**IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE**

**[2019] SGHC(I) 15**

Suit No 4 of 2018

Between

(1) Sheila Kazzaz
(2) Ahmed Kazzaz

… *Plaintiffs*

And

(1) Standard Chartered Bank
(2) Laurence Black
(3) Harish Phoolwani
(4) Naushid Mithani

… *Defendants*

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# JUDGMENT

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[Banking] — [Advice] — [Negligent]
[Contract] — [Misrepresentation Act]
[Credit and Security] — [Mortgage of personal property] — [Life insurance policies]
[Damages] — [Measure of damages] — [Tort]
[Tort] — [Misrepresentation] — [Inducement]
[Tort] — [Misrepresentation] — [Negligent misrepresentation]
[Tort] — [Negligence] — [Breach of duty]
[Tort] — [Negligence] — [Duty of care]

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# Sheila Kazzaz and another
# v
# Standard Chartered Bank and others

**[2019] SGHC(I) 15**

Singapore International Commercial Court — Suit No 4 of 2018
Anselmo Reyes IJ
18–28 February, 1 March 2019; 29 March, 22 April 2019

14 October 2019 Judgment reserved.

**Anselmo Reyes IJ:**

## Introduction

1 The first and second plaintiffs, Sheila and Ahmed Kazzaz ("Sheila" and "Ahmed") are mother and son (collectively, "the Kazzaz family" or "the Plaintiffs"). They are UK citizens, but have resided in Dubai since 2004. The ASK Group is the Kazzaz family business. Sarchil Kazzaz ("Sarchil"), who was Sheila's husband and Ahmed's father, established the ASK Group. Ahmed succeeded Sarchil as chairperson of the ASK Group upon the latter's passing away in 2007. Between 2010 and 2014, when the events that are the subject of these proceedings took place, the ASK Group was largely engaged in business in Iraq, including property investments and duty-free retail shops.

2 The first defendant, Standard Chartered Bank ("SCB"), is a UK-incorporated multinational bank with branches in Singapore and the Dubai

International Financial Centre ("DIFC"). The Kazzaz family became private banking clients of SCB's DIFC branch ("SCB DIFC") in October 2010. The second defendant, Laurence Black ("Laurence"), was SCB DIFC's Head of Fiduciary Services for Middle East and North Africa until December 2012. The third defendant, Harish Phoolwani ("Harish"), was (and remains) an SCB DIFC Director. He was Ahmed's and Sheila's Relationship Manager until August 2012. The fourth defendant, Naushid Mithani ("Naushid"), was SCB DIFC's Head of Relationship Management and Investment Advisory from May 2010 until March 2011, when he became Head of Private Banking. Naushid was introduced to Ahmed in February 2011. Laurence, Harish and Naushid are sued in their personal capacities. Collectively, SCB, Laurence, Harish and Naushid will be referred to here as "the Defendants".

3 During the course of the Plaintiffs' private banking relationship with SCB, trust structures with SCB's affiliated trust companies (Standard Chartered Trust (Guernsey) Limited ("SCTG") and Standard Chartered Trust (Cayman) Limited ("SCTC")) were set up to hold various assets, and accounts were opened with SCB's Singapore branch ("SCB Singapore"). Ahmed took out a loan from SCB to pay (1) the premium ("the premium loan") for a universal life insurance policy ("the Policy") on Sheila's life and (2) a mortgage ("the mortgage") for a property ("the Westchester Property") where his daughter Lana resided while studying in London. Ahmed also decided to invest the proceeds from the sale of Ducie Court ("Ducie Court") (one of the family's properties in Manchester) in an investment portfolio with SCB.

4 Ducie Court was owned by two Liberian companies, Financial Links Limited and Norley International Limited, which Sarchil had set up with Rathbone Trustees Jersey Limited in the 1980s. Rathbone Trustees later became



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Hawksford Trustees ("Hawksford"). In January 2008 Ahmed set up a trust called the St. Bernard Trust to hold the Liberian companies. This was to remove Dana (Ahmed's sister) from the trust following a dispute with her. Hawksford was also trustee of the ASK Trust, which had been established by Sarchil to hold the licence to operate duty free shops in Iraq. Ahmed was unhappy with what he regarded as Hawksford's opaque billing practices and planned to terminate the St. Bernard Trust on the sale of Ducie Court.

5 SCB is sued as being vicariously liable for the acts of Laurence, Harish and Naushid. More specifically, the Plaintiffs allege that the Defendants are liable to them for (1) negligent misrepresentation under the common law or the Misrepresentation Act (Cap 390, 1994 Rev Ed) ("the MA"), (2) breaches of the common law duty of care, and (3) breaches of the DIFC Regulatory Law (DIFC Law No.1 of 2004).

6 On negligent misrepresentation, the Plaintiffs' case is that the Defendants wrongfully induced Ahmed and Sheila to enter into a Property Financing Arrangement ("PFA") that was unsuited to their financial needs. Under the alleged PFA, SCB was to provide or arrange for the following financial products and services:

(a) the mortgage to fund the purchase of Westchester Property and thereby enable the proceeds from the sale of Ducie Court to be used for an investment portfolio.

(b) the Policy, with financing for the Policy's premium being made available through the premium loan.



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(c) offshore trusts and companies to hold assets of the Kazzaz family, including the Westchester Property and the Policy.

The plaintiffs complain that they were induced to enter into the PFA as a result of three representations by SCB:

(i) Alleged Misrepresentation (1): From April 2010 to February 2011, SCB (acting through Laurence, Harish and Naushid) misrepresented to Ahmed that the PFA was a self-funding arrangement so that (a) investments made using the Ducie Court sale proceeds would generate sufficient returns to meet the interest payments arising from the premium and mortgage loans and (b) Ahmed would not have to provide further funds as security for the premium or mortgage loans.

(ii) Alleged Misrepresentation (2): From April to October 2010, SCB (acting through Harish and Laurence) misrepresented to Ahmed that Sheila and he need not be concerned with reviewing, understanding or seeking professional advice on the documents to be executed under the PFA as SCB would ensure that the documents would be in the best interests of Ahmed and his family.

(iii) Alleged Misrepresentation (3): From April 2010 to February 2011, SCB (acting through Laurence, Harish and Naushid) misrepresented to Ahmed that the PFA was suitable for the Kazzaz family.

7 On breaches of the common law duty of care, the Plaintiffs contend as follows:



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(a) Alleged Breach (1): The Defendants did not explain, highlight or make known to Ahmed the true and full extent of his liabilities to SCB in relation to the repayment of the premium loan.

(b) Alleged Breach (2): The Defendants failed to highlight the currency risk inherent in the PFA to Ahmed.

(c) Alleged Breach (3): The Defendants failed to highlight that the guaranteed death benefit under the Policy was only until Sheila turned 86.

(d) Alleged Breach (4): The Defendants failed to explain the rationale or necessity for the Policy to be purchased and held by SCTG.

(e) Alleged Breach (5): The Defendants failed to ensure that the Kazzaz family had the means to meet their obligations under the PFA.

(f) Alleged Breach (6): The Defendants failed to advise the Kazzaz family sufficiently or properly about the suitability of the PFA.

(g) Alleged Breach (7): The Defendants failed to explain the significance of being a "Professional Client" to the Plaintiffs and to assess their suitability of being classified as such.

8 On breaches of the DIFC Regulatory Law, the Plaintiffs make the following complaints:

(a) Alleged DIFC Law Breach (1): SCB failed to ensure that its financial recommendations were suitable for the Kazzaz family.



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(b) Alleged DIFC Law Breach (2): SCB failed to ensure that the financial information that it provided was clear, fair and not misleading.

(c) Alleged DIFC Law Breach (3): SCB breached its regulatory duty of care.

(d) Alleged DIFC Law Breach (4): SCB failed to carry out a proper client classification of the Kazzaz family as "Professional Clients".

(e) Alleged DIFC Law Breach (5): SCB breached the prohibition in Article 94 of the DIFC Regulatory Law by operating as an insurance intermediary.

The Plaintiffs say that Laurence, Harish and Naushid are individually liable under the DIFC Regulatory Law as they provided financial services to the Kazzaz family personally of their own accord.

9 It is the Plaintiffs' case that, by reason of the negligent misrepresentations, breaches of the common law duty of care, and breaches of the DIFC Regulatory Law identified above, the Plaintiffs suffered loss and damage. By this action they claim compensation for such loss and damage.

**Factual analysis**

10 In this section I consider the factual matters in dispute between the two sides. By way of preface, I make three comments.

11 First, following the substantive hearing of the evidence, the proceedings were adjourned for the parties to file two rounds of closing submissions. Just before the exchange of the first round of closing submissions, the Plaintiffs



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advised that they were dropping the allegations of fraudulent misrepresentation and undue influence that they had raised in their pleadings and pursued through the substantive hearing of the evidence. I gave leave to the Plaintiffs to abandon their cases on fraud and undue influence, as in my view there was no evidence whatsoever that the Defendants, whether individually or collectively, had acted in a fraudulent manner or had exerted undue influence on either of the Plaintiffs. In their closing submissions, the Defendants have argued that the Plaintiffs should be made to bear the costs of and occasioned by their abandoned case on fraud and undue influence on an indemnity basis. However, I think that the question of how such costs should be handled (including their incidence, basis and taxation), are best left to be dealt with at a later stage, along with all other outstanding issues of costs in this action.

12 Second, many of the events that these proceedings are concerned with happened many years ago. Some matters took place nearly a decade ago. In those circumstances, I have exercised caution when assessing parties' recollection of events. I have reminded myself that, given the effluxion of time, parties are bound to have false memories, that is, apparently remembering clearly that something did or did not occur, when the reality was very different. Thus, I have attempted to test parties' recollection of events against contemporaneous or near contemporaneous documents in the trial bundle. In some instances, where supporting documents were sparse or non-existent, I have had to come to conclusions based on the balance of probability and common sense. The Plaintiffs in particular have urged me to conclude, because something was not recorded in an SCB contact report as having been said, that no such statement was made. But the contact reports do not purport to be comprehensive summaries of what transpired at a meeting. For that reason, it would be too simplistic an analysis to find that something did not happen purely



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based on what has not been recorded in a contact report. Just as any other piece of evidence, contact reports need to be assessed in light of the totality of the available evidence, including other contemporaneous documents, witness evidence under cross-examination, the balance of probability and common sense.

13 Third, in this section and the succeeding one, there will be some consideration of DIFC law. The parties agreed that each would make submissions on DIFC law to me directly, rather than through the traditional method of employing expert witnesses. Thus, in advance of the substantive hearing, the parties identified the issues of DIFC law that I would have to consider in this action. Thereafter, the parties with the assistance of DIFC lawyers incorporated their submissions on disputed matters of DIFC law in their written closing submissions.

***Meeting on 27 April 2010***

14 There is no dispute that Ahmed first met Harish on 27 April 2010 following an introduction by Marlon Sawaya ("Marlon"), the ASK Group's Relationship Manager at SCB's Small and Medium Enterprises (SME) Division. There is disagreement over what precisely was said at the meeting.

15 Ahmed says that he informed Harish of his intention to sell Ducie Court, to terminate the St. Bernard Trust, deposit the sale proceeds from Ducie Court with SCB and use those proceeds to purchase a property in London. Harish is alleged by the Plaintiffs to have suggested that the Ducie Court proceeds could better be deployed in a PFA that would enable Ahmed to purchase a London property while also generating wealth for the Kazzaz family. Ahmed claims that at the meeting, Harish introduced the idea of insurance referrals and premium



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financing and pitched SCB's fiduciary services, including the setting up of trusts and personal investment companies.

16 SCB denies that a PFA was raised at the introductory meeting with Ahmed or at any time. SCB says that the Plaintiffs' case of SCB proposing a PFA for the purchase of a London property is a complete myth. SCB is adamant that its representatives never mentioned a PFA. SCB accepts that over time Sheila and Ahmed entered into various financial arrangements with SCB or associated companies. But SCB says that such arrangements evolved incrementally as and when Ahmed requested a specific service from SCB and not as part of an over-arching scheme that would cater for all needs of the Kazzaz family at one go. At the first meeting, SCB claims that Harish was simply informed that Ahmed had an interest in SCB's fiduciary and estate planning services. In support, SCB relies on the fact that Harish emailed Ahmed on 28 April 2010 to introduce Laurence (who handled fiduciary services) and on 7 May 2010 to inform Ahmed that Michael Evans ("Michael") of the law firm Burges Salmon LLP would be in Dubai and could assist with possible estate planning and trust arrangements.

17 In my view, Ahmed's recollection of what happened at the first meeting is likely to be the more accurate. Harish's 28 April 2010 email to Ahmed introducing Laurence began as follows: "It was pleasure meeting you yesterday, step by step we are going to present you on creating value add from Standard Chartered Bank Globally." The reference to creating value "step by step" suggests that Ahmed's plan to sell Ducie Court and buy a London property with the proceeds was discussed. The reference also indicates that Harish proposed that Ahmed's objectives might be better achieved through an arrangement which would enable him to purchase a London property while at the same time



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"creating value add". The message that Harish conveyed was that SCB could assist Ahmed to achieve such an outcome "step by step". Harish's 28 April 2010 email then introduced Laurence using these words: "I am also going to arrange for meeting with Mr. Laurence Black on Fiduciary (Trust and Personal Investment Companies) aspects of your wealth." This indicates that, at this early stage, it was contemplated that one component of the arrangement might possibly involve the use of fiduciary services (such as the holding of assets on trust). For this reason, Harish was "also" introducing Laurence who would then deal with the fiduciary "aspects of your [that is, the Kazzaz family's] wealth".

18 The foregoing conclusion is further supported by reference to an internal email from Harish to Laurence on 8 November 2010. Harish there referred to his initial meeting with Ahmed (wrongly said to have occurred in March 2010) as follows: "I think you [Laurence] would agree with me since the time we have been coordinating with him [Ahmed] on giving him responsible solutions on the trust aspects. he has been constantly asking about the insurance policy, since I pitched it to him in the month of March 2010." It appears from this that, as early as his first meeting with Ahmed, Harish had at least floated the idea of purchasing the Policy as part of an arrangement to achieve Ahmed's objectives.

***Exchanges between April and August 2010***

19 Ahmed did not reply to Harish's emails of 28 April 2010 and 7 May 2010. Harish called Ahmed to follow up, asking Ahmed if he would like to have a conference call with Michael, so that Ahmed could get some "idea and food for thought and how the plan's going to be, what the structure is going to be and how it's going to look like". Thereafter, the two did not communicate until August 2010.



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20 On 5 August 2010 Ahmed emailed Harish that "it might be a good time to come and see you and start to talk about my future investment plan and how you could best assist me with investing the £5m that I will net from the property disposal in England". The email also attached information on Ahmed's business activities in Iraq. Ahmed met with Harish and Marlon on 8 August 2010 and it appears that their discussion focussed on how Ahmed might exit the existing trusts of the Kazzaz family property. Harish says (and I accept) that Ahmed observed that he wanted to set up a private banking account to move the sale proceeds from the existing trusts and asked if SCB could take over the same. Harish asked Ahmed for the trust deeds. Harish emailed Ahmed on 11 August 2010 to suggest that Laurence could assist in setting up Ahmed's foundation with SCB.

21 On 24 August 2010 Harish spoke to Ahmed over the phone and Ahmed explained again that he did not want to place the Ducie Court proceeds with Hawksford. Ahmed said that he wished to open an account with SCB to receive the proceeds and repeated that he wanted to change trustees. On 26 August 2010 Ahmed sent Harish the trust deeds for the St. Bernard Trust and the ASK Trust. On 28 August 2010 Ahmed emailed Harish to say that he was going to be in Jersey on 7 September 2010 to meet Hawksford. Ahmed asked if Harish could arrange an appointment for Ahmed to open a private banking account with SCB's Jersey branch. Ahmed said that he hoped to receive some information about SCB's trust services before he left for Jersey.

22 Harish replied on 30 August 2010, acknowledging receipt of the trust deeds and again introducing Laurence to Ahmed. Harish pointed out that it was not necessary for Ahmed to be in Jersey to open an SCB account there. Nonetheless, Harish offered to fly to Jersey to meet Ahmed. Harish wrote: "This



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would also give us a chance to show our capabilities from Trust Officer themselves and we can also address all potential ambiguities around the current structures and other matters." Ahmed responded by email on 31 August 2010, detailing his existing trust structures. He observed that he was "very keen, if possible during [his] trip to Jersey, to move the two trusts and the assets out of the hands [of] Hawksford". Soon after 31 August 2010 Ahmed told Harish and Laurence that he wanted to discuss his existing trust structures and possible solutions at a face-to-face meeting.

23 SCB submits that, throughout the foregoing exchanges Ahmed made no mention of an "arrangement". Instead, SCB stresses that at this point Ahmed was not a client of SCB and suggests that the discussions between Ahmed and SCB simply centred on the trust services that SCB could provide. But that does not seem correct to me. While I would accept that discussions were at a preliminary stage, it appears that the parties were not just talking about trust services in the abstract. What was being explored was how SCB's trust services might be used to hold Kazzaz family assets. In conjunction, it was specifically envisaged that the proceeds from the sale of Ducie Court would be lodged in a private banking account with SCB, presumably as one piece of a financial arrangement towards which SCB and Ahmed were working.

***Meeting on 8 September 2010***

24 Ahmed met Clive Harrison ("Clive"), a Senior Fiduciary Specialist in the private banking division of SCB's London branch in Jersey on 8 September 2010. The purpose of the meeting, as mentioned by Laurence to Clive in an email dated 6 September 2010, was to "discuss his [Ahmed's] concerns and evaluate his/the families objectives and assets that they wish to retain/place into



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trust in order to propose a suitable SCB solution". Clive prepared a contemporaneous note of the meeting. It seems to me that the note, as amplified by Clive in video-link evidence at trial, is the most reliable evidence of what happened at the meeting. This is especially since Clive no longer works for SCB and voluntarily agreed to give evidence notwithstanding.

