IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC(I) 1

Originating Application No 16 of 2023

Between

(1) Marketlend Pty Ltd
(2) Australian Executor Trustees Limited

… *Claimants*

And

QBE Insurance (Singapore) Pte Ltd

… *Defendant*

Counterclaim of Defendant

Between

QBE Insurance (Singapore) Pte Ltd

… *Claimant in Counterclaim*

And

Marketlend Pty Ltd

… *Defendant in Counterclaim*

JUDGMENT

[Contract — Assignment — Consent — Estoppel]
[Evidence — Admissibility of evidence — Hearsay — Exceptions]
[Insurance — General principles — Condition precedent — Non-disclosure — Risk]

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Marketlend Pty Ltd and another
v
QBE Insurance (Singapore) Pte Ltd

[2025] SGHC(I) 1

Singapore International Commercial Court — Originating Application 16 of 2023
Sir Henry Bernard Eder IJ
4–8, 11, 14 November 2024

8 January 2025 Judgment reserved.

Sir Henry Bernard Eder IJ:

Introduction

1 In this case, the claimants seek to recover a total sum of US$ 9,035,365.38 (plus interest and costs) under an insurance policy dated 14 July 2020 (the "Policy") in respect of trade credit insurance ("TCI") issued by the defendant, QBE Insurance (Singapore) Pte Ltd ("QBE"), to the original insured, Novita Trading Limited ("Novita"), pursuant to which, according to the claimants, QBE agreed to indemnify Novita in respect of certain losses arising out of its sale and shipment of goods on deferred terms with named buyers (the "Alleged Sale Contracts" or "Alleged Trades").

2 It is important to note that although Novita was and is the original named insured under the Policy and the so-called seller that conducted the Alleged Trades of various commodities, the present claims are not brought by Novita

itself. Instead, they are brought by the first claimant, Marketlend Pty Ltd ("Marketlend") and the second claimant, Australian Executor Trustees Limited ("AETL").

3 Marketlend is an Australian company founded in 2014 by Mr Leo Anthony Tyndall ("Mr Tyndall") which provides an online platform that connects investors with businesses, typically small and medium-sized enterprises which require financing. So far as the present case is concerned, Marketlend had extended financing to Novita by way of a Debtor Finance Facility dated 9 August 2019 (the "Facility"). Marketlend contends (but QBE disputes) that it is entitled to make a claim under the Policy pursuant to a power of attorney (the "Power of Attorney") granted to it by Novita as stipulated in Schedule 4C to the Facility.

4 The present proceedings were originally brought in the name of Marketlend alone pursuant to the Power of Attorney. Following service of the Statement of Claim dated 22 November 2022 and the Defence dated 13 December 2022, a third-party notice dated 28 March 2023 was issued against Novita. However, Novita did not enter an appearance and has played no part in the present proceedings. No one from Novita has provided an affidavit or witness statement or given evidence in this trial in support of the claims now advanced. Indeed, Novita's ex-director, Mr Jitendrakumar Trivedi Vyomesh ("Mr Trivedi"), has refused to cooperate with the claimants. On 27 March 2024, Novita was placed into liquidation.

5 Meanwhile, after QBE objected to Marketlend's standing to bring a claim under the Policy, Marketlend made an application dated 8 April 2024 by way of SIC/SUM 17/2024 to join AETL as a co-claimant. QBE did not contest that application and by an order made on 11 April 2024, the Court ordered

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AETL to be added as a co-claimant. AETL is a trustee of a securitised trust which funded Marketlend's facilities to Novita and was included as a joint insured under the Policy by way of a Banker's Endorsement which QBE (re)issued on 24 July 2020 (the "Banker's Endorsement").

6 In total, the claimants bring eight separate claims in respect of eight separate Alleged Trades between Novita, as so-called seller, and various so-called buyers ("Alleged Buyers") as summarised in the table below. I say "so-called" because it is an important part of QBE's case that all these Alleged Trades were not "genuine physical trades" but, on the contrary, were "fictitious". Indeed, it is QBE's case that there is no admissible evidence in these proceedings of any sale and/or shipment of goods by Novita to its Alleged Buyers and that (to use the words of QBE's counsel) Novita's Alleged Trades have been "pulled out of thin air".

7 The following table summarises the claims advanced by the claimants and the amounts claimed in respect of each Alleged Trade.

Alleged Buyer	Commodity	"Alleged Sale Contracts"	Bill(s) of Lading ("BL(s)")	Default Date under the Policy	Amount in US$
Fidelity Trading Corporation ("Fidelity")	Soybean meal	10 June 2020 ("Alleged Fidelity Contract")	BL No 7 dated 13 June 2020 ("Alleged Fidelity BL")	15/7/2020	1,713,645
Crown Beec General Trading LLC ("Crown Beec")	Uruguayan Soybeans, in bulk	20 June 2020 ("Alleged Crown Contract")	BLs Nos 3, 17 and 12 dated 26 June – 1 July 2020 ("Alleged Crown BLs")	11/01/2021	1,800,000
Green Trees General Trading LLC ("Green Trees")	Soyabean meal, in bulk	10 June 2020 ("Alleged Green Trees Contract")	BL No 5 dated 13 June 2020 ("Alleged Green Trees BL")	22/12/2020	1,800,000
Max Arabian FZE ("Max Arabian")	Soybean meal	1 June 2020 ("Alleged Max Arabian Contract")	BL No 3 dated 4 June 2020 ("Alleged Max Arabian BL")	20/12/2020	871,720.38

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Alleged Buyer	Commodity	"Alleged Sale Contracts"	Bill(s) of Lading ("BL(s)")	Default Date under the Policy	Amount in US$
NSJ General Trading Co LLC ("NSJ")	Russian Milling Wheat	15 July 2020 ("Alleged NSJ Contract")	BLs No 2 and 5 dated 23 July 2020 ("Alleged NSJ BLs")	06/02/2021	900,000
Sealoud Asia Pte Ltd ("Sealoud")	Tin ingots	20 June 2020 ("Alleged Sealoud Contract")	BL No OOLU264265 4180 dated 29 June 2020 ("Alleged Sealoud BL")	11/01/2021	1,350,000
United Industrial Group (Asia) Limited ("UIG")	Soybean meal	10 June 2020 ("Alleged UIG Contract")	BL No 3 dated 13 June 2020 ("Alleged UIG BL") {D/188}	24/12/2020	1,800,000
Yeskey Enterprises Limited ("Yeskey")	Soybean meal	10 June 2020 ("Alleged Yeskey Contract")	BL No 1 dated 13 June 2020 ("Alleged Yeskey BL")	22/12/2020	1,800,000
Less Aggregate Deductible					-3,000,000
Total					**9,035,365.38**

In addition, the claimants claim interest and costs.

8 The claimants contend that their claim is straightforward: there has been a relevant insured event giving rise to an Insured Debt (as defined in the Policy) in respect of all these Alleged Trades *viz*, in the case of Fidelity, the issuance of a winding up order and, in the case of the other Alleged Trades, a failure by each of the Alleged Buyers to pay amounts due pursuant to the alleged sale contracts within the relevant "default period" specified in the Policy and referred to in the above table.

9 QBE denies liability for all of these claims on the basis of various defences which broadly fall under the following four main heads.

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10 First, QBE submits that Marketlend has no standing to claim under the Policy and/or, in breach of clause 2 of the QBE Trade Credit – Selective (AP) Trade Credit Insurance Policy Wording ("Policy Wording"), Novita effected an assignment of the rights and benefits under the Policy in favour of Marketlend without the written consent of QBE with the result that, as stipulated in that clause, QBE is entitled "...to avoid liability under the Policy."

11 Second, QBE submits that it was entitled to avoid and has validly avoided the Policy on grounds of (a) material non-disclosures/misrepresentation; (b) (alleged) assignment of the Policy without QBE's prior written consent (this overlaps with the first issue above); and/or (c) pursuit of claims known to be false or fraudulent.

12 Third, QBE submits that certain conditions precedent for liability under the Policy have not been satisfied. In particular, QBE submits that: (a) the insured parties have failed to provide relevant information and documents requested by QBE; (b) Novita failed to disclose material facts to QBE; and (c) Novita failed to notify QBE of a Notifiable Event and/or an Event of Insolvency (as defined in the Policy).

13 Fourth, QBE submits that, on the evidence, the claimants cannot prove the existence of an Insured Debt (as defined in the Policy) because they cannot conceivably show that Novita sold and shipped goods to its Alleged Buyers; and that despite QBE's repeated requests, no evidence has been produced of Novita having purchased the goods it purportedly sold to its Alleged Buyers; nor any evidence of the transmission of original bills of lading from Novita to its Alleged Buyers; nor any alternative explanation of how Novita was involved in the sales chain for the goods, such that its Alleged Buyers could have taken

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exclusive physical control of and/or been required to "accept" the goods (as QBE submits is required for a "shipment" under the Policy).

14 To be clear, QBE does not dispute that various shipments evidenced by the bills of lading did in fact take place as is confirmed by a series of reports, *viz*, the Lloyds Intelligence Report ("LIR") and International Maritime Bureau ("IMB") Reports. However, those bills of lading do not name Novita as the shipper, consignee or otherwise and, according to QBE, there is no evidence or at least no credible evidence that Novita acted as an intermediate seller or buyer in the chain between the original shipper/seller and end receiver.

15 Moreover, in respect of at least two of the Alleged Trades *viz*, the Alleged Sealoud Contract and the Alleged NSJ Contract, QBE submits that there is credible positive evidence that the underlying goods were in fact traded by other parties without the involvement *at all* of Novita or its Alleged Buyers; and that it must necessarily follow that Novita's Alleged Trades must have been fictitious. Thus, QBE says that in fact:

(a) As to the Alleged Sealoud Contract, the relevant trade did not in fact involve Novita at all but involved a chain from PT Timah TBK ("PT Timah") (the shipper under the bill of lading) – Indometal (London) Limited ("Indometal") – Viant Pte Ltd ("Viant") – Ningbo Zhichen Trading Co. Ltd ("Ningbo") (the notify party under the bill of lading).

(b) As to the Alleged NSJ Contract, the relevant trade did not involve Novita at all but involved a chain from Grainexport SA ("Grainexport") (*ie*, the trading arm of the shipper under the bill of lading, LLC "UGC YUG") – Ameropa AG ("Ameropa") – ETG

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Commodities Limited ("ETG") (*ie*, a company in the same corporate group as the notify party under the bill of lading, ETC Agro (Pty) Ltd).

16 In support of its case under this head, QBE also relies on other evidence which it contends demonstrates that Novita and the majority of its Alleged Buyers had connections to a money laundering scheme.

The Evidence

17 In the course of the trial, the parties served affidavits or witness statements from the following witnesses, all of whom gave oral evidence in Court:

(a) On behalf of the claimants, Mr Tyndall, the founder, one of the directors and CEO of Marketlend. His responsibilities include creating key business processes, managing Marketlend's operations and making all significant business decisions for the company.

(b) On behalf of QBE:

(i) Mr James Evans ("Mr Evans") (Head of Trade Finance Solutions), who gave evidence on the underwriting of the Policy.

(ii) Mr Ki Hsien Ling ("Mr Ki" or "Mr Ling") (Commercial Underwriter), who also gave evidence on the underwriting of the Policy.

(iii) Mr Joseph Smart ("Mr Smart") (ex-General Counsel, Head of Risk Compliance and Legal, Asia for the QBE Insurance Group) who gave evidence regarding the investigation of the claims.

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(iv) Mr Bruno Vickers ("Mr Vickers") (Managing Director of J S Held ("JSH"), an expert services firm). Mr Vickers heads JSH's Global Investigations practice in Singapore and produced two reports setting out (among other things) details of the connections between Novita, its Alleged Buyers and an Indian businessman Yalamanchilli Satyanarayana Chowdary (popularly known as and henceforth referred to as "Mr Sujana").

(v) Ms Samantha Geok Leng Lim ("Ms Lim"). She is currently a director of Viant and gave evidence by video concerning the shipment of the tin ingots under BL No OOLU2642654180 dated 29 June 2020 *ie*, the Alleged Sealoud Contract.

(vi) Ms Maria Eugenia Gomez ("Ms Gomez"). She is the Head of Trade Operation in Africa for ETG and also gave evidence by video concerning the shipment of Russian Milling Wheat which is the subject of the Alleged NSJ Contract.

18 In support of their respective cases, the parties also sought to rely on certain written statements as well as certain other documents which were at least in part the subject of objection on grounds that the former were inadmissible in evidence and that the latter were not "authentic" and/or were, in any event, inadmissible as to the truth of their contents. I heard the parties' submissions with regard to such objections on the fourth day of the trial. So far as relevant, I deal with the status of such evidence later in this Judgment.

19 As regards expert evidence, the parties originally agreed to call expert evidence from an underwriting expert and two commodities experts: one for the

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trading of wheat and soybeans (collectively, referred to as "agri") and another for the trading of tin. A list of issues for these experts was also agreed.

20 However, in the event, the claimants elected not to call an underwriting expert; and have led evidence from a single commodities expert, Mr Mahajan Anuj Amritsagar ("Mr Mahajan"), whose focus appears to be steel trading. Mr Mahajan produced three reports, the first dated 20 June 2024 and two supplemental reports dated 12 August 2024, one addressing agri and the other tin trades.

21 For its part, QBE, led evidence from an underwriting expert, Mr Edward Brittenham ("Mr Brittenham"), who produced a report dated 20 June 2024. QBE also relies on the evidence of an agri trading expert, Mr Paul Bloemendal ("Mr Bloemendal"), who produced two reports dated 20 June 2024 and 12 August 2024; and a tin trading expert, Mr Frederic Delforge, who also produced two reports dated 20 June 2024 and 12 August 2024. Mr Bloemendal and Mr Delforge also produced joint statements with Mr Mahajan dated 18 July 2024 and 24 July 2024 respectively.

Background to and issuance of the Policy

22 Negotiations with regard to the issuance of the Policy were carried out on behalf of Novita by its TCI broker, Chief Trade Credit Pty Ltd ("Chief") whose joint managing director was Uta Lucky ("Mr Uta").

23 The claimants tendered no oral evidence regarding the background to and issuance of the Policy. However, this was the subject of evidence from QBE's witnesses and, save as indicated below, was largely uncontroversial. The following is a summary which is based in part on the evidence of Mr Evans,

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Mr Ki and Mr Smart and which I have, to a large extent, borrowed from the parties' opening submissions.

24 QBE's underwriting of TCI policies was divided into commercial underwriting and risk underwriting. As explained by Mr Ki and Mr Evans, the commercial underwriters determined the policy structure including the premium, policy period, deductibles, and played a front-facing role with the brokers, receiving information from them and communicating QBE's decisions to them. The risk underwriters on the other hand decided credit limits for insured buyers largely by reference to their financial standing. Mr Ki explained the commercial underwriting aspect of the Policy and Mr Evans focused more on risk underwriting.

25 At the material time, Mr Ki was the Commercial Underwriting Manager, Asia for QBE. He took the lead for QBE in relation to commercial underwriting of the proposed cover for Novita, while others took the lead on risk underwriting. It was Mr Ki's evidence that TCI is intended to cover payment default in relation to physical trading and not in relation to financial instruments generally which may be covered by other forms of insurance (such as non-payment insurance). He described QBE's commercial underwriting processes and the matters it considered in reaching the conclusion to offer cover to Novita and on what terms. It was his evidence that Novita made positive representations that the business for which cover was being sought was physical trading (as opposed to paper trading) but that QBE had no need to test this fact since physical trading is the premise for TCI cover and an underwriter's task when considering cover is to assess the risk of non-payment on trade in goods not whether the underlying business of the proposed insured is in fact something altogether different, *ie*, something akin to financing or financial arbitraging. He explained using the analogy of travel insurance – when an insured seeks travel

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insurance, the insurer investigates the risks associated with travel but does not investigate whether the insured is in fact going to travel as travel is the premise for travel insurance coverage.

