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

**[2025] SGHC(I) 22**

Originating Application No 3 of 2025 (Summons No 21 of 2025)

Between

Novo Nordisk A/S

… *Claimant*

And

(1) KBP Biosciences Pte. Ltd.
(2) Huang Zhenhua

… *Defendants*

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# JUDGMENT

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[Injunctions — Mareva injunction — Setting aside]
[Arbitration — Injunction — Court's powers under section 12A of the International Arbitration Act 1994 (2020 Rev Ed)]

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# Novo Nordisk A/S
# v
# KBP Biosciences Pte Ltd and another

**[2025] SGHC(I) 22**

Singapore International Commercial Court — Originating Application No 3 of 2025 (Summons No 21 of 2025)
Philip Jeyaretnam J
7, 9 and 11 July 2025

12 August 2025 Judgment reserved.

**Philip Jeyaretnam J:**

## Introduction

1 This is an application by the defendants, KBP Biosciences Pte Ltd ("KBP") and Huang Zhenhua ("Dr Huang"), to set aside a worldwide freezing order against them that I granted in *Novo Nordisk A/S v KBP Biosciences Pte Ltd and another and another matter* [2025] 3 SLR 1511 ("*Novo Nordisk 1*"). The worldwide freezing order was granted on an *ex parte* basis without notice, preventing KBP and Dr Huang from removing any of their assets that are in Singapore up to the value of US$730m. The worldwide freezing order was granted in support of a New York-seated arbitration that the claimant, Novo Nordisk A/S ("Novo"), then intended to commence. It has since been commenced against KBP and Dr Huang and alleges fraud on their part in relation to KBP's sale to Novo of a drug that KBP had developed.

2 KBP and Dr Huang contend that there is no good arguable case nor a real risk of dissipation. They also allege breaches of the duty to make full and frank disclosure. Lastly, they contend that the legal requirements for a court to grant interim relief under s 12A of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA") are not satisfied. Having considered parties' submissions, I dismiss the application. These are my reasons.

## Background facts

3 KBP is the global headquarters of a biotechnology research and development organisation founded by Dr Huang.[1] Dr Yonghong Fred Yang ("Dr Yang") is the organisation's Chief Development Officer.[2] KBP's lead product candidate is a compound known as Ocedurenone, that is said to control blood pressure and provide kidney protection.[3]

### *Phase 2 and the Interim Analysis*

4 Trials for a potential new drug go through various phases preparatory to seeking regulatory approval. Novo acquired Ocedurenone after Phase 2 and the institution of Phase 3. For this reason what the Phase 2 results truly showed about the efficiency of Ocedurenone was of great importance. Consistency of results was also significant. Ocedurenone began Phase 2 trials in April 2018. The Phase 2 trials were managed by Worldwide Clinical Trials, Inc ("WCT") as the contract research organisation ("CRO").[4] Phase 2 recruited patients from

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1 Claimant's Bundle of Documents ("CBOD") Bundle C1 ("C1") at p 296 (Huang Zhenghua's 3rd Affidavit filed 25 March 2025 ("Huang3") at para 6).

2 CBOD Bundle C2 ("C2") at p 4 (Yonghong Fred Yang's 1st Affidavit filed 27 March 2025 ("Yang1") at para 1).

3 C1 at pp 296–297 (Huang3 at paras 7–8).

4 C2 at p 8 (Yang1 at para 15).

clinical sites in the United States, Chile, Georgia, Bulgaria, Hungary, Israel and Australia.[5] By 1 June 2020, all patients had already been enrolled in Phase 2. Patients from Bulgaria were enrolled in March 2020.[6] KBP was the sponsor for Phase 2 and appointed Dr George Bakris ("Dr Bakris") and Dr Bertram Pitt ("Dr Pitt") as lead principal investigators ("PIs").[7]

5 In or around January 2020, KBP decided to perform an unplanned administrative interim analysis (the "Interim Analysis") to support manufacturing decisions of the Phase 3 study. On 13 April 2020, KBP and WCT approved a blinding plan, which was submitted to the US Food and Drug Administration ("FDA") on 15 April 2020.[8]

6 The Interim Analysis was made available to KBP in June 2020, which was based on data from the first 90 patients to complete week 12 of Phase 2. The results of the Interim Analysis did not show any clear treatment effect of Ocedurenone.[9]

7 In accordance with the blinding plan, KBP's clinical team (including the lead PIs) had no knowledge of the results from the Interim Analysis.[10]

8 Phase 2 ended on 5 August 2020.[11]

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5 C2 at p 9 (Yang1 at para 16).

6 C2 at p 12 (Yang1 at para 25).

7 C2 at p 9 (Yang1 at para 17).

8 C2 at p 11 (Yang1 at para 21).

9 C2 at p 12 (Yang1 at para 24).

10 C2 at p 12 (Yang1 at para 26).

11 Defendants' Written Submissions dated 16 May 2025 ("DWS (16 May)") at para 24.

9 On 24 January 2021, Dr Bakris, Dr Pitt and eight other individuals, including Dr Yang, submitted an article (the "Hypertension Article") for publication.[12] Among other things, the article concluded that Ocedurenone effectively lowers blood pressure.[13] The Hypertension Article was accepted and subsequently published in July 2021.[14]

10 On 17 June 2021, Dr Bakris and Dr Pitt, together with Mr Frederic Jaisser, a scientific adviser to KBP, submitted an article (the "EO Article") for publication.[15] Among other things, the article stated that Ocedurenone demonstrated clinical efficacy and safety.[16] The article was accepted and subsequently published on 19 October 2021.[17]

11 On 6 July 2021, the Phase 2 clinical study report ("CSR") was issued. The Phase 2 CSR was approved by Dr Bakris and Dr Pitt as lead PIs.[18] The Phase 2 CSR is a comprehensive document that provides a detailed account of the design, conduct, analysis and results of the clinical trial.[19] According to KBP, the Phase 2 CSR demonstrated that Ocedurenone had efficacy not just in Europe, but in North America and other regions (namely, Chile and Israel).[20] By contrast, Novo's position is that, unknown to it at the time of acquisition, data

12 C2 at pp 13–14 (Yang1 at para 31).

13 C2 at p 14 (Yang1 at para 33).

14 C2 at p 14 (Yang1 at para 32).

15 C2 at p 15 (Yang1 at para 35).

16 C2 at p 15 (Yang1 at para 37).

17 C2 at p 15 (Yang1 at para 36).

18 C2 at p 16 (Yang1 at para 39).

19 C2 at p 16 (Yang1 at para 40).

20 C2 at pp 17–19 (Yang1 at paras 42–48).

from the Bulgaria site was entirely responsible for Ocedurenone showing a treatment effect in Phase 2.[21]

***Phase 3***

12 KBP engaged PAREXEL International (IRL) Ltd ("Parexel") to be the CRO for Phase 3. The first patient for Phase 3 was screened on 17 November 2021, and the last patient was enrolled in October 2023.[22]

13 A steering committee (the "Phase 3 Steering Committee") oversaw the conduct of Phase 3. The committee comprised Dr Bakris, Dr Pitt, Dr Janet Wittes ("Dr Wittes") and Dr Yang.[23]

***Due diligence and acquisition***

14 In early 2023, Novo became interested in acquiring Ocedurenone.[24] Novo commenced its due diligence of Ocedurenone in February 2023, while Phase 3 was ongoing.[25] For this purpose, Novo had access to a full electronic data room with documents from KBP.[26] KBP uploaded a listing containing data on the vital signs of every patient enrolled in Phase 2 (the "Vital Signs Data Listing"), but in Portable Document Format ("PDF").[27] KBP also uploaded a set

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21 CBOD Bundle B1 ("B1") at p 69 (Peter Billeskov Schelde's 1st Affidavit dated 17 February 2025 ("Schelde1") at para 120).