25 It appears that Ahmed provided information at the meeting on the Kazzaz family's existing trust structures and its assets in France and Iraq. That information included estimates of the value of such assets. There is a dispute among the parties on whether the estimated values had come from Ahmed as his evidence at trial was that the values recorded in Clive's note were "out of proportion". Ahmed says that he would not have valued his Iraq properties at US$50 to 60 million, since that amount "would buy half of Baghdad ... at the time". The Plaintiffs suggest that there was no reason for Ahmed to come up with such a figure. Nonetheless, it seems to me that the figures which Clive recorded were likely to have come from Ahmed.

26 I note, for instance, that on 5 August 2010 Ahmed sent an email to Harish (copied to Marlon). The email stated:

> Please also look at some other information that is happening from our business activities in Iraq that you might find interesting:
>
> http://www.sumitomocorp.co.jp/english/news/worldbusiness/middle_east.html
>
> I think that it might be a good time to come and see you and start to talk about my future investment plan and how you could best assist me with investing the £5m that I will net from the property disposal in England.

27 The email included as an attachment the English translation of an Investment Licence No. 48/2010 dated 6 July 2010 ("the Licence") in favour of



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Leadstay (a company within the ASK Group) as investor. The Licence stated:

> Due to Leadstay has obtained – company owner Mr. Ahmed Sarchil Kazzaz – on investment license for constructing investment area to attract the foreign investments and due to the approval of Ministry of Finance/Real Estate Administration (Ekarat) on allocation a land with area (27.000 Donam, 18 olk, 73 m) from the total area to the land 30/108 M 17 Sowiab.

28 The Licence contained a number of undertakings, including at paragraph 8:

> I undertake to submit Certificate of Financial Worthiness from reliable bank at Central Bank Of Iraq includes confirmation on financial capability of my company to execute the project with invested amount ($35.000.000) thirty five million dollars or bid bond, its amount and validity period will be determined by the End User (Real Estate Administration (Ekarat) to assure good performance and qualification of the company for execution.

29 The Licence identified the person making the undertaking as:

> Mr. Ahmed Sarchil Kazzaz: owner of Leadstay Co. on behalf of him, Authorized Manager Mr. Ahmed kamal Abed Al Haleem as per Chamber of Commerce ID no. 13/247 on 18/12/2004 and Civil ID no. 00379423 issued from Al Mansor Civil Status Directorate, record- 902, page-180322 in 23/5/2010.

30 Asked about the Licence at trial, Ahmed responded as follows:

> Court: While we are in the Iraq business, you showed us a document yesterday and Mr Chia took you to it. That was the document at page, bundle 30, page 21418. This is an investment licence that -- - in relation to property in Iraq, and you -- am I to understand from this that you were under an obligation -- Leadstay rather was under an obligation to invest 35 million?
>
> Ahmed: The budget, the estimated budget of the project in total was 35 million.
>
> Court: Right.



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Ahmed: But there was no feasibility study or -- this was a -- this was maybe just a number that was picked out relative to the size of the -- of the plot.

Court: I'm looking at page 21421. Paragraph 8 .... If I understand it correctly, you turn to page 21422, the undertaker there is you? Am I to understand that this is an undertaking to the Baghdad government to invest or to be financially capable up to an amount of $35 million?

Ahmed: Your Honour, as you can appreciate, this is a translated document. I really don't know exactly what the -- what the proper regulation or anything would be to that, but to the certain extent that we had never provided a certified financial worthiness for Leadstay for this amount, we never had that amount.

Court: But that's not my question. My question is: did you undertake something in the terms of paragraph 8 on page 21421?

Ahmed: No.

Court: No?

Ahmed: No.

Court: So Leadstay or yourself never undertook that?

Ahmed: No.

Court: Right. And what then is this document supposed to be?

Ahmed: It's a licence, it's a licence to develop this land which as I said -- as we speak today we haven't -- we haven't started because we are still seeking -- seeking investors.

Court: As I understand it, the licence is subject to certain conditions.

Ahmed: Certain conditions.

Court: On its face it seems at least to be subject to condition of a certain undertaking.

Ahmed: Yes.

Court: But you've never given that undertaking?



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Ahmed: No, I've never given that undertaking.

31 It may be that, as Ahmed testified, the Iraqi investment project has yet to start because the Kazzaz family is still looking for investors. But the document as emailed to Harish in August 2010 (without any qualification that an undertaking in terms of paragraph 8 of the Licence had never been given and the investment project was still in search of investors) would have given (and was likely intended by Ahmed to convey) the impression that the Kazzaz family had substantial means, at least enough to support an undertaking that a company within the ASK group had the "financial capability ... to execute the [Iraqi] project with invested amount ($35.000.000) thirty five million dollars or bid bond".

32 Cross-examined by SCB's counsel (Ms. Tan) about whether he had provided details and (if so) what details about his net worth to SCB, Ahmed replied as follows:

Ms. Tan: So when you started these proceedings, your recollection was that you told them your net worth was only US$ 10 to 15 million.

Ahmed: Which was my estimation.

Ms. Tan: Your estimation as your net worth. Now, see, after the defendants filed their defence, and before you were due to file your reply, you amended your case to say, "Well, actually, no. I informed them it was US$ 25 million to US$ 30 million." Yes?

Ahmed: Yes.

Ms. Tan: And then after we sought specific discovery, which means documents --

Ahmed: Yes.

Ms. Tan: -- in relation to the proceedings, then you amended your pleadings to say, "Well, actually,



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I told them that my net worth was about US$ 41 million."

Ahmed: That I told the --

Ms. Tan: You told Laurence and Harish or Nash, right?

Ahmed: Yeah.

Ms. Tan: So do you agree that your recollection of what you told the defendants as to your net worth has changed?

Ahmed: I don't recall ever saying to any of the defendants, "I'm worth X."

Ms. Tan: So now your position is you don't recall telling them --

Ahmed: I'm --

Ms. Tan: -- that were you were worth any amount?

Ahmed: I don't recall. I don't recall that I mentioned that. It's not something that I -- it's not something I would do.

Ms. Tan: So why do you state that in your statement of claim?

Ahmed: What? That I'm worth --

Ms. Tan: That you told them that you were worth 41 million.

Ahmed: Because that's what came -- that's what's now come -- I mean, after -- after discovery, after we've collected all the -- all the value, because we went through a very, very long and laborious and very detailed assertion of the assets. For example, I omitted at the time that we had a property in Morocco, had a property -- these properties I haven't even visited for 20-odd years. So when we -- when we were asked by my instructing solicitors we need have a detail of all our assets, we had to collect all this, and it was a very, very long and laborious thing to come up with this --

Court: I think the question is simply going to this: your evidence now is that you don't actually recall that you ever told them, told Standard Chartered, how much you were worth.



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| | |
|---|---|
| Ahmed: | Yes, your Honour. |
| Court: | So I take it, as far as you're concerned, you never said anything about your net worth. |
| Ahmed: | No. |
| Court: | Is that right? |
| Ahmed: | That's correct. |
| Court: | The question is this: then why did you bother to plea in your pleading, changing it several times, that you were worth 10 million, 20 million -- |
| Ahmed: | Because that was my -- |
| Court: | The question isn't quite finished. |
| Ahmed: | Sorry, your Honour. |
| Court: | -- 20 million, 30 million, you're actually pleading a fact that you told them you were worth that much. Why bother to plead that if you say that you never told them anything about your net worth? |
| Ahmed: | I really can't -- I can't -- I don't know how to respond to you to be honest with you, because I would have never basically we -- what I know now is that we have gathered all the information necessary to establish what the -- the net worth of the -- what my net worth is. |
| Court: | Right. Do I take it from this that at the time -- |
| Ahmed: | At the time. |
| Court: | -- you had no idea what your net worth is? |
| Ahmed: | I had no idea. |
| Court: | Right. Thank you. |
| Ms. Tan: | Thank you. This is why, after going through the trial process, after gathering documents and so on, your estimation of your own net worth has actually increased up to four times from US$ 10 to US$ 41 million, you agree? |
| Ahmed: | Yes, I agree. |

33 I conclude from the foregoing exchange with counsel that, in all



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likelihood, although he can no longer recall doing so, Ahmed did provide SCB and its officers (including Harish, Laurence, Naushid and Clive) with ballpark estimates of his net worth and the value of his assets. As he himself had no idea of his net worth at the time, the figures given would have been rough-and-ready estimates and may have been simplified by being rounded up. Thus, for instance, I do not rule out the possibility that the figure of US$35 million mentioned in the Licence was rounded to a broad figure of US$50 million in the course of discussions.

34 Ahmed also told Clive that he wanted to exercise more control over the investment than he had under his existing trusts. Clive suggested that separate structures be set up for the Kazzaz family's assets in France and Iraq. The possible use of a trust to hold a life insurance policy was also discussed. Clive's evidence (which I accept) was that Ahmed seemed familiar with the concept of using trust structures and was eager to have such trust structures in place.

***Meetings on 22 September 2010***

35 On 22 September 2010 Ahmed met Harish, Laurence and Mark Jackman (Global Head of Fiduciary Services) at lunch. There was a discussion about the Kazzaz family's circumstances. Laurence explained the difficulties that Ahmed would face in passing his assets to his two daughters under *shari'a* and French inheritance laws. Although impressed by the information that Laurence imparted, Ahmed says that he developed a "fear factor" in his mind about not being able to pass his Iraqi and French assets to his daughters. Ahmed's evidence is that he was persuaded then and there to set up trust structures along the lines that Laurence had sketched out. Ahmed further recalls that Harish and Laurence advised at the meeting that the best thing for him to do was to take an



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insurance policy over his life since he was the breadwinner for some ten dependents.

36 On the same day, after lunch, Ahmed met with Jyotsna Pandey ("Jyotsna") from IPG Financial Services Pte Ltd ("IPG"). The reason for the meeting (as Harish had previously explained to Ahmed) was that SCB could not sell or advise on life insurance policies. Ahmed thus had to be referred to IPG for this purpose.

37 The parties give conflicting accounts of what happened at the meeting with Jyotsna.

38 Ahmed says that, at the meeting, Jyotsna did not speak. Instead, Harish did all the talking. Harish is thus alleged to have explained that it would be possible to obtain an insurance policy on a person's life with a net death benefit of US$21.5 million up to the age of 100. Ahmed's evidence is that he asked Harish at the meeting to explain "what the point of the life insurance policy was and how it worked". According to Ahmed, Harish did not do so, but stated that he could only demonstrate how the life insurance policy would work after the amount of coverage under a policy to be acquired had been confirmed. Harish instead only described in general terms how a policy worked.

39 In contrast, Harish says that he left it to Jyotsna to introduce IPG's services to Ahmed and conduct her own due diligence on Ahmed and his insurance needs. Jyotsna is said by Harish to have explained the features of a universal life insurance policy and to have told Ahmed that he could speak to Harish if Ahmed wished to obtain financing for the premium. According to Harish, it was pointed out to Ahmed that the premium would involve the upfront



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payment of a large sum due to the high death coverage. Harish's evidence is that at the meeting he explained to Ahmed how premium financing worked. Harish says that he told Ahmed that one could borrow up to 90% of the Day 1 cash surrender value of a policy and pay the difference between that amount and the premium amount one's self or, alternatively, one could provide security in cash or assets for the shortfall amount if one wished to take out a loan for the entire premium. Harish further says that he told Ahmed that, if the Day 1 cash surrender value of the policy dropped, a customer may have to top up the account. Ahmed is said by Harish to have observed that he could use the Ducie Court sale proceeds as collateral since he intended to deposit them with SCB. Harish recalled that Jyotsna mentioned to Ahmed that it would be difficult for him to be insured as he was frequently in Iraq and that both Sheila and he would have to undergo a medical examination as part of the application process.

40 I prefer Harish's version of events as likely to be the more reliable, in particular because it is consistent with contemporaneous documents. I make three further observations.

41 First, as SCB points out, Ahmed's account contradicts the email from Jyotsna to Harish dated 22 September 2010, attaching generic illustrations for a face amount of US$30 million up to the age of 100 for the purposes of the meeting with Ahmed that day. Ahmed accepted during cross-examination that he had seen similar illustrations, but he could not recall whether it was at the meeting on 22 September 2010 or some other time.

42 Second, Ahmed's account of events is contrary to Jyotsna's contact log for the meeting. The log records that the following were discussed:

(a) Guaranteed and current interest rate



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(b) Interest rate history

(c) Break even and cash value projection

(d) No lapse protection

(e) Worst case scenario

(f) Stability of insurance carriers

(g) Premium financing (covered by the relationship manager)

43 The contact log also notes that Ahmed was unlikely to obtain coverage and Ahmed would discuss with his mother and confirm a date for the medical examination. Further, if (as appears to have been the case) the generic illustrations discussed were for a face amount of US$30 million, Ahmed's recollection that the parties were only discussing a policy with a face amount of US$21.5 million at the meeting is not likely to be correct.

44 Third, Ahmed's own evidence was inconsistent. During examination-in-chief, Ahmed accepted that the contact log accurately set out what happened at the meeting with Jyotsna on 22 September 2010. He was asked:

| | |
|---|---|
| Court: | Looking at this document are you able to tell us if this document accurately sets out a meeting you had on 22 September 2010? |
| Ahmed: | Yes, sir. |
| Court: | It's accurate? |
| Ahmed: | It's accurate. |

But, in the course of cross-examination and re-examination, he maintained that the contents of the 22 September 2010 contact log (as well as other IPG contact



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logs) were false.

45 On the following day, Harish emailed Ahmed to confirm that the medical examination would take place on 25 September 2010. Harish attached a number of forms from IPG for Sheila's signature. The forms were blank, with stickers at various locations where Sheila was supposed to sign.

46 The medical examination took place on 25 September 2010.

47 Laurence sent a two-page email on 29 September 2010 advising Ahmed on how SCB's services could meet his objectives and what options were suitable. The email included a seven-page brochure on SCB's fiduciary services, intended to highlight the benefits of having an offshore trust. Ahmed says that he only flipped through the brochure, as he had already been persuaded by what Laurence had proposed at the 22 September meeting and since he preferred meeting people to reading brochures and documents.

***Signing of account opening and other forms in early October 2010***

48 Harish and Laurence met Ahmed to sign the account opening documents. There is a dispute as to precisely when Ahmed signed the documents. SCB initially said that the meeting took place on 10 October 2010. But according to Ahmed's passport, he was in Iraq from 4 to 15 October 2010. Thus, the likelihood is that the meeting took place at some point before 4 October 2010.

49 The Plaintiffs submit that SCB's evidence of what transpired at the meeting should not be believed. This is for a variety of reasons. First, there is a contact report dated 28 September 2010 by Harish which refers to a meeting



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having taken place at a location where there would have been no buildings at the time. Second, another contact report dated 30 September 2010 by Harish refers to Laurence, rather than Ahmed, getting all the documents signed. Third, Harish's recollection of the meeting date was inconsistent. Ahmed says that, when the SCB bank forms (that is, the Client Agreement, Client Declaration, Memorandum of Charge and Letter of Indemnity) were signed, no explanation was given to him of the documents. In particular, Ahmed maintains that there was no explanation of what it meant to be a "Professional Client" of SCB.

50 The Defendants accept that Harish's contact reports mentioned above do not record that an explanation of what a "Professional Client" entailed was given to Ahmed at the time of signing. Nonetheless, the Defendants say that, according to Ahmed, his practice before signing anything is to ask the person presenting a document to explain the same. SCB submits that Ahmed would therefore not have signed the banking forms without some explanation.

51 Harish's affidavit evidence of the signing process was as follows:

> 79. I thus recall explaining to Ahmed that I would need him to sign some further documents, in particular the Client Declarations. I told him that, as the Bank's DIFC branch did not hold a retail license and did not service retail clients, we could only provide services to him if he was a "professional client" and signed the Client Declarations confirming this. To be a "professional client", he would need to have net assets of at least USD1 million and sufficient experience and understanding of the relevant financial market(s) in which he would be participating and product(s) which he would be taking up through the Bank. Ahmed told me to let him have the further documents for his execution, and I agreed to get back to him on this.
>
> ....
>
> 89. I took Ahmed through (and Ahmed then signed) the Client Agreement and Client Declarations. To me, this was a continuation of our discussion and the due diligence process



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> that I had carried out with him on or around 28 September 2010. I explained to him generally the purpose of the Client Agreement, namely, that this was the document setting out the terms and conditions upon which the Bank would provide him services as a "professional client". I reminded him that the Bank could only provide services to a "professional client", and he needed to confirm that he was agreeable to being a "professional client" as such clients would not be afforded the same level of protection as retail clients.
>
> ....
>
> 91. As mentioned earlier, as is my usual practice with all my customers, I would have flipped through each and every page of the documents, while going through them based on the "headings". I would also have informed Ahmed that he could read through the documents and refer either to me or to Laurence if he had any queries in relation to them. I would also have told him to consult a lawyer in relation to the documents, if he thought it necessary. As is the Bank's standard practice, a copy of the duly-executed documents would have been sent to Ahmed thereafter by my assistant. Certainly, at all material times while I was Ahmed's relationship manager, he never complained that he had not been provided with a copy of any of the documents executed by him.
>
> 92. For completeness, I note that Ahmed also signed a letter of indemnity for the Bank's UAE branch acting on his instructions by telex, telephone, facsimile, telegraph, cable, email or electronic means. This was a standard document required for the UAE branch which my assistant had included in the pack (as Ahmed's Dubai account was going to be upgraded and tagged to me)....

