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

[2026] SGHCR 35

Originating Claim No 496 of 2025 / Summonses Nos 1808 and 1863 of 2026

Between

The Tyrell Solution Private Limited

… *Claimant*

And

Nasrat Lucas Muzayyin

… *Defendant*

Originating Claim No 585 of 2025 / Summonses Nos 1807 and 1862 of 2026

Between

Nasrat Lucas Muzayyin

… *Claimant*

And

(1) The Tyrell Solution Private Limited
(2) Tyrell Offshore Solutions Private Limited
(3) Peter James Bartlett

… *Defendants*

JUDGMENT

[Civil Procedure — Pleadings — Further and better particulars]
[Civil Procedure — Production of documents — Documents referred to in a pleading or affidavit]
[Civil Procedure — Production of documents — Private or internal correspondence]
[Civil Procedure — Production of documents — Privileged documents — Implied waiver]

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The Tyrell Solution Pte Ltd
v
Nasrat Lucas Muzayyin and another matter

[2026] SGHCR 35

General Division of the High Court — Originating Claim No 496 of 2025 (Summonses Nos 1808 and 1863 of 2026) and Originating Claim No 585 of 2025 (Summonses Nos 1807 and 1862 of 2026)
AR Ong Kye Jing
15 July 2026

20 August 2026 Judgment reserved.

AR Ong Kye Jing:

1 The four single applications pending trial ("SAPTs") before me arise in two related actions that will be heard together at trial. The parties seek further and better particulars ("FBPs"), specific production of documents and permission to file further pleadings. While such applications are a familiar feature of pre-trial litigation, these SAPTs have been filed in circumstances where affidavits of evidence-in-chief ("AEIC") have been filed before the exchange of documents, under what is commonly referred to as the "AB4D" procedure. This invites consideration of how applications for FBPs should be approached where AEICs are already on the table and how this dovetails with the purposes that the AB4D procedure is designed to serve. The specific production applications also raise questions relating to the "plain and obvious" standard, the treatment of known adverse documents within private or internal

correspondence, and implied waiver of legal professional privilege.

Background facts

The parties' actions

2 In HC/OC 496/2025 ("OC 496"), The Tyrell Solution Private Limited ("TSPL") seeks to recover a sum of US$700k ("Loan") from one Mr Nasrat Lucas Muzayyin ("Mr Muzayyin"). This sum had been disbursed under a loan agreement dated 3 July 2018 ("Loan Agreement") but it has not been repaid.[1]

3 Mr Muzayyin's primary defence is that the sum was not a loan, but a fee he received for his role in brokering a corporate acquisition pursuant to a "Brokering Fee Agreement". It is therefore a sum to which he is entitled and the Loan Agreement was entered into merely as a sham.[2]

4 His defence is founded on certain understandings that he claims to have reached with one Mr Peter Bartlett ("Mr Bartlett"). According to Mr Muzayyin, Mr Bartlett was TSPL's representative, controlling mind and beneficial owner, and had ostensible authority to act on its behalf in all dealings and interactions with Mr Muzayyin.[3]

5 TSPL's position is diametrically opposed. It says that its real decision-maker is one Ms Audrey Thiam ("Ms Thiam"), who is its sole shareholder and sole director, and who had to make all material decisions. It rejects Mr Muzayyin's claim that Mr Bartlett incorporated TSPL in March 2017 to conduct his business dealings and investments; that Ms Thiam is but a nominee

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1 OC 496 SOC at paras 4 to 8 and 14.

2 OC 496 Defence at paras 12, 25 and 26.

3 OC 496 Defence at paras 22, 36 and 57.

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director; and that Mr Bartlett has the wide authority that has been asserted. It also maintains that the Loan Agreement was genuine and enforceable. Should the court find otherwise, however, it argues that Mr Bartlett and Mr Muzayyin had engaged in an unlawful means conspiracy pursuant to a "Conspiracy Agreement". The unlawful means include the creation of the Loan Agreement as a sham and breaches of Mr Bartlett's fiduciary duties to TSPL.[4]

6 In some ways, HC/OC 585/2025 ("OC 585") can be understood as a mirror image of OC 496. OC 585 was commenced by Mr Muzayyin, who seeks a declaration that the Loan Agreement is unenforceable, or alternatively, that TSPL is estopped from enforcing it. In addition to TSPL, he brings Mr Bartlett in as the third defendant, so that if the court were to conclude that the Loan Agreement is enforceable, Mr Bartlett might be ordered to pay damages for his misrepresentations about the Loan. Under that same alternative case, Mr Muzayyin also seeks an order that Tyrell Offshore Solutions Private Limited ("TOSPL"), the second defendant in OC 585, pay the sum of US$700k to him.[5]