26 Mr Evans was, at the material time, the Head of Trade Credit, Asia for QBE and had oversight of both the commercial and risk underwriting teams. He was not actively involved in the issue of the Initial Policy (as referred to below) but was very much involved in the issue of the Policy. Mr Evans also gave an introduction to QBE's underwriting of TCI cover. He explained that TCI is concerned with non-payment in relation to trading in physical goods not financial instruments. He identified that as the premise for consideration of the Policy. Mr Evans also explained the key risk underwriting considerations for TCI policies, clarifying that credit limits for buyers are primarily assessed by reference to their financial standing (as gleaned from their financial statements and third-party credit reports), and the location of the buyers and broad internet searches on them. When COVID-19 started impacting trade flows, the risk underwriting also included calls with proposed buyers to assess their business performance, liquidity and outlook.

27 So far as the present case is concerned, it is common ground that Marketlend provided financial accommodation to Novita by way of the Facility dated 9 August 2019 referred to above.

28 Shortly thereafter, Novita, through its brokers, Chief, approached QBE Australia in August 2019 seeking to obtain TCI coverage. Initial discussions followed with commercial terms and indicative credit limits for identified buyers being proposed subject to provision of further information. To formalise matters, Novita gave notice that Chief was its authorised broker on 12 September 2019.

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29 Around mid-September 2019, Chief provided certain information on behalf of Novita to QBE including a copy of a PowerPoint Presentation on Novita's business (the "PowerPoint") that described Novita as an "established trading company" and included what QBE contended were the following material representations as to Novita's business:

(a) Novita "[f]acilitates long and short term *supply chain* solutions – ensuring customers have a *steady supply of product* they need to continue with the smooth day-to-day running of their operation".

(b) Novita "[*s*]*pecialises in physical movements* of goods from their place of origin to markets where they are in demand".

(c) A description of Novita's business model that "[e]nd product is *exported* to final destination based on buyer(s) requirement", with "*export* financing go[ing] towards liquidation of *import* financing".

(d) Novita's "Key Management" included a Mr Boopalan Senthilkumar (Head of Trade *Operations*), whose role included "ensuring our *supply chain logistics* and *execution of trade contracts* are delivered in a timely fashion".

[emphasis in original removed, emphasis in italics added]

30 On 11 October 2019, Chief submitted to QBE a QBE Trade Credit Insurance Proposal form duly completed on behalf of Novita (the "Proposal Form"), which described Novita's business as "general commodities trading".

31 On 4 November 2019, Policy documents were executed and issued for QBE Trade Credit Policy no SG-75224 in favour of Novita (the "Initial

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Policy"). This policy was ultimately terminated on account of Novita not then being able to obtain funding for its trading activities.

32 The matters which I have described above were uncontroversial. However, in passing, I note that it is QBE's case that these statements in the PowerPoint and the Proposal Form constituted material representations which induced QBE to enter into the Policy Pty Ltd and were untrue, thereby entitling QBE to avoid the Policy as referred to below. In particular, the evidence of Mr Ki and Mr Evans was that they would not have underwritten the Policy or recommended any of their colleagues to issue the Policy if they had known that:

(a) Novita was in the business of conducting trades and/or seeking coverage for trades which did not involve original bills of lading or any reliable means to verify the possession and physical transmission of commodities to and from its trading counterparts, which were solely for the purposes of financing or were otherwise not genuine physical trades of commodities; and

(b) Novita had links to Mr Sujana and/or companies owned by Sujana or his close relatives (collectively, the "Sujana Group").

So far as relevant, I consider this part of QBE's case later in this Judgment.

33 In passing, I also note that as part of Mr Tyndall's commentary on the underwriting process, his evidence was that he was not aware of any due diligence carried out by QBE on the operational aspects of the trades between Novita and the proposed insured buyers, and that he considered this position "unsurprising" since, according to Mr Tyndall, "...QBE was *undertaking the risk of the Insured Buyer's payment default* and by issuing the Policy, QBE was satisfied following its own due diligence *with the financial standing of each of*

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the Insured Buyers up to the specified limits" [emphasis in original]. This was, in effect, consistent with the evidence of QBE's witnesses as well as QBE's submission that as a TCI underwriter, QBE did not and did not have to investigate the operational aspects of the trades, but only assessed the risk of the insured buyers' default by reference to their financial standing. In that latter regard, I should mention that it was the claimants' case that prior to issuance of the Policy, QBE did perform, as part of its own standard procedures, a credit risk assessment in respect of the Alleged Buyers which, as reflected in QBE's own internal documentation, demonstrated that, at least at the date of each risk assessment, QBE was well aware that each of the Alleged Buyers did not carry any "inventory". Although this was relied upon by the claimants, it did not seem to me to undermine QBE's case that the Policy only covered genuine physical trades.

34 In the following year, between 21 May 2020 to 9 June 2020, Chief and QBE negotiated an extension of the Initial Policy.

35 By emails from Mr Uta to QBE on 19 June 2020, 26 June 2020 and 1 July 2020, Mr Uta informed QBE that Marketlend was funding Novita and that AETL was a trustee for an affiliate of Marketlend. Further, in Mr Uta's 26 June email, he informed QBE that rather than acting as loss payee or under a full proceeds assignment, Marketlend had opted for a banker's endorsement, on the basis that this would provide "better protection to the lender [*ie*, Marketlend] than the other forms of the policy being assigned".

36 On 29 June 2020, QBE confirmed that it was "on risk" with Novita with effect from 1 June 2020.

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37 In passing, I note that it was during the period between 1 June 2020 and 15 July 2020 that the Alleged Trades which are the subject of the present claims against QBE were allegedly made.

38 By an email dated 15 July 2020, QBE sent a copy of the schedule for the Policy which replaced the Initial Policy and serves as the basis of the present claims (the "Policy Schedule"). The Policy is numbered SG-78300, dated 14 July 2020 and provides for a policy period of 1 June 2020 to 31 May 2021. To be clear, although described as a "schedule", it was common ground that this document in effect constituted the Policy together with the QBE Trade Credit – Selective (AP) Trade Credit Insurance Policy Wording (the "Policy Wording") and the Banker's Endorsement entered into between AETL (as the "Bank"), Novita (as the "Non-Bank Insured") and QBE. It is also common ground that QBE subsequently received the full premium of US$630,000.

39 By an email dated 17 July 2020 Marketlend informed Chief that it required certain amendments to be made to the Banker's Endorsement which it had received and requested that these amendments be conveyed to QBE as soon as possible.

40 By an email dated 20 July 2020, Mr Uta requested QBE to allow access for Marketlend as "Joint Insured – The Bank".

41 By an email from Mr Uta to Marketlend on 20 July 2020, Mr Uta requested the "names and email addresses of the recipients" be notified should QBE make any changes to the terms of the Insurance Policy, such as the credit limit endorsements. On 6 August 2020, QBE granted such access to the email addresses provided by Marketlend to Mr Uta.

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42 Meanwhile, by an email to Mr Uta on 17 July 2020, Marketlend stated that it required certain amendments to be made to QBE's Banker's Endorsement which it had received, and requested that these amendments be conveyed to QBE as soon as possible.

43 By an email from QBE to Mr Uta on 24 July 2020, the final, amended version of the Banker's Endorsement which included the terms requested by Marketlend was sent to Mr Uta.

44 By an email on 23 October 2020, Mr Uta informed QBE that owing to the difficulties of dealing with Novita, Marketlend would be exercising its rights under the Banker's Endorsement as Joint Insured and would be notifying QBE accordingly. QBE did not object to this.

45 In support of its case, the claimants highlight that QBE is a large and sophisticated trade credit insurer; and that, as such, it would have conducted and did in fact conduct its own due diligence prior to underwriting the trades. This is evidenced both *prior to* the entry into the Policy, and the continuous and ongoing due diligence which QBE conducted. Thus, prior to the entry into and throughout the lifespan of the Policy, QBE had frequently conducted its own due diligence on the Insured Buyers, as would be expected of any insurer entering into such policies. In summary, the claimants submitted that all QBE was interested in was the financial ability of the Insured Buyers as that was what they were covering under the Policy. Thus, as stated by Mr Evans, QBE accepts that "the *only* risk [they] are taking under a TCI policy is the credit risk of the buyers created from deferred payment terms in relation to the goods delivered to them". The claimants cite the following examples of the due diligence exercised by QBE:

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(a) Throughout 2019 and 2020, QBE independently conducted internal credit risks assessments on the Insured Buyers in the form of Credit Risk Forms, generated by Tinubu Square's Grams Reports ("Credit Risk Reports"), for the purposes of determining whether to grant or revise a credit limit in respect of an Insured Buyer. The Credit Risk Reports included an assessment of the Insured Buyer's aggregate limit and summaries of their financial statements. For instance, the Credit Risk Report for Green Trees dated 1 November 2019 had an aggregate limit of "USD 6,000k" and observed that Green Trees had "[r]evenue noted increase y/o/y from USD 176.0 mn to USD 255.19 mill at FYE 2018", "sound creditor turnover" and a "[s]ound financial profile". In the Credit Risk Report for Green Trees dated 10 January 2020, the aggregate limit went up to "USD 7,000k".

(b) On 13 November 2019, QBE requested for the "incorporation certificate" of Crown Beec from Mr Uta, as QBE had records suggesting that Crown Beec was inactive. Mr Uta responded on 14 November 2019 with Crown Beec's financial information company registration papers, which QBE was content with and confirmed that the "limit [for Crown Beec] has been approved within the system".

(c) On 13 April 2020, QBE requested Mr Uta to arrange a call between Novita and another insured buyer, Green Trees, or with Green Trees directly, assuming Novita was comfortable with that, for the purposes of its "annual review on Green Trees".

(d) On 1 June 2020, QBE had informed Mr Uta that regarding Sealoud, QBE would not require a call as they had recently had one.

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(e) Even after the Policy had been entered into, QBE undertook its own monitoring of the Insured Buyers. For instance, on 21 August 2020, QBE asked Mr Uta to help coordinate calls with Yeskey and NSJ Trading to "better understanding what they are seeing and how they are managing through the current challenging environment".

(f) Mr Uta also provided frequent updates to QBE on the status of Novita and its trades under the Policy, which was met with praise from QBE for Chief's mitigation efforts, which it considered "really prudent".

(g) On 18 December 2020, Mr Uta provided QBE with an update on how the COVID-19 pandemic had affected the cashflow of the Insured Buyers and Chief's "strategy to manage our Insured clients [and] Insured Debts". Specifically, the email also informed QBE that it was "working with Novita and their Insured Buyers to progress further".

(h) On 21 December 2020, QBE responded to Mr Uta's email, thanking him for the "really comprehensive" email and that it was a "really prudent approach to managing the risks involved".

(i) On 4 February 2021, Mr Uta informed QBE that certain of the Insured Buyers had "failed to meet payments by due dates" and that there had been "no further trading", but that Chief would continue to work with the Insured Buyers "to work out repayment plans as a means to mitigate any Insured Losses".

The Policy

46 The Policy comprises:

(a) the Policy Schedule;

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(b) the Policy Wording which contains general terms and conditions;

(c) the Bankers' Endorsement

47 The relevant parts of the Policy Wording are as follows:

(a) The cover provided under the Policy is as follows:

> In consideration of the payment of all premiums and other fees and charges when due and subject to the terms and conditions of this Policy, the Insurer agrees to indemnify the Insured up to the Insured Percentage of the Insured Loss in the event of an Insured Buyer failing by reason of a Claimable Event to pay the Insured an Insured Debt.

with the following definitions:

> **Insured Loss** is the amount of an Insured Debt that is either:
>
> 1. admitted to rank against the insolvent estate of the Insured Buyer; or
> 2. in the case of a Protracted Default only, so much of the Insured Debt as is confirmed to the Insurer by evidence of a valid debt that is satisfactory to the Insurer and is not in dispute between the Insured and the Insured Buyer;
>
> each after taking into account the whole of any Recoveries relating thereto.
>
> **Insured Buyer** is any person or entity carrying on business with the Insured in any of the Approved Countries (specified in the Schedule) and who is included in this Policy by a Credit Limit Endorsement…
>
> **Claimable Event** in respect of an Insured Buyer means either Insolvency or any other named Claimable Event in the Schedule that must have occurred before a claim can be submitted.

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The Policy Wording also includes the following definitions of "Insolvency" and "Protracted Default" (with the Protracted Default Period being fixed at 180 days in the Policy Schedule):

> **Protracted Default** is a Claimable Event and occurs in respect of an Insured Buyer when:
>
> (a) the Insured Buyer fails to pay an Insured Debt to the Insured within the Protracted Default Period; and
>
> (b) the Insured has, within the Protracted Default Period, fully complied with all of their obligations in accordance with this Policy including, but not limited to, condition 3 of the Policy.
>
> The Protracted Default Period is the period referred to in the Schedule and which commences on the original due date for payment of an Insured Debt under the relevant contract of sale or, if that original due date is postponed, such postponed due date. The Protracted Default Period cannot commence or continue to run while an Insolvency of the Insured Buyer exists or while the Insured Buyer:
>
> 1. is entitled to or obliged to refuse payment of an Insured Debt under any law or regulation or is obliged to refuse payment by a person exercising powers of government; or
>
> 2. claims that it is entitled to withhold payment of any part of an Insured Debt and the Insurer is satisfied that a dispute exists between the Insured and the Insured Buyer which has not been resolved by the parties to the relevant contract or by arbitration, or by legal proceedings.
>
> The Claimable Event Date in respect of Protracted Default will be the date of the expiry of the Protracted Default Period.
>
> **Insolvency** is a Claimable Event and occurs in respect of an Insured Buyer when any of the following steps has been taken:
>
> (a) an Insured Buyer initiates or becomes the subject of any procedure or action or proceedings pursuant to local bankruptcy or insolvency legislation which is uncontested and results in the Insured Buyer being recognised at law as being subject to a moratorium or in external administration or insolvency or winding up in insolvency; or…

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Insured Debt means so much of any indebtedness arising out of the trade falling within the description of the Schedule and:

1. is owing by an Insured Buyer to the Insured; and

2. does not exceed the Permitted Credit Limited; and

3. is in respect of the invoice value of goods sold by the Insured and Shipped to an Insured Buyer and/or the invoice value of services that have been sold and rendered to an Insured Buyer; all of which must have occurred within the Policy Period and pursuant to a contract of sale providing for repayment of the debt within the terms of payment specified for the Approved Country of the Insured Buyer in the Approved Countries & Conditions Table in the Schedule; and

4. all values of goods and services referred to under 3 above must have been invoiced by the Insured within the Maximum Invoicing Period.

…

(b) Clause 1 provides as follows:

1. Policy Period, Policy Cancellation, Premiums and Fees

The Policy is issued for the Policy Period and is non-cancellable other than by the specific rights of the Insurer under this Policy or at law to cancel or void this Policy or its obligations hereunder. …

(c) Clause 2 provides:

2. Assignment

The insured shall not assign any rights or benefits under this Policy unless the Insurer's prior written consent to the assignee and the form of assignment has been obtained.

Any assignment made or purported to be made by the Insured without such consent will entitle the Insurer to avoid liability under this Policy.

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(d) Clause 8 provides as follows:

8. Claims

(a) The Insured must submit a claim under this Policy by completing a claim form supplied by the Insurer in respect of an Insured Debt relating to an Insured Buyer within six (6) months after the relevant Claimable Event Date in respect of such Insured Buyer.

…

(c) Subject always to all terms and conditions of this Policy, and after taking into account any interim payments and Recoveries and any applicable Deductible, the Insurer shall pay to the Insured the Insured Percentage of the Insured Loss:

1. in the case of Insolvency, within thirty (30) days after the Insurer has received appropriate confirmation that the Insured Debt has been admitted to rank for distribution against the insolvency state in favour of the Insured;

2. in the case where a Protracted Default occurs, within thirty (30) days after the Insurer is provided with evidence to the Insurer's satisfaction that the Insured Debt exists and that all reasonable means (including the pursuit of legal action) to recover the Insured Debt has occurred without success.