52 Among the documents signed by Ahmed is a Client Declaration in the following terms:

> The undersigned Client, hereby:
>
> 1. Represents and warrants that it/he meets the definition of "Client" as set out in the Glossary Module and Chapter 3 of the Conduct of Business Module of the DFSA Rule book as follows:
>
> √ An individual who:
>
> has at least US$1 million in liquid assets, having provided SCB with written confirmation of this fact or any entity within the SCB Group has provided such



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> confirmation (where "liquid assets" can be defined as cash or assets that can be readily converted into cash, including but not limited to marketable securities, government bonds, treasury bills and notes that mature within 90 days);
>
> has sufficient financial experience and understanding to participate in financial markets in a wholesale jurisdiction (such as the DIFC); and
>
> ....
>
> consents hereby to being treated as a Client in a wholesale jurisdiction (such as the DIFC).
>
> 2. Declare that the particulars and information provided by it/him to SCB and/or the Group herein are accurate, correct, true and complete as at the date hereto, and that such particulars and information (whether provided to SCB or the Group) will be relied on by SCB in making its decision as to whether it/he qualifies as a Client hereunder.
>
> …
>
> 7. Declare and further consent to being treated as a Client under the laws and regulations of the DIFC, and confirm that it/he understands that, by making this declaration and giving this consent, it/he will not be afforded the retail customer protections and compensation rights that may generally be available to it/him in other jurisdictions.

53 Ahmed also signed a Client Agreement with the following terms:

> 2.8 The Client acknowledges and agrees that:
>
> a. The Client qualifies as a "Professional Client" in accordance with the DFSA Rules and acknowledges that the DIFC Branch provides the Services only to and for Professional Clients. The Client understands the consequences of being a Professional Client and acknowledges and confirms its understanding that the Client will not be afforded with any retail client protections….
>
> ….



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> 3.1 The Client makes the following representations and warranties to and for the benefits of the DIFC Branch and/or SCB as of the date of this Agreement and on each occasion that it enters into a Transaction or Execution Only Transaction:
>
> a. The Client qualifies as a "Professional Client" for the purposes of the DFSA Rules and does not elect to be treated as a Retail Client.

54 The bank forms are dated 10 October 2010. The date is written in some (but not all) documents in a different ink (blue) from that used by Ahmed for his signature (black). This indicates that the documents may have been post-dated by Harish after they were executed by Ahmed. The tick (√) in the Client Declaration is in black ink and, contrary to Ahmed's evidence, is (in my view) likely to have been placed there by him.

55 I find that in all likelihood Harish did explain to Ahmed that he had to open an account as a "Professional Client" if SCB DIFC was to provide him with services. In such case, Harish would almost certainly have explained to Ahmed what being a "Professional Client" meant and that Ahmed would not be receiving the same protections as a "Retail Client". Ahmed must have agreed, otherwise he would not have been able to make use of SCB DIFC's services. Ahmed says that he did not read the relevant bank forms (including the Client Declaration), but simply signed where it was indicated that he should sign. But, following ordinary contract law principles, Ahmed, being an adult of sound mind, should be held bound by his signature and must be taken to have accepted and represented to SCB that he had sufficient net worth and financial understanding to be classified as a "Professional Client".

56 By this stage, it was apparent that Sheila, not Ahmed, would be the insured under the envisaged universal life policy. Thus, Ahmed considered that



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Harish and Laurence would want to meet Sheila.

57 On 18 October 2010 Harish and Laurence visited Sheila at her house for the purpose of signing documents. Sheila signed the Client Agreement, the Client Declaration, and the Client Investment Questionnaire ("CIQ"). As Sheila was to be the settlor of the insurance trust, she also signed documents for setting up the insurance trust. She chose the name of the trust (the SAHLK Trust) based on her email code password with "S" standing for "Sheila," "A" for Ahmed, "H" for "Hannah," "L" for Lana, and "K" for "Kazzaz".

58 The parties have differing accounts about what happened at the 18 October meeting. There is a dispute, for instance, about whether Harish and Laurence came by appointment (as they claim) or dropped by unannounced (as Sheila contends). In all likelihood, Harish and Laurence came by appointment. However, it seems to me that nothing turns on that dispute.

59 The more important difference is whether Harish and Laurence explained the significance of any documents. Sheila says that they did not provide any explanation and did not go through the CIQ with her. According to her, she simply signed where she was told to sign. Harish and Laurence, on the other hand, say that they explained the documents. SCB's contact report for the meeting does not mention whether or not the documents were explained.

60 Sheila's recollection of events is uncertain. She conceded so much at trial:

> Court: So the reality is, Mrs Kazzaz, you don't really remember very much of what transpired on the 18th?
>
> Sheila: No, I don't. No.



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61 Her evidence (which I accept) was that in reality she would sign whatever Ahmed instructed her to sign. Whether or not Laurence and Harish turned up at her home unannounced, she was aware that Ahmed wanted her to sign documents that the SCB officers would be bringing to her at some point and for that reason she signed the documents. This would have been the position regardless of whether an explanation of the documents was given or not.

62 Sheila's passive attitude at the time is apparent from the following exchange:

| | |
|---|---|
| Court: | Excuse me. How exactly would that have helped, Mrs Kazzaz? Because you say you're not very familiar with these things in any event, all you do is administrative matters. I think the suggestion being made is that, really, you left everything to Ahmed -- |
| Sheila: | Well, I did. I did, your Honour. |
| Court: | -- to your son to take care of. |
| Sheila: | Yes. |
| Court: | If Ahmed said it was all right for you to sign, you signed? |
| Sheila: | That's correct, your Honour. Thank you. |
| Ms. Tan: | So just to confirm, you were happy for them to deal with Ahmed; do you agree with that? |
| Sheila: | Happy for? |
| Ms. Tan: | For the bank representatives to deal with Ahmed. |
| Sheila: | Well, yes, I guess, at the time. |
| Ms. Tan: | You were happy for Ahmed to make the decisions on obtaining a mortgage from the 1st defendant to fund the purchase of the property in London; agree? |
| Sheila: | At the time, yes. |



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63 In my view, Harish's account of what actually happened at the meeting with Sheila is likely to be the more reliable. In his affidavit evidence, Harish deposed:

> 138. On my part, I noted that Ahmed wanted Sheila on-boarded as a private banking customer and I would thus be upgrading her Jersey account. I informed her that, while Laurence would handle the insurance and trust documents, I would be her relationship manager. I would thus require her to sign the Client Agreement (including Client Declarations) as well as to complete the Investment Questionnaire.
>
> 139. On that basis, I went through both documents with her. As is my usual practice when going through the Client Agreement, I explained that the Bank's DIFC branch did not hold a retail license and did not service retail clients. Thus, if she and Ahmed wanted us to service her, she would have to be a "professional client". This meant that she would need to have net assets of at least USD1 million and sufficient experience and understanding of the relevant financial market(s) in which she would be participating and product(s) which he would be taking up through the Bank.
>
> 140. I noted that Sheila should have sufficient net worth as held with Ahmed, so the question was one of her experience and understanding of the relevant financial market. Sheila commented that she ran the business with Sarchil when she was younger, and continues to run the business operations when Ahmed was not around. I noted that Sheila would not be making investments herself and, in any event, should have sufficient experience and understanding of trust services. If so, I would classify her as a "professional" client on this basis. She agreed to this, and did not object when I filled up the Client Agreement and Client Declarations on this basis.
>
> 141. Thereafter, when (as per my usual practice), I tried to flip through the pages with Sheila and point out the clauses based on their "headings", I recall Sheila telling me that she knew how to read the documents herself. I also recall Sheila thus going through the documents herself before signing, although she did not raise any specific queries on them.
>
> 142. After Sheila signed the Client Agreement and Client Declarations, we also went through the Investment Questionnaire. I went through the questions with Sheila, and filled them in as I did so. As mentioned earlier, the Investment Questionnaire had set out a series of "scored" questions. After tallying the "scores" based on Sheila's input, I informed Sheila



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> that her risk profile was "Moderate". Sheila also did not take any issue with this risk profile.
>
> 143. The Investment Questionnaire also recorded Sheila's estimated net worth to be approximately USD39.2 million, being the real estate portfolio held by Sheila and Ahmed. I told Sheila that this estimate was based on my discussion with Ahmed, and Sheila did not take any issue with it. She then proceeded to sign the Investment Questionnaire.

64 I note that Sheila signed a Client Declaration and Client Agreement in similar terms to those signed by Ahmed. Sheila says that she did not read the terms of those documents and would not have understood them even if she had done so. Nevertheless, as she is an adult of sound mind, she should similarly be held to the terms that she signed.

65 There is a dispute among the parties in respect of Sheila's net worth as stated in the CIQ. There her "Estimated Net Worth" and "Estimated Total Liquid Net Worth" were indicated as being US$39.2 million. The same figure appears in a source of wealth memorandum for Sheila that Harish prepared earlier. There are said to be other inaccuracies in the CIQ, such as the value of Ducie Court (said to be around £7 million, instead of just £5.75 million (the price at which the Kazzaz family sold Ducie Court)) and the value of French properties held by the Kazzaz family (said to be around €20 million, in contrast to the range of €7 to €8 million previously recorded by Clive). On 6 October 2010 IPG sent a confidential financial statement to Harish suggesting that Sheila had net assets of US$100 million, an income of US$500,000, and net business interests of US$15 million. Sheila says that, being a retired widow with no income of her own, her net worth could not have been anywhere near US$39.2 million. The Plaintiffs complain that Harish made no attempt to ensure that accurate estimates of the Kazzaz family wealth were stated in the bank and IPG documents.



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66 I make three observations in this connection.

67 First, when dealing with Sheila's net worth and source of wealth, SCB clearly did not draw a distinction between the assets and income of Ahmed, Sheila and the ASK Group. SCB treated such assets and wealth as belonging to the Kazzaz family. Thus, the figures in Sheila's CIQ and other documents were supposed to reflect the Kazzaz family's wealth as a whole, not just that of Sheila. SCB's approach in this respect was consistent with the conduct of Ahmed and Sheila. The latter did not distinguish between their individual assets but instead treated the same as the family's wealth with Ahmed implicitly authorised to deal with the same for the general benefit of the family as a whole. This is evident, for instance, in the following passage from Sheila's cross-examination:

| | |
|---|---|
| Ms. Tan: | We know that Ahmed is your son -- |
| Sheila: | Yes. |
| Ms. Tan: | -- and you were as well, at that time, very close to him. |
| Sheila: | Yes. |
| Ms. Tan: | As far as you were concerned, he was the head of the family? |
| Sheila: | He is now, yes -- or he is since 2007. |
| Ms. Tan: | He runs the family business? |
| Sheila: | Yes. |
| Ms. Tan: | He handles your financial matters for you? |
| Sheila: | Always. |
| Ms. Tan: | You relied on him -- |
| Sheila: | I did. |
| Ms. Tan: | -- to manage your financial matters, your financial affairs? |
| Sheila: | I do 100 per cent, yes. |



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| | |
|---|---|
| Ms. Tan: | You relied on him generally? |
| Sheila: | Generally. |
| Ms. Tan: | In relation to the present proceedings, your present complaint, you relied on him in relation to the property financing arrangement -- |
| Sheila: | Yes. |
| Ms. Tan: | -- and all the components of it; agree? |
| Sheila: | Yes. |
| Ms. Tan: | Is it your case that he was not authorised to have done so? You were not giving him authority to do so on your behalf? |
| Sheila: | Well, I didn't think I had to give him authorisation seeing as he was head of the family. |
| Ms. Tan: | So as far as you were concerned, it's implicit that he was authorised to do this on your behalf? Meaning that you just assumed, you don't have to expressly tell him that he is authorised to handle these matters? |
| Sheila: | It is assumed, obviously, yes. |

68 Second, SCB says that it relied on information about the Kazzaz family wealth that Ahmed provided. As noted above, Ahmed himself had no clear idea about the value of his assets and wealth at the time. Nonetheless, he sent documents (such as the Licence) to SCB which would have conveyed the impression that the Kazzaz family was of substantial means. As we have seen, the Licence alone refers to an undertaking by the Kazzaz family in the order of US$35 million. There is other evidence supporting the inference that the source of SCB's information was ultimately the Kazzaz family itself. On 30 September 2010 Jyotsna sent an IPG form to Harish requesting information about Sheila Kazzaz's circumstances, including her income and wealth. Harish forwarded the IPG form to Ahmed who in turn asked Sheila to fill it out. Sheila (or Ahmed



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using Sheila's email address) appears to have emailed Pradeep Sankar ("Pradeep") to complete the IPG form according to the financial statements that Pradeep had for her. At trial, Sheila described Pradeep as a trusted employee mainly responsible for handling accounting and one of the persons who, when Ahmed was in prison (see below), ran the family's Iraqi business.

69 Third, as already noted, Sheila and Ahmed are adults of sound mental capacity. They say that they simply signed documents when asked to do so by SCB. According to them, they relied on what SCB's representatives told them about the documents and at best would only have flipped through the documents without bothering to check the accuracy of the information stated therein about them. In those premises, it seems to me that they must take responsibility for inaccuracies in the factual information about them in the relevant forms. While SCB's representatives could state what the documents were about, Ahmed and Sheila would have been in the best position to know whether any information about their circumstances (including their income and assets) contained in a document was somehow erroneous. That they did not verify the information themselves does not, in my view, enable them to shunt responsibility onto SCB for inaccuracies about their personal circumstances recorded in the documents, especially where (as seems to have been the case on the evidence) the information appears to have originated from them.

70 In short, I am satisfied that any inaccuracies about Sheila's and, for that matter, Ahmed's wealth information in the various SCB documents originated from the Kazzaz family. Some initial information about Ahmed may have been provided to Harish by Marlon, the ASK Group's relationship manager with SCB's SME Division. But it seems to me on the evidence that in all likelihood the source of the information, accurate or not, in SCB and IPG documents was



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ultimately the Kazzaz family itself.

71 There is also a dispute over the level of Sheila's financial sophistication. At trial Sheila portrayed herself as a mere housewife who had assisted her husband in his business by looking after the day-to-day management of Ducie Court which was then run as an accommodation for the homeless. She repeatedly emphasised that, apart from the workings of an endowment mortgage, she had little understanding of financial products. It seems to me that Sheila was too prone to play down her business knowledge and accomplishments. In reality, although retired, Sheila had been involved: (1) in the running of Owens Park Delicatessen in about 1972 and subsequently in a clothes business that she and her husband set up; (2) in the property business that she established with her husband in 1982; (3) as a director of Ducie Court Hotel Ltd and Ducie Court Ltd; (3) as a manager and director of H&L FZE and a director and co-signatory of Financial Links Limited (companies within the ASK Group); (4) as an "investor" for the purposes of her UAE residence visa; and (5) as protector of the Hawksford trusts. When Ahmed was imprisoned (see below), Sheila (with Pradeep's assistance) monitored the Kazzaz family's accounts and business and requested that relevant financial information be sent to her. In my view, in light of her previous experiences, Harish could justifiably classify her as a "Professional Client", namely a person with "sufficient financial experience and understanding to participate in financial markets in a wholesale jurisdiction (such as the DIFC)".

***Events from mid-October to December 2010***

72 On 16 October 2010 Harish sent Ahmed an email attaching financing charts prepared by IPG, based on the offers that IPG had obtained for the Policy



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from Manulife. Harish asked Ahmed to call him when going through the attachments. Harish explained the financing charts to Ahmed over a call the next day. Manulife had set a deadline of 19 November 2010 for the premium payment to secure the rates of the existing offer as set out in a policy illustration dated 27 October 2010. Ahmed helped to obtain Sheila's signature on the illustration.

73 The SAHLK Trust was set up on 1 November 2010. SCTG also sent an application for life insurance on that day. On 2 November 2010 SCTG signed the account opening application form with SCB and applied for credit facilities with SCB.

74 There is a dispute on whether there was a conference call among the parties on 3 November 2010. According to Harish, there was a conference call between Ahmed, Jyotsna and him to go through the policy illustration dated 27 October 2010. Ahmed could not recall that Harish had ever put him on a conference call with a third person. He says that, if there had been a call with Jyotsna, it had not been made known to him that Jyotsna was also on the line. The Plaintiffs argue that Jyotsna's contact log for the call on 3 November 2010 was prepared only on 22 March 2011 and so cannot be regarded as a contemporaneous note of the call. Here I accept the evidence of Jyotsna's contact log. The date "22 March 2011" in the meta-data for the contact log was the "last modified" date for the document on IPG's database. In all likelihood, the date merely shows the last time when the contact log was accessed and does not mean that the document was only created subsequently.

***Meetings in January and February 2011***

75 On 25 January 2011 there was a meeting among Ahmed, Harish,



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Laurence and Michael. There is a dispute among the parties as to whether Michael might be regarded as independent counsel acting on Ahmed's behalf. On the facts, I doubt that Michael could be so regarded, given Michael's close connection with SCB. But I do not think that anything turns on this point. Michael gave advice on the legal structures for the setting up of the envisaged trusts. Ahmed's evidence (which I accept) is that neither Michael nor Al-Tamimi (a Dubai law firm which SCB introduced to Ahmed) provided legal advice on whether it was necessary or beneficial to hold the Kazzaz family's assets in a trust structure.

76 As at January 2011 Harish had provided Ahmed with two policy illustrations from Manulife, one dated 27 October 2010 and the other dated 11 January 2011. Both showed that an initial death benefit of US$21.5 million was guaranteed until Sheila turned 100. Ahmed's evidence is that, at the time, he was under the impression that the Policy would guarantee the death benefit up to Sheila attaining the age of 100. Ahmed says that, for that reason, when Harish asked to see Sheila on 1 February 2011 for her to sign the 11 January illustration and Sheila had checked with Ahmed if it was fine for her to sign, Ahmed had no objection. Sheila consequently signed the 11 January 2011 illustration.

77 On 2 February 2011, Ahmed emailed Harish as follows:

> Please do me a favour and meet with a very close family friend of mine who I have known since childhood, Mr. Walid Fattah.
>
> Walid worked with Credit Suisse for a number of years and resides in Dubai.
>
> To be frank and honest with you although you and Laurence have explained to me the financing charts of the life assurance I am yet to understand the mechanics completely so I would like you to please take some and explain everything to Walid for me so that he can then in turn advise me accordingly. Sorry to be of any inconvenience to you both.