22 C2 at p 22 (Yang1 at para 53).

23 C2 at pp 22–23 (Yang1 at para 54).

24 B1 at pp 35–37 (Schelde1 at paras 27–32).

25 B1 at p 37 (Schelde1 at para 33).

26 B1 at p 38 (Schelde1 at para 35).

27 C2 at p 27 (Yang1 at para 61); C2 at p683 to CBOD Bundle C5 at p713.

of documents it had previously submitted to the Chinese National Medical Products Administration (the "CTA Package").[28]

15 Following due diligence, Novo and KBP executed an asset purchase agreement (the "APA") on 11 October 2023, and the acquisition closed on 29 November 2023.[29]

16 On 19 November 2023, Novo paid US$700m by wire transfer to KBP's account with DBS Bank Ltd ("DBS"), and deposited US$100m in escrow for release 18 months after closing, except to the extent necessary to satisfy any unsatisfied claims for indemnification asserted prior to the release date.[30]

***Post-closing, Futility Determination and termination***

17 KBP continued as the sponsor of Phase 3 post-closing, but Novo had broad rights to control and direct KBP with regard to the conduct of Phase 3.[31]

18 The Phase 3 trial protocol provided for a formal interim analysis to assess efficacy once all trial subjects had completed week 12 of the trial, to determine whether to move forward with the trial.[32] The results, as prepared by Parexel, showed that the futility criteria in the study protocol had been fulfilled, *ie*, the drug lacked efficacy (the "Futility Determination").[33]

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28 C2 at p 41 (Yang1 at para 66(b)).

29 B1 at p 50 (Schelde1 at para 69).

30 B1 at pp 50–51 (Schelde1 at paras 70–71).

31 B1 at p 51 (Schelde1 at para 72).

32 B1 at p 52 (Schelde1 at para 75).

33 B1 at pp 52–53 (Schelde1 at para 76).

19 On 26 June 2024, Novo announced publicly that Phase 3 had failed and it would take an impairment loss of over US$800m.[34]

20 In July 2024, Novo conducted a Phase 3 trial good clinical practices ("GCP") audit of the Bulgaria site that resulted in certain "major" finding concerning many other things the quality and integrity of the data.[35]

21 On 12 September 2024, after Novo had conducted investigations, it presented certain data anomalies in the Phase 2 and 3 trials to several KBP executives, including Dr Yang and Dr Bing Li, the Chief Executive Officer of KBP.[36] This included the fact that the Bulgaria site was an outlier in terms of treatment effect.

22 There were further exchanges on 19 September 2024, KBP gave a presentation to Novo to address Novo's queries regarding the Bulgaria site.[37]

23 Then, by an email dated 27 September 2024, Parexel released to Novo its analysis of the topline result based on the locked database of the entire Phase 3 study.[38]

24 Matters came to a head. On 21 and 23 October 2024, Novo submitted written complaints to the FDA and European Medicines Agency ("EMA") regarding the Bulgaria site.[39] On 6 December 2024, KBP prepared a written

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34 B1 at p 54 (Schelde1 at para 79).

35 B1 at p 68 (Schelde1 at para 119).

36 B1 at pp 69–70 (Schelde1 at para 121 to 122).

37 C1 at p 45 (Yang1 at para 105).

38 C1 at p 47 (Yang1 at para 110).

39 C1 at p 55 (Yang1 at para 134).

rebuttal to Novo's complaints.[40] On 18 December 2024, Dr Wittes and Dr Pitt, as members of the Phase 3 Steering Committee, sent a letter to Novo addressing its complaints.[41] It is at this point that Novo concluded that it had been misled by KBP at the time of the acquisition.

## Procedural history

25 On 10 February 2025, Novo filed its originating application without notice on an *ex parte* basis.[42] On 14 February 2025, the worldwide freezing order was granted against KBP and Dr Huang.[43] On 10 March 2025, KBP and Dr Huang filed this summons to set aside the worldwide freezing order.

26 The APA stipulates that the exclusive dispute resolution mechanism is arbitration in New York under the auspices of the International Chamber of Commerce ("ICC").[44] On 26 March 2025, Novo filed its request for arbitration against KBP and Dr Huang before the ICC.[45] In asserting that Dr Huang is bound by the arbitration agreement, Novo relies on the express extension of the arbitration agreement to officers and directors of either party or their affiliates.

27 On 14 April 2025, KBP filed proceedings before the Denmark court (the "Danish Proceedings") seeking, amongst others, an order that Novo be

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40 C1 at p 60 (Yang1 at para 148).

41 C1 at p 63 (Yang1 at para 152).

42 CBOD Bundle A ("A") at p 3.

43 A at pp 25–31.

44 B1 at pp 214–215 (Asset Purchase Agreement dated 11 October 2023 ("APA") at s 12.8(d)).

45 CBOD Bundle B5 ("B5") at pp 214–247.

prohibited from applying, enforcing, seeking enforcement or otherwise relying on the worldwide freezing order.[46]

28 The setting aside application came up for hearing before me on 23 May 2025. However, the time was spent on dealing with questions of admissibility of evidence. Thereafter, on 19 June 2025, I heard parties on SIC/SUM 41/2025, an application for an anti-suit injunction against the Danish Proceedings, and granted the injunction sought. I did so because the Danish Proceedings concerned whether Novo had acted in breach of the APA by seeking interim relief in Singapore, and this was an issue of which the Singapore court had been seized from the time of the *ex parte* hearing and in the setting aside. I considered that it was an abuse of process to both seek to set aside the freezing order on this ground and to raise the same ground simultaneously in Denmark. Indeed, if KBP and Dr Huang were right that the APA provided an exclusive procedure concerning interim relief, this would make recourse to the Danish courts a breach as well. Denmark was not the seat court and was thus in no better position than the Singapore court to determine this issue. Further, in answer to my question, counsel for KBP and Dr Huang indicated that if they failed before the Danish court, they would still run the same argument in Singapore. Additionally, I considered that notwithstanding that Novo is a well-resourced entity, it was vexatious and oppressive to open a second front in Denmark when doing so was wholly duplicative and redundant. At the same time, I repeated an observation I had made at the original *ex parte* hearing, that once the arbitral tribunal was constituted, the underlying issues of whether the freezing order should continue could be put to the arbitral tribunal.[47]

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46 Peter Billeskov Schelde's 3rd Affidavit dated 22 May 2025 ("Schelde3") at pp 6423-6426.

47 Transcript for 19 June 2025 at p 11 lines 30–32.

29 I then heard parties on the present summons to set aside the worldwide freezing order across three hearing days on 7, 9 and 11 July 2025. At the start of that hearing, parties confirmed that they agreed that the setting aside application should be heard by this court.

**Issues**

30 The defendants' arguments for why the worldwide freezing order should be set aside may be grouped into three categories. First, KBP and Dr Huang contend that the requirements for a worldwide freezing order are not made out, namely (a) that there is no good arguable case on the merits of Novo's claim as KBP had not failed to disclose material information, and (b) that there is no real risk that KBP and Dr Huang will dissipate their assets to frustrate the enforcement of the anticipated ICC arbitral award. Secondly, KBP and Dr Huang contend that the *ex parte* injunction should be set aside as Novo had breached its duty to make full and frank disclosure of material facts relating to good arguable case and real risk of dissipation. Thirdly, the legal requirements for a court to grant interim relief under s 12A of the IAA are not satisfied. These are the requirements that (a) the arbitral tribunal has no power or is unable for the time being to act effectively (under s 12A(6)), (b) the case is one of urgency

(under s 12A(4)), and (c) the court is of the opinion that it is appropriate to make the order (under s 12A(3)).

31 In the alternative, the defendants submit that the worldwide freezing order should be varied to restrain them collectively up to the value of US$730m and to limit disclosure only to assets exceeding US$10,000 in value.

**Good arguable case**

32 At the *ex parte* hearing, as set out in [5] of *Novo Nordisk 1*, I was satisfied that Novo had shown that it had a good arguable case against KBP and Dr Huang for fraud under New York law, which governs the dispute. Novo's case was that KBP had deliberately failed to disclose information that was material to its decision to acquire Ocedurenone at that stage (*ie*, after Phase 2 and before Phase 3). After Novo had already acquired the drug, the Phase 3 results culminated in a Futility Determination and Novo took an accounting impairment loss in respect of the initial purchase consideration of over US$800m.[48] It was not their case that there was any guarantee that the drug would prove to be commercially successful. Instead, they took the commercial risk that the development of the drug might prove to be futile but did so on the express basis that what they were told about the Phase 2 results was "true, complete and accurate".[49] Following the Futility Determination, Novo investigated why the Phase 3 results differed so markedly from those in Phase 2. This led Novo to the conclusion that they had not been told the whole truth about the Phase 2 results.[50]

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48 B1 at pp 29–30 (Schelde1 at paras 12–13).