7 This last point warrants some context-setting. TOSPL is a wholly-owned subsidiary of TSPL. As with TSPL, Mr Muzayyin claims that Mr Bartlett was TOSPL's representative, controlling mind and ultimate beneficial owner, and that he had ostensible authority to act on its behalf in all dealings with Mr Muzayyin, whereas TOSPL claims that Ms Thiam's concurrence was needed for all material decisions as its sole director.[6] To appreciate the relevance of TOSPL to the dispute, a few words should be said about the corporate acquisition I alluded to earlier.

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4 OC 496 SOC at paras 19 to 22.

5 OC 585 SOC at p 13 (reliefs).

6 OC 585 SOC at paras 2, 3 and 5; OC 585 Defence at paras 4 to 6.

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8 Here, the precise facts are subject to some dispute and my summary should be understood in that light. Mr Muzayyin and Mr Bartlett have had business dealings since 2010. In 2017, Mr Bartlett informed Mr Muzayyin of an opportunity to invest in or acquire a group of companies known as Rubicon. These discussions also included one Mr Roger Chia ("Mr Chia"). An agreement was reached that the acquisition would be funded through the companies of Mr Muzayyin and Mr Chia, which are Sebrina Holdings Pte Ltd ("SHPL") and Oro Development Private Limited ("Oro") respectively. A new entity, Faro III ("Faro"), would also be incorporated to facilitate the acquisition. SHPL and Oro would receive returns based on their capital and cash injections, while TOSPL would be issued preference shares in Faro.[7]

9 Crucially, a sum of US$900k would be paid by Faro to TOSPL following the acquisition. The sum of US$700k that Mr Muzayyin received (and which forms the subject of the present actions) is said to have originated from this US$900k sum.[8] The parties advance sharply contrasting narratives as to what the sum represents.

10 On Mr Muzayyin's case, in mid to late 2017, Mr Bartlett had requested a brokering fee for his role in the acquisition of Rubicon. It was ultimately agreed between Mr Bartlett and Mr Muzayyin that Mr Bartlett would receive US$200k while Mr Muzayyin would receive US$700k. The mechanics of payment were agreed among Mr Bartlett, Mr Muzayyin and TOSPL: Faro would pay a sum of US$900k to TOSPL, and TOSPL would transfer the sums of US$200k and US$700k to Mr Bartlett and Mr Muzayyin respectively. This

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7 OC 585 SOC at paras 4 and 6; OC 585 Defence at paras 13 to 15.

8 OC 585 SOC at para 7.

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is what the parties have come to refer to as the (purported) "Brokering Fee Agreement".[9]

11 Around May to July 2018, Mr Muzayyin and Mr Bartlett resumed discussions on the performance of the Brokering Fee Agreement, including where and when Mr Muzayyin's brokering fee was to be paid. After some discussion, Mr Bartlett informed Mr Muzayyin that the fee would be paid by TSPL instead of TOSPL, and proposed that the payment be documented as a loan for internal business reasons. On Mr Muzayyin's case, this was the genesis of the Loan Agreement. Mr Bartlett also represented to Mr Muzayyin that the Loan Agreement would not be enforced and that the "Loan" was not a loan that Mr Muzayyin had to repay.[10]

12 On this basis, Mr Muzayyin claims that the sum of US$700k he received was not a loan but the agreed brokering fee. However, if the court were to find that it represents the loan under the Loan Agreement, this would mean that Mr Muzayyin has yet to be paid the brokering fee.[11] This explains why TOSPL has been made a defendant in OC 585, so that it might be ordered to pay the brokering fee to Mr Muzayyin.

13 Turning to TSPL and TOSPL's case, they disavow knowledge of the Brokering Fee Agreement, which would in any event have been entered into without authority and without consideration. They contend that the agreement to acquire Rubicon did not envisage a brokering fee being paid, only that Faro would pay a *consultancy fee* of US$900k to TOSPL ("Consultancy Fee"). The

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9 OC 585 SOC at para 7.