…

(e) Clause 10 provides as follows:

10. Disclosure

(a) The Insured must disclose in writing to the Insurer all material facts and information concerning or relating to this Policy, the Insured Buyers and its dealings with the Insured Buyers and any likely claim under this Policy.

(b) The Insurer may request that the Insured provide and the Insurer may at any time examine or take copies of any letters, accounts or other documents in the possession or control of the Insured relating to or connected with this Policy or the obligations of the Insured or any transactions between the Insured and any Insured Buyer.

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(c) The Insured must, at the request of the Insurer, supply the Insurer with any information in its possession or take any reasonable steps to obtain for the Insurer any information or the sight of any documents in the possession of any third party relating to or connected with this Policy or any transaction between the Insured and the Insured Buyer.

(f) Clause 13 provides as follows:

13. Governing Law

The Policy is governed by the laws of the Country/State/Territory of issue noted in the Schedule and any disputes or differences arising under it or in respect of it are to be determined by the appropriate courts.

The governing law and country of issue as set out in the Policy Schedule is Singapore.

(g) The policy period was from 1 June 2020 to 31 May 2021.

The Claims

48 As explained by Mr Tyndall, Marketlend's standard credit management processes include reminding third party buyers of the payments due 15 days before the due date for payment, both by letter and by telephone. In addition, again as explained by Mr Tyndall, in or about July 2020, one of Marketlend's compliance officers, Ms Claire Yu ("Ms CY"), also contacted what is said to have been an authorised representative of each of the Alleged Buyers by telephone to confirm the details of each of the outstanding invoices. Consistent with the standard process which Mr Tyndall had put in place, these calls were carried out on a recorded line. Audio recordings of the calls made by Ms CY, together with certified transcripts were produced in evidence by Mr Tyndall ("CY's conversations") and heavily relied upon by the claimants in support of their case that the trades were genuine and not fictitious. In particular, the

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claimants submitted that in the course of these conversations, each of the Alleged Buyers (by their authorised representative) confirmed that the relevant invoices were correct, valid and not in dispute. I set out below the content of one of those transcripts which is typical of those conversations:

> Mr Kumar: Hello.
>
> Claire: Hi, good afternoon, this is Claire calling from Marketlend on the recorded line. I'm looking for Mr Kumar.
>
> Mr Kumar: Speaking.
>
> Claire: Hi, yeah, I know that you have already confirmed the details of the invoice by our client which is Novita…Novita Trading Limited, it's just that we also need to confirm it over the phone so that there won't be any confusion for all parties in the future, so...
>
> Mr Kumar: Ok.
>
> Claire: Do you happen to have the copy of the invoice? CI200284.
>
> Mr Kumar: 284?
>
> Claire: Yes, 20084.
>
> Mr Kumar: 20084. Um, just give me a moment.
>
> Claire: Ok.
>
> Mr Kumar: 20084. My system is… uhhh… just (Inaudible). Yeah, got it now, 20084?
>
> Claire: Yes, that's right. Ok, so can you tell me the amount on your invoice, please?
>
> Mr Kumar: Two million sixteen thousand four hundred ninety two sixteen.
>
> Claire: U.S. dollars. Ok, thanks.
>
> Mr Kumar: USD.
>
> Claire: And on this invoice it says the term is 180 days,
>
> Mr Kumar: Ehem.
>
> Claire: issued on 15th of July, 2020. So the payment which is on the due date, we expect that to be deposited into our account, Marketlend. Which is also stated on the invoice and also in the enduring notice that has been sent and signed.

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> Mr Kumar: Yes.
>
> Claire: Okay, so just to confirm, Mr. Kumar, that means all information on this invoice are correct, valid, and not in dispute?
>
> Mr Kumar: No problem.
>
> Claire: Is that right? Okay. Do you have any questions at all about this invoice?
>
> Mr Kumar: No, everything is clear.
>
> Claire: Ah, ok, great. We'll be calling this tomorrow. Thanks for your time, you have a wonderful day.
>
> Mr Kumar: Ok, bye.
>
> Claire: Thank you. Bye.

It is important to note that Ms CY did not submit a formal affidavit or witness statement and was not called to give oral evidence. I consider further below the evidential status of Ms CY's conversations and what weight, if any, to be ascribed to them. For present purposes, it is sufficient to note that QBE's position was that Ms CY's conversations were inadmissible in evidence as to the truth of what was stated by the individuals who spoke to Ms CY; and that, in any event, even if Ms CY's conversations are admissible in evidence, what Ms CY may have been told by these individuals does not necessarily show that the Alleged Trades were genuine.

49 At about the same time, on 15 July 2020, a winding up order was made against one of the Alleged Buyers *ie*, Fidelity by the High Court of Malaya at Labuan in Malaysia. On 3 December 2020, AETL as a named co-insured under the Policy submitted a claim form to QBE in respect of Fidelity. Jumping ahead in the chronology, it is common ground that Marketlend filed a proof of debt with the liquidator of Fidelity on 14 January 2021 and that the liquidator subsequently admitted that debt in full on 28 December 2021.

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50 Meanwhile and following the expiry of the relevant default periods under the Policy, the correspondence adduced in evidence by Mr Tyndall shows Marketlend chasing towards the end of 2020 and early 2021 for sums said to be due from the Alleged Buyers. It is unnecessary to refer in detail to the relevant correspondence save to note the evidence of Mr Tyndall (which I accept) that the outbreak of the pandemic in the early part of 2020 and subsequent period severely impacted financial and commodity markets; and that, in some cases at least, responses received from at least some of the Alleged Buyers to Marketlend's demands complain about liquidity difficulties allegedly caused, at least in part, thereby.

51 In the event, no moneys were ever received from any of the Alleged Buyers.

52 On 9 March 2021, AETL submitted seven further claim forms in respect of the seven further Alleged Trades on the basis that there had been a relevant "Protracted Default" as defined in the Policy.

53 Thereafter, between 16 April 2021 and 31 August 2022, QBE and Marketlend entered into lengthy correspondence in respect of the claims in the course of which QBE pressed for further documents and information in support of the claims. It is unnecessary to set out the details of these exchanges save to note that: (a) QBE's position was that the coincidental timing of the series of defaults across all the Alleged Buyers was unusual and warranted further investigation of the claims; and (b) in response, Marketlend did provide certain documents, notably copies of the alleged sale contracts and bills of lading together with copies of invoices and packing lists; vessel movement reports for the bills of lading in the form of the LIR and IMB Reports; and transcripts of Ms CY's conversations.

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54 However, QBE's position was and remains that important documentation relating to the Alleged Trades remains outstanding *viz*:

(a) purchase contracts;

(b) invoices;

(c) proof of payment to Novita's suppliers;

(d) packing lists for Novita's purchase leg;

(e) charterparties;

(f) certificates of origin, certificates of weight, certificates of quality;

(g) export certificates and customs documentation;

(h) cargo manifests at the point of loading;

(i) evidence of negotiation/structuring of trades between Novita and the Alleged Buyers;

(j) cover correspondence in relation to the transmission of the Alleged Sale Contracts, invoices, bills of lading and shipping documents from Novita to the Alleged Buyers; and

(k) detailed trading history between Novita and the Alleged Buyers, setting out payment due dates and dates of payment.

55 Meanwhile, Marketlend took steps and initiated various legal proceedings in different jurisdictions against the Alleged Buyers to seek recovery of amounts allegedly due under the alleged sale contracts. In summary, the relevant legal proceedings were as follows:

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Insured Buyer	**Action(s) taken by Marketlend**
Crown Beec	• Issued Notice before legal action on 21 September 2021. • Dubai Court of First Instance issued a judgment in favour of Marketlend on or around 29 October 2021. • Crown Beec was served with the judgment issued by the Court of First Instance on 25 April 2022.
Green Trees	• Issued Notice before legal action on 16 August 2021. • Dubai Court of First Instance issued a judgment in favour of Marketlend on or around 13 April 2022. • Execution proceedings were filed against Green Trees on or around 14 January 2021.
Max Arabian	• Issued Notice before legal action on 15 February 2021. • Issued Notice before legal action on 11 July 2021. • Court of First Instance issued judgment in favour of Marketlend on or around 1 November 2021. • Execution proceedings were filed against Max Arabian on or around 14 January 2021.
NSJ	• Issued Notice before legal action on 2 September 2021. • Court of First Instance issued judgment in favour of Marketlend on or around 8 November 2021. • Execution proceedings were filed against NSJ on or around 22 February 2022.
Sealoud	• Issued letter of demand on 26 February 2021. • Wound up in the Singapore Court on 23 April 2021. • Liquidator admitted Marketlend's proof of debt on 14 April 2022.
UIG	• Issued statutory demand on 17 September 2021. • Wound up in Hong Kong Court on 12 January 2022. • As provisional liquidator concluded that UIG did not have assets exceeding HKD 200,000, the company was liquidated.
Yeskey	• Issued statutory demand on 17 September 2021. • Wound up in Hong Kong Court on 12 January 2022. • As provisional liquidator concluded that UIG did not have assets exceeding HKD 200,000, the company was liquidated.

56 For present purposes, it is unnecessary to set out the details of these steps save to note that, according to Mr Tyndall, none of the Alleged Buyers defended the legal proceedings brought against them. Further, although Marketlend obtained judgment and/or winding-up orders against all the Alleged Buyers, the actions taken by Marketlend have not resulted in the recovery of any money.

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57 The claimants submitted that the fact they had obtained judgment and/or winding up orders against the Alleged Buyers as referred to above was itself relevant evidence supporting their claims in the present case. I do not accept that submission. Given that none of the Alleged Buyers participated in any of the proceedings which were brought against them, the judgments and/or winding up orders made by the other courts say nothing as to whether the Alleged Trades were genuine or not. In any event, QBE was not party to those other proceedings.

58 In light of what QBE considered were important gaps in the information provided as well as QBE's own inquiries, QBE declined to accept the claims. By way of letters dated 4 April 2023 and 21 April 2023, QBE also gave notice avoiding the Policy. QBE conveyed further grounds for avoidance of the Policy to the claimants by way of its pleadings in these proceedings (which were also notified to Novita by way of a letter from the claimants' lawyers to Novita dated 12 August 2024).

The Issues

59 Against that background, I turn to consider the relevant issues which I propose to address in the order set out below.

(a) Issue 1: Does Marketlend have standing to claim under the Policy and/or has there been a breach of Clause 2 of the Policy Wording (prohibition of any assignment without the written consent of QBE) and, if so, what is the effect of such breach?

(b) Issue 2: Has there been a failure of a condition precedent to any claim under the Policy by reason of the failure by the Insured to provide documents and/or information requested by QBE?

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(c) Issue 3: Is there proof (on a balance of probabilities) of one or more Insured Debts under the Policy?

(d) Issue 4: Has there been any other breach of a condition precedent to the right to claim under the Policy?

(e) Issue 5: Was QBE entitled to avoid the Policy?

I recognise that the order in which I propose to address the issues might appear not entirely logical. In particular, the question as to whether QBE is entitled to avoid the Policy (Issue 5) is, in truth, logically anterior to whether there has been a failure to comply with a condition precedent of the right to recover under the Policy (Issue 4) and whether the claimants have established the existence of an Insured Debt under the Policy (Issue 3). In addition, there is some overlap between some of the issues. However, in preparing this Judgment, it seemed to me that my proposed order of dealing with the issues makes some practical sense even if it is not entirely logical.

Issue 1: (a) Does Marketlend have standing to claim under the Policy and/or (b) has there been a breach of Clause 2 of the Policy Wording (prohibition on assignment without QBE's consent) and, if so, what is the effect of such breach?

60 Issue 1(a) is, in my view, straightforward. The starting point is that it is common ground that, unlike AETL, Marketlend is not a named insured. Rather, as pleaded in paragraph 5 of the Statement of Claim, it is Marketlend's case that Novita executed a power of attorney on 9 August 2019 in its favour (the "Power of Attorney") and that Marketlend is therefore authorised to act on behalf of Novita in all matters including to bring the present claim with AETL.

61 In response, QBE pleaded in paragraph 5 of its Defence as follows:

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> Paragraph 5 of the Statement of Claim is admitted insofar as the 1st Claimant appears to be authorised by the terms of the Power of Attorney to act on behalf of Novita to bring the present claim. However, the Defendant avers that that does not give the Claimant the standing / right to pursue claims under the Policy; and notwithstanding the Power of Attorney, the obligations to satisfy and demonstrate fulfilment of the Policy's terms and conditions are with respect to the Insured.

On its face, the first sentence of this paragraph would seem to accept that Marketlend was authorised by the terms of the Power of Attorney to act on behalf of Novita to bring the present proceedings – although it is not easy to understand how that first sentence is consistent with the second sentence which asserts that the Power of Attorney does not give Marketlend the "standing/right" to pursue the present claims. Be that as it may, there is no doubt (indeed it is common ground) that Novita did indeed execute a document which was attached as a schedule to the Facility entitled "Schedule 4C: General Security Deed & Power of Attorney (Hong Kong Law)" dated 9 August 2019 ("Schedule 4C") and which provided in material part as follows:

> **1.** The Account Holder as beneficial owner or as legal and beneficial owner:
>
> …
>
> b) assigns and agrees to assign absolutely to Marketlend all its right, title and interest from time to time in and to any policy of insurance in which the Account holder may from time to time have an interest; and
>
> …
>
> **20.** In consideration of Marketlend entering into the Transaction Documents the Account Holder appoints Marketlend Pty Ltd (ACN 602 720 856) and each Receiver appointed under this Charge to act as its attorney (the **Attorney**) and each authorised officer of Marketlend (**Authorised Officer**) jointly and each of them severally to be its attorneys.
>
> …

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> **29.** An Attorney may exercise the powers of the Attorneys under this power of attorney in the name of the Account Holder or in the name of the Attorney and as the act of the Account Holder.

I consider clause 1(b) below. For present purposes, it is sufficient to note that Marketlend does not rely on any purported assignment as stipulated in clause 1(b) to assert its entitlement to pursue the present claims. Rather, as I understood and consistent with its pleaded case, Marketlend relied on the Power of Attorney granted by Novita as stipulated above in clause 20 as well as the terms of clause 29 which expressly stipulates for the manner in which Marketlend may exercise the powers of an attorney on behalf of Novita.

62 In my view, the Power of Attorney as contained in Schedule 4C does, on its face, give Marketlend the power to bring the present proceedings in its own name. Ultimately, at the very end of the last day of the hearing, the defendant's counsel accepted that he had no answer to that:

> Court: …And forget about the pleading just for a moment, there's no doubt that [counsel for the claimants] has advanced a claim on the basis of them being an attorney in its own name, forget about your pleading. Why can't they claim under the policy then?
>
> [Counsel for the defendant]: I'm afraid I don't have an answer to that, your Honour.

On this basis, I would hold the answer to issue 1(a) is: Yes.

63 I turn then to issue 1(b). In summary, although Marketlend does not itself seek to assert the existence of any assignment pursuant to clause 1(b) of Schedule 4C, it is QBE's case that that clause operates as an assignment of the "right, title and interest" in and to the present Policy; that such assignment was made without the written consent of QBE; that this constituted a breach of clause 2 of the Policy Wording; and that, in accordance with the express terms

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of that latter clause, QBE was and therefore is entitled "...to avoid liability under the Policy".

64 In passing, it is important to note that the wording of clause 2 is not that QBE would, in the case of an assignment made without QBE's consent, be entitled to avoid the Policy itself – but rather that QBE would be entitled to avoid "...liability under [the] Policy..."