49 B1 at p 177 (APA at s 4.8(h)); Transcript for 9 July 2025 ("Transcript (9 July)") at p 17 lines 20–22.

50 B1 at pp 54, 72 (Schelde1 at paras 80, 127).

33 By s 4.8(h) of the APA, Novo obtained representations and warranties from KBP that it had "made available to [Novo] true, complete and accurate copies of … all material information … concerning the safety, efficacy, side effects, toxicity, or manufacturing quality and controls of any Compound or Product".[51] This representation and warranty was provided in response to Novo's request during the due diligence stage for "[c]onfirmation of whether all information about the quality, manufacturing, toxicology, efficacy and safety of the Product has been disclosed" after the due diligence phase had commenced.[52] This express contractual obligation meant that KBP was required to disclose all material information concerning the efficacy of Ocedurenone.

34 It was not seriously contested that KBP did not specifically disclose that there had been quality and compliance issues at the site in Bulgaria, nor that the results from that site concerning the efficacy of Ocedurenone were significantly different from those from the other sites.[53] In so far as KBP contends that underlying data was sufficiently disclosed, I consider this contention at [45] below.

35 Novo's focus in this matter concerns efficacy, and in particular efficacy as measured by a reduction in trough cuff seated systolic blood pressure ("SBP"). Trough cuff seated SBP refers to SBP measured when the drug concentration is at its lowest (*ie*, typically immediately before the subsequent dose is administered) and with the use of a standard blood pressure cuff while

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51 B1 at p 177 (APA at s 4.8(h)).

52 B1 at p 501 (Novo due diligence Q&A tracker at row 65 for request dated 15 August 2023).

53 Claimant's Written Submissions dated 16 May 2025 ("CWS (16 May)") at paras 41–42, 62.

the patient is in a seated position.[54] As stated in the Phase 2 CSR, the "primary analysis showed statistically significant decreases in mean trough cuff seated SBP from Baseline to Day 84",[55] thus serving as a "very impressive and encouraging" indicator of the drug's efficacy to Novo.[56]

36 By the *inter partes* hearing, the position concerning what KBP knew and did not disclose had strengthened in Novo's favour as I explain at [43] and [44] below. I deal first with KBP's argument that comparative analysis of the Bulgaria site with the overall results is not material information.[57] For the purpose of considering whether there was a breach of this representation and warranty, counsel for KBP submits that the question of materiality is to be determined on an objective basis, although the subjective belief of the individuals that it was not material (if that was their belief) would be relevant on other aspects, such as whether there was dishonesty.[58] In my judgment, the weight of evidence at both the *ex parte* and *inter partes* stages supports the conclusion that the information about Bulgaria is objectively material. This is because consistency of results is important for the evaluation of efficacy. Indeed, the Phase 2 CSR that was provided by KBP to Novo made specific conclusions concerning consistency of results in relation to the reduction in SBP. In a section titled "Discussion and Overall Conclusions", the Phase 2 CSR stated that:[59]

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54 B1 at p 42 (Schelde1 at para 48).

55 B1 at pp 42, 595 (Schelde1 at para 49; Clinical Study Report for KBP-5074-2-001 ("Phase 2 CSR") at para 11.4.1.1.1).

56 B1 at p 44 (Schelde1 at para 50).

57 See C2 at p 76 (Yang1 at para 175).

58 Transcript for 11 July 2025 ("Transcript (11 July)") at pp 46–49.

59 B1 at p 648 (Phase 2 CSR at p 133).

> The reduction in SBP was *consistent across various subgroups including* age group, baseline eGFR level, background antihypertensive medication, gender, proteinuria group, ethnicity, *geographic region*, and diabetes status. [emphasis added]

37 This statement in the Phase 2 CSR about consistency would be undermined by information that one site had significantly better results, which in turn significantly influenced the overall results for all sites.

38 Contrary to KBP's contention that "[t]he Phase 2 CSR expressly referenced the Phase 2 Interim Analysis multiple times", the Phase 2 CSR instead specifically stated that "[n]o interim analysis for efficacy was planned for this study".[60] It did not mention that any unplanned study for efficacy took place, instead describing an "unplanned administrative interim analysis to support manufacturing decisions for the Phase 3 study".[61] The results were not provided. The manner in which the description is worded would not alert the reader to the possibility that this "administrative interim analysis to support manufacturing decisions" is in fact related to clinical efficacy.

39 Novo only obtained the Phase 2 Interim Analysis results after completion of the APA on 22 August 2024. Novo obtained them from WCT, the CRO for the Phase 2 trial. The results, dated 27 May 2020, did not at that point include data from the Bulgaria site, and showed no statistically significant response to treatment with Ocedurenone.[62] The statistical non-efficacy shown by the data at that point in time was conceded by KBP.[63]

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60 B1 at p 577 (Phase 2 CSR at para 9.7.1.11).

61 B1 at p 581 (Phase 2 CSR at para 9.8.4).

62 B1 at p 61 (Schelde1 at para 100).

63 C2 at p 12 (Yang1 at para 24).

40 This evidence sufficiently establishes a good arguable case that material information concerning efficacy was not disclosed in breach of the representation and warranty.

41 There is then the question of KBP's knowledge of the breach which would go to fraud. In the absence of fraud, the cap of US$100 million (which was the amount of the purchase price held in escrow) would apply: see s 11.2(b)(i) of the APA.

42 At the *ex parte* hearing, there was evidence that KBP (through Dr Huang) had knowledge of the results of the Interim Analysis which showed that, in the absence of data from the Bulgaria site, the drug had no statistical efficacy. Dr Huang was the founder, Executive Chairman and a 40% shareholder of KBP's parent company at the material time.[64] Dr Huang was on the distribution list for the Phase 2 Interim Analysis and it is recorded in the Phase 2 CSR that the "[Phase 2 Interim Analysis] results" were reported to him on 1 June 2020.[65]

43 On the question of knowledge, Novo obtained evidence after the *ex parte* hearing that further strengthened its case. This evidence was obtained from an earlier potential buyer of Ocedurenone, a company called Otsuka. The evidence on KBP's dealings with it is significant because it shows that the potentially anomalous nature of the Bulgaria site was a material point for potential buyers of Ocedurenone. The evidence shows the following:

(a) Otsuka had concluded after its data room review of the Phase 2 results that there was an "[i]mbalance in clinical data: Single site

64 C1 at p 295 (Huang3 at para 1); B1 at p 33 (Schelde1 at para 21).

65 B1 at p 582 (Phase 2 CSR Table at 9.8.4).

(Bulgaria) was responsible for bulk of efficacy, raising questions about repeatability".[66]

(b) KBP had acknowledged in its response to Otsuka sent under cover of an email dated 25 August 2021 that the SBP response in the patients at the Bulgaria site was indeed better than those in other countries and regions.[67] However, KBP sought to explain this by reference to the Bulgarian patients having been enrolled later and provided with additional guidance.[68]

(c) Otsuka was not convinced by this response, as shown by an email dated 7 September 2021 from Otsuka to KBP in which a representative from Otsuka stated that he did not find the data compelling, did not see a correlation between pre-dosing stability and the change in SBP on administration of the drug "on a country by country basis" and hence he was not convinced that this was what drove the good efficacy in Bulgaria.[69]

44 Otsuka concluded that it would not proceed with the acquisition based on the Phase 2 data but also said that they would continue to follow the development of the drug as the data matured.[70] KBP's counsel submitted that Otsuka's concerns about the consistency of the results did not mean that Otsuka walked away completely.[71] This however misses the point. The evidence shows

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66 CBOD Bundle B6 ("B6") at p 233.

67 B2 at p 76.

68 B2 at p 78.

69 B6 at p 215.

70 B6 at p 233.

71 DWS (16 May) at para 428.

that Otsuka decided not to proceed with the acquisition at that stage of the drug's development because of the inconsistency of the results. This not only shows that the difference between the results in Bulgaria and elsewhere was material to the question of whether to acquire the drug, but also that senior leadership of KBP, including Dr Huang, were aware that this information was important to potential buyers.

