. The parties repeat the arguments in respect of Category 18.

216 I dismiss Category 28 for the same reasons as Category 18.

[27] Harding A1 at para 80.

Category 29

217 Category 29 seeks: Any emails, letters, messages, correspondence or other communications from around 3 May 2024 to date between Thai Oil and Linklaters in which (i) Thai Oil accepted that Linklaters would not advise Thai Oil in relation to the Restructuring; (ii) Thai Oil consented to Linklaters using separate and distinct teams to advise and represent Thai Oil on the one hand and the Petrofac Group on the other hand; and (iii) Thai Oil consented to the use of information barriers to protect confidential information and to Linklaters not disclosing to Thai Oil confidential information about Petrofac Group.

218 Category 29 mirrors Category 16, except that the documents are sought against Thai Oil here. The parties repeat the arguments in respect of Category 16.

219 Category 29 is dismissed for the same reasons as Category 16.

Category 30

220 Category 30 seeks: Any emails, letters, messages, correspondence or other communications around May 2024 between Thai Oil and Melvin Sng of Polaris Advisory Asia Pte. Ltd. ("Polaris"), regarding the scope of Polaris' engagement "in relation to Petrofac's financial matters due to conflicts".

221 The Claimants submit that no evidence has been disclosed as to the scope of Polaris's engagement to advise Thai Oil in relation to Petrofac's financial matters. The documents will shed light on the scope of Polaris' engagement, the issues Polaris was asked to consider, and the extent to which those matters overlapped with the Restructuring. The documents are material to

assessing how the alleged conflicts were managed in practice. The Claimants also repeat their submissions in respect of Category 28.

222 The Defendants repeat their submissions in respect of Category 28 and submit that documents in this category would be wholly irrelevant to OA 9.

223 Category 30 is dismissed. On the Claimants' argument that the communications would reveal the circumstances that prompted Linklaters to identify the conflict of interest issue, the information available to Linklaters at the time, and the considerations that informed the eventual decision to restrict the scope of its retainer,[28] I repeat my reasons in Category 18 above: it is unclear how the scope of the Polaris's engagement (and the scope of the Linklaters Thai Oil team's retainer) has any relevance to whether the Claimants' confidential information was obtained or whether there is a risk of misuse in the EPC Arbitration. Further, these documents would be private as between Thai Oil and Polaris; given my conclusion on materiality, I do not need to conclude if this is a special case justifying production.

Category 31

224 Category 31 seeks: The engagement letter(s) between Thai Oil and Humphries Kerstetter LLP ("Humpries Kerstetter") in relation to the Petrofac Restructuring Plans and Thai Oil's position, rights and options as a creditor of Petrofac Limited.

225 The Claimants submit that no evidence has been disclosed as to the specific scope of Humphries Kerstetter's engagement. The documents are material to understanding what safeguards were implemented, when they were

[28] Summary Table in SUM 1526, Column E at para 241(b).

implemented, and whether they were adequate to address the risks arising from Linklaters's concurrent representations. The contemporaneous documents evidencing the scope of Humphries Kerstetter's engagement, and any variation, expansion or limitation thereof, therefore go directly to a central plank of the Defendants' case. The documents are also not privileged and it is unclear why the scope of Humphries Kerstetter's engagement would entail the giving of legal advice. In any event, implied waiver applies given the Defendants' reliance on Humphries Kerstetter's engagement as part of the conflict management measures. Concerns of privilege can also be addressed by judicial inspection coupled with a Hollander order. In so far as the documents are private, this is a special case justifying production since the Defendants have relied on the scope of Humphries's engagement.

226 The Defendants submit that it is especially unclear how the documents would go towards whether there is a real and sensible possibility of the Claimants' confidential information being misused. Moreover, the affidavit filed on behalf of Thai Oil has stated that Humphries Kerstetter advised "Thai Oil on the Petrofac Restructuring Plans and Thai Oil's position, rights and options as a creditor of Petrofac Limited",[29] and the Claimants have no basis to disbelieve this assertion.

227 Category 31 is dismissed. I agree with the Defendants that it is unclear how Humphries Kerstetter's scope of engagement is connected to whether there is a real and sensible possibility of the Claimants' confidential information being misused in the EPC Arbitration. The scope of Humphries Kerstetter's engagement would at best pertain to whether Linklaters is still involved in

29 Arkhanin A1 at para 21.

advising Thai Oil *in Petrofac Limited's administration*. That issue does not pertain to the EPC Arbitration and is irrelevant in OA 9.

Category 32

228 Category 32 seeks: Any emails, letters, messages, correspondence or other communications (including internal notes of meetings, reports to Thai Oil management, etc) from November 2023 to date discussing Linklaters's concurrent representation of Thai Oil and Petrofac Limited.

229 The Claimants repeat their submissions for Categories 16 and 28. The documents are material to the extent to which Thai Oil was informed of the nature and implications of the arrangements put in place by Linklaters. This is a special case justifying production of Thai Oil's internal correspondence, particularly given that Thai Oil's consent was only obtained in May 2024, two months after information barriers were implemented. Further, the mere fact that a document concerns Linklaters's concurrent representation does not automatically render it privileged. Any concerns about privilege can be dealt with by judicial inspection coupled with a Hollander order.

230 The Defendants submit that the documents are covered by legal advice privilege and are private correspondence not subject to a production order, and no special case exists. The documents are not material because they would not go to the real and sensible possibility of misuse, even if they shed light on Thai Oil's understanding of the conflict. Further, the category is framed too broadly with no identified sender/recipient or temporal limit.