10 OC 585 SOC at paras 15 to 17.

11 OC 585 SOC at para 31.

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Loan Agreement is therefore a genuine and binding agreement, pursuant to which Mr Muzayyin is indebted. If Mr Muzayyin had entered into the Loan Agreement without the intention of repaying the Loan, then he would have intentionally deceived TSPL and Ms Thiam and dishonestly induced them into lending him money.[12]

Procedural history

14 On 25 June 2025, TSPL initiated arbitration proceedings pursuant to the Loan Agreement. On 26 June 2025, TSPL commenced OC 496 but did not serve process on Mr Muzayyin. According to TSPL, it was only after Mr Muzayyin submitted his response to the notice of arbitration on 23 July 2025 that many of the matters above came to light, such as the allegation that the Loan Agreement was a sham. As this appeared to be a *prima facie* case of fraud, and as such a cause of action would lie beyond the ambit of the parties' arbitration agreement, TSPL requested that arbitration proceedings be suspended so that separate proceedings could be pursued. Mr Muzayyin agreed.[13]

15 Around the same time, Mr Muzayyin commenced OC 585 on 25 July 2025 and served process on TSPL and TOSPL on 31 July 2025. This meant that while OC 496 was filed first, OC 585 was served first. Having seen Mr Muzayyin's statement of claim ("SOC") in OC 585, TSPL sought permission on 18 August 2025 to amend its SOC in OC 496. Permission was granted, and the amended SOC (which I shall refer to as the OC 496 SOC for simplicity) was filed and served on Mr Muzayyin on 9 September 2025.

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12 OC 585 Defence at paras 16 and 29.

13 OC 585 SOC at paras 27 to 29; OC 585 Defence at para 44.

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16 At a Registrar's Case Conference ("RCC") on 23 December 2025, the court noted the parties' agreement that the AB4D procedure under O 9 r 8(1) of the Rules of Court 2021 ("ROC 2021") should apply. At the following RCC on 27 January 2026, timelines were given for AEICs to be filed, and by-consent orders were made for both actions to be heard at the same time before the same judge, for evidence adduced in one action to be relied upon in the other, and for documents disclosed in one action to stand as disclosed in the other.

17 Three AEICs were filed by Mr Muzayyin's witnesses, *viz*, Mr Chia, one Ms Tioh and Mr Muzayyin himself. The sole witness of TSPL and TOSPL, Ms Thiam, filed her AEIC in March 2026 ("Ms Thiam's 1st AEIC") and a supplemental AEIC in May 2026 ("Ms Thiam's 2nd AEIC"). In this judgment, I will be referring principally to Mr Muzayyin's AEIC and Ms Thiam's two AEICs.

18 To date, Mr Bartlett has not filed a notice of intention to contest or not contest OC 585 and has not participated in proceedings.

19 In June 2026, the parties filed the four SAPTs (*viz,* HC/SUM 1807/2026 ("SUM 1807"), HC/SUM 1808/2026 ("SUM 1808"), HC/SUM 1862/2026 ("SUM 1862") and HC/SUM 1863/2026 ("SUM 1863")), which may be summarised as follows:

Party **Main Action**	**Mr Muzayyin**	**TSPL/TOSPL**
OC 585	SUM 1807 Production and FBPs	SUM 1862 Production and FBPs
OC 496	SUM 1808 FBPs	SUM 1863 FBPs and Reply

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20 Given that TSPL and TOSPL have common legal representation and their interests and cases are aligned, I will adopt the shorthand "TS" in this judgment where I refer to both entities or where the distinction between them is not material. Where it matters, TSPL and TOSPL will be individually named. Singular verbs are used with "TS" solely for grammatical convenience.

Issues to be decided

21 I will first summarise the legal principles governing applications for FBPs and specific production, before addressing the SAPTs in the following sequence:

(a) Mr Muzayyin's applications for FBPs in SUM 1808 (OC 496) and SUM 1807 (OC 585);

(b) TS's applications for FBPs in SUM 1863 (OC 496) and SUM 1862 (OC 585);

(c) Mr Muzayyin's application for specific production in SUM 1807;

(d) TS's application for specific production in SUM 1862; and

(e) TSPL's application for permission to file a reply in SUM 1863.

22 My discussion of the legal principles will focus on four questions in particular:

(a) In an application for FBPs, what does it mean for particulars to be "necessary on the facts of the case" under O 9 r 13 of the ROC 2021?

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(b) In an application for FBPs where AEICs have been filed, what recourse can be had to the AEICs in determining whether particulars are necessary?

(c) In an application for specific production, can a requested party's general non-compliance with its disclosure obligations, without more, show that it is plain and obvious that there are further documents to be produced or accounted for?

(d) In an application for specific production, what order(s) would be appropriate where the parties have not submitted that the proscription in O 11 r 5(2) of the ROC 2021 applies (*ie*, that the requested documents are part of the requested party's private or internal correspondence), but it nevertheless appears likely that this would be the case?