45 KBP contends that the fact that it uploaded the Vital Signs Data Listing and the CTA package to the data room during due diligence shows that there was no intention to suppress information. It is true that these two documents include in PDF format data on the vital signs of every patient enrolled in Phase 2, identifying the site that they were from as well as their SBP. KBP notes that Novo had not even asked for this to be done.[72] I accept that Novo could in theory have either asked for the data to be provided in an analysable format or could have deployed data loggers to input the data themselves into another analysable format. If they had done either of these, they would have discovered that the Bulgaria results drove the overall Phase 2 results and would not have proceeded with the acquisition. However, this argument does not take KBP very far. First, in so far as the issue for me is whether there is a good arguable case for non-disclosure, it is not an answer to non-disclosure of analyses of data that the same analysis could be reconstructed by resort to other means. The second issue is what it means for the state of mind of the officers of KBP who make an unsolicited disclosure of the vital signs data in PDF format, while not disclosing the analyses of that data that KBP had itself done, such as the analysis included in the PowerPoint presentation prepared in February 2021,[73] nor the concerns

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72 DWS (16 May) at paras 216–219.

73 B6 at pp 30, 32 (Søren Østergaard Hardt-Lindberg's 1st Affidavit ("Østergaard1") at paras 62, 64); B6 at 184-185.

expressed by Otsuka to KBP about that data. It suggests an attempt to keep Novo in the dark about the problems with the Bulgaria site while offering a plausible story of "candour" if Novo later discovered those problems.

46 The evidence thus sufficiently establishes a good arguable case against both KBP and Dr Huang that the non-disclosure was deliberate and dishonest. This is not directed at whether KBP or Dr Huang believed at the time of entry into the APA that the drug would not prove commercially viable or that Phase 3 was not worth undertaking (notwithstanding the issue of the Bulgaria site for the Phase 2 results). The point is that there is a good arguable case that KBP and Dr Huang deliberately did not disclose information concerning the Bulgaria site because they feared that if they did then Novo would, like Otsuka before it, decline to acquire the drug at that stage and leave KBP to fund the Phase 3 trials, if it could. It is relevant that by 2023, KBP was financially strapped, as shown by the fact that it took an emergency loan of up to US$25m from two investors on 22 September 2023 at the very steep interest rate of 40% per annum.[74] It is a reasonable inference that Dr Huang was worried that if Novo did not make the acquisition, KBP would not complete Phase 3 and there would be no other buyer.

**Risk of dissipation**

47 I am also satisfied that there is a real risk of dissipation. Before I deal with the evidence, I recapitulate two aspects of the law that are important to keep in mind.

48 First, the overarching test is whether there is objectively a real risk that judgment may not be satisfied because of a risk of unjustified dealings with

[74] B6 at p 501.

assets: see *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 *("JTrust*") at [64]. Where moneys or assets are dealt with in order to discharge an existing obligation or to obtain commercial value in the form of a different asset, such as a sale at market value for which moneys are received or a loan upon which a (recoverable) receivable is created, such dealings would likely be for legitimate commercial reasons and would not be unjustified: see *Milaha Explorer Pte Ltd v Pengrui Leasing (Tianjin) Co Ltd* [2023] 1 SLR 1072 at [32].

49 The second is that the risk of dissipation is not to be inferred simply from allegations of dishonesty against the defendant. As was explained by the Court of Appeal in *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 ("*Bouvier*") at [93], "the alleged dishonesty must be of such a nature that it has a real and material bearing on the risk of dissipation". As further explained in *Bouvier* at [94], the court must "examine the precise nature of the dishonesty that is alleged and the strength of the evidence relied on in support of the allegation".

50 KBP transferred out almost all of the purchase consideration of US$700m to its holding company ("KBP Cayman") by June 2024, and in turn KBP Cayman had transferred out almost all of what it received by the end of 2024. As of 7 March 2025, KBP only had about US$435,000 in its bank accounts while as of 21 February 2025, KBP Cayman held only US$27.5m.[75] I accept that substantial payments from KBP Cayman were to external lenders and investors, independent consultants and employees. However, US$30m was

[75] B5 at p 97 (Peter Billeskov Schelde's 2nd Affidavit dated 24 April 2025 at para 76); C1 at p 313 (Huang3 at para 41).

paid directly to Dr Huang as bonus for FY2023 and FY2024,[76] while approximately US$300,965,696.69 was paid to KBP BVI which is wholly owned by Dr Huang via his vehicle, Panda Pharma Holdings Ltd ("Panda Pharma"), before being transferred to Dr Huang's personal bank accounts.[77]

51 KBP has pointed out that the moneys received by Dr Huang via Panda Pharma remain in Dr Huang's personal bank accounts, a large majority of which are in Singapore.[78] However, if this is considered through the lens of the claim against KBP, the moneys had moved through several intermediaries to Dr Huang. The moneys went from KBP to KBP Cayman, then to KPB BVI, before going to Dr Huang (via Panda Pharma). That the moneys then stopped with Dr Huang in Singapore may reflect that only a claim against KBP was anticipated, and not a claim against Dr Huang personally.

52 There is evidence that as early as 5 January 2024, Dr Huang anticipated a claim by Novo against KBP. The minutes of the KBP Cayman shareholder meeting on that date records Dr Huang saying:[79]

> … we have encountered unexpected challenges after the closing of the deal and our road ahead will not be a smooth one, so our core objective now is to properly incentivize the team to complete the [New Development Application] of our product with Novo Nordisk, otherwise not only can't we receive the milestone and other payments from Novo Nordisk, but also they may claim damages against us …

53 While counsel for KBP argued that this statement instead relates to a claim that happened to be made by an employee on the same day alleging that

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76 C1 at pp 309, 313 (Huang3 at paras 31(b), 40).

77 C1 at p 311 (Huang3 at paras 34–36).

78 C1 at p 325 (Huang3 at para 79).

79 C1 at p 536.

he was the true owner of the patent in Ocedurenone,[80] this argument was not convincing. The phrase "they may claim damages" plainly refers to Novo and distinguishes Novo's bringing of a claim from it not making future payments. No doubt, if KBP did not own the intellectual property in the drug, it would have to repay the purchase price to Novo but the evidence shows that KBP never considered the claim by the employee to be a serious claim. In fact, KBP's lawyers described the claim as "frivolous" in an email sent to Novo around two weeks later.[81] At this interlocutory stage, I consider that Novo has the better of the argument, and conclude for the purpose of this judgment that Dr Huang was not referring to a claim by Novo for breach of the representation and warranty that KBP owned the intellectual property in the drug, but was instead referring to potential claims if the drug did not show efficacy during Phase 3. This was connected to non-disclosures on KBP's part concerning the Phase 2 results. I conclude that Dr Huang, knowing that Novo had not been told of the consistency issue that had caused Otsuka not to proceed with acquisition at the Phase 2 stage, anticipated a claim against KBP if Phase 3 was not successful.

54 This context of an anticipated claim against KBP by Novo shows that transfers from KBP to KBP Cayman that were not intended to pay off obligations owed by KBP Cayman, such as those to external investors or lenders, were unjustified. Counsel for KBP and Dr Huang made no mention of any contractual obligation for KBP Cayman to pay Dr Huang, only stating that Dr Huang considered it appropriate for him to be paid given that the external investors had been paid.[82] There was considerable evidence and argument over

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80 Transcript for 7 July 2025 ("Transcript (7 July)") at p 53 lines 14–18; C11 at pp 73, 75.

81 C11 at pp 83–84.

82 Transcript (7 July) at p 46 lines 12–23.

whether KBP Cayman had fulfilled the legal requirements for making declaring dividends in (the ultimate) favour of Dr Huang. There were certainly valid questions concerning this. However, this debate is beside the point. A lawful payment is not necessarily a justified payment and may be dissipative. On the other hand, a payment made in good faith yet technically not fulfilling legal requirements might not be dissipative. Here, Dr Huang caused KBP and KBP Cayman to transfer a substantial part of proceeds of sale to himself where the evidence shows he anticipated a claim by Novo against KBP if Phase 3 was not successful and that such claim would be mounted on the basis that Novo had been misled. Even if this transfer was done lawfully via the mechanism of dividends, it may still be dissipative in nature.

55 I hold that in the circumstances of this case moving approximately US$330m from KBP to its ultimate beneficial owner, Dr Huang, is not justified and is dissipative conduct. In the event, Novo has commenced a claim against Dr Huang in addition to claiming against KBP but there is no evidence that Dr Huang anticipated a claim against him personally. As such, it does not count in his favour that he did not in turn transfer the moneys elsewhere.