65 At one stage, I had thought that this distinction might be important. In particular, I had thought that Marketlend's position was that if there were an assignment made in favour of Marketlend without QBE's written consent, then QBE would only be entitled to avoid liability as against Marketlend – leaving unaffected AETL's right to claim as a joint insured. However, in the course of opening submissions, the claimants' counsel conceded that if clause 2 were triggered by reason of an assignment in favour of Marketlend made without QBE's written consent, the effect would be that QBE would be entitled to avoid liability as against both Marketlend and AETL.

66 Here, it is QBE's case that it did not at any time give its written consent to the assignment in clause 1(b) of Schedule 4C, whether by way of consent to the assignee, to the form of the assignment, or in any other way; that there was therefore a breach of clause 2 of the Policy Wording; that; and that it necessarily follows that QBE was and is entitled to avoid liability under the Policy as against both claimants.

67 To be clear, Marketlend did not contend that QBE had given its consent to the assignment in Schedule 4C at the time it was executed in August 2019 or at any time prior to the execution of the Policy. Instead, Marketlend relied on four main points which I address in turn.

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68 First, as pleaded, it was Marketlend's case that the effect of clause 1(b) of Schedule 4C was that there was never any assignment in fact but that in that document Novita had "merely" agreed to assign rights at some stage in the future which never happened, although Marketlend did not appear to pursue this argument at trial. In any event, I do not accept that submission. The wording of clause 1(b) is plain *viz*, it provides, in effect, that Novita both agrees to and does in fact assign its rights, under policies of insurance in which it was to have an interest *at any time* and, further, it had charged all of its rights in respect of *present and after-acquired property*. As submitted by QBE, the effect of clause 1(b) was that upon Novita acquiring rights under the Policy, these were assigned without more to Marketlend.

69 Second, Marketlend submitted that there was no breach of clause 2 of the Policy Wording because it does not apply to assignments made *before* the Policy was entered into but applied only to assignments made *after* the Policy incepted. I do not accept that submission. To my mind, there is nothing in that clause to suggest that it is so restricted. Further, as submitted by QBE, Novita could not and did not assign its rights under the Policy before such rights existed. The effect of clause 1(b) was that such rights were assigned immediately upon the execution of the Policy. Relatedly, Marketlend submitted that there is an implied term that clause 2 of the Policy did not apply to *existing* assignments of, or agreements to assign, the Policy. Again, I do not accept that submission. It is trite law that a term will only be implied in fact if it is "necessary" to do so to make the contract work (see *eg*, *Panwah Steel Pte Ltd v Koh Brothers Building & Civil Engineering Contractor (Pte) Ltd* [2006] 4 SLR(R) 571 at [8]). I see no such necessity here to justify the implication of the alleged term.

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70 Third, Marketlend submitted that QBE had provided the requisite consent in writing to the assignment. In support of that submission, Marketlend relied upon various exchanges in June and July 2020 between Chief and QBE as referred to in [35] and [39]−[42] above.

71 In summary, Marketlend submitted that it is thus clear that QBE was, at all relevant times, kept informed of Marketlend's role as funder, and more critically, that Novita would only be able to pay the premiums under the Policy if Marketlend funded it; and that QBE's case that it did not consent to the assignment should therefore be rejected.

72 I am prepared to accept that QBE was well aware of Marketlend's general role. However, I do not consider that any of the factual matters relied upon by Marketlend as summarised above amount to the giving of consent – let alone written consent – to any assignment of the Policy in favour of Marketlend. In particular:

(a) The email dated 24 July 2020 from Chief to QBE requesting that Marketlend personnel be provided access to QBE's trade credit portal in relation to the Policy is equally consistent with AETL being represented by Marketlend. Indeed, although Marketlend was in discussions with QBE in relation to a potential assignment, those discussions culminated in Marketlend requesting, and QBE agreeing to, the Bankers' Endorsement with AETL.

(b) The email dated 24 July 2020 from QBE to Chief simply stated in material part: "[t]o avoid ambiguity: the Banker's Endorsement [serial number] under the policy attached to Insured, Novita… policy schedule, recognises the parties involved in the facility agreement". There is

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nothing in that email to suggest that QBE was somehow aware that Marketlend (rather than AETL) was the lender under the facility agreement with Novita at the time. As far as QBE was concerned, it had no reason to believe that the lender under the facility was Marketlend, and not AETL (*ie*, the party that Marketlend proposed as a joint insured via the Banker's Endorsement).

(c) The email dated 26 June 2020 from Chief to QBE, stated in material part: "as you are aware that Marketlend is funding the above Insureds on the back of the Insured Buyers that are covered by QBE. Rather than acting as the Loss Payee under a Full Proceeds Assignment, Marketlend has opted for QBE's banker's endorsement. This endorsements [*sic*] provides better protection to the lender [rather] than the other forms of the policy being assigned". This email likewise is consistent with Marketlend proposing AETL (not itself) as the joint insured under the Policy (as in fact happened); and the parties attempting to agree on the terms of a possible assignment. There is nothing in this email, which in any way suggests that in addition to the Banker's Endorsement under discussion, Marketlend was also proposing some free-standing assignment in its favour, still less that QBE was somehow consenting to it. Rather, as submitted by QBE, the converse is true: the email (and the draft banker's endorsement attached to it) make it clear that the identity of the assignee under the then contemplated assignment and the form of any such assignment had to be agreed by QBE. Mr Ki explained during his cross-examination that he could not even confirm whether this email contemplates the policy being assigned to Marketlend. For present purposes, what is ultimately important is that a Banker's Endorsement in favour of AETL was concluded.

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(d) The email dated 25 November 2020 from Chief to QBE stated in material part: "Further to our meeting last week with Marketlend, please find attached their letters in respect of their request to act their role under the Bankers Endorsement of the respective policies". What was attached were two letters from AETL (not Marketlend), only one of which is relevant to the Policy – which confirmed that AETL had paid the outstanding premium under the Policy. There is nothing in this email or the attachments constituting any written consent by QBE to any assignment of the Policy in favour of Marketlend.

(e) The email dated 24 March 2021 from QBE to Marketlend set out a "summary of estimated Protracted Default dates which are based on the information you have provided us to date", and added that "[a]t this early stage we have focussed only on the minimisation of a potential loss, and have not assessed whether all the terms and conditions of the Policy have been complied with. All of our rights are hereby expressly reserved". Again, this email does not, in my view, assist Marketlend.

73 Fourth, Marketlend submitted that QBE is estopped from relying on clause 2 of the Policy as it had a good working relationship with Marketlend for eight years prior to this suit; that QBE was, or would have been, aware of the implications of Marketlend's role as funder, being familiar with Marketlend's *modus operandi;* and that QBE's current allegations are simply inconsistent with the parties' prior conduct and relationship. Again, I am prepared to accept that QBE had a good working relationship with Marketlend over a number of years. However, in my view, that falls far short of a representation by QBE that it consented, or at least would not object to the assignment of the Policy in favour of Marketlend. The parties' conduct seems to me to be consistent with

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the decision to make AETL a joint insured with Novita and the correspondence which culminated in the issuance of the Banker's Endorsement.

74 For all these reasons, it is my conclusion that there was an assignment of the Policy in favour of Marketlend; that such assignment constituted a breach of clause 2 of the Policy; that QBE is therefore entitled to avoid liability under the Policy as against Marketlend; and that, given the concession made by the claimants' counsel, QBE is also entitled to avoid liability under the Policy as against AETL.

75 That conclusion is fatal to the claims brought by both claimants in this suit, such that it is strictly unnecessary to consider the further issues in this case. However, in case I am wrong, I turn to consider the further issues.

Issue 2: Has there been a failure of a condition precedent to any claim under the Policy by reason of the failure by the Insured to provide documents and/or information requested by QBE?

76 The Policy Wording stipulates:

> **Conditions Precedent to Liability**
>
> Due observance of *each* of the terms and conditions of this Policy … by the Insured are conditions precedent to *any* liability of the Insurer under this Policy.
>
> [emphasis added]

Here, it is QBE's case that there has been a number of failures by the insured parties to meet the terms and conditions of the Policy with regard to (a) provision of information/co-operation; (b) disclosure of material facts; and (c) notification of "Notifiable Events". To be clear, it is QBE's case that any single failure is fatal to the present claims. I propose to deal with the first of these

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alleged failures below. I deal later in this Judgment with the second and third of these alleged failures after I have considered Issue 4.

77 Under this head, QBE relied upon:

(a) Conditions 10(b) and (c) of the Policy Wording which I have already quoted above (at [47(e)]) and which (in summary) entitled QBE to request and required the Insured to provide certain documentation and information; and

(b) Condition 8 of the Policy dealing with "Claims" which provides that it is a condition precedent to the payment of any claim by QBE under the Policy that the Insured "co-operate fully with the Insurer" (see [47(d)]). Notwithstanding the generality of the words, QBE accepted that, as a matter of construction, this condition precedent is concerned with the Insured's co-operation in relation to the investigation and handling of claims.

78 In summary, QBE submitted that, in breach of these provisions and after submitting the claims, the Insured(s) failed to provide QBE with the documents QBE reasonably required to investigate and assess the validity of the present claims. As stated above, although QBE was provided with some documentation, it was QBE's case that there remained – and still remains − much documentation or information which QBE had requested but which had not been provided. According to QBE, this documentation or information was − and still remains − reasonably required to verify compliance with the terms of the Policy. In particular, QBE submitted that this documentation or information was and is all within the scope of what QBE was entitled to request under the stated provisions of the Policy to satisfy itself as to the validity of the claims.

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79 This was disputed by the claimants on two main grounds.

80 First, it was submitted by the claimants that there is nothing in the Policy which specifically requires the provision of the documentation or information that QBE had requested and remains outstanding. It is fair to say that the Policy does not specify particular classes of documents still less any particular document to be provided by the Insured in support of any claim. However, the wording of Clauses 10(b) and (c) is of wide scope. In particular, at the request of QBE, I read Clause 10(b) as imposing an obligation on the Insured to provide any documents in its possession or control relating to or connected with: (a) the Policy; or (b) the obligations of the Insured; or (c) any transactions between the Insured and any Insured Buyer. At the request of QBE, Clause 10(c) imposes a similar (albeit not identical) obligation on the Insured to, upon request, supply QBE with "any information in its possession or take any reasonable steps to obtain for [QBE] any information or the sight of any documents in the possession of any third party relating to or connected with this Policy or any transaction between the Insured and the Insured Buyer". It is important to note that the documents or information that QBE is entitled to request and that the Insured is obliged to provide or supply includes but is not limited to documents or information relating only to the particular sale contract between the Insured and the Insured Buyer.

81 Second, as reflected in the protracted correspondence between QBE and Marketlend, Marketlend's position was that the documentation/information requested by QBE is, in any event, unnecessary – or at least not reasonably necessary – for the purpose of QBE assessing the validity of the claims and therefore does not fall within the scope of either Clause 10(b) or 10(c); and that remains Marketlend's submission.

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82 As to such submission, I am prepared to assume in favour of the claimants that despite the apparent wide wording of both Clause 10(b) or 10(c), QBE would not be entitled to insist on the provision of documents or information which was not reasonably necessary for the purpose of enabling QBE to assess the validity of claims. However, contrary to the claimants' submission, it seems to me that in the circumstances of the present case, a significant part of the documentation or information requested by QBE was reasonably necessary if not essential to enable QBE to carry out that exercise.

83 In broad terms, the documents or information which, according to QBE, it had requested but which had not been provided fall into two groups, *viz*: (a) the documents or information relating to Novita's inward purchases (*ie*, in which Novita acted as the buyer) which, for convenience, I will refer to as the "upstream material"; and (b) the documents or information relating to the Alleged Trades between Novita (as seller) and the Alleged Buyers which I will refer to as the "downstream material". For context, QBE argues that it needed both the upstream and downstream material to verify if Novita ever came into possession of, and subsequently sold, physical goods, which goes towards the question of whether the Alleged Trades in fact took place with respect to underlying physical goods. This has a bearing on the validity of the Alleged Trades and is a point I return to later.

84 The upstream material includes Novita's inward purchase contracts, invoices, proof of payment to Novita's suppliers; packing lists for Novita's purchase leg; certificates of origin, certificates of weight, certificates of quality, export certificates and customs documentation and cargo manifests at the point of loading. The claimants submitted that the provision of this upstream material either:

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(a) did not fall within either clause 10(b) or 10(c) of the Policy Wording because they all related to contracts not with the Alleged Buyers but with other third parties and that therefore they were not documents "...relating to or connected with the Policy or the obligations of the Insured or any transactions between the Insured and any Insured Buyer" within the scope of clause 10(b) or documents "...relating to or connected with this Policy or any transaction between the Insured and the Insured Buyer" within the scope of clause 10(c); or

(b) was not reasonably necessary to enable QBE to assess the validity of the present claims.

I certainly see some force in what is stated in sub-paragraph (a); and, to the extent that there is any uncertainty as to the scope of clauses 10(b) and 10(c), I suppose that there is an argument that they should be construed against QBE. I have much more doubt about the claimants' further submission in sub-paragraph (b). Indeed, my tentative view is that even if the upstream material did not fall with clause 10(b) or (c), there was an obligation to provide such material at the request of QBE as part of the duty to cooperate as stipulated in clause 8. Notwithstanding, I am prepared to assume in favour of the claimants that there was no breach in failing to provide the upstream material.

85 However, the position with regard to the downstream material is, at least in part, different. As requested by QBE, that downstream material includes evidence of negotiation and/or structuring of trades between Novita and the Alleged Buyers, along with cover correspondence in relation to "the transmission of the executed [Alleged Sale Contracts]", invoices, bills of lading and shipping documents from Novita to the Alleged Buyers. I have some doubts as to whether evidence of negotiation and/or structuring of trades between

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Novita and the Alleged Buyers would fall within clause 10(b) or (c); and I am also not sure what is meant by the reference to the "transmission" of the Alleged Sale Contracts.

86 However, in my view, it is plain that cover correspondence in relation to the transmission of the invoices, bills of lading and shipping documents from Novita to the Alleged Buyers would fall within both those clauses. Although it may perhaps be debatable whether these documents can properly be said to "relate to" or "be connected" with the Policy, there is, in my view, no doubt that they do relate to or are connected with Novita's obligations or the particular transactions between itself and the Alleged Buyers. After all, clauses 10(b) and 10(c) are worded disjunctively (see [47(e)] above). Moreover, it is, in my view, equally plain that these documents are reasonably necessary if not essential to enable QBE to assess the validity of the claims. Insofar as may be necessary, I also consider that that there was an obligation to provide these documents to QBE as part of the duty to co-operate specified in clause 8 of the Policy Wording.

87 Given this conclusion, it is unnecessary to consider the suggestion put to Mr Tyndall by QBE's counsel in cross-examination that Marketlend failed to take reasonable efforts to obtain the information and documents requested by QBE. I see some force in the argument that Marketlend did use at least some reasonable endeavours to obtain documentation/ information in response to QBE's requests – as is reflected, for example, in the exchange of WhatsApp messages between Mr Tyndall and Mr Trivedi during the period of May to August 2023 when, again for example, on 16 May 2023, Mr Tyndall in exasperation told Mr Trivedi that he was "sick and tired" of Mr Trivedi's lack of cooperation and that, if this lack of cooperation continued, Mr Tyndall thought that he did not have "any other choice but to actually advise the

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liquidator to make it complaint [*sic*] to the police and order a warrant against you in Singapore", followed by arranging for the same in other jurisdictions. On the other hand, there is equally some force in the argument that the claimants could perhaps have taken steps to obtain relevant documents/information at an earlier stage from Novita as well as the other Alleged Buyers.

88 However, whether any such steps would have borne fruit is, at best, uncertain. In any event, it is, as I say, unnecessary to consider this aspect further. Moreover, to be clear, the fact that the fault in failing properly to respond to QBE's requests lies with Novita not the claimants is irrelevant. Equally, the fact that Marketlend has used reasonable efforts to obtain and provide the documentation or information reasonably requested albeit without success is also no answer to QBE's case in relation to clauses 10(b) and 10(c).