231 Category 32 is dismissed. I agree with the Defendants that the documents would not be material to the real and sensible possibility of misuse of the Claimants' confidential information in the EPC Arbitration. It is not clear

why Thai Oil's consent is needed for information barriers to bet set up. In assessing whether there is a real and sensible possibility of misuse, the key inquiry would be how the Claimants' confidential information is managed and kept within Linklaters, not what Thai Oil understood of the conflict. Additionally, the broad manner in which the category is framed does not merely cover documents discussing whether Thai Oil was informed of the arrangements put in place by Linklaters, but appears instead to be a general "catch all" request that far exceeds the stated purpose of the category that was highlighted in the Claimants' submissions.[30]

Category 33

232 Category 33 seeks: Any emails, letters, messages, correspondence or other communications (including internal notes of meetings, reports to Thai Oil management, etc) discussing Thai Oil's decision to join PSEAL and subsequently seek leave from the Singapore court to continue the arbitration against PSEAL after it was placed into judicial management.

233 The Claimants submit that Linklaters commenced parent guarantee arbitrations against Samsung Parent and Saipem Parent but not against Petrofac Limited, despite having earlier indicated it would do so. This is inconsistent with Thai Oil's decision to join PSEAL to the EPC Arbitration and seek leave to continue proceedings against PSEAL after it was placed into judicial management. The documents are material to why Thai Oil chose to join PSEAL but not commence proceedings against Petrofac Limited, and whether this reflects the influence of Linklaters's conflict of interest. The documents are not privileged as Thai Oil has not averred that the documents were made for the

[30] SUM 1526 Summary Table, Column C at Category 32.

purpose of obtaining or giving legal advice, nor has Thai Oil identified its internal legal advisors or asserted that they were acting independently. In so far as these documents are private or internal correspondence, this is a special case for a production order to be made.

234 The Defendants submit that the documents are covered by legal advice privilege as the documents would involve communications made for the purpose of obtaining or giving legal advice. It is not controversial that seeking legal advice was the very purpose why Linklaters was engaged by Thai Oil. The documents are also private correspondence not subject to a production order as no special case has been established and no adverse documents are known to exist. The documents are not material and would not go towards the real and sensible possibility of confidential information being misused. Crucially, the joinder of PSEAL was necessary as it is a party to the EPC Contract, unlike Petrofac Limited. It is commercially rational not to pursue an insolvent entity, which explains why proceedings were not commenced against Petrofac Limited.

235 Category 33 is dismissed:

(a) First, the documents are immaterial as the Claimants have not alleged that the decision to join PSEAL and not Petrofac Limited to the EPC Arbitration is a result of the actual misuse of the Claimants' confidential information. This appears to be an attempt to fish for wrongdoing that has not been alleged by means of specific production.

(b) Secondly, the scope of this category is impermissibly broad. There is no temporal limit, and no specificity on the parties to the correspondence. The category as framed is disproportionate to the purpose of the request.

(c) Thirdly, I observe that the documents would be internal and/or private documents. Given my conclusion on materiality, there is no need to conclude if this would be a special case.

(d) Lastly, legal advice privilege would likely attach to many of the documents in this category, and especially to the documents which the Claimants may wish to have sight of – such as advice from Linklaters not to join Petrofac Limited to the EPC Arbitration. The Claimants have also not alleged any waiver. Production of these documents would clearly not be permissible.

Category 34

236 Category 34 seeks: Any emails, letters, messages, correspondence or other communications (including internal notes of meetings, reports to Thai Oil management, etc) in relation to Thai Oil's decision not to commence an arbitration against Petrofac Limited under the Parent Company Guarantees granted by Petrofac Limited.

237 The parties repeat their submissions in Category 33 above. Category 34 is a corollary to the underlying facts raised in Category 33.

238 Category 34 is dismissed for the same reasons as Category 33.

Conclusion

239 I make the following orders:

(a) Linklaters shall, within fourteen (14) days from the date of this order, file and serve an affidavit stating whether they have at any time had, in their possession or control, the documents listed in my orders in respect of Categories 19, 22, 23 and 24, and if any of the said documents are no longer in their possession or control, stating when the documents were parted with and what has become of them.

(b) If the documents set out above are in the possession or control of Linklaters, Linklaters shall file and serve on the Claimants a List of Documents listing the documents, together with an affidavit verifying the said Supplemental List of Documents, within fourteen (14) days from the date of this order.

(c) Linklaters shall, within fourteen (14) days (from the date of this order), produce full and complete versions of the documents specified or described in the List of Documents filed pursuant to the preceding paragraph above for inspection by the Claimants and/or their solicitors, and permit them to make copies thereof.

240 I thank the Claimants' counsel, Mr Lok Vi Ming *SC* and Mr Zhuang Wenxiong, as well as the Defendants' counsel, Mr Thio Shen Yi *SC* and Mr Joshua Phang, for their helpful submissions at the hearings. I also thank the other solicitors who have assisted with this matter.

241 I will hear the parties on costs.

Chong Fu Shan
Assistant Registrar

Lok Vi Ming *SC*, Lee Sien Liang Joseph, Zhuang Wenxiong, Cham Jay Yin and Ryan Leong Lup Mun (LVM Law Chambers LLC) for the claimants;
Thio Shen Yi *SC*, Joshua Phang Shih Ern, Kimberly Ng Qi Yuet, Christabelle Arya Gerard and Ang Kai Le (TSMP Law Corporation) for the defendants.