56 In my judgment, there is cogent evidence that Dr Huang has exhibited dishonesty that bears on the risk of dissipation. That dishonesty is shown by KBP deliberately not providing Novo with information concerning the Bulgaria site so that the transaction would conclude and KBP would receive the US$700m, followed by the relatively speedy movement of the proceeds of sale out of KBP and ultimately (in respect of US$300m of it) to himself. I appreciate that Dr Huang has not been cross-examined on his explanations. My views at this interlocutory stage are not in any way binding on the final decision-maker. Nonetheless, in assessing the risk of dissipation, I am required to consider what

his conduct shows about his intentions to frustrate any award against KBP or (now that he has been included in the claim) any award against himself.

**Full and frank disclosure**

57 The applicable principles concerning full and frank disclosure are not disputed by the parties, and were summarised by the Court of Appeal in *JTrust* at [90] as follows:

> (a) The duty of the plaintiff is to make a full and fair disclosure of all the material facts. The material facts are those which it is material for the judge to know in dealing with the application as made. Materiality is to be decided by the court and not by the assessment of the plaintiff or his legal advisors.
>
> (b) The plaintiff must make proper inquiries before making the application. The extent of inquiries which will be held to be proper, and therefore necessary, must depend on all the circumstances of the case including (i) the nature of the case which the plaintiff is making when he makes the application; (ii) the order for which the application is made; and (iii) the probable effect of the order on the defendant.
>
> (c) If material non-disclosure is established, the court will be astute to ensure that a plaintiff who obtains an *ex parte* injunction without full disclosure is deprived of any advantage he may have derived by the breach of duty. In particular, the court will be inclined towards discharging the injunction for abuse of process, unless there are extenuating circumstances for which the plaintiff might be excused.
>
> (d) Whether the fact not disclosed is of sufficient materiality to justify or require the immediate discharge of the order without examination of the merits depends on the importance of the fact to the issues which were to be decided by the judge on the application. The answer to the question whether the non-disclosure was innocent, in the sense that the fact was not known to the plaintiff or that its relevance was not perceived, is an important consideration but not decisive by reason of the duty on the plaintiff to make all proper inquiries and to give careful consideration to the case being presented.
>
> (e) It is not for every omission that the injunction will be automatically discharged. A *locus poenitentiae* may sometimes be afforded. The court has a discretion, notwithstanding proof of material non-disclosure which justifies or requires the immediate discharge of the *ex parte* order, nevertheless to

> continue the order, or to make the order on new terms. Where the court finds it appropriate to continue an injunction despite material non-disclosure, the court may in its discretion hold that the plaintiff is sufficiently penalised by an appropriate order as to costs.

58 The duty of full and frank disclosure is also reflected in O 18 r 1(7) of the Singapore International Commercial Court Rules 2021 ("SICC Rules").

***Facts relating to good arguable case***

59 The defendants allege that at the *ex parte* hearing, Novo failed to disclose certain material facts relating to whether Novo had a good arguable case against KBP for fraud and misrepresentation.

*Phase 2 results and Interim Analysis*

60 The defendants submit that Novo's claim that only data from Bulgaria showed efficacy was not true.[83]

(a) First, Dr Bakris and Dr Pitt, as lead principal investigators ("PIs") who were independent of KBP, knew about the Interim Analysis, yet they approved the Phase 2 CSR.[84] They also published the Hypertension Article and the EO Article that said Ocedurenone was effective.[85] They would not have done so if the drug was only effective in one country.[86]

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83 Transcript (7 July) at p 56 lines 10–11.

84 Transcript (7 July) at p 55 lines 24–29.

85 Transcript (7 July) at p 55 line 29 to p 56 line 2; DWS (16 May) at para 25.

86 Transcript (7 July) at p 56 lines 16–18; C2 at p 16 (Yang1 at para 39).

(b) Second, KBP's unrebutted expert evidence was that the drugs had efficacy beyond Bulgaria.[87] Of course, this expert evidence was not yet available at the *ex parte* stage, and no breach of full and frank disclosure arises in respect of it.

(c) Third, there was data which showed that Ocedurenone had efficacy in North America and other areas besides Europe.[88]

61 Counsel for the defendants argues that Novo should have told the court about these matters (save for that at [60(b)]) at the *ex parte* hearing.[89]

62 Counsel for Novo disagrees that Dr Bakris and Dr Pitt had access to the Interim Analysis.[90] Counsel referred to the Phase 2 CSR itself, which stated:[91]

> Following the delivery of interim analysis results, according to the Interim Administrative Analysis Blinding Plan, KBP's executives and board members had access to the interim data. *… The Interim Analysis data/ results delivered to KBP on June 1, 2020 were not accessible to any KBP clinical team members until after database lock on Oct 1, 2020.* [emphasis added]

63 Similarly, the Hypertension Article referred to the Interim Analysis and stated:[92]

> A specific blinding plan, including a robust firewall, was created and shared with the US Food and Drug Administration. *Participating investigators and regulatory and clinical team members did not have access to the administrative interim analysis data results*, thereby ensuring equipoise and ongoing protection of patient data. [emphasis added]

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87 Transcript (7 July) at p 56 lines 19–25.

88 Transcript (7 July) at p 56 line 26 to p 57 line 25; C2 at p 332.

89 Transcript (7 July) at p 57 lines 26–32.

90 Transcript (7 July) at p 26 lines 7–21.

91 B1 at p 581 (Phase 2 CSR at para 9.8.4).

92 B1 at p 666.

64 The blinding plan that both documents referred to listed Dr Bakris and Dr Pitt among the blinded personnel,[93] and contained a table stating that they had no access to the Interim Analysis results, to the blinded results, or to the unblinded data.[94] It was also specifically stated that the "Lead PIs will not have access to the results of the interim administrative analysis".[95] By contrast, the list of unblinded personnel included Dr Huang and Dr Yang, among other senior KBP personnel.[96]

65 In sum, the evidence at this stage indicates that while Dr Bakris and Dr Pitt knew *about* the Interim Analysis, they did not have access to the data or results of that analysis. I recognise that KBP's counsel submitted that *after* (but not during) the Interim Analysis, Dr Bakris and Dr Pitt did get to see the data from the Interim Analysis.[97] However, upon clarification, KBP's counsel acknowledged that the evidence he had on affidavit was that the two doctors received *all* the raw data from Phase 2 – of which the Interim Analysis data was a subset – and not that they received the Interim Analysis report.[98] In these circumstances, Novo could not have been expected to anticipate that KBP would argue in favour of the efficacy of Ocedurenone on the basis that the lead PIs knew about the Interim Analysis – and in particular its analysis of the Bulgaria site – and yet endorsed the Phase 2 CSR and wrote the two articles. Accordingly, I do not find that Novo was in breach of its duty of full and frank disclosure by failing to raise that matter *ex parte*.

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93 B1 at p 713.

94 B1 at p 709–710 (Table 1).

95 B1 at p 711 (Point 4(a)).

96 B1 at p 713.

97 Transcript (9 July) at p 130 lines 4–5, p 132 lines 3–5.

98 Transcript (9 July) at p 132 lines 8–23.

66 As for the data from North America and other areas outside Europe, counsel for KBP pointed to data in the Phase 2 CSR that, according to his expert's evidence, showed efficacy in those regions.[99] Novo's submission, as supported by their own expert, was that based on KBP's own pre-specified futility criteria, the reductions in SBP for those regions were not statistically significant and therefore did not establish efficacy.[100] It is not for me to decide which of these positions is correct as the issue before me is strictly whether Novo should have raised KBP's arguments *ex parte*. In that regard, I am mindful that in trying to understand this data, the court has to rely on expert evidence, as counsel for the defendants rightly cautions.[101] With that in mind, I do not find that Novo can be faulted for not having identified KBP's arguments concerning efficacy outside Europe at the *ex parte* stage. The relevant expert evidence was not yet available at that time.

67 The defendants also submit that Novo misleadingly told the court that KBP introduced patients from the Bulgaria site *in response* to the Phase 2 Interim Analysis results, even though Novo knew that *all* patients had been enrolled before the Interim Analysis took place.[102]

68 I am unable to accept this submission. It is not disputed that the Interim Analysis data consists of a subset of the Phase 2 data, and did not include data from the Bulgaria site. The statements KBP take issue with merely capture that fact.[103]

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99 Transcript (9 July) at p 56 line 26 to p 57 line 25.