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78 Ahmed's letter (emailed on 5 February 2011) authorising SCB to disclose Ahmed's personal information to Walid Fattah ("Walid") describes the latter as Ahmed's "financial adviser". Ahmed signed the authorisation letter after clearing the text with Walid. The meeting with Walid took place on 6 February 2011. Naushid attended. At the pleading stage, Ahmed had accepted that he was also at the 6 February meeting. But it has become clear from the entries in Ahmed's old Iraqi passport showing that Ahmed was in Iraq from 28 January to 24 February 2011, that Ahmed would have been in Iraq at the time.

79 After the meeting, Walid sent an email (with the subject heading: "SC feedback to be read when YOU ARE CONCENTRATED") to Ahmed on the same day as follows:

> Just wanted to give you feedback on the meeting today with Standard Chartered.
>
> Great team, great ideas and really I think they understand VERY well your concerns and your current situation.
>
> Let me start with the trust structures that they want to put in place:
>
> At the top, it would be a Guernsey trust holding all the assets, split in to 3 BVI's. 1st one would hold financial assets (cash, portfolio) and potentially the Insurance policy, 2nd would hold real estate (UK, France) and 3rd would hold the Iraq business and assets.
>
> We discussed that maybe they would set up a 2nd trust for the Iraq business only. That would avoid any issues if one day rules change in Iraq. Tamimi has confirmed to them that the Iraq assets can be held by foreign ownership, meaning that the trust would be recognized in Iraq.
>
> The beneficiaries of the Trust would be you, your mom and your 2 girls.
>
> Now the interesting part, the life insurance..
>
> The life insurance they are offering is an amazing product. The documents they sent you are just a bit complicated to read. In a nut shell, it is true that if you pay up 2.5 mio USD, SC will



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leverage that and give you a loan for the extra amount up to 15.6 mio USD. On that loan they will charge you 1.5% (current rate). God forbid, something happens to your mother tomorrow, you will immediately get 21.5mio USD (minus the loan to SC).

Now I asked them the worse case scenario. The page 6 of 8 in the docs they sent, give 2 different scenarios.

On the left side, the chart give you the numbers with a min guaranteed rate of 3% and the one on the left, gives you the numbers at the current rate of return of 4.4%. If during the next 20y, the return on the underlying investments done by the insurance company are never higher then 3%, then basically, you would of lost the 2.5mio USD you put in, but of course you would still get the 21.5mio USD if your mother was to pass.

Best case scenario is that the return is at or above 4.4%, then the value of the policy increases! That's why in the example on the left, after 10y, you start getting more then 21.5 mio USD if your mother was to pass. While she is alive and the policy is still running, the moment the value of the policy is above 21.5mio USD, you are entitled to pull out the difference, so basically when your mother is 85, you could skim off 4.4mio USD.

Ahmed it's a great policy with all the right guarantees. I would advise you to go for this. It seems you told them that the beneficiary of this policy should only be yourself. I agree with them, that the beneficiaries should be you in 1st line and your daughters in 2nd line, meaning if you pass with your mother, the girls are both beneficiaries 50/50. It would be more logical that way, because if the insurance policy comes under the trust, the beneficiaries of the trust are AK, SK and the girls. I know you have had some differences in your family but this makes more sense.

Their is an issue with the insurance, Manulife, is going to stop offering those insurances as of 28 of Feb, they will only offer them to the billionaires of this world then, but because they have made you an offer, they are going to honor it till that date. I highly recommend you to go ahead and sign up for it, this is really a great way of covering the future of your daughters in a worse case scenario.

They said that you are basically waiting for the sale of the Manchester property to come up with the approx 2.5 mio USD to go ahead. So just so that you know, that deadline is crucial.

We spoke about the mortgage for the UK property. If I understand well, once you sell the property in Manchester, you



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> will transfer 5.5mio GBP to your account with SC. They will use that amount to guarantee the mortgage in the UK and to leverage approximately 2.5mio USD for the insurance. This means that even if you have a guarantee for the mortgage and for the life insurance, you are still investing 100% of the 5.5mio GBP.
>
> I know it's a long email, but Ahmed, now that I've gone through the docs, I have to say it makes sense to go their way.
>
> Ahmed, please go through this and write down your questions. I'm leaving now for a meeting in Abu Dhabi, but tomorrow let me know when we can speak and I'll go through this email with you and make it sound much easier.
>
> I'm happy to help you on this, thanks for the trust.

80 There is no contact report for the 6 February 2011 meeting. The Plaintiffs complain that at the 6 February meeting no mention was made of the following:

(a) The possibility of margin calls being required if the investment portfolio did not generate sufficient returns to cover interest payments on the premium loan or if there was insufficient collateral for the premium loan due to a drop in value of the Policy.

(b) The fact that the annual interest payments on the premium loan would be around US$250,000 per year.

81 Nonetheless, Walid's email as well as some undated presentation slides used at the 6 February 2011 meeting give a flavour of what was discussed at that time. The undated presentation slides refer (among other matters) to the following:

> Cash deployment of GBP 5.5 Mio after the property is sold would be invested in to Moderate Aggressive Portfolio .... This portfolio would be actively managed and fixed income would be managed in terms of maturity with no compromise on credit quality of the portfolio.



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…

Added advantages to this portfolio:

- Cash availability at any time
- Portfolio growing and producing consistent returns whilst supporting needs for UK property and insurance.
- Insurance added value against the portfolio providing cash injection to the portfolio upon the demise of a key member of the family.
- Since AK is the only member of the family who is going to be earning so getting Future value of his potential income."

…

Universal Life Insurance – Wealth Creation tool

With Universal Life

Premium (ie AUM): USD 15,000,000

Sum Assured: USD 21,500,000

Loan: USD 15,000,000

Loan Interest: 2 %

Loan Payment: 200,000 USD

Projected Annual Return

USD 1,000,000 – 200,000

Client's Potential Estate after Yr 1

USD 21,500,000 - 15,000,000 + ( 1,000,000–)

NB: USD financing – 90% of Day 1 cash value

82 There is a dispute among the parties as to whether Ahmed and Walid



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met with Laurence and Harish on 23 February 2011. On this, I agree with the Plaintiffs that, on the evidence, in particular Ahmed's old Iraqi passport, it is unlikely that there was such a meeting.

83 All sides agree that there was a meeting among Ahmed, Harish, Laurence, Naushid and Walid on 28 February 2011. According to Ahmed, all that was mentioned at this meeting was that there would be minor changes to the envisaged policy and a reduction in the premium. According to Ahmed, it was said that these changes would not affect the benefit that the life insurance would bring. SCB says that the use of premium financing, monthly interest payments, and the possibility of margin calls were discussed at this meeting.

84 To my mind, an email dated 1 March 2011 from Harish to Walid (copied to Ahmed among others) is the most reliable evidence of what must have been discussed at the meeting on the previous day. The email states:

> This is with regards to our conversation with Ahmed yesterday. As you know the universal life insurance illustration dated the 28th February has now lapsed and we have therefore obtained a revised illustration dated 1st March which incorporates the new terms offered by Manulife who have reduced their standard death benefit option from age 100 to 80 years.
>
> To summaries the following actions have been taken to secure the interests of AK and SK.
>
> 1. We have renegotiated the terms and conditions with Manulife and approvals were obtained from senior Manulife officials recognizing your valued relationship with SCB Private Bank.
>
> 2. Results obtained
>
> a. We have been able to secure the death benefit protection until age 85, 5 years above the standard policy terms. Guaranteed death benefit therefore lasts until average life expectancy.



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> b. Insurance premium is reduced from USD 15,640,311 to USD 13,863,738. Hence collateral/client equity required is reduced.
>
> c. Realistically, we can expect the death benefit to remain beyond age 85 as we don't believe the worst case scenario in the illustration will be effective.
>
> i. To explain, the left hand side of the new illustration both attachments reflects the worst case scenario wherein the credit rate earned on the policy is at the minimum guaranteed rate of 3% as opposed to 4.4% (the current credit rate taking into account the current interest rate environment post GFC) and;
>
> ii. The cost of insurance is 4 times higher than current cost of insurance.
>
> d. SCB credit and I will monitor the value of the policy on a monthly basis. If the value deviates from the projected plan (i.e. grows less than 3%), we will communicate this to AK and assess alternative options. This helps us to mitigate AK's concern of below-expectation returns.
>
> Kindly note the new illustration will be valid only till 24th March 2011 as the medical for SK expires then.

85 The email was sent at noon. It is unlikely that everything stated in the email could have been negotiated with Manulife overnight between the time of the meeting on 28 February and noon on the following day. The email refers to "our conversation with Ahmed yesterday". It refers to matters which Walid (and presumably Ahmed to whom the email has been copied) are already supposed to "know". The tenor of the email suggests that the matters there had already been discussed in detail and are merely being summarised in the email. The email specifically refers to the death benefit being changed, following negotiation, from age 100 years to 85 years (as opposed to age 80 years). The email also refers to the required "collateral" and "client equity". Further, reference is made to Harish "monitor[ing]" the value of the policy on a monthly



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basis and, if growth is less than 3%, to "assess[ing]" alternative options. The email also refers to "AK's (that is, Ahmed's) concern of below-expectation returns". All of the foregoing matters suggest that Ahmed voiced such concern over lower than expected returns at the 28 February meeting.

86 In short, contrary to Ahmed's recollection at trial, the email does point to (1) margin financing, in particular the possibility of calls being required if there was insufficient collateral for the premium loan due to a drop in client equity or the value of the Policy, (2) the size of the premium, and (3) the need to monitor the value of the envisaged policy on a monthly basis, having all been discussed at the 28 February meeting.

***Events from March to December 2011***

87 The Policy was issued on 11 March 2011.

88 Laurence and Jyotsna visited Sheila at her villa on 21 March 2011. There is a dispute among the parties as to whether Jyotsna explained to Sheila the "Free-Look" period and the death claims process. Sheila did not recall even meeting Jyotsna. Jyotsna's contact log for the meeting (prepared on 22 March 2011) mentions that policy illustrations were shown to Sheila at the meeting and subsequently emailed to her. Mention is also made in the contact log to the "Free Look" period and the death claims process having been discussed. The Plaintiffs say that the entries in the contact log are implausible. But it seems to me that this contemporaneous contact log is reliable evidence as to who visited Sheila and what actually happened during their visit.



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89 Ducie Court was sold in March 2011 for £5,313,195.53 (less bank charges) and the proceeds were deposited with SCB between March and May 2011.

90 On 15 March 2011 Harish emailed Ahmed as follows:

> As we discussed, I am in the stage of finalizing and putting an Investments proposal portfolio which will generate returns. Interest will be paid by the returns generated from the portfolio. (Interests for Insurance, Properties in London and property in Dubai Interest plus Principal)
>
> Presentation will Depict the following Scenario's:-
>
> > How we will Invest GBP 5.O Mio's.
> >
> > Collateral Value will be used for Insurance Policy and Properties.
> >
> > Availability Cash at any given point in time from the portfolio.
> >
> > How much the portfolio will indicatively generate per annum.
>
> Just to confirm lastly that I have not converted GBP into USD. I have kept GBP intact as per your instructions.
>
> I have attached temporary statement. Send you Official statement by tomorrow once it is generated by Singapore office of SCB.

91 On 21 March 2011 Harish sent a Client Advisory Proposal to Ahmed. The proposed allocation was for 84% of the Ducie Court sale proceeds to be invested in fixed income assets and 16% to be invested in equities. The total average coupon cashflow from bonds per annum was expected to be £127,125. Harish asked Ahmed for feedback when they met on 24 March 2011. But at the meeting Ahmed told Harish that he was not able to make investment decisions himself and would be guided by the advice and recommendations of SCB.

92 Ahmed subsequently took out a total of US$4 million in loans against



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the value of the portfolio for use in his Iraqi business. Ahmed says that he took out these loans because he had been assured by the Defendants that his business needs would be met by the arrangement that had been put in place. The loan amounts were drawn down as follows:

(a) 29 March 2011: US$850,000

(b) 31 March 2011: US$650,000

(c) 21 April 2011: US$1,000,000

(d) 18 May 2011: US$500,000

(e) 30 May 2011: US$500,000

(f) 16 June 2011: US$500,000

93 The loans were transferred to the ASK Group account with SCB.

94 On 12 May 2011 after Ahmed's request for a transfer of US$ 1 million, Harish wrote to him:

> I am able to arrange to [transfer] US$ 1 Mio transfer but I will be in Margin Call/Sell Down situation. We have always been planning for GBP 5 Mio. As of now we have only received GBP 4.0 Mio approx.
>
> I can send also send you US $ 750k straight away but in that situation I will be running it too tight.
>
> I am able to send you US $ 500k keeping a margin of US $ 250 k.
>
> AMEX Credit Cards are on their way for onward delivery to you.
>
> On the other hand we are making decent progress on the investment portfolio. (Attached)



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95 On the same day Ahmed wrote back to Harish:

> There must be something fundamentally wrong or a huge misunderstanding between us that need to be resolved.
>
> You have received from me £4M which comes to around $6,520,000 and all that you have transferred to me to Dubai is $2.5M and now you are telling me that you are struggling to send me $1M.
>
> There must be something wrong or something that I do not understand so I would appreciate if you explain to me in layman's terms?

96 On 14 May 2011 Harish replied:

> Apologies for the delayed response!
>
> You have remitted to SCB GBP 4.0 Mio equivalent of US $ 6.52 Mio.
>
> Below mentioned are the approximate details of how US $6.52 is utilized for understanding purposes.
>
> US$ 2.2 Mio is blocked for Insurance policy of US$ 21.5 Mio.
>
> US$ 2.5 Mio is been remitted out as per your instruction.
>
> US$ 0.750 Mio available to utilize (Tightly Managing all the loan position)
>
> US$ 1.07 is utilized for Investments in Fixed Income Strategy. Below mentioned is a detailed explanation of how the value is being utilized.
>
> In order to create regular cash flow in the account as discussed we are investing in Bonds/Fixed Income Strategy which will produce enough income to cover interest payments. Each Investment instruments have their own loan to value, For example US$ 100 is invested in Bond. This bond will have Loan to value of 65% which means that only 65% of value could be utilized or drawn against this is the reason why the balance US $1.07 Mio is utilized.
>
> May I please request you to give me time on Sunday to discuss this matter in detail?

97 In the meantime, in May 2011, Sheila found a suitable London flat (the Westchester Property) for purchase by the Kazzaz family. Ahmed informed



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SCB of this by email dated 20 May 2011. Ahmed wrote:

> I would like to be in a position to make a solid and firm offer this week on the basis that we are a cash buyer and can perform a quick sale.
>
> I am not sure how low w can go as I have not bought property in London for the last 20 years!
>
> Please kindly advise me what you think would be a good offer? The asking price if £1.750,000.
>
> Many thanks for your help and attention in this matter.

98 According to Ahmed, Laurence and Harish proposed that Ahmed use a mortgage to purchase the Westchester Property. Ahmed agreed to obtain a mortgage from SCB even though he believed that he had sufficient cash to purchase the Westchester Property outright and negotiations had been carried out on the basis of a "cash purchase without requiring financing" and the seller was not happy with the introduction of a mortgage. Ahmed further says that he assumed that the mortgage would be a long-term fixed loan like the standard 25-year mortgages to which he had been accustomed in England. According to Ahmed, he did not realise (and it was not made clear to him) that the mortgage was actually made under a fixed advance of up to 12 months which could be reviewed at SCB's discretion.

99 On 26 June 2011 Ahmed emailed Harish as follows:

> I wish to file a formal complaint with you via this email as to the way in which I am being asked to sign documents that I do not have any idea what they are about as I am being "thrown" documents with little "sign here" post it notes all over the place but with no covering letter or explanation as to what these documents mean and what they are about !!
>
> Hence I have decided that from now on I shall refuse to release any more documents bearing my signature till I receive from you a clear and concise detailed explanation **BY EMAIL** from you as I believe it is very bad service and highly unprofessional



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to ask me to sign documents that I have no idea what they are about.

I am sure that you nor anyone within the SCB private banking team mean any harm towards me and my investments but I am not in the business of signing documentation that I do not understand and although I have signed documents for you till now rather blindly I am now taking a position that I will not sign any documents till I have a clear email in advance from you with a full and complete explanation of the documents that you wish me to sign.

100 Harish emailed Ahmed on 28 July 2011 as follows:

Please note that I am now in possession of the Facility Letter for the mortgage. This simply means we are ready.

There are couple of documents which needs your signature so trustees can execute them on your behalf for ASK three Limited. Below is detailed explanation of the documents. (Attached)

Facility Letter:- This documents details the standard term and condition of Mortgage Facilities being setup in ASK Three Limited.

Executive Summary of the Mortgage for more information please refer to the facility Letters.

1. Mortgage Offer is 75% of the property value. As you already know evaluators are surveying the current value of the property.

2. One time charge of 0.75% will be charged on the loan amount.

3. Cost of Funds (SCB Lending Rate currently rate monthly is 0.83%) + 2.50% per annum.

4. Interest only product.

5. Borrower may wish to close the loan anytime without any penalty.

Company Directors Resolution agree to pass resolution to onboard Mortgage facilities above.

Sole Member Resolution to pass resolution to onboard Mortgage above Facilities.



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> Minutes of Meeting for the company confirming above facilities.
>
> For more details please refer to the attached document.

101 The mortgage took the form of a loan facility to ASK Three Limited, one of seven companies (including Financial Links Duty Free Limited, KAR Motors Limited, ASK One Limited and ASK Two Limited) incorporated in 2011. The loan facility letter was attached to Ahmed's email. It offered to provide two facilities. Facility 1 in the amount of US$100,000 and Facility 2 in the amount of US$2,115,000 or 75% of the current market value or purchase price of the Westchester Property. Facility 2 was stated to be in the form of "Fixed Advances of up to twelve (12) months". In respect of Facility 2, the letter stated that:

> The Bank may, from time to time as it deems fit and at its absolute discretion, review and amend the rate or rates of interest stated herein by notice to the Client if in its opinion, there is a change in market conditions necessitating such review, and such amendment shall take effect and be binding on the Client from the date of the notice.