89 For these reasons, it is my conclusion that there has been a significant failure to comply with the terms of clause 10(b), 10(c) and/or 8 of the Policy Wording and that, given that compliance with such provisions is a condition precedent to *any* liability of QBE under the Policy, it follows that QBE is not liable and that the claimants' claims must be rejected.

90 In light of that conclusion, it is unnecessary to consider the remaining issues in this case. However, once again, in case I am wrong, I turn to consider the other issues.

Issue 3: Is there proof (on a balance of probabilities) of one or more Insured Debts under the Policy?

91 The claimants submit that the evidence shows the existence of an Insured Debt with regard to each of the Alleged Trades. In support of that submission, the claimants rely in particular upon: (a) copies of the Alleged Sale

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Contracts together with copies of the alleged invoices and packing lists (the "transaction documents"); (b) the copies of the bills of lading; (c) the LIR and IMB Reports; (d) the so-called Sealoud ledger; and (e) Ms CY's conversations which, according to the claimants constitute acknowledgements by each of the Alleged Buyers of the relevant Insured Debt.

92 This is hotly disputed by QBE. In summary, QBE disputes the authenticity of the transaction documents and/or submits that they and the other documents referred to in the preceding paragraph are inadmissible as to the truth of their contents and/or submits that, even if strictly admissible, the claimants fail to satisfy the burden of proof which lies on them to show, on a balance of probabilities, the existence of any of the alleged Insured Debts. Further, QBE submits that, in the light of all the evidence, the Court should positively find that the Alleged Trades are not genuine physical trades but are "fictitious". For one or more of these reasons, QBE submits that the claims should all be rejected.

"Genuine Physical Trades"

93 As to these submissions, I start by considering QBE's fundamental submission that, as a matter of construction, the Policy only covers what QBE's counsel described as "genuine physical trades". There was much debate during the trial as to what this phrase really meant. As repeatedly pointed out by the claimants, that phrase is not a defined term in the Policy Wording nor does that phrase appear anywhere in the body of the Policy; nor is it a term of art. However, QBE submitted that it was simply a convenient phrase to describe what Mr Evans said in evidence and what QBE submitted was the "premise" of the cover provided by the Policy.

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94 In broad terms and simply as a matter of language, I would ordinarily understand that phrase to mean no more than that the underlying trade was not fictitious or simply a "paper" trade but one which was in respect of and related to an actual physical shipment of goods. To that extent, I have no difficulty myself using the phrase "genuine physical trade" in that sense.

95 Unfortunately, the debate which has arisen in this case with regard to this phrase is due in large part to the definition adopted by QBE in para 3.2 of its Defence where it is pleaded "for the avoidance of doubt..." the phrase "genuine physical trade" means "a trade where transmission of title to and possession of the underlying Goods can be demonstrated". That definition found its way into a number of the witness statements and experts reports as well as QBE's opening written submissions (where it was stated, for example, at para 55: "[a]n "Insured Debt" under the Policy therefore requires an insured to be able to demonstrate a transmission of title to and possession of the underlying goods"). To my mind, that definition has given rise to much unnecessary debate and confusion in the course of the trial.

96 The main focus of that debate was the reference to the need to demonstrate transmission of "possession" of the underlying goods. In particular, it is obvious to anyone who knows anything about international trade, that whenever there is, for example, a chain of sale contracts, although the intermediate seller/buyer may obtain what is often referred to as "constructive" possession of the goods by the receipt of original bills of lading, it will not normally obtain actual physical possession of the goods. Further, as recognised by QBE itself in its written opening submissions and confirmed by QBE's own experts, parties may agree what was referred to as a "substitute document work-around" *ie*, a document by-pass or circle trade; and, of course, even the end

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receiver may obtain actual possession of the goods from the carrier without the original bills of lading against a letter of indemnity acceptable to the carrier.

97 In my view, this whole debate was somewhat arid and ultimately a side-show to the real issues in this case which must be considered by reference to the terms of the Policy Wording which I have already quoted above in relevant part. In short and at the risk of repetition:

(a) It is common ground that that the Policy obliged QBE to indemnify the Insured up to the Insured Percentage "...of the *Insured Loss* in the event of an Insured Buyer failing by reason of a Claimable Event to pay the Insured an *Insured Debt*..." [emphasis added]

(b) "Insured Loss" is in turn defined at p7 of the Policy Wording as follows:

> **Insured Loss** is the amount of an Insured Debt that is either:
>
> 1. admitted to rank against the insolvent estate of the Insured Buyer; or
> 2. in the case of a Protracted Default only, so much of the Insured Debt as is confirmed to the Insurer by evidence of a valid debt that is satisfactory to the Insurer and is not in dispute between the Insured and the Insured Buyer;
>
> each after taking into account the whole of any Recoveries relating thereto.

(c) "Insured Buyer" means "any person or entity carrying on business with the Insured… and who is included in this Policy by a Credit Limit Endorsement…"

(d) "Insured Debt" is defined at p 6 of the Policy Wording as follows:

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> **Insured Debt** means so much of any indebtedness arising out of the trade falling within the description of the Schedule and:
>
> 1. is owing by an Insured Buyer to the Insured; and
>
> 2. does not exceed the Permitted Credit Limited; and
>
> 3. is in respect of the invoice value of goods *sold by the Insured and Shipped to an Insured Buyer*... all of which must have occurred within the Policy Period and pursuant to a contract of sale providing for repayment of the debt within the terms of payment specified for the Approved Country of the Insured Buyer in the Approved Countries & Conditions Table in the Schedule; and
>
> 4. all values values of goods and services referred to under 3 above must have been invoiced by the Insured within the Maximum Invoicing Period.
>
> …

(e) "Shipped" is defined at p 7 of the Policy Wording in the following terms:

> **Shipment** and **Shipped** means:
>
> 1. in respect of goods:
>
> (a) in the case where an Insured Buyer is located in the country of the Insured, the time at which the goods physically pass from the Insured into the exclusive physical control of the Insured Buyer or the Insured Buyer's agent (which transaction must be completed within the Policy Period); or
>
> (b) in the case where an Insured Buyer is located in a country other than the country of the Insured, the time at which the goods have been passed to the first independent carrier (which must be within the Policy Period) in the process of being carried to the place where the Insured Buyer or its agent is required to accept them.
>
> 2. in respect of services is when the service has been rendered to the Insured Buyer and promptly invoiced within the Maximum Invoicing Period after the work has been completed or services have been rendered within the Policy Period.

98 Accordingly, QBE submitted, and I readily accept, that on a plain reading, an "Insured Debt" under the Policy requires an actual physical sale and

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shipment of goods by Novita to its insured buyers. I also readily accept that a sale entails the transfer of title to goods from a seller to a buyer. Equally, it seems plain to me that such sale must be "genuine", not "fictitious". To that extent, the phrase "genuine physical sale" is, in my view, one which is useful to describe in broad terms the type of transaction covered by the Policy. It follows in my view that as a matter of construction of the Policy, the essential issue is whether there was one or more relevant genuine physical trade(s) in the sense stated above.

99 So far as may be relevant, I readily accept QBE's submission that that construction is supported by the following:

(a) The evidence of both Mr Ki and Mr Evans that Novita held itself out as being in the business of conducting genuine physical trades, and not merely financing arrangements; that that was the business it was looking to cover its exposure for; and that there was never any indication that Novita would be engaged in any other form of activity. Mr Ki and Mr Evans both explained (and I accept) that, had they been informed that Novita would not be engaging in physical trading, they would not have underwritten TCI cover; and that there is a different insurance product, non-payment insurance which can be used to cover the risk of non-payments regardless of the nature of the underlying transaction.

(b) Relevant parts of the PowerPoint Presentation and the Proposal Form which I have already summarised above (at [29]) which indicated that Novita was seeking cover for losses incurred in its physical trading of commodities.

(c) The only underwriting expert in the proceedings, Mr Brittenham confirmed that in his experience "TCI coverage is only available for

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receivables arising from an underlying commercial sale of physical goods between independent companies"; and "[p]urely financing transactions have a different risk profile from trade transactions covered by TCI as, amongst other things, there are no physical goods that can be liquidated for cash in such transactions".

(d) Mr Bloemendal confirmed that the pattern of trading required by the term "Shipped" in the Policy indicates that physical rather than paper trading was required.

100 In my view, none of the above is surprising in any way at all; and, at the end of the day, I did not understand the claimants' counsel to disagree with the analysis which I have outlined above.

101 So, against that explanation, it is then necessary to consider whether the claimants have, on the evidence, established on a balance of probabilities the existence of one or more relevant genuine physical trades and that any one or more of the eight Alleged Trades are, in truth, genuine sales of physical goods by Novita to each of the Insured Buyers.

102 I have already summarised the evidence relied upon by the claimants in support of its case (at [91] above). As to that evidence, there is no dispute with regard to the evidential status of the bills of lading or the LIR and IMB Reports. On that basis, I accept what is stated in those documents. In summary, they show, and I accept, that physical goods as described in the bills of lading were duly shipped on board the various vessels and transported to the various destination ports. However, that evidence does not even begin to show that Novita was itself involved in shipping those goods at the port of loading or

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otherwise involved as an intermediate buyer/seller in the purchase in or onward sale of the goods to the respective Alleged Buyers.

103 On behalf of the claimants, it was submitted that the mere fact that Novita came to have possession of these documents including copies of the bills of lading and was able to hand them over to Marketlend strongly supports their case that the Alleged Trades must be genuine. In support of that submission, the claimants relied upon the evidence of their expert, Mr Mahajan that "[c]opies of original BLs are not *easily* obtained by an uninvolved party without the acquiescence or involvement of a holder of that Original BL" [emphasis added]. Thus, the claimants asked rhetorically: if the Alleged Trades were not genuine, how else did Novita come to have possession of these documents? In the ordinary course, I see some force in that submission. However, there is no evidence here as to how Novita did come to have possession of these documents. It is one of the many missing parts of the jigsaw.

104 QBE hotly disputed that the fact that Novita came to have copies of the bills of lading is of any assistance to the claimants. In particular, QBE submitted that the claimants' submission that it was possible to draw an inference from Novita's possession of the copies of the bills of lading that Novita must therefore have traded with holders of original bills of lading would be fallacious and inaccurate. In particular, QBE submitted that it is well known that copies of bills of lading are routinely used by fraudsters and that the mere fact that Novita had copies of the bills of lading does not establish that it traded with a participant in the actual trading chain. To the contrary, QBE submitted that the fact that Novita resourcefully obtained copy bills of lading for different products involving different shippers, to sell goods under what QBE submitted were dubious contract terms on its letterhead, which have no trace of negotiation, creates the opposite inference: that Novita was the perpetrator of fictitious

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trades. That submission may well be true – but it is of course entirely speculative and assumes facts which I consider later in this judgment.

105 For present purposes, I proceed on the basis that the fact that Novita came to have possession of the copies of the bills of lading (as well as certain other documents) is one of the mysteries of the case that could easily have been explained by evidence from Mr Trivedi or someone else from Novita and that, absent such evidence, this point is of little, if any, assistance to the claimants.

106 I turn to consider the other so-called "evidence" relied upon by the claimants in support of their case, notably the transaction documents, the Sealoud ledger and Ms CY's conversations. As stated above, QBE raises objections with regard to both the authenticity and admissibility of such so-called evidence. It is therefore necessary to set out briefly the applicable principles concerning the law of evidence potentially relevant to the present case.

107 At the outset, I note that it is perhaps rare or at least somewhat unusual in modern times for a court in civil proceedings to have to rule on formal objections concerning the authenticity and/or admissibility of evidence. In most cases, the focus is not so much on authenticity and/or admissibility but on what weight (if any) to be given to any particular part of the evidence having regard to the totality of all of the evidence. Indeed, counsel on behalf of the claimants submitted that, at least so far as QBE's objections were concerned, the points taken by QBE were highly technical; and that the court should adopt what he described as a "flexible" or "liberal" approach. I readily accept that such a flexible or liberal approach is reflected to at least some extent in the Evidence Act 1893 (2020 Rev Ed) (the "Evidence Act") (see also the suggested treatment of the Evidence Act as a "facilitative statute" in *Public Prosecutor v Knight*

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Glenn Jeyasingam [1999] 1 SLR(R) 1165 at [58], *cf Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 329 at [122]). However, it is important to recognise the existence of at least some important limits and safeguards laid down in that Act as to the admissibility of evidence.

108 In passing, it should be noted that in certain circumstances, O 13 r 15 of the Singapore International Court Rules 2021 (the "SICC Rules") allows the court to disapply the rules of evidence found in the laws of Singapore. However, no relevant application has been made in this case; and it was common ground that the ordinary rules of evidence as set out in the Evidence Act apply in the present case. In that context, I would summarise the relevant applicable principles as follows.

Relevant rules of evidence

Authenticity

109 Authenticity is a necessary condition of admissibility. Until authenticity is established, admissibility has no meaning: *CIMB Bank Bhd v Italmatic Tyre & Retreading Equipment (Asia) Pte Ltd* [2021] 4 SLR 883 ("*Italmatic (HC)*") at [68].

110 A litigant is entitled to object to the authenticity of documents adduced in evidence by its opponent and to require the opponent to prove them in accordance with the Evidence Act (*Italmatic HC* at [71]).

111 However, a party is deemed to admit the authenticity of a document in its opponent's list of documents unless that party issues a notice of non-admission in respect of that document within the time stipulated in O 27 r 4(1) of the Rules of Court (2014 Rev Ed) (*Italmatic HC* at [71]). The relevant

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provisions of the SICC Rules are similar (although I note that the claimants submit that the SICC Rules are to be construed more strictly against the party failing to issue a notice of non-admission or deny the authenticity of the document in his pleading). In particular, O 12 r 10 of the SICC Rules provides:

> **Admissions as to authenticity of documents (O. 12, r. 10)**
>
> **10.** A party who receives a document produced by another party under this Order is deemed to have admitted to the authenticity of that document, unless the receiving party —
>
> (a) has denied the authenticity of that document in the receiving party's pleading or memorial; or
>
> (b) within 28 days after receiving the document, serves on the producing party a notice stating that the receiving party does not admit the authenticity of that document and requires it to be proved at the trial or substantive hearing of the case.

112 Therefore, pursuant to O 12 r 10 of the SICC Rules, a litigant who intends to put the authenticity of a document in issue must either deny the authenticity of that document in their pleading or memorial, or serve a notice stating that he does not admit the authenticity of the document within the stipulated time.

113 However, formal proof of the documents is dispensed with by an agreed bundle, although the truth of their contents will still have to be proved (*ie*, authenticity is admitted by inclusion in agreed bundle): *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd* [2006] 3 SLR(R) 769 ("*Jet Holding*") at [44] and [51].

114 In general, a document's authenticity would be proved by evidence which is itself admissible: *Italmatic (HC)* at [73]. This is generally by way of (a) primary evidence (*ie*, producing the original document (see s 64 of the Evidence Act); (b) secondary evidence pursuant to s 67 of the Evidence Act; or

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(c) by producing a copy where the document is admissible in evidence by virtue of s 32(1) of the Evidence Act, pursuant to s 67A of the Evidence Act: *Columbia Asia Healthcare Sdn Bhd and another v Hong Hin Kit Edward* [2016] 5 SLR 735 at [23] ("*Columbia Asia*").