100 Claimant's Responsive Speaking Notes ("CRSN") at para 10; B6 at p 24 (Østergaard1 at para 70).

101 Transcript (9 July) at p 127 lines 3–15.

102 DWS (16 May) at paras 248–251; C2 at p 21 (Yang1 at para 48).

103 See, *eg*, B1 at p 74 (Schelde1 at para 132).

*Disclosure of raw data during due diligence*

69 The defendants allege that Novo failed to disclose the material fact that during due diligence, KBP supplied Novo with raw data in the form of the Vital Signs Data Listing and the CTA Package.[104] Novo did not open these documents, much less request a different format for the data.[105]

70 The defendants submit that Novo is only now feebly arguing that the Vital Signs Data Listing and the CTA Package do not amount to "raw data" because they were provided in PDF format as opposed to another format.[106]

71 In my view, the dispute between parties over the proper format of the raw data is secondary to the central issue, namely, whether KBP failed to disclose material information concerning the difference in efficacy between the Bulgaria site and other sites. First, as explained above at [45], it is no answer to non-disclosure that Novo could in theory have discovered the difference between the Bulgaria site and other sites. Novo would not have known where to look for the anomaly if it was not alerted. Second, this concomitantly reduces the strength of any argument that KBP was acting "transparently",[107] because there would not have been much transparency if Novo was not alerted to the anomalous data. Accordingly, I do not find that Novo failed to disclose a material matter in breach of its obligations.

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104 DWS (16 May) at paras 213(a), 214–215.

105 Transcript (7 July) at p 60 lines 13–15.

106 DWS (16 May) at para 218.

107 DWS (16 May) at para 219.

*Futility Determination*

72 The defendants submit that Novo failed to disclose errors in the Futility Determination.[108] After the Futility Determination was made, Parexel had informed Novo that statistical errors had been made in compiling the data.[109] After correcting for the errors, Ocedurenone satisfied only one of two futility criteria (namely, it satisfied the SBP futility criteria but not the p-value futility criteria), such that the "anticipated hypothesis" is that "treatment effect is significant but not substantial", and Ocedurenone was still worth "continuing current development plants" and not "worthless".[110] The defendants further submit that Novo failed to disclose Parexel's analysis of the topline result which likewise showed that the drug still had potential.[111] In this connection, the defendants also argue that Novo failed to disclose that it disputes the accuracy and veracity of the Futility Determination.[112]

73 Accepting for the sake of argument that Ocedurenone still had some development potential, it remains undisputed that the Futility Determination was unchanged, *ie*, Ocedurenone had failed Phase 3. A good arguable case would still have been made out by Novo, and therefore I do not find even *in arguendo* that this matter was sufficiently material so as to occasion a breach of Novo's duty of full and frank disclosure.

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108 DWS (16 May) at paras 222–223.

109 DWS (16 May) at paras 227–228.

110 DWS (16 May) at paras 229–230, 233–234.

111 DWS (16 May) at para 231.

112 DWS (16 May) at paras 237–239.

*KBP's position that Ocedurenone displayed efficacy around the world*

74 The defendants submit that Novo failed to disclose that KBP's position was that Ocedurenone displayed efficacy in clinical sites in other parts of the world, not just the Bulgaria site.[113]

75 I likewise do not find this sufficiently material. First, as explained above at [32], Novo's case against KBP is based on their non-disclosure of information relating to Ocedurenone, not the inefficacy of the drug. Second, as explained above at [73], and as Novo submits,[114] The defendants do not and cannot dispute that Ocedurenone failed Phase 3. The defendants merely argue that the drug did not fail it as badly as originally determined. Thus, a good arguable case is still established on Novo's part.

*Phase 3*

76 The defendants submit that Novo failed to disclose various facts relating to purported fraud at the Bulgaria site. First, the defendants allege that Novo failed to disclose the Phase 3 Steering Committee's finding that there was no evidence of fraud at the Bulgaria site and no grounds to justify removing the Bulgaria site from any analysis of Phase 3.[115]

77 Next, the defendants say that Novo failed to disclose that Dr Pitt and Dr Wittes wrote to Novo categorically disagreeing with Novo's complaints to the FDA and EMA about the Bulgaria site and Novo's insistence on excluding the Bulgaria site from the Phase 3 CSR.[116] Dr Pitt and Dr Wittes had stated that

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113 DWS (16 May) at para 240.

114 CRSN at para 30.

115 DWS (16 May) at para 244.

116 Transcript (7 July) at p 73 lines 22–31; DWS (16 May) at para 69.

"neither [Novo] nor KBP has provided any convincing evidence that the results from [the Bulgaria site] are fraudulent".[117]

78 Finally, the defendants highlight that if the Bulgaria site was tainted by serious irregularities and fraud, the FDA and EMA would have responded. However, they have not responded, and Novo did not disclose this.[118]

79 In my view, these are not material omissions for the simple reason that Novo's case does not rest on fraud at the Bulgaria site, but on KBP's concealment from Novo of anomalous results at that site.

*Novo's reason for termination*

80 The defendants submit that Novo failed to disclose that Dr Søren Østergaard Hardt-Lindberg, Project Vice President at Novo, told Dr Yang that the real reason for Novo terminating the development of Ocedurenone was for "business reasons".[119]

81 However, it does not necessarily follow that, as KBP argues, Novo's concern was not about ascertaining the true scientific treatment effect or efficacy of Ocedurenone at all.[120] For one, the attenuated efficacy of Ocedurenone would affect its commercial viability. For another, as Novo submits, Ocedurenone had already failed Phase 3 and this was a disagreement over how Novo dealt with the aftermath of that failure, rather than an indication that there had been no material omission on KBP's part prior to closing.

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117 CBOD Bundle C7 ("C7") at p 326.

118 DWS (16 May) at para 252.

119 Transcript (7 July) at p 69 lines 8–13.

120 DWS (16 May) at para 67.

***Facts relating to risk of dissipation***

*Existence of external investors*

82 KBP submits that Novo never drew the court's attention to the existence of external shareholders and investors in KBP Cayman, even after I posed a question as to why a seller should not distribute funds upstream to someone who has perhaps incurred costs in development.[121]

83 In fact, counsel for Novo did acknowledge that it would be natural for a seller to repay investors from the proceeds of sale,[122] but relied on the speed and size of the dividends declared to KBP Cayman. The available information at that point indicated that after receiving US$700m in payment from Novo, KBP paid out US$244m to KBP Cayman as a loan to KBP Cayman, paid another US$95m to KBP Cayman in repayment of a loan, and declared a dividend of US$578.5m which was unpaid as at 31 December 2023.[123] Although we now know that KBP Cayman then redeemed its external investors pursuant to its contractual obligations, we now also know that substantial payments were made to Dr Huang. I am not able to find any failure to disclose matters known at the time of the *ex parte* application.

*Nature of KBP's liabilities*

84 KBP submits that Novo never drew the court's attention to the nature of KBP's liabilities. In particular, about 90% of KBP's liabilities were owed to its

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121 DWS (16 May) at paras 255–258.

122 Transcript for 14 February 2025 ("Transcript (14 February)") p 15 lines 13–23.

123 C1 at p 730 (Transcript (14 February) at p 4 lines 5–8); CBOD Bundle B4 ("B4") at p 29.

parent company, KBP Cayman, and not to external investors.[124] KBP's financial statements for 2022 contained the standard rider that KBP Cayman would continue to support KBP for at least a year (*ie*, until the end of 2023).[125]

85 I do not find that this was a material omission. As Novo has pointed out, even if the entire sum payable to KBP Cayman was discounted, KBP's liabilities would still exceed its assets by about US$2.6m, based on KBP's 2022 financial statements.[126] The evidence that KBP took loans at exorbitant rates of interest in September 2023 further supports the conclusion that it was financially strapped (see above at [46]).

*Dividends allegedly declared in 2023*

86 KBP submits that Novo misrepresented that KBP declared dividends of US$578.5m in 2023.[127] In fact, it was declared on 3 June 2024, but was declared in respect of the financial year ending 31 December 2023, and reflected in KBP's financial statements for 2023.[128]

87 I am unable to accept this submission. Novo did not know at the *ex parte* stage that the dividends were declared in 2024 and then reflected in KBP's financial statements for 2023. The financial statements describe the dividends of US$578.5m as being "[d]eclared during the financial year" of 2023, and not "in respect of" 2023, as KBP contends.[129]

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124 DWS (16 May) at para 262.