The loan facility was to be secured (among other collateral) by a "First legal all monies mortgage on the Property to be executed by Ask Three Limited". The letter also provided:

> 6.2 Collateral Value of Security
>
> The Client undertakes that he will at all times, maintain the Aggregate Collateral Value of the Security above or equal to the Equivalent Amount of the Total Outstandings.

102 By email dated 28 July 2011 Ahmed sought Walid's advice before accepting the facility letter's terms. Walid emailed back:

> Just went through the offer, I think its really good. The one thing you can negotiate is the interest rate in the 2nd facility. They are offering you 2.5% over cost of funding, I'm sure they



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> can bring that down to at least 2.25%, more will be tough, but you should aim for 2%. As you are already a client with them with the trusts and the life insurance, you need to pressure them on that. Lower to 2% is not feasible if you ask my opinion.

103 It seems to me, on the basis of Harish's email pointing out the terms of the facility letter, that Ahmed knew or ought to have known what the mortgage entailed. He cannot now claim to be surprised by the terms that he accepted such that, as a result, the terms agreed should not be treated as binding.

104 The Kazzaz family's offer to buy the Westchester Property was accepted on 24 May 2011. The consideration was £1,750,000. The purchase was completed on 31 August 2011.

105 On 18 July 2011 Harish wrote to Ahmed:

> Please find attached redemption form for your perusal in order to cater to your US $ 1 Mio transfer to your ASK G account. However this will deviate from the current strategy of 80% on the portfolio. Thereafter I will have no funds in the account left for the property purchase. Detailed below is an indicative rough snapshot of the overall portfolio cash position.
>
> > Funds funded to the personal a/c GBP 5.5 Mio
> >
> > 80% Net Loan To Value on portfolio of GBP 5.5Mio = GBP 4.4Mio
> >
> > Insurance policy block GBP 1.35 Mio
> >
> > Loans extended to ASK G GBP 2.47Mio

106 Ahmed sent back two signed redemption forms on 27 July 2011. Harish replied:

> As discussed over the phone we are advising you to sell these funds because these funds are carrying 60% to 70% liquidity against your 100% invested money. We are doing this because we are trying to manage your investments to let you take 80% of the percent of the money invested in SCB. Hence redemption



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> of these funds was advised by me to bring your investments aligned to 80% liquidity against your 100% invested money.

107 Trusts were set up as follows:

(a) SAHLK Trust: 1 November 2010

(b) ASK Star Trust: 19 May 2011

(c) ASK Trust: 19 August 2011

The trustees of the various trusts were SCTG and SCTC. Ahmed says that he was unaware that the ASK Trust and ASK Star Trust were to hold the family assets and the SAHLK Trust was to hold the Policy. Ahmed further claims that, beyond those details, he was unaware of the details of each trust or the rationale behind their set-up. Although there is an email from Ahmed to Michael in which he expressed his views on the proposed trust structures, Ahmed's evidence is that he was only repeating advice that Laurence and Michael had given him previously. Even when he commented on wanting to have a "modern reserve powers discretionary trust rather than a discretionary trust which is the only way I wish to proceed," Ahmed maintains that he was merely stating what Clive or Laurence had told him previously.

108 I find this evidence of Ahmed difficult to accept. In the same email to Michael, he states:

> I fully understand and agree to your advise about the property in London to be settled inside a Guernsey trust and the French properties inside a separate Cayman Island trust.
>
> The duty free licence should be also held inside another Cayman Island Trust separately and also the Iraq properties inside yet another Cayman Island Trust - I do not want these trusts to be in anyway incestuous and have separate vehicles



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> for different assets so that they can be moved or disposed of separately.
>
> I am in Dubai till the 10th of March and would be happy to talk to you about all of the above at your convenience with the exception of 7th and 8th of March as these days I will be in meetings all day.

Read as a whole, the email does not appear to be from a person who was merely parroting (without comprehending) what others told him to say. On the contrary, the email suggests that Ahmed fully understood (and agreed with) the underlying rationales for the trust structures which SCB created on his instruction. The email is also evidence that Laurence, Clive and Michael had provided Ahmed with detailed explanations as to why the various trusts were being set up and what assets they were supposed to hold.

109 On 11 September 2011, Harish wrote to Ahmed:

> I have reassessed the whole Investment portfolio after the property transaction was completed. Below mentioned are figure for your reference.
>
> Approximate Calculation for understanding purpose only:-
>
> GBP 5,500,00.00
>
> GBP -1,341,463.40 @ 1.6400 Block for Insurance Policy in US $ 2,200,000
>
> GBP -3,149,214.63 @ 1.6400 Loans drawn already in US $ 5164711.99
>
> Balance GBP 1,009,321.97 (This amount is approximately 18.35% of the Initial capital)
>
> As discussed previously in our last meeting 80% of the initial capital is what you will take it as loan and rest of the 20% will remain invested to generate positive cash flow to take care of the mortgages.
>
> After having factored in this fact, I can now confirm that there is no further cash which could be drawn from ASK One Limited.



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110 According to Ahmed, in mid-2011, SCB did not alert him to the possible impact on his investment portfolio of his withdrawals from the Ducie Court proceeds. Ahmed's case is that, even at this stage, there was no suggestion that the investment portfolio might not generate sufficient returns to cover the interest payments on the premium loan and the mortgage. Ahmed's evidence is he was reassured by Harish that everything was fine.

111 I am unable to accept Ahmed's evidence on this.

112 First, as SCB submits, it is not credible for Ahmed to say that he believed that he could take out US$4 million (from a portfolio of just over US$8 million) without affecting investment returns from his portfolio. There is no evidence that SCB represented to him that his business needs for an indefinite amount would be met. Ahmed himself observed that Harish always told Ahmed that his investment positions were very tight each time he wanted to make a withdrawal. For instance, Ahmed complains in his affidavit evidence that "Harish's response to my request for transfer of funds was always that there were insufficient funds".

113 Second, Ahmed relies on the undated presentation slides used at the 6 February 2011 meeting having referred to the investment portfolio providing for "cash availability at any time". Ahmed claims to have understood this to mean that he could withdraw funds at any time for his business needs. But that does not seem to me to be a reasonable reading of the presentation slides. As a matter of common sense, the fact that cash could be made "[available] at any time" can hardly be reasonably understood to mean that one can withdraw any amount up to possibly the total invested at any time and still be able to meet one's regular premium and mortgage loan payments. Ahmed would at least have



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understood that the investment portfolio was supposed to generate returns from which the premium and mortgage loans could be met. It would obviously follow from this that, the lesser the amount invested in the portfolio as a result of withdrawals by Ahmed, the lesser the amount that the portfolio could generate and consequently the less likely that the returns from the portfolio would be able to meet the regular premium and mortgage loan interest payments. In those circumstances, it could hardly be surprising that SCB would be looking to Ahmed to make up any shortfall with cash or margin calls. By the loan facility letter of 28 July 2011, for instance, the client (Ahmed) specifically undertook that "he will at all times, maintain the Aggregate Collateral Value of the Security above or equal to the Equivalent Amount of the Total Outstandings".

114 Third, as just mentioned, the loan facility letter of 28 July 2011 refers to "collateral value of security". There are other references to "collateral" in Harish's communications to Ahmed. There does not appear to be an email from Ahmed requesting Harish to explain what such references to "collateral" were supposed to mean. That suggests that in all likelihood Harish did explain to Ahmed what was meant by "collateral" and, despite what he now says, Ahmed understood the concept of "collateral" at the time. Indeed, where there were matters that he felt he did not understand, Ahmed took the precaution of consulting Walid and obtaining Walid's clearance before proceeding.

***Events from 2012 onwards***

115 In February 2012 Ahmed was arrested in the US. On 29 October 2012 he was sentenced to 15-months' imprisonment in the US for conspiracy with two other persons to defraud on the basis that he had offered bribes in Iraq to procure a sub-contract and its continuation with a US corporation. The period



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of his incarceration was a difficult time for the Kazzaz family. Nonetheless, during this time, SCB continually requested funds to settle outstanding interest payments on the premium and mortgage loans. There were also regular invoices for trust fees. Ahmed complained about SCB's constant demands for payment which he characterised as "a bottomless pit". He became increasingly unhappy with the Defendants.

116 On 23 July 2012 Rohit Sharma ("Rohit") (SCB DIFC's Head of Investment Advisory) emailed Ahmed:

> [T]he strategy for this insurance policy with premium financing was for the interest costs to be met from the investment portfolio held in ASK One Limited. The portfolio has however been reduced by the withdrawals made for other purposes listed above and market conditions. Given the reduction in size of the ASK One Limited portfolio it has not been possible to generate sufficient income/growth to meet the premium financing and other loan interest costs.

Harish responded in similar fashion a week later. However, Ahmed became frustrated with SCB. On 28 August 2012, at Ahmed's request, Marlon replaced Harish as Ahmed's relationship manager.

117 On 6 October 2013 Ahmed returned to Dubai. On 14 November 2013 SCB closed Ahmed's personal accounts. In January 2014 Marlon sought to obtain an updated CIQ from Sheila. But Sheila refused to sign the same. In June 2014 Ahmed asked SCB to reduce the interest rate on his loans. The interest rate was lowered from 1% to 0.8% over cost of funds. By letters dated 20 September 2015 and 23 November 2015 SCB terminated Sheila's account. By a letter dated 9 May 2016 SCB terminated ASK One's credit facilities. By two letters dated 10 May 2016, SCB terminated the credit facilities of ASK Three and the SAHLK Trust. SCB requested full payment of the total outstanding



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amounts on all credit facilities by 30 June 2016. On 10 October and 14 November 2016 SCB notified Sheila that it could no longer provide banking services to her Jersey account and asked her to close her account by 9 December 2016. By email from SCTG dated 15 August 2016 Ahmed learnt that SCTG was unable to continue providing fiduciary services.

118 The foregoing sequence of events proved to be a stressful time for the Kazzaz family. The Plaintiffs say that the emotional toll led to Sheila (who had previously suffered from depression) experiencing a relapse in November 2016.

119 Ahmed requested a tele-conference call with SCB and the representatives of the SCTG to discuss whether it was worth keeping the Policy and the available options for financing the premium loan. The conference took place on 25 May 2016 involving the Plaintiffs and representatives of SCTG. Nevertheless, on 2 June 2016 SCTG requested additional securities or payment of about US$450,000 by 15 June 2016. Ahmed accordingly decided that it would be better to find alternative financing for the Policy. But he was unable to do so. On 8 December 2016 Ahmed was notified that SCB had surrendered the Policy. He later understood that the surrender value was US$12,801,778.89, with a shortfall of US$1,225,267.80 recovered through enforcement of a pledge over ASK One's assets.

120 By letter dated 14 September 2016 SCB confirmed that the mortgage loan taken out by ASK Three for the Westchester Property would be extended to 30 September 2016. Ahmed sold an Iraqi property ("the Salim Property") on 10 October 2016 to raise funds and avoid the Westchester Property (where Lana was living) being sold by SCB. On 17 January 2017 Ahmed redeemed the mortgage over the Westchester Property.



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121 The Plaintiffs say that, by reason of the foregoing facts and matters, they are entitled to the following financial relief: (1) US$1,076,857.81 as the interest on the premium loan, (2) US$1,225,267.80 to cover the shortfall on the surrender of the Policy, (3) £141,913.64 as the additional incurred in purchasing the Westchester Property by means of a mortgage instead of cash, (4) US$1,500,000 from the forced sale of the Salim Property to redeem the mortgage, and (5) US$178,983.66 as fees paid to SCTG and SCTC.

***Summary***

122 The Plaintiffs invite me to find as follows on the basis of the facts and matters reviewed above:

(a) The Defendants did not take any steps to verify the Plaintiffs' net worth, income, access to cash or investment profile before onboarding them as Professional Clients and advising them on the suitability of the PFA.

(b) The Defendants represented to Ahmed that he did not need to worry about reviewing the documents required to implement the PFA as they would take care of it for him and his family. They knew that Ahmed approved Sheila's signing of documents on this basis.

(c) The Defendants did not explain or highlight the purpose, features and risks of the PFA and being a Professional Client to the Plaintiffs. This included the purpose of the trusts structures, the possibility of currency risks, margin calls and interest payment arising from the proposed financing, and the net death benefit of the Policy being guaranteed for only 16 years and 6 months (*ie*. until Sheila turned 86), and not until Sheila turned age 100.



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(d) The Defendants represented and assured Ahmed that the returns on investments would cover the interest payments for the premium loan and the mortgage.

(e) The Defendants represented to Ahmed that he could obtain funds for his business needs under the PFA. When Ahmed requested funds for his business needs, he was not told of the possibility that the investments may not generate enough returns to cover the costs of maintaining the PFA.

123 In light of the survey of the facts and evidence in this section, I am unable to find that the Plaintiffs have made out the matters that they submit I should find. On the contrary, based on the review of evidence in this section, I make the following findings on the evidence:

(a) SCB (including Harish, Laurence and Naushid) obtained its information about the Kazzaz family wealth and income from Ahmed himself. Ahmed did not really have any idea of his net worth and assets at the time. He most likely dealt with broad-brush figures. But, from the Licence alone, SCB would understandably have had the impression that the Kazzaz family had significant wealth and assets, such that the family was in a position to undertake to the Iraqi government that Leadstay would invest US$35 million in a development.

(b) SCB through Harish and Laurence in particular explained the purposes, features and risk of what the Plaintiffs have called the PFA. At trial SCB argued that it never put forward a PFA to Ahmed, but instead suggested possible solutions from time to time for Ahmed's evolving needs. Nonetheless, the evidence suggests that SCB discussed



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with Ahmed the putting together of a package of services that could cater to the needs of the Kazzaz family. That package included among its elements: (i) the purchase of the Policy, (ii) the sale of Ducie Court, (iii) use of the sale proceeds from Ducie Court to create an investment portfolio, (iv) the purchase of a London property through a mortgage, (v) the payment of the premium and mortgage loans from the returns generated by the investment portfolio, and (vi) the establishment of trusts to hold Kazzaz family assets, such as the Policy and the ASK Group's Iraqi assets. The evidence indicates that SCB through Harish and Laurence explained the rationale underlying the trust structures, the possibility of currency risks and margin calls, and interest payment arising from the proposed financing. Ahmed was told that the net benefit of the Policy would only last until Sheila turned 85 and not until Sheila turned 100.

(c) The Defendants did not represent to Ahmed that the financial arrangements that SCB would put in place would take care of the Kazzaz family's needs, regardless of how much Ahmed withdrew from the investment portfolio. In particular, SCB represented that the investment portfolio could generate returns that would pay off the interest due on the premium and mortgage loans. But SCB did not represent that the investment portfolio could generate sufficient returns to meet such interest payments, no matter how much moneys Ahmed withdrew from the investment portfolio. SCB through Harish, Laurence and Naushid did say that cash could be readily available. But this did not mean (and could not reasonably have been understood to mean) that Ahmed could withdraw as much cash as he wished from the portfolio whenever he wanted, without impairing the portfolio's ability to generate returns that



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would be sufficient to meet the interest payments due on the premium and mortgage loans. What Harish, Laurence and Naushid meant by cash being available was that, when cash was urgently needed, the portfolio's investments could be readily liquidated to meet such needs.

(d) I do not accept the complaint in Ahmed's email dated 26 June 2011 that, as a matter of practice, SCB (whether through Harish or Laurence) would simply put documents before Ahmed for signature without explanation. What is stated in that email is contradicted by the documentary evidence in this case, from which it would appear that in practice Harish and Laurence would take pains to deal with points raised by Ahmed from time to time.

(e) I find that SCB explained to Ahmed and Sheila what it meant to become SCB's Professional Client and were justified in classifying them as such.

**Legal Analysis**

124 In this section, I consider the Plaintiffs' claims of negligent misrepresentation, breaches of the common law duty of care, and breaches of the DIFC Regulatory Law in light of my findings of fact above.

***Negligent misrepresentation***

125 The misrepresentations are alleged to have occurred in Dubai. Where a foreign tort is involved, Singapore law applies a double actionability test. See *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377, at [53]. Essentially, the conduct of which complaint is made must be actionable as a civil wrong in the place where it was committed and actionable as a tort in



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Singapore. Misrepresentation is actionable as a tort in Singapore. The Defendants accept that misrepresentation would be actionable as a civil wrong under Dubai or DIFC law. It follows that the double actionability test is met. In that case, the court essentially applies the law of the forum (that is, in this case, Singapore law) in evaluating whether as a matter of fact there has been a misrepresentation for which damages may be claimed. Accordingly, subject to a question about the extra-territorial application of the MA (see below), I should apply Singapore law when determining whether SCB is liable for negligent misrepresentation.

126 Under Singapore law, two types of situations may be distinguished for the purposes of analysing whether there has been negligent misrepresentation.

127 The first situation is what might be referred to as the statutory paradigm. That is where: (1) a defendant makes a representation of present fact or law (as opposed to a prediction about the future) to a plaintiff, (2) the representation is false, (3) the representation induces the plaintiff to enter into a contract with the defendant, and (4) the plaintiff suffers loss as a result. This paradigm is typically actionable under the MA. For instance, in relation to a negligent misrepresentation which induces a plaintiff representee to enter into a contract with a defendant representor, MA s 2(1) provides:

> **Damages for misrepresentation**
>
> **2.**—(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.



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It will be noticed that s 2(1) only applies where a person (the plaintiff) has entered into a contract after a misrepresentation has been made "by another party thereto", that is, by another party to the relevant contract.