115 However, the Court of Appeal has cautioned against a strict and uncompromising application of the laws of evidence in relation to authenticity. Thus, in *CIMB Bank Bhd v World Fuel Services (Singapore) Pte Ltd and another appeal* [2021] 1 SLR 1217 ("*World Fuel*") at [57], the Court observed:

> We are of the view that *Italmatic Tyre* does not go so far as to suggest that where direct evidence is available, such direct evidence must always be adduced to establish authenticity. It was merely referring to the ordinary and practical means of establishing authenticity. That said, direct evidence would usually be the strongest evidence available to a party, and the maker of a document should generally be called as a witness to prove its authenticity (see, *eg*, *Chua Kok Tee David* ([29] *supra*) at [47]). A party's failure to call a witness to give direct evidence could also potentially result in an adverse inference being drawn against it under s 116, illustration (*g*) of the [Evidence Act]. *However, the omission to adduce direct evidence where it is available is not necessarily fatal to proving a document's authenticity. The impact of not adducing direct evidence is dependent on the facts of each case. Relevant but non-exhaustive factors include the strength of the indirect or circumstantial evidence adduced, the reasons given by the relevant party for not adducing direct evidence, and the probative value of the direct evidence if it had been adduced.*
>
> [emphasis added]

116 Finally, I note and bear well in mind the *dicta* espoused by the Court of Appeal in *Jet Holding* regarding the erosion of the "*best evidence rule*" in other jurisdictions in favour of adducing all evidence, with the focus being on the *weight* being accorded to the evidence concerned instead: at [62].

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Admissibility

117 After authenticity has been established, it generally remains necessary to prove the truth of the contents of the document by admissible evidence (I would myself add − at least if that is the purpose of the desire to adduce the document in evidence): *Jet Holding* at [76]. In that context, it is important to note that the truth of the contents of the document may not be proved *merely* by the document itself because of the hearsay rule: see, for example, the important observations of the Honourable Sundaresh Menon JC (as his Honour then was) in *GIB Automation Pte Ltd v Deluge Fire Protection (SEA) Pte Ltd* [2007] 2 SLR(R) 918, ("*GIB Automation*") at [15] when commenting on passages from *Jet Holding*:

> This passage makes it clear that even if a document is accepted as authentic, the truth of its contents may not be proved by the document itself because of the hearsay rule. There may well be limits to the principle. If an invoice is accepted as authentic and if it is shown that it has been sent to and received by the addressee, it may well be the case that the invoice alone may not be relied upon to prove that the sum stated there is due and owing by the addressee. *However, if it be shown, for instance, that the invoice had been sent and received and that part-payment had been made without demur by the addressee, then it may well be that the court may infer that the debt has been sufficiently proved. This is obviously not put forward as a proposition of law, but simply as an illustration that the principle may have limits.*
>
> [emphasis added.]

118 Pursuant to s 5 of the Evidence Act, evidence may only be given of facts in issue which are relevant (as the term is described in the Evidence Act). Hearsay evidence is *prima facie* inadmissible as it is perceived as irrelevant facts. Such evidence is only admissible if it falls within one or more of the exceptions in s 32(1) of the Evidence Act: see my own Judgment in *Esben Finance Limited and others v Wong Hou Lianq Neil* [2020] SGHC(I) 25 at [77];

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Chen Siyuan & Lionel Leo, *The Law of Evidence in Singapore* (Sweet & Maxwell, 3rd Ed, 2022) ("*Chen*") at para 4.070.

119 So far as the present case is concerned, that section provides in material part as follows:

> **Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant**
>
> **32.**—(1) Subject to subsections (2) and (3), statements of relevant facts made by a person (whether orally, in a document or otherwise), are themselves relevant facts in the following cases:
>
> …
>
> **or is made in course of trade, business, profession or other occupation;**
>
> (b) when the statement was made by a person in the ordinary course of a trade, business, profession or other occupation and in particular when it consists of —
>
> (i) any entry or memorandum in books kept in the ordinary course of a trade, business, profession or other occupation or in the discharge of professional duty;
>
> (ii) an acknowledgment (whether written or signed) for the receipt of money, goods, securities or property of any kind;
>
> (iii) any information in market quotations, tabulations, lists, directories or other compilations generally used and relied upon by the public or by persons in particular occupations; or
>
> (iv) a document constituting, or forming part of, the records (whether past or present) of a trade, business, profession or other occupation that are recorded, owned or kept by any person, body or organisation carrying out the trade, business, profession or other occupation,
>
> and includes a statement made in a document that is, or forms part of, a record compiled by a person acting in the ordinary course of a trade, business, profession or

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> other occupation based on information supplied by other persons;
>
> **or against interest of maker;**
>
> (c) when the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose the person or would have exposed the person to a criminal prosecution or to a suit for damages;
>
> …
>
> **or is made by person who is compellable but refuses to give evidence;**
>
> (i) when the statement was made by a person who, being compellable to give evidence on behalf of the party desiring to give the statement in evidence, attends or is brought before the court, but refuses to be sworn or affirmed, or is sworn or affirmed but refuses to give any evidence;
>
> **or is made by person who is dead or who cannot be produced as witness;**
>
> (j) when the statement is made by a person in respect of whom it is shown —
>
> (i) is dead or unfit because of his or her bodily or mental condition to attend as a witness;
>
> (ii) that despite reasonable efforts to locate him or her, he or she cannot be found whether within or outside Singapore;
>
> (iii) that he or she is outside Singapore and it is not practicable to secure his or her attendance; or
>
> (iv) that, being competent but not compellable to give evidence on behalf of the party desiring to give the statement in evidence, he or she refuses to do so;
>
> **or by agreement.**
>
> (k) when the parties to the proceedings agree that for the purpose of those proceedings the statement may be given in evidence.

120 At this stage, it is convenient to highlight at least some of the important general points concerning admissibility of evidence in this case under this

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section and, so far as relevant, my conclusions with regard to the admissibility of particular documents/statements submitted by the parties and, more specifically, the admissibility of evidence as to the truth of the contents of certain documents relied upon by the parties in support of their respective cases.

121 However, before doing so, I should clarify and emphasise two points. First, it is important to note that pursuant to s 32(3) of the Evidence Act, even if particular statements are *prima facie* admissible in evidence under the relevant exceptions, the Court has a residual discretion to exclude such evidence. In that context, I was referred to the applicable principles as summarised in *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 ("*Gimpex*") at [103]−[109]. For present purposes, it is sufficient to say that I do not consider that it would be appropriate to exercise that discretion with regard to any of the documents/statements otherwise admissible under s 32(1) of the Evidence Act. Second, a conclusion that evidence is admissible under s 32(1) of the Evidence Act says nothing, of course, about what weight, if any, to ascribe to such evidence. Pursuant to s 32(5) of the Evidence Act, that is ultimately a matter for the Court.

(1) Section 32(1)(*b*)

122 As to s 32(1)(*b*), I note that it was apparently introduced (and amended) to give the Court a more flexible exception to the hearsay rule: *Columbia Asia* at [20]; and that, as noted by the Court of Appeal in *Gimpex* at [92] when surveying the legislative history of the provision, the Parliamentary intention was to remove "technical limitations to the scope of the 'business statement' exception, and to allow a court the discretion to admit all business records produced in the ordinary course of business which appear *prima facie* authentic". The Court of Appeal in *Gimpex* also endorsed (at [94]) the principles

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espoused by the learned Prof Jeffrey Pinsler SC, *Evidence and the Litigation Process* (LexisNexis, 4th Ed, 2013) ("*Pinsler*") at para 6.008:

> The term 'record' is not defined in the [Evidence Act]. It may consist of a single document which includes information or two or more documents which contain information. In any event, it must be compiled by a person in the ordinary course of his trade, business, profession or other occupation. There is no express requirement that the compiler and the persons who supplied the information included in the record must have personal knowledge of that information. Therefore, s 32(1)(*b*)(iv) is broader than the repealed s 272 of the current CPC (and its predecessor, s 380 of the former CPC), which required the supplier of information to have, or to be reasonably supposed to have had, personal knowledge concerning the facts. Moreover, where the supplier of information was merely an intermediary (as when he received information from another supplier of information, who might have been an intermediary himself), the intermediary or intermediaries had to have been acting under a duty. *The absence of these requirements in s 32(1)(b)(iv) means that hearsay upon hearsay (multiple hearsay) to an unlimited degree may be admitted without safeguards concerning the knowledge of the persons involved in transmitting the information.* Furthermore, the condition in the repealed s 272 that direct oral evidence of the facts would have been admissible (*ie*, the court could have accepted direct testimony of the facts if it had been available) is also absent from s 32(1)(*b*)(iv). Additionally, the protection in the repealed s 272, which precluded the admissibility of a statement in the record if the person who supplied the information did so after the commencement of investigations into the offence, has not been retained by s 32(1)(*b*)(iv). These omissions raise the real possibility that documentary records admitted under s 32(1)(*b*)(iv) may be unreliable, a particular concern where the accused has to face such evidence in criminal proceedings.
>
> [emphasis in original removed, emphasis added in italics]

123 The High Court in *Bumi Geo Engineering Pte Ltd v Civil Tech Pte Ltd* [2015] 5 SLR 1322 at [105] explained that:

> To qualify under this exception, the entry must have been in the way of business. This has been defined to mean a course of transaction performed in one's habitual relations with others and as a material part of one's mode of obtaining a livelihood…

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This proposition was affirmed in *Management Corporation Strata Title Plan No 3556 (suing on behalf of itself and all subsidiary proprietors of Northstar @ AMK) v Orion-One Development Pte Ltd (in liquidation) and another* [2020] 3 SLR 373 at [22].

124 The rationale behind s 32(1)(*b*) of the Evidence Act is that a statement or entry made in the ordinary course or routine of business or duty may be presumed to have been done from disinterested motive and may therefore be taken to be generally true: *Pinsler* at para 6.006. At this stage, I note that QBE submits that responses which disinterested non-parties provided by way of correspondence when they were asked about their trading counterparts plainly satisfy the requirement for a statement made in the "ordinary course of business" in s 32(1)(*b*) of the Evidence Act. So far as relevant, I consider such submission further below together with the other documents and statements that the claimants say fall within this exception. I also note that this exception to the hearsay rule was likewise heavily relied upon by the claimants in support of their case that the "transaction documents" (including copies of the alleged sale contracts, the alleged invoices and packing lists) all constituted part of Novita's business records and admissible in evidence under s 32(1)(*b*). For its part, QBE disputed that any of these documents were "authentic" and that, in any event, they were not admissible under this section.

(2) Section 32(1)(*c*)

125 This exception to the rule against hearsay is perhaps more straightforward although, in order to get within the exception, the essential question is whether the statement is one made against the interest of the maker. At this stage, I merely note that this exception to the hearsay rule was heavily relied upon by the claimants in support of their case that Ms CY's conversations

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were admissible in evidence under s 32(1)(*c*) on the basis that the statements made by the individuals with whom Ms CY spoke were made against their own (*ie*, the Alleged Buyers) interest. I deal with this later in this Judgment.

(3) Sections 32(1)(*j*)(iii) and (iv)

126 In order to get within the exception in sub-section (iii), it is necessary to show that (a) the maker of the statement is outside Singapore; and (b) it is not practicable to secure that person's attendance. As stated in *Gimpex* at [98], the second limb is "less straightforward, in the sense that what is 'practicable' is open to interpretation and would depend on the circumstances". Sub-section (iv) potentially overlaps to some extent. It requires that the maker of the statement is not "compellable" and that he or she refuses to give evidence.

127 In the present case, the claimants initially sought leave of the Court on the fourth day of the trial to lead evidence in chief from Mr Tyndall to show that Mr Trivedi was not in Singapore and that it was not practicable to secure his attendance as a witness at the trial. I refused that application on the basis that, in my view, it would be wrong in principle to consider such an application without, at the very least, the claimants first providing a witness statement from Mr Tyndall setting out, even in broad terms, the substance of what he (Mr Tyndall) might say.

128 Thereafter, late on the evening of the fourth day of the trial or early on the morning of the next day *ie*, the fifth day of the trial, the claimants served and thereafter sought leave to adduce in evidence a further witness statement from Mr Tyndall to the effect that Mr Trivedi was not in Singapore; setting out the steps that had been taken by the claimants to seek to persuade Mr Trivedi to come to Singapore to give evidence – all without success; and confirming that

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Mr Trivedi was not "compellable" as a witness and that it was not practicable to secure his attendance at trial. In addition, Mr Tyndall referred to and attached a number of documents to that witness statement concerning the claimants' attempts to contact Mr Trivedi and to persuade him to give evidence at the trial.

129 On behalf of QBE, it was submitted that I should refuse that application for leave to serve that further statement of Mr Tyndall – in particular because the documents referred to in and attached to Mr Tyndall's statement had not previously been disclosed and provided to QBE as they ought to have been; and that, in any event, Mr Tyndall's statement came too late. Late (indeed very late), it certainly was. However, as conceded by counsel on behalf of QBE, there was no prejudice and, on that basis, I granted leave to the claimants to adduce in evidence that further witness statement by Mr Tyndall.

130 It is unnecessary to set out the details contained in that witness statement save to say that, in light of Mr Tyndall's evidence, I accept that the claimants have used reasonable endeavours to persuade Mr Trivedi to give evidence in this trial; and to note that Mr Trivedi has been wholly uncooperative and has, in effect, point blank refused to assist the claimants and to come to Singapore to give evidence. For present purposes, I accept that Mr Trivedi is not in Singapore; that it is not practicable to secure Mr Trivedi's attendance as a witness in this trial; that he is not compellable to give evidence; and that any statements proven to have been made by Mr Trivedi are admissible evidence under ss 32(1)(*j*)(iii) and/or 32(1)(*j*)(iv) of the Evidence Act. I consider further below what, if any, relevant statements have been made by Mr Trivedi and are admissible in evidence.

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131 So far, I have focussed on the statutory provisions in the Evidence Act with regard to the documents/statements sought to be put in evidence and relied upon by the claimants.

132 I turn then to consider other evidence which QBE sought to rely on in certain other documents from non-parties as identified in a table entitled Annex B to QBE's note on admissibility of evidence dated 6 November 2024 which may be grouped into three broad categories *viz*: (a) statements in correspondence about the investigated trade flows; (b) statements in witness statements about the investigated trade flows; and (c) underlying documents concerning the non-parties' involvement in the investigated trade flows.

133 The claimants admitted the authenticity of all these documents but disputed their admissibility on various grounds. As submitted by the claimants and contrary to QBE's primary submission, the contents of most, if not all, of these documents were, in my view, *prima facie* inadmissible as to the truth of their contents by reason of the rule against hearsay. However, it was submitted on behalf of QBE that the makers of all these statements and documents were not in Singapore; that they were not compellable; that they had either refused to give evidence or that it was not practicable to secure their attendance; and that such documents/statements were admissible in evidence pursuant to ss 32(1)(*j*)(iii) and/or 32(1)(*j*)(iv) of the Evidence Act. For present purposes, it is sufficient to note that as I ruled in the course of the trial, I accept that the statements made in the following documents are admissible in evidence as to the truth of their contents pursuant to s 32(1)(*j*)(iii) and/or s 32(1)(*j*)(iv) of the Evidence Act:

(a) with regard to the Alleged Sealoud Contract:

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(i) the statements made by Ms Yenni Wiska Ariani ("Ms Yenni") in emails dated 19 August 1922 and 4 April 2024;

(ii) the witness statement of Mr Himbauan Ramadhan ("Mr Ramadhan") dated 4 September 20924 (including the emails appended to such statement dated 17 July 2020, a DHL shipment receipt with reference OOLU2642654180, an invoice from PT Timah to Indometal and an extract from PT Timah's bank statement);

(iii) an email from Mr Rolan Rizki ("Mr Rizki") dated 17 April 2024; a further email from Mr Rizki dated 24 April 2024 including certain attached documents *viz* an invoice from Indometal to Viant, an invoice from PT Timah to Indometal and a screenshot of Indometal's bank account; and a witness statement of Mr Rizki dated 20 August 2024;

(iv) an email from Viant dated 17 September 2024 including various other documents attached to that email;

(v) a statement from Ningbo Veken dated 6 March 2024 including various other documents attached to that statement;

(vi) a witness statement from Mr Bo Shao ("Mr Bo") dated 31 May 2024;

(b) with regard to the Alleged NSJ Contract:

(i) an email dated 16 December 2023 from Mr Grant Fincham from the North American office of Ameropa; and

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(ii) an email dated 5 August 2024 from Mr Gregory Wierzynski (Ameropa's General Counsel) including various other documents attached to that email.