125 DWS (16 May) at para 263.

126 CRSN at para 63.

127 DWS (16 May) at para 266.

128 DWS (16 May) at paras 267–268.

129 B1 at p 280.

*DBS charge*

88 KBP submits that Novo misrepresented the nature of the charge granted by KBP in favour of DBS over a US$218m fixed deposit.[130] Novo should have told the court that there were a number of fixed deposits instead of a single fixed deposit account, and that they did not know the amount of the fixed deposit that was the subject of the charge.[131]

89 It is true that KBP's financial statements for 2023, which Novo relied on, described "[f]ixed deposits", in the plural, amounting to US$218m.[132] However, the charge document described the property securing the charge as "[a]ll sums … deposited by [KBP] with [DBS] … under any fixed deposit, time deposit, or other similar account or accounts …". The document went on to define "Fixed Deposit" to "include … any sum or sums which are now or from time to time deposited by [KBP] with [DBS] in any such fixed deposit, time deposit, or other account or accounts …".[133] On the face of the charge document, therefore, the charge covered all fixed deposit accounts held by KBP with DBS. Even at this *inter partes* stage, there is no evidence before me as to how much of the US$218m in fixed deposits was held by DBS, and how much (if any) was held elsewhere.[134] Of course, KBP has now explained that the charge arose to secure a corporate credit card with a $50,000 limit.[135] But I do not find that Novo made any material misrepresentations regarding the state of affairs based on the documents or information available to them at the *ex parte* stage.

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130 DWS (16 May) at paras 270–271.

131 DWS (16 May) at para 274.

132 B1 at p 267.

133 B4 at p 195.

134 Transcript (11 July) at p 32 line 17 to p 33 line 5.

135 See C1 at p 743.

***Summary***

90 The defendants acknowledge that a single breach of full and frank disclosure may not be sufficient to warrant setting aside the worldwide freezing order, but submit that the sum of all these numerous breaches is sufficiently egregious to warrant setting aside on the basis of breach of full and frank disclosure alone.[136]

91 I do not consider, however, that the effect of the non-disclosures complained of is material enough, even cumulatively, to warrant setting aside the worldwide freezing order. Considered holistically, Novo complied with its duty to draw the court's attention to matters it could reasonably expect to be raised against it. It follows that I also reject the defendants' invitation to find that the breaches were so serious as to constitute an abuse of process.[137]

**Section 12A of the IAA**

92 I am satisfied that the court can order relief under s 12A of the IAA in support of the ICC arbitration. In particular, I find that the following requirements are fulfilled: (a) the arbitral tribunal was unable to act effectively at the time of the *ex parte* application; (b) the case is one of urgency; and (c) it is appropriate for the Singapore court to make the order.

***Whether the arbitral tribunal was able to act effectively***

93 Section 12A(6) of the IAA provides that the court should only make an order under s 12A if the arbitral tribunal "has no power or is unable for the time being to act effectively". At the time of the *ex parte* application, the ICC arbitral

136 Transcript (7 July) at p 75 lines 9–12.

137 Transcript (7 July) at p 75 lines 13–15.

tribunal had not been constituted.[138] The ICC emergency arbitrator, who is bound by the *lex arbitri* (*ie*, New York law), did not have the power to grant Mareva relief on an *ex parte* basis.

94 The defendants accept that the ICC emergency arbitrator is unable to grant *ex parte* relief. Instead, they contend that the ICC emergency arbitrator could effectively have granted the relief sought within a few hours through emergency relief, albeit with notice given to KBP and Dr Huang. Emergency relief would be an order pending the ICC emergency arbitrator's decision and can be issued even before the responding party has filed its response.[139] However, the expert reports diverge on the period of time it takes for an ICC emergency arbitral order to be issued, with the defendants' expert estimating a far longer timeframe of no "fewer than seven or eight days after the applicant filed for emergency relief" which would make it difficult for the emergency arbitrator to act effectively.[140]

95 Any order granted by the ICC emergency arbitrator also would not apply to Dr Huang since the emergency arbitrator provisions only apply to "signatories of the arbitration agreement … or successors to such signatories": Art 29(5) of the ICC Rules.[141] In contrast, under the IAA, the Singapore court can grant relief against non-signatory parties to an arbitration agreement (determining this question at the interlocutory stage on a *prima facie* basis). Indeed, the IAA also empowers the court to grant relief against non-parties over

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138 23 May 2025 Minute Sheet at p 2.

139 Transcript (7 July) at p 93 lines 16–25.

140 CWS (16 May) at para 218; CBOD Bundle B10 at pp 33–34 (George A Bermann's Reply Expert Report at para 68); DWS (16 May) at para 304; C7 at p 387.

141 Claimant's Written Submissions dated 10 February 2025 ("CWS (10 February)") at paras 124–126.

whom it has jurisdiction: *Alphard Maritime Ltd v Samson Maritime Limited and others and another matter* [2025] SGHC 154 at [35]. As noted at [26] above, Novo has commenced the arbitration against both KBP and Dr Huang, the latter by virtue of the express extension of the arbitration agreement to officers and directors of either party or their affiliates. Dr Huang contests that he is a party to the arbitration agreement. I hold that Novo has established that Dr Huang is indeed a party to the arbitration agreement on a *prima facie* basis by virtue of this express extension. Thus, unless and until Dr Huang succeeds in his jurisdictional objection before the arbitral tribunal, an injunction may lie against him as a party to the arbitration agreement pursuant to s 12A of the IAA.

96 Therefore, the ICC emergency arbitrator could not grant the freezing order sought on an *ex parte* basis and so could not act effectively. The requirement under s 12A(6) of the IAA is satisfied.

***Urgency***

97 For an application to be made to the General Division of the High Court under s 12A(4) of the IAA (without the permission of the arbitral tribunal or the agreement in writing of the other parties), the circumstance must be "one of urgency". The case must also be one of "extreme urgency" for an application for an injunction made without notice: para 71(2) of the Supreme Court Practice Directions 2021 (the "Practice Directions").

98 Novo contends that the application is urgent because the arbitral tribunal had not yet been constituted, and any ICC emergency arbitrator could not act *ex parte*, and the risk that the defendants may dissipate their assets.[142]

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142 CWS (16 May) at para 215; CWS (10 February) at paras 102–115.

99 The defendants contend that the matter was not one of urgency as there had been an inordinate delay of around five to seven months before Novo filed its application for the Mareva injunction in February 2025.[143] For instance, Novo ought to have brought the application when it discovered that Ocedurenone showed no treatment effect after receiving the Phase 2 Interim Analysis results in August 2024 or, at the latest, in September 2024 when it had confronted KBP with the "anomalies" in the Phase 2 and 3 results.[144]

100 A delay in bringing the s 12A application is not determinative of whether the case is one of urgency. There could be various reasons for a delay, Novo's reason – that it had only obtained key evidence to mount a claim in fraud in December 2024[145] – being one of them. Instead, I agree with Novo that the defendants' history of dissipative conduct provides strong support for the urgency of the application: see [55] above.

101 I do not accept Novo's argument that the ineffectiveness of an arbitral tribunal in granting interim relief is of itself a "disjunctive ground on which urgency can be made out".[146] The English cases cited by Novo do not go so far: *Cetelem SA v Roust Holdings Ltd* [2006] 1 WLR 3555 at [37]; *Starlight Shipping Co and another v Tai Ping Insurance Co Ltd and another* [2008] 1 All ER (Comm) 593 at [27]; *Gerald Metals SA v Timis and others* [2016] EWHC 2327 (Ch) at [47(7)].[147] Rather, ineffectiveness relates first of all to necessity, which is a separate requirement under s 12A(4) of the IAA.

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143 DWS (16 May) at para 279; Transcript (7 July) at p 116 lines 11–22.

144 DWS (16 May) at paras 279–295.

145 CRSN at paras 77–78.

146 CWS (16 May) at para 215.

147 CWS (16 May) at para 215; CWS (9 July) at para 79.

102 Nonetheless, where it is shown that prior notice would potentially imperil the effectiveness of any freezing order sought, this fact is relevant to the question of urgency. On the facts of this case, the condition of urgency under s 12A(4) of the IAA is satisfied due to the risk of dissipation, especially if notice was given. This happens to be the same reason why an ICC emergency arbitrator was not able to act effectively. Nonetheless, the questions are distinct.