128 The second situation is what might be referred to as the general paradigm. That is where: (1) a defendant makes a representation of present fact or law (as opposed to a prediction about the future) to a plaintiff, (2) the representation is false, (3) the false representation induces the plaintiff to enter into transaction (not necessarily contractual) with a third party, and (4) the plaintiff suffers loss as a result. This general paradigm is actionable at Singapore common law pursuant to the leading case of *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 (HL). In such situation, a plaintiff must establish that, taking account of all circumstances, the defendant owed a duty to take reasonable care when making the relevant representation to the plaintiff. For example, there would be such a duty where it is plain that a "party seeking information or advice was trusting the other to exercise such a degree of care as the circumstances required": *Hedley Byrne*, at 486 per Lord Reid. As far as negligent misrepresentation is concerned, the general paradigm overlaps with the statutory paradigm in the situation where the third party and the defendant are the same person: the defendant makes a negligent misrepresentation which induces the plaintiff to enter into a transaction (a contract) with the defendant. The statutory paradigm merely requires the defendant representor to have taken reasonable care in the making of a representation. MA s 2(1) does not stipulate that the defendant representor must be shown to have owed a duty of care to the plaintiff representee. That may be because the defendant in the statutory paradigm can be presumed to owe a duty of care to the plaintiff when making the impugned representation, since that representation will have been intended by the defendant to induce the plaintiff to enter into the relevant contract with



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the defendant.

129 The Plaintiffs have run alternative cases based on the statutory and general paradigms. Although there are similarities between the two paradigms, there are also differences between them. *Hedley Byrne* addressed the difficulty that, until the decision in that case, it had not been thought possible to recover damages for pure economic loss in an action for the tort of negligence. On the other hand, the MA addressed the difficulty that at common law it was only possible to bring an action for deceit (that is, fraudulent misrepresentation). It was possible in equity to seek relief for innocent misrepresentation. But the equitable relief was limited to rescission, as opposed to damages. The MA created a statutory action for negligent misrepresentation. The MA did so by providing that where a misrepresentation has been made, the burden is on the representor to show that he or she "had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true". In other words, by contrast with the general paradigm, when the MA is invoked, the burden is on the defendant, once the plaintiff has shown that a false representation was made, to adduce evidence that he or she took reasonable care when making the impugned representation. This apparent reversal of the normal evidential burden of proof has led legal commentators to suggest that, where there is an overlap between the statutory and general paradigms, a plaintiff should tactically opt to frame his or her action within the statutory paradigm as the burden would then be on the defendant to show evidence of having taken reasonable care. Otherwise, under the general paradigm, the burden will be on the plaintiff to show that a defendant failed to take reasonable care in making a representation. See *RBC Properties Pte Ltd v Defu Furniture Pte Ltd* [2015] 1 SLR 997, at [63]–[66].



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130 There is a further difference upon which legal commentators have focussed. Read literally, MA s 2(1) seems to provide that, where negligent misrepresentation has been established, the defendant will be "liable to damages in respect thereof had the misrepresentation been made fraudulently". It has consequently been suggested that the more liberal measure of damages that the common law allows where the tort of deceit has been established, will equally apply to negligent misrepresentation under MA s 2(1). See, for example, *Royscot Trust Ltd. v Rogerson* [1991] 2 QB 297 (CA) in which Balcombe LJ expressed the view (at 301) that, where there has been negligent misrepresentation under the English equivalent of the MA, a victim is "entitled to recover ... all the losses ... suffered as a result of its entering into the agreements ... , even if those losses were unforeseeable, provided that they were not otherwise too remote". However, I am sceptical of this supposed difference. As a matter of principle, it would be wrong for a person who was merely negligent to be treated as if he or she had acted fraudulently. In Singapore, Balcombe LJ's view has recently been queried by the Court of Appeal in *RBC Properties* at [83]–[85]. Nevertheless, as neither party has pursued this argument in their submissions, it is unnecessary for me to do more than flag that there is an ongoing debate on the remedial scope of MA s 2(1).

131 There may be yet another difference between the two paradigms. I am far from convinced that the MA is applicable in the present circumstances where the alleged misrepresentations would have taken place not in Singapore, but in the DIFC. In *JIO Minerals FZC v Mineral Enterprises Ltd* [2011] 1 SLR 391, the Court of Appeal held (at [104]):

> It appears, therefore, that the purposes underlying the Misrepresentation Act are two-fold: (a) to supplement the remedies available to a representee under common law (more accurately, under the then common law as the seminal House



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> of Lords decision in *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 had been decided by the time the Misrepresentation Act had been enacted and had filled the then existing gap, albeit in different manner than that provided for pursuant to s 2(1) of the Misrepresentation Act (see, for example, *Cheshire, Fifoot and Furmston's Law of Contract – Second Singapore and Malaysian Edition* (Butterworths Asia, 1998) ("*Cheshire, Fifoot and Furmston*") at pp 468–471)); and (b) to confer the courts with flexibility in remedial matters by allowing courts to award damages in lieu of rescission, which flexibility was not available under the common law (pursuant to s 2(2) of the Misrepresentation Act (see also *Cheshire, Fifoot and Furmston* at pp 482–484)). These purposes would not appear to be enhanced if the Misrepresentation Act were applicable to misrepresentations occurring outside Singapore territory in relation to contracts governed by foreign law. Unlike, for example, the Prevention of Corruption Act or the Traditional Chinese Medicine Practitioners Act, the Misrepresentation Act is not intended to regulate conduct or protect classes of persons. The purposes of such conduct regulating and protective statutes would, perhaps, be advanced if they are applied without strict regard to territorial links. A statute that merely supplements existing common law remedies with respect to the Singapore common law of contract, without serving a conduct regulating or protective function, on the other hand, does not appear to require general extraterritorial application to have its purposes advanced. If, however, the relevant contract were governed by Singapore law (whether by express choice or otherwise), it would appear to be consistent with the purposes of the Misrepresentation Act to say that it applies even to misrepresentations occurring outside Singapore territory. In fact, we would suggest that it would be highly artificial if a choice of Singapore law in a contract only brings into operation Singapore common law for misrepresentations occurring outside Singapore territory without the supplementary or facilitative provisions of the Misrepresentation Act.

In light of the foregoing, I doubt whether, when the double actionability test is met in respect of a tort committed outside Singapore, the court here can apply statutes such as the MA that do not have extra-territorial effect. The Plaintiffs cited *JIO Minerals* for a different proposition and have not discussed the conflict of laws issues that I have just highlighted. The Defendants have not challenged the applicability of the MA on the basis of the dictum that I have



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quoted. Accordingly, having heard no argument on the matter, I will leave the point for discussion in future cases. I will simply assume (without necessarily accepting) for the purposes of this judgment that the MA is applicable to the alleged misrepresentations here.

132 I start (as the Plaintiffs have) with a *Hedley Byrne* analysis. For this purpose, I will proceed on the basis that the Defendants owed a duty of care to the Kazzaz family when making representations to them in relation to the services that SCB could provide. Given that, on behalf of the Kazzaz family, Ahmed was plainly "seeking information or advice" and was "trusting the other [SCB and its officers] to exercise such a degree of care as the circumstances required", it would be difficult in my view to maintain that SCB owed no duty of care at all to the Kazzaz family on the facts.

133 It will be seen from my findings above that, in relation to Alleged Misrepresentation (1) (see [6(c)(i)] above), SCB (whether through Laurence, Harish, Naushid or anyone else) did not represent that the financial arrangements that they were proposing would be self-funding so that the investment portfolio put together from the Ducie Court sale proceeds would generate sufficient returns to meet the interest payments for the premium and mortgage loans in all circumstances and, in particular, regardless of the amounts withdrawn by Ahmed. All that was represented to Ahmed was that an investment portfolio could be put together out of the Ducie Court proceeds that would generate returns to cover the interest due on the premium and mortgage loans.

134 I have so far treated Alleged Misrepresentation (1) as a representation of present fact, rather than merely a statement of opinion or a prediction of what



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might happen in the future. But in actuality the statement that the PFA would generate sufficient returns is in form a statement about what is likely to happen. It is not so much a statement of present fact as a statement of belief or opinion about the future. It would therefore be more accurate to treat the alleged misstatement as an implicit representation that the maker knew of facts that might reasonably have led the maker to believe that the proposed financial arrangements could generate sufficient returns to cover the relevant interest payments in the future. The question would be whether Harish reasonably believed when making the proposal to Ahmed that the investment portfolio that SCB was going to put together for the Kazzaz family had the potential to generate sufficient returns to cover the interest on the premium and mortgage loans.

135 On this, Harish's evidence when cross-examined by the Plaintiffs' counsel (Mr. Chia) was as follows:

| | |
|---|---|
| Court: | Because even on what was thought beforehand, before Mr Kazzaz even asked for this additional US1 million for his Iraq business, there was a premium of approximately US$200,000-odd per year. |
| Harish: | You mean interest? |
| Court: | Interest. |
| Harish: | Yes. |
| Court: | Sorry, interest on the premium. |
| Harish: | Yes. |
| Court: | Premium loan -- |
| Harish: | Premium loan. |
| Court: | -- of US$200,000-odd per year. |
| Harish: | Yes. |



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Court: You had a portfolio of about 4 million pounds at the time, 4.3 million pounds.

Harish: Approximately five, yes.

Court: So, let's say, US$5 million. So that investment portfolio would have to make something like at least 5 per cent every year?

Harish: Yes, that was part of the investment portfolio that was suggested.

Court: So if anything was taken out of that investment portfolio, then it would be rather difficult -- I mean it's difficult enough to hit 5 per cent --

Harish: Yes.

Court: -- every year --

Harish: Correct, sir.

Court: -- if you take anything out it's even going to be even more difficult.

Harish: Yes.

Court: So wouldn't it be rather, shall we say, a tight package that if you had less than the US$5 million proceeds from the Ducie Court.

Mr. Chia: British pounds, your Honour.

Court: I know, but initially they received about 4 million pounds. So just going by that. If you had anything less than that, the likelihood is you would have great difficulty meeting the interest on the premium financing?

Harish: If anything less than that, yes.

136 Harish continued:

Mr. Chia: I will repeat my question. You would have also known by this date, 21 March 2011, that the proposed investment portfolio was not going to generate sufficient funds to cover the interest payments, right?

Harish: Your Honour, if I can perhaps ask the counsel to help me understand, "sufficient" means --



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Court: There wasn't going to be enough.

Harish: From the numbers that are put together, yes.

Mr. Chia: Just to provide context for my subsequent questions, you can see that this portfolio at 3262 assumes that 5 million British pounds, pounds sterling, will be invested, correct?

Harish: Yes.

Mr. Chia: So it follows that if one were to reduce this portfolio below 5 million, then logically, the returns will be even lesser than what is projected, right?

Harish: Yes.

Mr. Chia: Because you have less principal to invest. Now, we are going to look at the subsequent email and that is at page 3298 of the same volume 5. Now, this email is dated 22 March, so it's one day later. And here, by the time you see this email you would have known that Ahmed needs funds urgently and he needs $1.5 million, right?

Harish: Yes.

Mr. Chia: And if this $1.5 million is withdrawn from the investment portfolio, then the portfolio would be even smaller and the returns will be even less than what we saw at the chart earlier, right?

Harish: Here I'm reading: "... I am waiting for you to make a loan in US$ against GBP £ deposit but this is urgent ..." So I guess he's taking a loan, not withdrawing. So there is value still in the account.

Mr. Chia: What we do know, Mr Phoolwani, is that subsequently, Ahmed was allowed to withdraw from the investment portfolio, yes?

Harish: Against the portfolio as per this email as a loan.

137 It seems to me on the evidence that Harish did not expect Ahmed to make substantial withdrawals from the investment portfolio and thereby seriously hamper the portfolio's ability to generate sufficient returns to cover the interest on the premium and mortgage loans. I do not believe that was an



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unreasonable assumption on Harish's part. The portfolio would have to generate returns of about 5% from nearly the entire of the Ducie Court sale proceeds if it was to have any prospect of wholly or even substantially covering the interest due on the premium and mortgage loans. In this sense, the contemplated arrangement would have been a "tight" package with little room to manoeuvre if (as eventually happened) Ahmed withdrew significant amounts. But Ahmed's withdrawals did not render it unreasonable for Harish when first proposing the arrangement to Ahmed to believe that an investment portfolio could be put together out of the Ducie Court proceeds which would generate sufficient returns to meet the interest payments on the premium and mortgage loans. I do not think that Harish was at fault in making the implicit representation described above.

138 Further, on Alleged Misrepresentation (1), I have not found that SCB (whether through Laurence, Harish, or Naushid) represented that Ahmed would never have to provide further funds as security for the premium loan or the mortgage. On the contrary, SCB (especially through Harish) informed Ahmed of the need to provide collateral security. For instance, the loan facility letter of 28 July 2011 (the terms of which Harish specifically asked Ahmed in his cover email to refer to) expressly referred to the client's undertaking to "at all times, maintain the Aggregate Collateral Value of the Security above or equal to the Equivalent Amount of the Total Outstandings". Before accepting the same, Ahmed asked Walid for advice on the terms of the letter and only acted upon receiving Walid's positive recommendation.

139 It follows that Alleged Misrepresentation (1) has not been made out on the facts. In any event, it seems that whatever SCB stated was not causative of Ahmed's entry into financial arrangements with SCB, Ahmed having cleared



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matters with Walid on at least two occasions before taking specific steps.

140 In relation to Alleged Misrepresentation (2) (see [6(c)(ii)] above), I have not found that SCB (whether through Laurence, Harish, or Naushid) represented to Ahmed that he need not review, understand or seek professional advice in respect of any documents to be executed. Instead, SCB (especially through Harish) not only recommended professionals (albeit connected with SCB) from whom Ahmed (if he wished) could seek advice, but also accommodated Ahmed's wish for the proposed arrangements on the Policy and its financing to be explained to Walid, so that Walid could in turn explain the same to Ahmed. At no time, as far as I can see on the evidence, did Harish, Laurence or Naushid tell Ahmed that he could not (or should not) seek professional advice on his own.

141 Alleged Misrepresentation (2) likewise fails on the facts.

142 In relation to Alleged Misrepresentation (3) (see [6(c)(iii)] above), what is or is not "suitable" is a matter of opinion, not a statement of present fact or law. However, the alleged representation is in effect an implicit statement that Harish and Laurence knew of facts that might reasonably have led them to conclude as a matter of opinion that the proposed arrangements were suitable for the Kazzaz family.

143 The evidence suggests that Harish and Laurence did indicate to Ahmed that in their view the arrangements being proposed by SCB were suitable for the Kazzaz family's needs. Those arrangements included purchasing the Policy by way of a premium loan, purchasing the Westchester Property by means of a mortgage, using the Ducie Court sale proceeds to establish an investment



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portfolio out of which the interest on the premium and mortgage loans could be paid, and establishing trust structures to hold Kazzaz family assets.

144 In response to my questions on the object of all SCB's proposed financial arrangements, Harish said:

> Court: ... What did you understand the whole purpose of the, shall we say, the arrangement that you had -- what do you say you had originally understood as the purpose of the arrangement?
>
> Harish: The main purpose of the arrangement was to really -- main purpose was to make sure that the proceeds that come out from Ducie Court go into a form of a trust and that is separate, kept separate from the entire family business because family had businesses in Iraq, and which were also subject to some other regulations, Force Hire [forced heir] shares, there are many other things. So the simple idea was to make sure that they put together certain -- certain funds, certain part of assets separate away from the entire ongoing affairs that they have in terms of business management and those -- those -- that pot [put?] would generate enough return to make sure that it provides for the insurance policy, financing, and at some stage later, new mortgage at some stage later. But that was also not defined per se at this stage so -- so I believe, if I'm -- my counsel can help me. There was a presentation that we had put together.
>
> Court: My question is just what is the objective as you understood it?
>
> Harish: That was the objective at that time.
>
> Court: What was the objective of the insurance policy?
>
> Harish: It was part of the family wealth planning because what I understood at that point in time from the family is that they wanted to protect the interest of the grand daughters and daughter. In a way that if -- because the family is into high risk business -- sorry, risky zone business where the family would -- as in Mrs Kazzaz and the daughters would not be able to access Iraq and



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> get access to their business assets directly, the understanding was this tool, insurance policy tool, would create additional, sort of, cover for -- which sits in the overall family estate planning.
>
> Court: I can understand perhaps if the insurance policy was taken out on Mr Kazzaz's life. What was the purpose of taking it out on Mrs Kazzaz's life?
>
> Harish: So I do not specifically remember the discussion that went on but the family was very keen that one of the -- to have this insurance policy. So either one didn't matter. For them what mattered was the granddaughters and their interests.

In short, Harish believed that the arrangements proposed were suitable because: (1) the investment portfolio put together from the Ducie Court proceeds would generate capital growth for the Kazzaz family in the long term, (2) the death benefit from the Policy would provide a degree of security in the longer term, (3) Kazzaz family assets injected into trust structures would be ring-fenced from forced heirship under French and *shari'a* law, and (4) the interest payments on the premium and mortgage loans would be met by the income generated by the investment portfolio. I am unable to say that such view was unreasonable.

145 The Plaintiffs submit that it was unreasonable for Harish to regard the proposed financial arrangements as suitable for the following reasons:

(a) The arrangements were not suitable for a person of Ahmed's risk profile.

(b) The arrangements were not suitable for a person of Ahmed's investment experience and knowledge.

(c) The arrangements were not suitable for a person of Ahmed's net wealth, income and access to cash.



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146 I am unable to agree.