134 Against that background, I turn to consider the further material sought to be relied upon by the claimants to prove that the Alleged Trades were indeed genuine physical trades.

The alleged transaction documents

The Alleged Contracts

135 The first category of documents sought to be relied on by the claimants is the transaction documents *viz* the Alleged Contracts, related invoices, packing lists and notices of assignment in respect of each Alleged Trade. QBE disputes both the authenticity and admissibility of these documents. As regards authenticity, the difficulty facing the claimants is that that there is no direct evidence at all by any person with relevant personal knowledge that these documents are authentic. However, I readily accept that the authenticity of a document may be proved otherwise than by direct evidence by a person with relevant personal knowledge. But it seems to me that the authenticity of a document must be proved by at least some admissible evidence including, of course, indirect and circumstantial evidence. To be clear, the fact that these documents were obtained by the claimants from Novita and Mr Tyndall's evidence in relation to them do not prove that they are authentic; and apart from the so-called Sealoud ledger and Ms CY's conversations which the claimants heavily rely on (which I consider below), there is no other direct admissible evidence to prove their authenticity.

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136 Moreover, QBE submitted that it is noteworthy that each of the eight Alleged Sales Contracts is in precisely the same form as the others, save only as to certain of the commercial terms (*eg*, the commodity, quantity, price, and load and disports). As observed by QBE's commodity trading experts, it is highly unusual to find identical or even similar contracts being used for commodities as different as tin ingots (which are typically transported in containers), and wheat/soybeans (which are typically transported in bulk) by buyers in different countries, and in respect of commodities being transported to and from different places.

137 Further, QBE submitted that there are a number of curious features to be found in each of the Alleged Sale Contracts (notwithstanding they all purport to be independent, arm's length transactions) which are unworkable, inappropriate and/or inconsistent with market practice and which, at the very least, throw considerable doubt on their authenticity. In that context, QBE drew particular attention to the following:

> (a) None of the Alleged Sales Contracts stipulates a shipment period or a delivery date. QBE's experts have highlighted this as "unacceptable" and "impractical" and a major departure from normal practice in the trading for all the commodities under question. The claimants' expert, Mr Mahajan, accepts that shipment period is "important" when trading wheat and soybeans. He nonetheless suggested that since the Alleged Sale Contracts for all the Alleged Trades "appear to have been agreed very close to the shipment date", that "could imply" that the vessel was already nominated and the shipment period was "mutually understood", obviating the need for express stipulation in the Alleged Sale Contracts. However, that explanation is entirely speculative and although I am prepared to assume

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that it may be theoretically possible, I accept the views expressed by QBE's experts as summarised above.

(b) Each of the Alleged Sales Contracts for the agri commodities (*ie*, all the Alleged Sale Contracts save for the Alleged Sealoud Contract) incorporates the GAFTA 88 form. This form is purposed for container trading and, as Mr Bloemendal has highlighted, is ill-suited for the Alleged Sale Contracts covering agricultural products to be carried in bulk.

(c) Each of the Alleged Sale Contracts required Novita to present its commercial invoice, a full set of 3/3 original BLs, and a packing list. However, Mr Bloemendal highlighted that packing lists are not typically a documentary requirement for bulk cargoes (which all cargoes save for the one under the Alleged Sealoud Contract were). The list of required documents is also strikingly abbreviated. According to QBE's experts, typically, a CIF seller would be required to present certificates of origin, certificates as to weight and quality analysis, a copy of its insurance policy or certificate of insurance, and, in respect of agricultural goods, phytosanitary certificates. Mr Mahajan accepted that the missing documents that Mr Bloemendal highlighted are "important", but suggested that the documents to be presented, and their timing and nature is a "commercial matter" for Novita to agree with its Alleged Buyers. Of course, the terms agreed between any seller and buyer are ultimately a commercial matter for the parties concerned. However, that does not detract from the points made QBE's experts which I readily accept.

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(d) The Alleged Sale Contacts for the agri commodities describe the commodity to be sold and purchased in brief terms and none includes a detailed quality specification. However, the evidence of Mr Bloemendal (which I accept) was that there ought to be more detailed specifications including as to agreed quality grades with agreed tolerances of difference concerning the standard of the same, impurity allowances, whether only non-GM products are permitted, protein content, oil content, and moisture content; and that the absence of these is highly unusual and is not encountered in the market. Without them, the obvious point is that it is not clear exactly what it is that is being sold and purchased, notwithstanding the warranty given by Novita in each of the contracts that "the Commodity to be in accordance with the description and Quality specified in this Contract". In contrast, Mr Mahajan suggested that commodities traded on broader descriptions remain marketable, and it may not be necessary to describe them in detail where a trader is assured of its ability to on-sell them. However, once again, although this may be theoretically possible, the fact remains that, as confirmed by QBE's experts, the absence of detailed specifications is highly unusual and not encountered in the market. As submitted by QBE, the position may be contrasted with the sale contracts disclosed by the non-party witnesses, for example, the sale contract between Ameropa and ETG (for wheat) and the sale contract between Viant and Ningbo (for tin).

(e) Each of the Alleged Sale Contracts contains the same quantity and quality determination clauses which are patently one-sided and inimical to the interests of the seller. They permit the buyer to conduct its own analyses post-delivery without any provision for joint sampling

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and surveys. According to QBE's experts, such clauses are unusual and "illogical", and ones that no reasonable commodity trader would accept.

(f) Each of the Alleged Sale Contracts includes an identical material adverse events clause that is very one-sided in favour of the buyer and potentially highly problematic for Novita. The evidence of QBE's experts (which I accept) was that they had never seen such a clause and that its inclusion in any, let alone all, of the Sales Contracts is "commercially impractical/unviable" to the point of being "remarkable" and "incomprehensible".

(g) Each of the Alleged Sales Contracts also provides for deferred payment, as opposed to the normal requirement of payment against documents or on presentation of the goods. More unusual is that each of the Alleged Sales Contracts grants 180-day deferred payment terms to traders of limited size and reputation. According to Mr Bloemendal and Mr Delforge, this is rare and out of step with commercial practice. I accept that evidence.

Neither of QBE's experts was able to reconcile this pattern with their experience or with commercial logic.

138 Of themselves, I readily accept that the similarity of all these Alleged Sale Contracts and their highly unusual features do not necessarily prove that they were not genuine but, in my judgment, those aspects of the Alleged Sale Contracts do form an important part of the evidence in this case which, at the very least, would seem to support such a conclusion.

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The so-called Sealoud Ledger

139 In passing, I note that the claimants also sought to rely upon an entry with regard to the Alleged Sealoud Contract in what was described as a "Sealoud ledger". However, there was much confusion with regard to this document. In final submissions, the claimants' counsel attempted to reconcile that entry with the Alleged Sealoud Contract. However, it was Mr Tyndall's own evidence that he had been unable to carry out that reconciliation exercise. In such circumstances and absent any evidence from Sealoud as to the provenance of that document including who compiled this document and what this document was or what it was supposed to show, I do not consider that this entry provides much, if any, assistance to the claimants in seeking to prove that the Alleged Sealoud Trade was genuine.

Ms CY's conversations

140 I turn then to consider the evidential status of, and, if admissible, what weight, if any, should be ascribed to, Ms CY's conversations which were heavily relied upon by the claimants in support of their case that the Alleged Trades were genuine. The difficulty here is that although the conversations were undertaken by Ms CY, she has not been called to give oral evidence to confirm either authenticity or admissibility of what she was told during the conversations. For the avoidance of doubt, Mr Tyndall confirmed in evidence that Ms CY was still employed by Marketlend. So far as I am aware, there is no reason why she could not have been called.

141 In light of Mr Tyndall's evidence, I am prepared to accept that Ms CY's conversations are authentic – in the sense that the audio recordings and the transcripts record the conversations that Ms CY had with various individuals. However, it remains to consider whether what Ms CY was apparently told

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during those conversations is admissible as evidence of the truth of what was said.

142 The starting point is, of course, that, as already stated above, Ms CY has not herself been called. As such, the recordings and transcripts are inadmissible as hearsay unless they fall within one or more of the statutory exceptions. Here, the claimants submitted that Ms CY's conversations were admissible under s 32(1)(*b*) or s 32(1)(*c*) of the Evidence Act. This is on the basis of Mr Tyndall's evidence that Ms CY's conversations form part of Marketlend's standard procedures in chasing outstanding debts and/or that the statements made to Ms CY were, in effect, against the interests of the Alleged Buyers. I was initially rather doubtful as to whether these recordings/transcripts can properly be categorised as "business records" or that the statements made to Ms CY were, in effect, against the interest of the Alleged Buyers. However, without deciding these points, I am prepared to assume in the claimants' favour that these conversations are admissible in evidence as to the truth of what Ms CY was told under one or other of these exceptions to the hearsay rule.

143 If that is right, then Ms CY's conversations are at least some admissible evidence that the Alleged Trades were genuine although, of course, it remains to consider what weight (if any) to give to that evidence having regard to the rest of the evidence and relevant circumstances.

144 In that regard, the main difficulty with regard to Ms CY's conversations is that it is always possible that the individuals who spoke to Ms CY were not in fact honest people. They have not come to give evidence and have not been cross-examined. It is quite impossible to assess their credibility. Standing alone, I am unpersuaded that Ms CY's conversations provide sufficient credible evidence to satisfy the burden of proving that the Alleged Trades were genuine;

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and in any event, Ms CY's conversations do not stand alone but are only part of the jigsaw and must be considered together with all the other evidence (and absence of evidence) in this case.

145 It is then necessary to consider the facts and matters relied upon by QBE in addition to the facts and matter already referred to above, in support of its case that the Alleged Trades were not genuine or at the very least that the claimants have not satisfied the burden on them to show that they were genuine.

146 First, it is noteworthy that between May and August 2023, Mr Tyndall followed up a number of times with Mr Trivedi for "evidence and do[c]s" to show that Novita's alleged trades were not "fictitious and a fraud", requesting in particular for "bank statements and payments to suppliers…[and] [e]mails", emphasising that the evidence of Novita's purchase of the goods is "very important". Even now, there is no evidence *at all* of Novita's purchase of the goods that it allegedly sold to the Alleged Buyers. Similarly, the absence of what I have described as the "downstream material" is an important lacuna in the evidence which, at least in the absence of any explanation as to why such material could not be produced, tends to support QBE's case that the Alleged Trades were not genuine.

147 Second, there is the fact that no one from Novita (or the Alleged Buyers) has been called to give evidence to say that the Alleged Trades were genuine. Indeed, on Mr Tyndall's own evidence, Mr Trivedi has been uncooperative and refused to either assist or to give evidence. Further, it was Mr Tyndall's own evidence that he did not trust what Mr Trivedi said and that "..he [*ie* Mr Trivedi] just lied so many times...". If the Alleged Trades were genuine, I see no reason why Mr Trivedi would not be prepared to assist and to give evidence – and, on

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the contrary, every reason to do so given that he has apparently provided a personal guarantee.

148 Of course, Mr Trivedi's conduct and his refusal to give evidence or otherwise assist the claimants at this trial does not necessarily prove that the Alleged Trades were not genuine but, as submitted by QBE, such conduct and his refusal to give evidence or otherwise assist does, in my view, provide justification for an adverse inference that the Alleged Trades were not genuine. To some extent, the fact that none of the Alleged Buyers (whom Mr Tyndall referred to in evidence as "ghosts" because they have all apparently disappeared) has been prepared to assist and to give evidence perhaps points in the same direction – although I can well understand that they stand in an antagonistic position to the claimants and, to that extent, I suppose that there is an argument that their unwillingness to assist the claimants is perhaps more understandable.

149 Third, QBE relied heavily on the similarity and unusual features of the Alleged Sale Contracts. I have already referred to this part of QBE's case above and expressed my conclusion (at [136]−[138]) which I do not propose to repeat.

150 Fourth, as I have already stated above, QBE relied heavily on the evidence obtained from various third parties who were involved in the chain of sales represented by the bills of lading which, according to the claimants, covered the commodities which were the subject of the Alleged Trades. That evidence was obtained by QBE's lawyers in the course of their investigations in this case by contacting the various shippers and notify parties named in the bills of lading in an attempt to reconstruct the actual flow of the goods under them. In addition to seeking confirmations from these parties by

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correspondence, QBE also made various applications and obtained orders from this court against such parties.

151 In summary, not a single shipper, notify party or intermediary who responded to those inquiries and/or has provided witness statements was aware of *any* involvement of Novita or the Alleged Buyers in the trade flows for the respective bills of lading. Further, in respect of at least the Alleged Sealoud Contract and the Alleged NSJ Contract, QBE submitted that the responses received and the important oral evidence of Ms Lim (with regard to the Alleged Sealoud Contract) and Ms Gomez (with regard to the Alleged NSJ Contract) confirmed that the underlying goods were traded in a chain from original shipper to end receiver without the involvement of Novita and its Alleged Buyers; and that the actual sales chain from original shipper to end receiver was as I have already summarised above at [15].

152 In response, it was submitted by the claimants that the reconstructed chain for Sealoud was inconclusive. In particular, the claimants submitted: (a) that the witness statements from PT Timah, Indometal, Viant and Ningbo were not made by the traders or operators with personal knowledge of how the bills of lading were dealt with; (b) that the statements from employees making observations from the records therefore only establish that they were unable to retrieve records of trades with Sealoud and do not exclude the possibility of Novita having dealt with and obtained bills of lading from those parties; (c) that of all the parties involved in the Sealoud trade, only a representative of Viant, Ms Samantha Lim, showed up to give evidence; and (d) that her evidence was of limited probative value as (i) she is a professional director who has no involvement in any of the affairs of the company; (ii) the documents annexed to her witness statement were not compiled or retrieved by her, but by the accounts team, which is an external service provider uninvolved in the making of those

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documents; and (iii) Viant has no physical premises and has three employees, none of whom are traders. Similarly, the claimants submitted that the reconstructed trade chain for NSJ was incomplete in that no response had been obtained from Grainexport with the consequence that QBE could not assert that Novita could not have dealt with Grainexport/UGC in this trade.

153 Given the very gaping holes in the evidence provided by Novita with regard to its own alleged purchases and sales, the claimants' attempts to undermine the evidence adduced by QBE as a result of its own very extensive investigations including, in particular, the evidence concerning the Alleged Seloud Contract and Alleged NSJ Contract are somewhat ironic.

154 In contrast and contrary to the claimants' submissions, the documentary material which QBE managed to obtain and which I have held is all admissible in evidence as well as the oral evidence of both Ms Lim and Ms Gomez (both of whom have no interest whatsoever in the outcome of the present litigation, were patently honest and whose evidence I readily accept) are very compelling in demonstrating that, on a balance of probabilities, these two particular Alleged Trades must be fictitious.

Conclusion with regard to Issue 3

155 Given my observations with regard to the totality of the evidence adduced and submissions made by the parties as summarised above, it is my conclusion that the claimants have failed to prove on a balance of probabilities that the Alleged Trades were genuine physical trades in the sense stated above. It follows that the claimants' claims must, in any event, be dismissed even if I am wrong in respect of my earlier conclusions with regard to the breaches of clause 2, clauses 10(b) and (c) and clause 8 of the Policy Wording.

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156 Insofar as may be necessary, I am also satisfied on a balance of probabilities that the Alleged Sealoud Trade and the Alleged NSJ Trade were both fictitious; and I so find. It follows that the claimants' claims in respect of at least these two trades must be dismissed for that reason even if I am wrong in respect of my earlier conclusions with regard to the breaches of clauses 2, 10(b), 10(c) and 8 of the Policy Wording.