***Appropriateness for the Singapore court to make the order***

103 Section 12A(3) sets out the condition of appropriateness as follows:

> (3) The General Division of the High Court may refuse to make an order under subsection (2) if, in the opinion of the General Division of the High Court, the fact that the place of arbitration is outside Singapore or likely to be outside Singapore when it is designated or determined makes it inappropriate to make the order.

104 The defendants contend that it is inappropriate for the Singapore court to grant the Mareva injunction as parties had contracted out of the interim-remedial jurisdiction of the court, instead agreeing on an application to the emergency arbitrator as the exclusive procedure for granting interim relief.[148] Granting Mareva relief, which is unavailable under New York law, would also "cut across the grain of parties' chosen curial law".[149]

105 The parties' chosen procedure for interim relief is set out under s 12.8 of the APA. I reproduce the relevant clauses as follows:[150]

> 12.8 Governing Law; Dispute Resolution.
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> …

148 DWS (16 May) at paras 330–342.

149 DWS (16 May) at paras 343–348.

150 B1 at pp 214–215 (APA at s 12.8).

> (b) Dispute Resolution Mechanism. The Parties agree that the procedures set forth in this *Section 12.8 shall be the exclusive mechanism* for resolving any dispute, controversy, or claim of any nature between the Parties that may arise out of or in relation to this Agreement (each, a "Dispute", and collectively, the "Disputes").
>
> …
>
> (d) Arbitration.
>
> (i) Any unresolved Dispute that had been subject to, and exhausted the procedures of, Section 12.8 and that is not an Excluded Claim ***shall*** be finally resolved by binding arbitration by the International Chamber of Commerce ("ICC") administered in accordance with the Rules of ICC in effect as of the Closing Date, and applying the substantive law specified in Section 12.8(a). …
>
> …
>
> (iii) A Party that needs *urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal* ***may*** *make an application for such measures pursuant to the ICC's Emergency Arbitrator Rules. …*
>
> [emphasis added in italics and bold italics]

106 The use of permissive language in s 12.8(d)(iii), through the word "may", suggests that the parties did not intend to preclude recourse to the courts for interim relief. This is in contrast to the use of the word "shall" in the arbitration clause at s 12.8(d)(i) of the APA. Further, the absence of any express wording in the rest of the APA excluding interim relief from the courts supports this interpretation of s 12.8(d)(iii). Relatedly, KBP's position that the ICC emergency arbitrator has exclusive jurisdiction over interim relief is inconsistent with KBP itself having filed an application for (in effect) an anti-suit injunction before the Denmark courts in April 2025.[151] In my view, the statement that "Section 12.8 shall be the exclusive mechanism for resolving any dispute, controversy or claim" concerns how the merits of the claim must be

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151 Schelde3 at pp 6423–6426.

determined (*ie*, in arbitration) and does not exclude seeking the support of a court for that arbitration, as was done here.

107 Next, it is not inappropriate for the Singapore courts to grant Mareva relief that is unavailable under New York law. The question instead is whether the New York court finds the granting of Mareva relief objectionable. This is because a court may have differing views towards domestic law and external intervention: see Yeo Tiong Min, *Commercial Conflict of Laws* (Academy Publishing, 2023) at pp 217–218, fn 148. Based on the evidence before me, the New York courts do not consider Mareva relief objectionable. The defendants do not dispute that the New York courts have enforced Mareva injunctions granted by foreign courts.[152]

**Variation of order**

108 The defendants seek, in the alternative, a variation of the worldwide freezing order such that (a) it restrains both defendants collectively, rather than each of them individually, from dealing with US$730m; and (b) the defendants are required to disclose only assets exceeding US$10,000 in value.[153] Novo contends that it would be oppressive if the worldwide freezing order froze assets in excess of the claim.

109 Novo rejects the defendants' alternative prayer for variation of the worldwide freezing order as (a) Novo's claim is against the defendants jointly and severally; and (b) the defendants have not adduced any serious evidence of other assets owned by KBP to justify a reduction in the sums frozen.[154]

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152 DWS (16 May) at para 302; C7 at p 386.

153 DWS (16 May) at paras 474–475; Transcript (11 July) at p 37 lines 21–27.

154 CWS (16 May) at para 228.

110 In my view, where a claim is made against multiple defendants on a joint and several basis, the court should, in determining the overall limit for the freezing order, consider the possibility that one defendant may be found not liable such that the claimant would only be able to enforce against the injuncted assets of the remaining defendant or defendants. This may make it appropriate, as here, to frame the freezing order to cover assets of each individual defendant to the amount of the claim against each such individual. Only framing the order in this way would prevent potential frustration of an anticipated judgment by the defendants making up the collective pool of restrained assets disproportionately from defendants with stronger defences. I also note that freezing orders have been granted restraining each defendant from dealing with the total sum claimed: see for example *JSC Commercial Bank Privatbank v Kolomoisky and others* [2020] Ch 783 at [2].

111 While Novo, in its written submissions for the *ex parte* application, had sought "an injunction against the Defendants … of up to US $730m",[155] the draft order annexed to the Originating Application makes it clear that Novo was seeking an injunction of up to US$730m against each defendant.[156]

112 Nonetheless, an argument could be made that Novo is unlikely to succeed against Dr Huang unless it also succeeds against KBP and so the injunction should only apply to Dr Huang's assets to the extent there is a shortfall between KBP's injuncted assets and the total claim. The argument was not however put like this. Moreover, such an argument would depend on first showing the value of KBP's injuncted assets. There was insufficient evidence concerning that value. I would therefore leave open the possibility for KBP and

155 CWS (10 February) at para 73.

156 Originating Application at Annex (Draft Order).

Dr Huang to renew an application for a variation with proper supporting evidence of value, either before me or before the arbitral tribunal.

113 Next, I turn to the defendants' application to vary the worldwide freezing order to limit the assets which require disclosure to those exceeding US$10,000 in value. The disclosure order that is granted ancillary to a Mareva injunction serves a limited but focused purpose of enabling the claimant to determine the location of the defendant's assets and take appropriate steps to preserve them pending trial: *Bouvier* at [101]. The ultimate question is what disclosure is necessary to serve that purpose. Although the standard form of a disclosure order ancillary to a worldwide freezing order in Appendix A Form 25 of the Practice Directions applies to all assets regardless of value, it is open to the court to provide for a minimum value of assets which have to be disclosed. This minimum value may be determined as is appropriate and fair depending on the size of the claim and the defendant's circumstances: Steven Gee, *Commercial Injunctions* (Sweet & Maxwell, 6th Ed, 2016) at para 23-014. Indeed, our courts have imposed minimum value limits in the context of ancillary disclosure orders: see *Jonathan John Shipping Ltd v Continental Shipping Line Pte Ltd* [2025] SGHC 34 at [60] and [62], on which point permission to appeal was denied.

114 In the present case, compared to the claim sum of US$730m, assets worth less than US$10,000 are *de minimis* in value. The worldwide freezing order allows Dr Huang to spend US$10,000 a week on his ordinary living expenses.[157] The fact that Novo specifically excluded disclosure of assets worth less than US$10,000 in its supporting affidavit at the *ex parte* stage[158] shows that

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157 A at p 27 Order 5.

158 B1 at p 27 (Schelde1 at para 5).

it did not think disclosure of such assets was on balance necessary, in the face of other considerations such as the efficiency of disclosure.[159] At the *inter partes* stage before me, Novo does not contend that it now needs such disclosure to police the Mareva injunction, but merely says that a minimum sum is not part of the standard form.[160] In these circumstances, I find that a US$10,000 minimum limit is in line with Novo's initial intended application and is appropriate at this stage.

## Conclusion

115 For these reasons, I dismiss the setting aside application, save that I vary the disclosure order ancillary to the worldwide freezing order, such that the defendants need only disclose assets that exceed US$10,000 in value. I will hear parties on costs.

Philip Jeyaretnam
Judge of the High Court

Ong Tun Wei Danny, Teo Jason, Lee Jin Loong and Zhang Haowei Elvis (Setia Law LLC) for the claimant;
Cavinder Bull SC, Tan Yuan Kheng (Chen Yuanqing), Gerald Paul Seah Yong Sing, Belle Tan Ling Yi and Tan Jui Yang Benedict (Drew & Napier LLC) for the defendants.

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159 B5 at p 139 (Schelde2 at para 184(d)).

160 Ibid.