147 First, the Plaintiffs say that, as a package, the financial arrangements were highly leveraged and could result in a 71% potential loss over a 5-year period based on the worst-case scenario. The Plaintiffs contend that the arrangements were consequently unsuitable even for the "most aggressive" investor profile on the CIQ (that is, a person willing to lose more than 20% over 5 years). But it is in the nature of even conservative financial products that a positive return is not guaranteed and the entire value of an investment may be lost. In considering a worst-case scenario, one needs to look at the probability of the same occurring. In fact, Walid considered the worst-case scenario of the proposed package with Ahmed and both concluded that the risk was acceptable. Second, no complaint has been made about the investment portfolio that SCB actually put together. It has not been suggested that the actual investments were too aggressive or otherwise unsuitable. The problem was that, shortly after the Ducie Court proceeds were remitted to SCB, Ahmed made substantial withdrawals. It was accordingly not possible for the diminished investment portfolio funds to generate sufficient returns to cover the premium and mortgage loans, much less provide significant capital growth. I have already dealt with the allegation that SCB told Ahmed that cash of any amount would always be available as and when Ahmed wished. Third, I do not think that it was unreasonable for SCB's officers to believe that someone with a net worth of US$41 million and who was in a position to undertake in the Licence to invest US$35 million in an Iraqi development, could afford interest costs of about US$250,000 per year.

148 For those reasons, Alleged Misrepresentation (3) also fails. The Plaintiffs' *Hedley Byrne*-based case on negligent misrepresentation is



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consequently rejected as a whole.

149 The Plaintiffs also rely on negligent misrepresentation under the MA s 2(1), Alleged Misrepresentations (1), (2) and (3) being said to have induced the Plaintiffs to enter into various contractual arrangements with SCB. On the assumption that the MA applies, it must nonetheless follow from my rejection of Alleged Misrepresentations (1), (2) and (3) that the claim based on s 2(1) cannot succeed. That claim is also rejected.

***Breaches of the common law duty of care***

150 The Plaintiffs' case is that a duty of care was owed by the Defendants to the Plaintiffs by reason of the following:

(a) It was foreseeable that the Defendants' failure to exercise reasonable care when advising the Plaintiffs on the components of the PFA would cause the Plaintiffs loss.

(b) There was sufficient legal proximity for a duty of care to arise due to SCB having assumed responsibility to take reasonable care when providing advice to the Plaintiffs and the Plaintiffs having correspondingly relied on the Defendants for that purpose.

(c) The regulatory obligations imposed on SCB under the Dubai Financial Services Authority Rules ("the DFSA Rules") concretises the nature of the Plaintiffs' duty of care.

151 The Plaintiffs stress that it was reasonable for them to rely on the Defendants, because Ahmed and Sheila were financially unsophisticated and had little or no experience of trusts. Clause 3.1(d) of the Client Agreements



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between the Plaintiffs and SCB stated that SCB DIFC did not owe any advisory, fiduciary or similar duties to the client. Clause 13 of the same document stated that SCB would not be liable for any loss suffered or incurred by the client arising in connection with any advice or recommendation under the agreements or any management of assets. But the Plaintiffs submit that such provisions are not applicable, because the clauses are ambiguous and should be construed *contra proferentem* (that is, against SCB insofar as SCB is seeking to rely on those clauses). In particular, the Plaintiffs say that the clauses do not apply since the Plaintiffs were wrongly classified as "Professional Clients" by SCB. Under the Client Agreements, investment advice and services were provided on the basis that the Plaintiffs were "Professional Clients" as defined in the DFSA Rules. Likewise, clauses 3.1(d) and 13 of the Client Agreements must have been premised (the Plaintiffs contend) on Ahmed and Sheila actually being Professional Clients. The clauses should not be treated as operative where the Plaintiffs are not actually Professional Clients. The clauses should not operate against clients who are inexperienced in financial and banking matters and would not fully have appreciated the impact of what they were agreeing to when they signed the Client Agreements.

152 I will again proceed on the basis that the Defendants owed a duty of care to the Plaintiffs. Nonetheless, it will be seen that, purely on the facts, I have found against the Plaintiffs in relation to Alleged Breaches (1), (3), (4), (5) and (6) of the common law duty of care (see [7] above). Thus, the Plaintiffs' claims based on Alleged Breaches (1), (3), (4), (5) and (6) must fail in any event.

153 In relation to Alleged Breach (2) (failure to advise on currency risk), the Plaintiffs contend that no such advice was given until an email from Rohit dated 12 July 2012. The email reads:



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With regards to your discussion with Harish around the shortfall / margin requirement, I thought I will provide you with a brief snapshot of the status of the accounts so as to define the variables due to which this has resulted. I have also put forward an action plan that will support the due requirement.

Provided below is the current scenario of the account followed with the action plan detailed below for which we require your consent.

ASK 1 a/c

Assets are equivalent GBP 4.98Mio of which the Loans are in USD amounting to equivalent of GBP 1.31 Mio. The lending value on these assets is approx GBP 2.74 Mio from which if we subtract the loans taken of GBP1.31 Mio (as mentioned above) and since there is a cross currency in your assets being in GBP and loans in USD there is an additional 10% (Approx GBP 131k) taken from the lending value amounting and hence the net available lending on the account is Approx GBP 1.3Mio.

SAHLK (Insurance a/c)

This requires a lending amount of GBP1.39Mio from the ASK 1 A/c based on the 10% of the policy amount being your collateral and 90% lending on the policy.

The total lending available falls short by approx GBP 100K.

Action Plan

To cover the above shortfall and to realign the balances as per the requirement of both the accounts.

This can be immediately be addressed by converting the cash GBP of 1.786Mio to USD at spot rate and book a forward cover for 3months tenor (i.e. after 3 months the reverse is done where we buy GBP) on a rollover basis back to GBP. This is done to mitigate the FX volatility and will support the necessary short fall. The short term forward cover taken also will provide flexibility to the investments to be closed or book profit.

This will help the accounts to free up the lending and cover the shortfall in the interim whilst new assets are received or a portfolio rebalancing is done at a later stage.

Please do let us know if you require any further information.



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154 Upon receipt of Rohit's message, Ahmed emailed Walid on the same day as follows:

> Sorry to bother you once more but I continue to have ever increasing problems with understanding what these guys ways they 'attempt' to explain matters to me. I don't understand one word they are saying here. And the problem is that I am planning on bringing an additional $9M into SCB PVT bank but am having serious second thoughts now and am planning to perhaps find another bank becoz I am now totally fed up with these double Dutch explanations. What do I do. Plz help !!!.

155 Harish's affidavit evidence on currency risk was as follows:

> 328. To my recollection, prior to the meeting, I briefed Rohit that Ahmed would be taking up a policy with premium financing under an insurance trust, and was also expecting to receive sale proceeds of about GBP 5 million into the trust structure. I told Rohit that Ahmed wanted to invest the sale proceeds and use the investment returns to support interest payments of about USD 250,000 per annum for the premium financing. Rohit then prepared a bond proposal (the "Bond Proposal") to show Ahmed that, based on investing USD 5 million in a proposed bond portfolio, the bonds would generate annual coupons of approximately USD 330,000 (i.e. more than sufficient to cover interest payments for the premium financing).
>
> 329. I recall that Rohit went through the Bond Proposal with Ahmed during the meeting. He explained that, given that there were interest payments that would have to be serviced, he had proposed a bond portfolio as the fixed income (i.e. the coupon payments) from this could be used to pay the interest payments. He also explained that he had only looked at USD-denominated bonds as the loan and interest payments were in USD. Otherwise, if the investments were in a different currency, they would be subject to cross-currency risks caused by fluctuations in exchange rate as well as a 10% haircut in collateral value to account for the cross-currency risks. I also recall suggesting to Ahmed that the Ducie Court Sale Proceeds be converted from GBP into USD, so as to minimize cross-currency risks.

156 In cross-examination, Harish said the following:



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Mr. Chia: Well, we can see from the portfolio it's in British pounds.

Harish: Yes.

Mr. Chia: So if the investment is made in British pounds, immediately there is some loss due to currency conversion because the interest payments are in US dollars, yes? You have to convert the pound to the dollar to pay off the interest on the loan?

Harish: I'm not sure about the loss that you're talking about here.

Court: Well, there is a fee for conversion I think is what Mr Chia says. Normally between buying and selling, there is a spread.

Harish: Three pips or very less.

Court: I think that's what Mr Chia is referring too. Is that correct? You're referring to the spread --

Mr. Chia: Yes.

Court: -- when you buy and sell foreign currency.

Mr. Chia: Yes, essentially there may be a fee and a spread because you convert from one currency to the other, so you lose a little bit in that.

Harish: Foreign exchange transaction fee is that --

Court: I think effectively that's what Mr Chia is referring to.

Harish: Okay.

Mr. Chia: Yes. That's because your income is in pound and your cost is in dollar so there is a conversion, yes.

Harish: Yes.

Mr. Chia: So immediately there is a forex risk right there. I think we covered it earlier, because of two currencies, yes?

Harish: Yes.

Mr. Chia: Even if the investment is doing as expected if the pound tanks against the US dollar, then you may not have as much as you expect, correct?



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Harish: From the collateral values perspective, correct? Is that what my understanding is?

Court: Not quite yet. All Mr Chia is saying is that the income generated by the investment portfolio, in terms of pound sterling had the currency risk, so that if -- to use his expression -- the pound tanks against the US dollar, well, you may not generate enough to pay off the interest on the premium financing for the year.

Harish: Yes.

Mr. Chia: Thank you, your Honour. And as you pointed out, it would also lead to possibly a reduction in the collateral value.

Harish: Correct, margin top-up.

Mr. Chia: Because the portfolio or at least part of it is pledged as collateral against the loan.

Harish: Yes.

Mr. Chia: Because we know the portfolio serves two purposes. Just stopping here, having explained all this, doesn't this show that this arrangement is so risky and complicated.

Harish: No.

Court: "This arrangement", what is "this arrangement"?

Harish: Exactly.

Mr. Chia: Let me put it this way. This concept of investing the sale proceeds to derive sufficient income to fund the interest payments, this is complicated and risky.

Harish: I disagree, because Mr Kazzaz based in -- at least has US dollars as income, that was the whole objective of paying it out as well, part of it.

Mr. Chia: The foreign exchange risk, I mean by now it's quite clear that you are proposing a portfolio in pound sterling. This foreign exchange risk arising from the fact that the cost is in US dollars was never highlighted to Ahmed, correct?

Harish: I disagree. Mr Sharma did. And this is where I bring in the experts to put together the settled part of the risk. Mr. Chia, I will have to bring



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> him in to answer this specific question if you want to go further.

157 What I derive from the foregoing evidence is that Rohit at Harish's request had proposed that a US$ investment portfolio be put together out of the Ducie Court proceeds which were denominated in pounds sterling. Rohit did so because the premium and mortgage interest payments were denominated in US$. Rohit thought that a portfolio in US$ would minimise the cross-currency risk. This would require the Ducie Court proceeds to be converted into US$ at the outset, before a portfolio was put together. Rohit explained this to Ahmed. But, as Harish noted in his email to Ahmed of 15 March 2011 (see [90] above), Ahmed's instruction was to keep the Ducie Court proceeds in pounds sterling and not to convert the same into US$.

158 I do not regard Ahmed's email to Walid of 12 July 2012 (see [154] above) as compelling or any evidence that Ahmed did not understand currency risk, as opposed to a complaint that Ahmed was unhappy about the number and extent of margin calls that SCB was making and regarded SCB's explanations for the same as little more than obfuscatory jargon. It is difficult to believe that an experienced businessman such as Ahmed with assets and interests in England, France, Dubai and Iraq would not understand basic concepts of foreign exchange and currency risk.

159 I also note that the Risk Disclosure Statement which Ahmed signed when opening a client account with SCB contained the following term:

> 1.11 Currency Risks
>
> Where trading contracts or other investments are denominated in currencies other than your primary reference currency, or where you convert funds from another currency upon making an investment, there is the risk that if the foreign exchange



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> markets move against you, then upon maturity or any earlier dealing the net proceeds converted into your primary reference currency, or the currency from which the initial funds were converted (as the case may be), may be significantly less than the equivalent figure on the date the contract was entered into or the investment made, and that any income or gains made may be entirely negated. Where your indebtedness to the Bank is secured by assets denominated in a currency different from the currency of the indebtedness, the foreign exchange market may move against you and the risk of loss can be substantial. In the case of foreign currency deposits, the net return on your foreign currency deposit(s) will depend on market conditions prevailing at the time of maturity. In this regard, you may suffer loss as a result of depreciation of the value of the currency paid as a result of foreign exchange controls imposed by the country issuing the currency. Such loss may offset the net return on your deposit(s) and may result in losses to such deposit(s). Repayment or payment of amounts due to you may be delayed or prevented by exchange controls or other actions imposed by governmental or regulatory bodies.

160 In short, contrary to the Plaintiffs' contention, I find that SCB did explain the currency risk to Ahmed and Ahmed understood the currency risks involved.

161 Alleged Breach (2) is not made out on the facts.

162 In relation to Alleged Breach (7) (failure to explain the significance of being a Professional Client and to assess the suitability of Ahmed and Sheila to be such), I have already found at [55] above that SCB through Harish explained to Ahmed and Sheila the significance of being a Professional Client and the consequences of not being a Retail Client. I have also found that SCB acted reasonably in classifying Ahmed and Sheila as Professional Clients. But I need to say a little about the Plaintiffs' allegation that SCB had no justifiable basis for classifying Ahmed and Sheila as Professional Clients in the context of Rule 2.5.1 of Conduct of Business Module B ("COB") of the DFSA Rulebook.



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163 COB Rule 2.3.2(1) provides:

> An Authorised Firm may classify a Person as a Professional Client only if such a Person:
>
> (a) either:
>
> (i) has net assets of at least $500,000 calculated in accordance with Rule 2.4.1; or
>
> (ii) is, or has been in the previous 2 years:
>
> (A) an Employee of the Authorised Firm; or
>
> (B) an Employee in a professional position in another Authorised Firm;
>
> (b) subject to (2), appears, on reasonable grounds, to the Authorised Firm, to have sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks following the analysis specified in Rule 2.5.1; and
>
> (c) has not elected to be treated as a Retail Client in accordance with Rule 2.3.3.

164 COB 2.5.1(1) states:

> For the purpose of Rule 2.3.2(1)(b), the analysis undertaken by an Authorised Firm must include, where applicable, consideration of the following matters:
>
> (a) the Person's knowledge and understanding of the relevant financial markets, types of financial products or arrangements and the risks involved either generally or in relation to the proposed Transaction;
>
> (b) the length of time the Person has participated in relevant financial markets, the frequency of dealings and the extent to which the Person has relied on financial advice from financial institutions;
>
> (c) the size and nature of transactions that have been undertaken by or on behalf of the Person in relevant financial markets;



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> (d) the Person's relevant qualifications relating to financial markets;
>
> (e) the composition and size of the Person's existing financial investment portfolio;
>
> (f) in the case of credit or insurance transactions, relevant experience in relation to similar transactions to be able to understand the risks associated with such transactions; and
>
> (g) any other matters which the Authorised Firm considers relevant.

165 The Guidance to COB 2.5 explains:

> Generally, an Authorised Firm may consider a Person to have relevant experience and understanding where such a Person:
>
> a. has been involved in similar transactions in a professional or personal capacity sufficiently frequently to give the Authorised Firm reasonable assurance that the Person is able to make decisions of that kind, understanding the type of risks involved;
>
> b in the case of an Employee, has worked in the financial services industry for at least one year in a professional capacity which requires knowledge of the transactions or services involved; or
>
> c. is found to be acting in relation to the particular transaction involved, on reliance of a recommendation made by an Authorised Firm or Regulated Financial Institution.

166 According to the Plaintiffs, in light of the COB, SCB had no reasonable grounds for considering that Ahmed or Sheila had sufficient experience or understanding to be classified as "Professional Clients" because of the following:



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(a) Ahmed did not have sufficient experience or sophistication to understand the financial investments such as the PFA and his limited experience was confined to the real estate market.

(b) Sheila's evidence was that she was risk averse and had limited knowledge of the real estate market and was evidently not sufficiently sophisticated to understand the risks of investing in complex financial investments.

(c) Neither Ahmed nor Sheila had ever acquired life insurance policies as investments, let alone through a geared structure supported by an investment portfolio.

167 I am unable to agree.

168 Under COB Rule 2.5.1(1)(a) what SCB had to assess was the knowledge and understanding of Ahmed and Sheila relative to the proposed transactions that they would be entering into with SCB. Those particular transactions (the Policy, the mortgage, trust structures) were not such complex or risky arrangements that Ahmed did not, or could not, understand or appreciate the risks being undertaken. For instance, both Ahmed and Sheila accepted that they were familiar with endowment mortgages. Such mortgages are usually tied with a life insurance policy. Further, mortgages are themselves an example of gearing. Both Ahmed and Sheila had familiarity with trusts. Sheila was the protector of the St. Bernard and ASK Trusts held through Hawksford. Ahmed was plainly familiar with trusts and their purpose as can be seen from his earlier correspondence with SCB, and in particular, with Harish.

169 More specifically, Ahmed's evidence of his understanding at the time



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suggests that he fully comprehended what SCB was proposing to him, including concepts such as collateral, the consequences of negative equity, and differential rates of interest.

170 Ahmed said in court:

> From what my understanding was at the time, the bank were going to receive sale proceeds of Ducie Court. They were going to invest the money of Ducie Court, they would pay the premium for the life insurance for the -- from the proceeds of Ducie Court. They would -- they would make certain investments to cover the premium and to cover the loans that they wanted to give me for my business in Iraq plus the house, the -- the life insurance they explained to me would give us cover and collateral to be able to go forward for the other -- for the other -- for the other points within the arrangement. That's why we went for it.

171 Later, in cross-examination he said:

> Ms. Tan: And you also understood that the bank would hold the policy as security for the premium loan.
>
> Ahmed: Yes.
>
> Ms. Tan: Yes?
>
> Ahmed: Of course. It was collateral for them. They -- they explained to me that the policy was collateral for them, that allowed them to -- to -- to provide me the borrowings.
>
> Ms. Tan: So assuming that the value of the policy went down, that meant the value of the collateral being held by the bank would go down, yes?
>
> Ahmed: Nobody told me about going down, Ms Tan. The email from --
>
> Court: I don't think that's the question. The question is just assuming that the value went down --
>
> Ahmed: Yes.
>
> Court: -- in some way, then the value of the collateral would go down, that seems to me a pretty straightforward proposition.