157 It is fair to say that there was no similar direct evidence of the kind that QBE had managed to obtain in relation to these two alleged contracts to prove that the other Alleged Trades were also fictitious. However, it seems to me that having regard to the totality of the evidence, the irresistible inference is, at least on a balance of probabilities, that that is indeed the case; and I so find.

158 It follows that the claimants' claims in respect of the other six Alleged Trades must also be dismissed for that reason even if I am wrong in respect of my earlier conclusions with regard to the breaches of clauses 2, 10(b), 10(c) and 8 of the Policy Wording. For the avoidance of doubt, even if I am wrong in making what seems to me that irresistible inference, the failure to disclose that the Sealoud Alleged Contract (which pre-dated the issuance of the Policy) was fictitious would: (a) constitute a breach of a condition precedent which would forfeit the right to make any claim under the Policy; and/or (b) entitle QBE to avoid the Policy. I deal with both these points later in this Judgment.

159 Before leaving this part of the case, I should mention that, in addition to the facts and matters to which I have already referred, QBE relied on what it submitted was evidence obtained as a result of extensive investigations carried out primarily by Mr Vickers as set out in his detailed report to show that Novita and most of the Alleged Buyers had links with and/or companies owned by

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Mr Sujana or the Sujana Group who have been accused of money laundering using shell companies to conduct fictitious transactions.

160 QBE submitted that this evidence supports its case that the Alleged Trades were not genuine physical trades. In particular, based on those investigations, QBE highlighted the following points:

(a) As summarised in a detailed summary table presented by Mr Vickers in his report (the "JSH Connections Table"), Novita and many of the Alleged Buyers (including Fidelity, Max Arabian, Green Trees and Seashore) have pervasive connections with the Sujana Group in terms of key persons, who have been investigated for fraud and money laundering, including by using shell companies to conduct fictitious transactions. (I do not propose to set out the JSH Connections Table in this Judgment because it extends to over 70 pages.)

(b) Mr Vickers identified in para 6.2 of his Summary Report a number of what are alleged to be fraud schemes in India involving some members of the Sujana Group.

(c) There is evidence that some of the Alleged Buyers (*ie*, Fidelity, Max Arabian, UIG, Crown and Green Trees) have also *separately* engaged in fictitious trading, suggesting (particularly in light of the pervasive connections with the Sujana Group mentioned above) that the present claims are a part of a wider fraudulent scheme. These other instances of fictitious trading are as follows:

(i) Nine other claims have been made under a separate TCI policy that QBE's sister company in Malaysia ("QBE Malaysia") had issued to Fidelity. In respect of all these nine

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other claims, QBE Malaysia has ascertained through confirmations obtained from the parties which actually traded the goods that the goods were traded to the exclusion of Fidelity or its alleged buyers (which, notably, included Max Arabian, Crown and UIG).

(ii) QBE had issued another TCI policy to a party named Longview Resources (SG) Pte Ltd ("Longview"), which I shall term the "Longview TCI Policy". Longview allegedly sold goods to Green Trees (thereby making Green Trees an alleged buyer under the Longview TCI Policy), with claims against the Longview TCI Policy subsequently being made in relation to this alleged sale. According to Mr Smart, QBE has ascertained that the alleged trade between Longview and Green Trees was also fictitious in that the underlying goods were traded to the exclusion of these two parties.

(iii) Fidelity's sole shareholder, Seashore Resources Pte Ltd (which is another alleged buyer under the Longview TCI policy), has also been ascertained to have been involved in fictitious trading.

(d) Mr Vickers' Summary Report shows that there are connections, in terms of ownership and/or control and/or key persons, between Novita and the Alleged Buyers and amongst the Alleged Buyers including:

(i) Novita and Fidelity are both owned by entities that are insured buyers under other TCI policies written by QBE.

(ii) A Mr Jundimeda holds a 49% stake in two Insured Buyers, Crown Beec and Green Trees. A Mr Abdulrahman holds

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a 51% stake in Crown Beec and is believed to hold the same stake in Green Trees and NSJ.

(iii) Mr Trivedi transferred his shares in Quant Impex Pte Ltd to Yeskey, one of the Insured Buyers.

(iv) A director of Fidelity has provided an address for corporate filings for a company in which Max Arabian, another of the Insured Buyers, is the sole shareholder.

(v) The current sole shareholder of Max Arabian, a Mr Thota, is also a shareholder in another Insured Buyer, NSJ.

161 On behalf of the claimants, it was submitted that all these facts and matters summarised in the previous paragraph would only be admissible in evidence if they qualified as "similar fact evidence" falling within s 14 or s 15 of the Evidence Act *ie*, to prove a person's state of mind: *Jason Grendus v Stephen David Lynch and others* [2021] SGHC 191 at [237] ("*Grendus*"); and that such facts and matters did not so qualify in the present case because: (a) they are sought to be adduced by QBE to prove what Novita had done (*ie*, the fact of fraud or fictitious trades) and not Novita's state of mind; and (b) they are unconnected to the specific facts (or transactions) in issue: *Grendus* at [239].

162 In any event, the claimants submitted that even if relevant, they should be excluded for their lack of probative value relative to their prejudicial effect because:

(a) allegations against Mr Sujana and Sujana-linked companies are limited to investigations having commenced. They have not resulted in any findings of fact or conviction – *ie*, the fact relied on is investigations being commenced, not any act by Mr Sujana or the companies; and

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(b) these allegations are also not made against Novita or any of the Insured Buyers themselves, but against companies which are alleged to be tenuously "connected". They cannot be similar fact evidence as to Novita's or the Insured Buyers' state of mind (or actions, if that is even permissible).

In the event, I have not found it necessary to decide these issues. I readily accept that the facts and matters referred to in the previous paragraphs raise potential suspicions as to the propriety of the Alleged Trades but, in my view, it is difficult, if not impossible, to assess their probative value without performing what would, in effect, be a mini-trial with regard to each supposed connection and alleged impropriety. That is not an exercise which has been possible or at least practicable to carry out within the confines of the present trial; and, in the light of the other evidence and conclusions which I have reached as stated above, it is unnecessary to do so. Accordingly, without determining the claimants' legal objections, I decided that the appropriate course was to assume in the claimants' favour that these facts and matters were either inadmissible or of no probative value; and, in reaching the conclusions stated above (at [155]−[158]), I put them out of my mind.

163 In the light of my conclusions with regard to Issue 3, the other issues all fall away. But, in case I am wrong, I deal with them briefly below.

Issue 4: Has there been any other breach of a condition precedent to the right to claim under the Policy?

164 I have already accepted QBE's case that there was a breach of clauses 10(b) and 10(c) and also clause 8 of the Policy Wording and that such breaches are fatal to the claimants' claims. So I deal very briefly with the other alleged

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breaches which are said by QBE to be a breach of a condition precedent to the right to claim under the Policy.

165 In summary, QBE submitted that there was, in effect, an express contractual duty to disclose any material fact both before the inception of the Policy and thereafter by virtue of Condition 10(a) of the Policy Wording (which obliged the Insured to disclose in writing "all material facts and information concerning or relating to this Policy, the Insured Buyers, and its dealings with the Insured Buyers and any likely claim under this Policy") as well as item 15 of the Proposal Form (which provided that the Insured is required to tell QBE anything that it "know[s], or could reasonably be expected to know, may affect our decision to insure you and on what terms") and the "Duty of Disclosure" endorsement to the Policy Schedule which specifies that "the Insured is required to tell the Insurer everything the Insured knows and that a reasonable person in the circumstances could be expected to know and is a matter relevant to the Insurer's decision whether to issue a policy, and if so, on what terms".

166 Further, QBE submitted that it is trite law that an insured is obliged to disclose any material fact *ie*, any fact which would be taken into account by a prudent insurer in deciding whether to accept the proposed risk and if so on what terms; and that this is an objective inquiry, decided by reference to a prudent insurer, not the subjective insurer in question. I did not understand that any of the foregoing was disputed by the claimants save that there was an issue as to whether there was any continuing duty of disclosure which is unnecessary to resolve – if only because most of the Alleged Sale Contracts all pre-date the issuance of the Policy.

167 Against that background, QBE submitted that there were two relevant breaches of the duty to disclose prior to acceptance of the risk by QBE.

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168 First, QBE submitted that there was a relevant material non-disclosure before the issuance of the Policy as to the nature of the trades sought to be insured. It is unnecessary to consider the various alternative ways in which QBE put its case under this head. Nor is it necessary to refer specifically to the evidence of Mr Brittenham or QBE's witnesses. For present purposes, it is sufficient to say that on the basis of that evidence, I am satisfied that the fact that any one or more of the Alleged Trades was fictitious (as I have found) was: (a) plainly material to the risk which a prudent insurer would have been willing to undertake; (b) that if that fact had been disclosed, QBE would never have accepted the risk; and (c) that the failure to make such disclosure was a breach of a condition precedent to the right to claim under the Policy. Accordingly, insofar as may be necessary, all the claims fail for this reason.

169 Second, QBE submitted that there had been a breach of the obligation to disclose in relation to a Notifiable Event and/or Event of Insolvency. In this context, QBE submitted that, in addition to the general disclosure obligations under Condition 10 of the Policy Wording, Condition 3(d) of the Policy Wording required the Insured, in the event of a Notifiable Event occurring, to notify the Insurer with the least possible delay. Condition 3(c)(i), in turn, deems a Notifiable Event to have occurred when, among other things, and to the knowledge of the Insured, "any circumstances arise which could, in the reasonable opinion of a prudent Insured, give grounds for the belief that an Insured Buyer may not (or may be unable to) perform or comply with its obligations under a contract of sale with the Insured".

170 Relying on that provision as well as the general obligation to disclose material facts referred to above, QBE submitted that Novita had here failed to disclose that, prior to inception of the Policy on 14 July 2020 (but during the pendency of the Preceding Policy), a winding-up application had been presented

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in Malaysia on 18 November 2019 in respect of one of the Insured Buyers, Fidelity, which, perhaps coincidentally or not culminated in the issuance of the winding-up order on 15 July 2020. It is common ground that the foregoing was never disclosed to QBE before issuance of the Policy; and I readily accept: (a) the evidence of Mr Brittenham that Fidelity's winding up was plainly a matter that was material to the risk being insured, at least in respect of Fidelity as a proposed buyer for giving grounds for the belief that Fidelity may be unable to pay its debts; and (b) the evidence of QBE's witnesses that QBE would not have accepted the risk if they had been informed of the winding up application.

171 Thus, the main issue here is whether QBE can show on a balance of probabilities that Novita was or ought to have been aware of the winding up application against Fidelity, but failed to disclose it.

172 In support of its case, QBE submitted that Novita was or ought to have been aware of such winding-up application for one or more of the following reasons *viz*: (a) Novita held itself out as having robust risk management proceedings in its PowerPoint, and should therefore have monitored any winding-up petitions against its buyers; (b) Novita and Fidelity are not only linked through their connections to the Sujana Group, but also through overlapping buyers (who in turn are *also* connected to the Sujana Group); (c) an adverse inference should be drawn against Novita, given its failure to participate in the proceedings; and (d) the claimants have also not led any evidence from Novita on this issue, nor any evidence of their attempts to clarify the position with Novita.

173 On behalf of the claimants, it was submitted that there is no evidence that Novita actually knew (or even ought to have known) of the winding up application presented against Fidelity. On the contrary, QBE's own "robust risk

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management processes" on Fidelity before the issuance of the Fidelity policy on 14 July 2020 failed to discover the winding up application; and the documents show that the Labuan Financial Services Authority confirmed that as at 4 June 2020 that there was no legal process for winding up of Fidelity which had been initiated or filed. In evidence, Mr Evans agreed that this was "confusing"; and Mr Brittenham accepted that this was the kind of document which he would rely on. In light of that evidence and even given whatever inference might be drawn by reason of: (a) the fact that the winding-up order was made only the day following when QBE issued the Policy; (b) the suggested "links" between Fidelity and Novita; and (c) the failure of Novita to participate in these proceedings, I find it difficult, if not impossible, to conclude that Novita knew or ought to have known of the winding up application. Insofar as may be relevant, I therefore reject this part of QBE's case.

174 Third, QBE submitted that Novita failed to disclose Novita's connections with the Sujana Group including the following:

(a) A former sole shareholder of Novita, Tejaswini Engineering Private Limited ("Tejaswini") which held 100% stake in Novita from 31 March 2017 to 5 May 2017, is reportedly a shell company that siphoned funds in a Mr Sujana-directed fraud scheme.

(b) A former director of Novita, Mr Rama Krishna Raju Gadhiraju ("Mr Gadhiraju") (from 23 March 2015 to 2 March 2017) was also a director of Tejaswini from 23 March 2015 to 18 March 2019. Another former sole director of Novita, Mr Rama Varanasi Srirama Chandra Murthy ("Mr Varanasi Murthy") (from 2 March 2017 to 11 October 2017) held directorships at the following companies liked with Mr Sujana: (a) Sujana Universal Industries Ltd (from 29 January 2009

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to 29 January 2010); (b) Neueon Towers Ltd, f.k.a. Sujana Towers Limited ("Sujana Towers") (from 4 October 2007 to 29 January 2009); and (c) EBC Bearings (India) Limited (from 30 June 2008 to 6 June 2016). EBC Bearings (India) Limited was identified in Indian court documents as an alleged shell company under the shared control of individuals linked to the Sujana Group, which had been issuing fake invoices.

(c) Novita's director prior to its liquidation, Mr Trivedi shared the same address in Malaysia as Mr Gadhiraju, Mr Varanasi Murthy and Mr Mohan Madhan Mohan Parki ("Mr Parki", who was also a former director of Tejaswini). Mr Trivedi has also been a director of another insured party under a separate QBE-issued TCI policy (who has also made claims), and of a buyer and a seller to that insured party in respect of claims that have been made under that policy, *all* of which are connected to the Sujana Group.

175 I am prepared to assume in favour of QBE that these are matters which, if true, were probably material to the risk. That was the evidence of Mr Brittenham which I accept. However, as stated above (at [162]), it has been impossible or at least impracticable to carry out an exercise to examine properly the nature of what are alleged to be the so-called connections between Novita and the Sujana Group and, given my conclusions that the present claims all fail for a raft of other reasons and that it is therefore strictly unnecessary to consider this particular issue, I do not propose to say anything more about this point.

Issue 5: Was QBE entitled to avoid the Policy?

176 To a large extent this issue overlaps with other issues which I have already considered. That is why I have left it to the very end. I can therefore

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deal with it very briefly *viz*, given: (a) my conclusions that the Alleged Sealoud Trade and the Alleged NSJ Trade were both fictitious; (b) that such fact was material to the risk but was never disclosed to QBE; and (c) that QBE would never have agreed to the issuance of the Policy if they had been told of the same, it follows that QBE was entitled to avoid the Policy. So far as necessary, it also follows that the representations contained in the PowerPoint were false and that QBE was entitled to avoid the Policy for that reason as well.

Conclusion

177 For all these reasons, it is my conclusion that these claims should be rejected and dismissed.

178 Given that outcome, it seems to me that QBE must be entitled to its reasonable costs to be assessed by me if not agreed. With that in mind, the parties are hereby directed to seek to agree on an appropriate order for costs within 21 days. Failing agreement, QBE shall submit its costs submissions (limited to seven pages) within 28 days and the claimants shall respond within seven days thereafter with their submissions (limited to seven pages) following which I shall make such order as may be appropriate.

Sir Henry Bernard Eder
International Judge

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Sandosham Paul Rabindranath, Alisa Toh Qian Wen (Dai Qianwen) and Choo Ian Ming (Cavenagh Law LLP) for the claimants; Baldev Singh Bhinder, Ramandeep Kaur and Vedam Rakesh (Blackstone & Gold LLC) for the defendant.

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