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Ahmed: Yes, I take that.

Court: Would you agree with that?

Ahmed: I take that, yes, your Honour.

Ms. Tan: If the value of the collateral held by the bank goes down, you would have to top up some amount to cover that shortfall, agree?

Ahmed: No, I disagree.

Ms. Tan: You did not --

Ahmed: I wasn't made aware -- I wasn't made aware of any of that at the time of taking out that policy.

Ms. Tan: Now, in your affidavit, your experience is actually -- your evidence is that you had experience with using credit, yes, and taking mortgages, agree?

Ahmed: Using credit, no, because we never took credit but applying for mortgages to buy properties which were usually residential properties, yes.

Ms. Tan: So would you agree the concept is similar where the bank grants you a loan to purchase a property --

Ahmed: Yes.

Ms. Tan: -- and it takes security over the property?

Ahmed: Of course.

Ms. Tan: It doesn't grant you a loan for 100 per cent of the property value --

Ahmed: Never.

Ms. Tan: -- yes, so you have to top up to additional, yes?

Ahmed: You pay the percentage of the difference between purchase price, loan, and the difference comes from -- comes from you.

Ms. Tan: Yes. Or it -- when it takes the property as security it doesn't assign to it 100 per cent of the value of the property for the purposes of computing the collateral value?

Ahmed: I'm sorry.



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Ms. Tan: You're not aware of that?

Ahmed: No, I don't understand your question.

Court: I think what she is saying is if you take a mortgaged property, if you take property as security for the mortgage --

Ahmed: Yes, yes.

Court: -- then the bank is not going to lend you 100 per cent of the property value.

Ahmed: Never, your Honour.

Court: You accept that? They will lend you.

Ahmed: 60, 70, 75 per cent.

Court: It all depends on your credit rating.

Ahmed: Credit rating, the property.

Court: The risk, the nature of the property, et cetera. I think that's all she was putting to you. Ms Tan, or have I misunderstood.

Ms. Tan: I'm happy to leave it at that actually, your Honour, thank you.

Court: I'm going to go just a little bit further, Mr Kazzaz.

Ahmed: Yes, your Honour.

Court: What happens when the amount loaned because now this would become accustomed to these financial crises where property goes down, the value of the property goes down dramatically, what happens when the amount loaned or the outstanding amount of the mortgage is greater than the value of the property as a result of a downturn?

Ahmed: They call that negative equity.

Court: Negative equity, exactly. What happens there the bank would be demanding more collateral wouldn't it, more security?

Ahmed: Not necessarily. They would maybe. Maybe, maybe not.

Court: Maybe, maybe not.



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Ahmed: Yes, depending on the level of the negative equity.

Court: Depends on a lot of factors including how much the bank values your custom, for instance, how close a customer, how reliable a customer you are. But that concept you do understand?

Ahmed: Yes, of course, your Honour.

172 In re-examination, Ahmed stated in relation to the Policy:

Ahmed: Well, obviously there was a premium financing which I obviously understood that there is a -- there is an interest to be paid on that -- on that premium financing and there was the chart that showed me the 250,000 per year

Court: Your understanding was because of the differential rates in interest --

Ahmed: Yes.

Court: -- your investments would be earning at a higher rate than --

Ahmed: The borrowing.

Court: -- the rate at which you borrowed.

Ahmed: Yes.

173 Sheila became a client of the Bank's DIFC branch on Ahmed's request and because she would be the settlor of the intended trust of the Policy. She was then already a private banking client of SCB's Jersey branch. It was not contemplated (and it never happened) that she would personally be making any "complex financial investments" or maintaining any investment portfolio. Sheila confirmed that she did not expect to invest anything with SCB or take up loan facilities. The only service provided to her was a referral to SCTG for the purposes of setting up the SAHLK Insurance Trust to ring fence Kazzaz family assets to safeguard the interests of Ahmed's daughters.



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174 In all the circumstances, it seems to me that SCB had ample grounds within the terms of the COB to consider the Plaintiffs as having suitable financial knowledge and experience to be classified as Professional Clients.

175 Alleged Breach (7) therefore fails on the facts. In consequence, the Plaintiffs' claims of breaches of the common law duty of care are rejected.

***Breaches of the DIFC Regulatory Law***

176 The Plaintiffs contend that the Defendants are liable to compensate the Plaintiffs for breaches of the DIFC Regulatory Law pursuant to Article 94 thereof. The latter provides:

> Civil Proceedings
>
> (1) Where a person:
>
> (a) intentionally, recklessly or negligently commits a breach of duty, requirement, prohibition, obligation or responsibility imposed under the Law or Rules or other legislation administered by the DFSA; or
>
> (b) commits fraud or other dishonest conduct in connection with a matter arising under such Law, Rules or legislation;
>
> the person is liable to compensate any other person for any loss or damage caused to that other person as a result of such conduct, and otherwise is liable to restore such other person to the position they were in prior to such conduct.
>
> (2) The Court may, on application of the DFSA or of a person who has suffered loss or damage caused as a result of conduct described in Article 94(1), make orders for the recovery of damages or for compensation or for the recovery of property or for any other order as the Court sees fit, except where such liability is excluded under the Law or Rules or other legislation administered by the DFSA.
>
> (3) Nothing in Article 94 affects the powers that any person or the Court may have apart from this Article.

177 The Defendants argue to the contrary that Article 94 only entitles the



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Plaintiffs to claim compensation before the DIFC Court (as opposed to the SICC or any other non-DIFC court) for the breach of the DIFC Regulatory Law. I shall, however, proceed by assuming (without necessarily accepting) that the breach of the DIFC Regulatory Law can give rise to a claim for compensation before a non-DIFC court such as the SICC.

178 In relation to Alleged DIFC Law Breach (1), the Plaintiffs rely on COB Rule 3.4.2(1) ("Suitability Assessment"). The Plaintiffs also cite Core Principle 8 ("Suitability") in Rule 4.2.8 of the General Module ("GEN**")** of the DFSA Rulebook. However, for the reasons already discussed, the Defendants reasonably formed the view that the proposed arrangements were suitable to meet the Kazzaz family's needs. Alleged DIFC Law Breach (1) is not made out on the facts.

179 In relation to Alleged DIFC Law Breach (2), the Plaintiffs rely on COB Rule 3.2 ("Communication of information and marketing materials") (especially Rule 3.2.1) which they submit required SCB to take reasonable steps to communicate information to the Plaintiffs about the PFA and its constituent parts in a manner that was clear, fair and not misleading. The Plaintiffs also cite Core Principle 6 in GEN Rule 4.2.6. However, as I have already found, SCB (through Harish, Laurence and Naushid) took reasonable steps to communicate information to the Plaintiffs about the financial arrangements that were being proposed to the Plaintiffs. I have not found that there was anything unclear, unfair or misleading about the information provided by SCB. I note that the evidence further suggests that Ahmed understood the nature of the services being proposed by SCB. The difficulty arose because Ahmed withdrew a substantial amount of the Ducie Court sale proceeds with the result that there were insufficient funds in the Kazzaz family's investment portfolio to generate



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returns to meet the interest on the premium and mortgage loans. As a result, SCB had to make numerous calls upon Ahmed to top up the difference, thereby leading to Ahmed becoming unhappy with the financial arrangements that he had entered into with SCB. Alleged DIFC Law Breach (2) is not made out on the facts.

180 In relation to Alleged DIFC Law Breach (3), the Plaintiffs rely on Core Principle 2 ("Due skill, care and diligence") in GEN Rule 4.2.2. However, for the reasons already discussed, the Defendants did not fail to exercise reasonable care and diligence. Alleged DIFC Law Breach (3) is not made out on the facts.

181 In relation to Alleged DIFC Law Breach (4), the Plaintiffs rely on COB Rule 2.3.1 (need to determine whether such a person is a "Professional Client" in accordance with COB Rule 2.3.2, in respect of all or particular Financial Services or products offered by an Authorised Firm). This has also been considered above. Alleged DIFC Law Breach (4) is not made out on the facts.

182 In relation to Alleged DIFC Law Breach (5), the Plaintiffs say that SCB acted as an insurance intermediary, because it advised Ahmed or Sheila to enter into the Policy, despite the fact that SCB was not licensed under the DIFC Regulatory Law to provide such type of financial service. The Plaintiffs say that SCB was thus in breach of Articles 41(1) and 42(3) of the DIFC Regulatory Law. This Alleged DIFC Law Breach was not pleaded. Further, such allegation was disavowed in the Plaintiffs' memorandum dated 11 February 2019 setting out the "Plaintiffs' Position on the Agreed List of Dubai International Financial Centre Law Issues". In the memorandum, the Plaintiffs expressed their position to be that SCB was "at all material times, an Authorised Firm and so was exempted from the Financial Services Prohibition". More particularly, the



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allegation was never squarely put in cross-examination to any SCB witness at the trial. The Defendants were not provided with a fair opportunity to rebut the allegation which was only belatedly raised in closing submissions. The allegation that SCB was wrongly providing the services of an insurance intermediary is thus not open to the Plaintiffs and is rejected.

183 For the foregoing reasons, regardless of whether the DIFC Regulatory Law can give rise to a civil claim for compensation before the SICC or any non-DIFC court, the Plaintiffs' claims for breaches of that law fail.

***Damages***

184 The Plaintiffs having failed to establish liability on the Defendants' part. It is unnecessary to consider the Plaintiffs' claims for damages. I confine myself to a few brief comments on the Plaintiffs' claims for damages.

185 Those claims are essentially tortious in nature. The Plaintiffs are seeking to be restored to the same position that they would have been if they had not entered into the various financial arrangements with SCB. On this basis, the Plaintiffs allege five heads of damage: (1) US$1,076,857.81 as the interest paid on the premium loan, (2) US$1,225,267.80 to cover the shortfall on the surrender of the Policy, (3) £141,913.64 as the additional interest incurred in purchasing the Westchester Property by means of a mortgage instead of cash, (4) US$1,500,000 from the forced sale of the Iraqi property to redeem the mortgage, and (5) US$178,983.66 as fees paid to SCTG and SCTC.

186 If the Plaintiffs are to be restored to the same position that they would have been in if they had not entered into any arrangements with SCB, the Plaintiffs must give credit for any benefits that they received as a result of the



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arrangements. Otherwise, there would be unjust enrichment at SCB's expense.

187 Thus, in connection with Heads (1) and (2) claimed by the Plaintiffs, credit must be given for the fact Sheila was covered by the Policy from March 2011 to the surrender of the same on 8 December 2016 (a duration of 5 years and 9 months) so that over that period her beneficiaries stood to receive a pay-out of US$21.5 million in the event of her passing. The Defendants have suggested that the appropriate amount to be credited should be the premium that would have been payable if the Policy had been taken out for a period of 5 years and 9 months. The Defendants estimate that the relevant premium would have been US$2,781,249.24, an amount which would exceed the total (that is, US$2,302,125.61) claimed by the Plaintiffs by way of interest payments on the premium loan and the surrender shortfall on the Policy. The Defendants calculated the relevant premium by taking the minimum premium (US$40,307.96) needed to carry the Policy for one month in the Policy's first year and multiplying that amount by 69 months. The Plaintiffs counter that, although the Plaintiffs may have enjoyed the benefit of the Policy's coverage for a period of 5 years and 9 months, such coverage "must be seen together with the actual and potential liabilities and risks that the Plaintiffs took on during that same period as a result of the Premium Loan". For example, the Plaintiffs say that "[n]otably, over a 5-year period, there was a potential loss of 71% of USD2.2 million, even without taking into account the interest charged". I do not understand the Plaintiffs' point. While it is true that there were risks (including a worst-case scenario), those risks would have been factored into the premium. The existence of the risks would not negate the fact that Sheila enjoyed the benefit of the Policy during the 5 years and 9 months of its existence. Accordingly, I prefer the Defendants' analysis in relation to the amount of credit that should be given.



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188 In connection with Head (3), there is a dispute among the parties as to whether credit should be given for any benefits that Ahmed might have obtained from the US$4 million that he withdrew for his Iraqi business. It appears, for instance, that Ahmed used between US$1.6 to US$1.7 million of the US$4 million withdrawn to purchase two properties in Dubai outright, rather than through a mortgage. Ducie Court was sold for £5,313,195.53. The Westchester Property was purchased for £1,750,000. If the Westchester Property had simply been purchased with part of the Ducie Court sale proceeds, it would have been possible to use the balance (a little over US$4 million at 2011 exchange rates) to purchase the Dubai properties and for use in the Kazzaz family's Iraqi business. Accordingly, I do not think that the Defendants are right in saying that credit must be given for the use of the $4 million withdrawn by Ahmed.

189 In connection with Head (4), the Plaintiffs say that Ahmed had to sell the Salim Property for US$1.5 million at the end of 2016 in order to redeem the Westchester Property mortgage. Had Ahmed waited longer to sell the Salim Property, the Plaintiffs contend that Ahmed could have sold the same for U$3 million. The Plaintiffs accordingly claim the difference of US$1.5 million for the forced sale of the Salim Property.

190 The Defendants observe the Plaintiffs' pleaded case was different from that pursued in court. The Plaintiffs plead that Ahmed had to force-sell an Iraqi property at a sum that was "substantially lower than the purchase price" and also lost rental income to prevent foreclosure of the Westchester Property. There is no evidence that the Salim Property had been rented out. Further, the evidence in support of a price of US$3 million if the Salim Property had been sold later consists of an undated Declaration by Hardi Ahmed Ali of "Real estate trading office Sarchinar" in the following terms (in English translation):



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> This is to attest that [Ahmed] the owner of [the Salim Property] had sold the property for one million and five hundred thousand USD on (10/10/2016). During the aforementioned period, the price of real-estates were at their lowest rates. If [Ahmed] had waited longer, he could have sold it for (3,000,000 USD), but since he was under pressure to pay back a bank abroad that was responsible for the mortgage of a property [Ahmed] owns in London, therefore he had to incur a loss of such amount in price difference.

191 I am unable to accept the Declaration as reliable evidence in support of the alleged loss of US$1.5 million on the Salim Property. For example, when it is said that had Ahmed waited "longer" he would have obtained "US$3 million", one asks: How much longer? What is the relevance of such later valuation date? On what basis was the sale price of US$3 million assessed? What comparables were used and what adjustments were made? Ahmed says that, from an Iraqi real estate valuer, one cannot expect the same degree of professionalism as from (say) Knight Frank. But that does not alter the fact that the evidence being proffered is essentially a bare assertion. Consequently, in the light of the Plaintiffs' contradictory pleading and the unsatisfactory evidence of the Declaration, the alleged loss of US$1.5 million has not been made out.

192 In connection with Head (5), Ahmed had concerns about French and *shari'a* inheritance laws and considered it "very logical" to use offshore trust structures to protect his assets and ensure that they would go to his daughters. He stated in cross-examination:

> Ms. Tan: Now, if you were going to be purchasing the Westchester property using your own cash instead, would you still have wanted a trust structure for all these other assets?
>
> Ahmed: I don't see the relevance.
>
> Ms. Tan: Just answer the question.



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Ahmed: No, I -- I still -- I don't -- I don't understand the question, sorry.

Ms. Tan: Let's say you were going to purchase Westchester using cash, you're not going to take a loan from the bank, would you still have wanted to set up this trust structure: Cayman STAR Trust, ASK One, ASK Two, Financial Links and KAR Motors?

Court: I think, the point is this --

Ahmed: Yes your Honour, I'm sorry, I didn't understand the question.

Court: -- these structures have to do with Iraq properties and with your other businesses.

Ahmed: Yes.

Court: It doesn't necessarily have to do with your London property --

Ahmed: Yes.

Court: -- Westchester property. So I think the suggestion being made is really whatever you would have done with the Westchester property, you would still have gone on with a trust structure in relation to your Iraq business, the duty-free licence --

Ahmed: Yes.

Court: -- KAR Motors, et cetera. You would still have adopted some sort of trust structure for those for purposes of mitigating state duty, tax, whatever, you would still have gone --

Ahmed: Well, it was primarily for the Sharia issue.

Court: Sharia law --

Ahmed: Yes.

Court: --- in ordered to have -- well, in order to deal with certain issues in relation to Sharia law.

Ahmed: That's correct, your Honour.

Court: Is that correct? Would you still have entered into this trust structure?

Ahmed: Yes, your Honour.



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193 It seems to me on the evidence that Ahmed would have entered into trust structures with SCTG and SCTC in any event. In those premises, I do not think that the Plaintiffs would be entitled to damages under Head (5).

194 For those reasons, even if the Plaintiffs had established some or all of their claims, they would have been entitled to a much lower amount than the total sum being claimed. There was a question whether Sheila was claiming for pain, suffering and loss of amenity in connection with the relapse of her depression. In their closing submissions, the Plaintiffs confirmed that they are not making such a claim.

***Miscellaneous***

195 The Defendants have argued that at least some of the Plaintiffs' claims are time-barred. In light of my conclusions on the facts, it is unnecessary to deal with the Defendants' case on time-bar.

**Conclusion**

196 The Plaintiffs having failed to establish liability on the part of the Defendants, the Plaintiffs' claims are dismissed.



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197 Within 28 days of the date of this judgment, the parties are to propose directions for dealing with the costs of this action (including (1) the costs of the withdrawn claims relating to fraud and undue influence and (2) the quantification of the costs being claimed by any party). If the parties are unable to agree directions, each side is to submit its proposed directions with succinct explanations of the reasons for any disagreement.

Anselmo Reyes
International Judge

Chia Voon Jiet, Koh Choon Min, Sim Bing Wen and Grace Lim Rui Si (Drew & Napier LLC) for the plaintiffs;
Tan Xeauwei, Melissa Mak, Daniel Seow and Marrissa Karuna (Allen & Gledhill LLP) for the defendants.



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