23 In the course of addressing the individual applications, I will also have occasion to consider some of the pleading requirements that apply to fiduciary duties (at [93] below), conspiracies (at [153] below), sham agreements (at [166] below) and ostensible authority (at [180] below), as well as the doctrine of implied waiver in the context of legal professional privilege (at [274] below).

The law on further and better particulars

General principles

24 Under O 9 r 13 of the ROC 2021, the court may order a party to serve particulars of any matter stated in its pleading on any other party if the court is of the opinion that the particulars are necessary on the facts of the case.

25 The need to give particulars "reflects the overriding principle that the litigation between the parties, and particularly the trial, should be conducted

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fairly, openly, without surprise and, as far as possible, so as to minimise costs": *Singapore Rules of Court: A Practice Guide* (Chua Lee Ming editor-in-chief and Paul Quan gen ed) (Academy Publishing, 2nd Ed, 2026) ("*Singapore Rules of Court: A Practice Guide*") at para 09.038. In *Access Medical Pte Ltd and others v MHC Medical Network Pte Ltd* [2023] SGHCR 19 ("*Access Medical*") at [17]–[19], the court held that the case law applicable under the Rules of Court (2014 Rev Ed) should broadly continue to be relevant to O 9 r 13 of the ROC 2021, although the following two points ought to be borne in mind:

(a) Order 9 rule 13 expressly clarifies that the standard for ordering particulars is whether the particulars sought are *necessary* on the facts of the case; and

(b) the power to order particulars should be exercised having regard to the *ideals* in O 3 r 1(2) of the ROC 2021 (the "Ideals").

26 In my view, the touchstone of necessity provides a useful lens for approaching an application for FBPs. I suggest that there are two senses in which FBPs must be necessary: (a) there must be a need to be met, and (b) an order for FBPs should be the necessary procedural tool.

27 First, there must be a *need* to be met. This is directed at the purposes that an order for FBPs is meant to serve. It is well accepted that FBPs serve to:

(a) inform the opposing party of the nature of the case that it has to meet;

(b) prevent the opposing party from being taken by surprise at trial;

(c) enable the opposing party to know what evidence it ought to prepare for trial;

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(d) limit the generality of the pleadings, claim, or evidence;

(e) limit and define the issues to be tried, and as to which production is required; and

(f) tie the hands of the pleading party, so that it cannot, without permission of court, go into any matters not pleaded.

See *Hii Yii Ann and another v Tiong Thai King and another* [2024] 6 SLR 96 ("*Hii Yii Ann*") at [10]; *Element Six Technologies Ltd v IIa Technologies Pte Ltd* [2017] SGHCR 16 ("*Element Six Technologies*") at [12(a)]; *AstraZeneca AB (SE) v Sanofi-Aventis Singapore Pte Ltd* [2013] SGHCR 7 at [12]; *Singapore Civil Procedure* 2026 vol I (Cavinder Bull *SC* gen ed) (Sweet & Maxwell, 2026) at para 9/13/1.

28 Under this rubric, the key question is whether there exists a *genuine* need for FBPs, based on an objective assessment of the parties' cases. It is easy for a party to assert, for example, that it would be *desirable* to tie the hands of the pleading party so that it cannot go into matters not pleaded or advance a shifting or inconsistent case at trial. But if what lies at the root of such a submission is speculation as to how the pleading party might run its case at trial, or if the risk of inconsistent cases is more apparent than real, then it would be hard to see why there would be a genuine need for FBPs. Similarly, while rational litigants would understandably want to minimise surprises at trial, a degree of uncertainty is unavoidable in most forms of litigation. The kind of surprise that an application for FBPs is concerned with would, in the main, be the sort of surprise that arises from a party not having fair notice of the nature of the case it has to meet: *Access Medical* at [19(a)]. In my respectful view, the underlying concern was well-captured by Saville LJ in *BA Pension Trustees Ltd v Sir Robert McAlpine & Sons Ltd* (1994) 72 BLR 26 at 33 (cited locally in *Sharikat*

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Logistics Pte Ltd v Ong Boon Chuan and others [2011] SGHC 196 ("*Sharikat Logistics*") at [7]):

> The basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer it. To my mind it seems that in recent years there has been a tendency to forget this purpose and seek particularisation even when it is not really required. This is not only costly, but is calculated to lead to delay and to interlocutory battles in which the parties and the court pore over endless pages of pleadings to see whether or not some particular point has or has not been raised or answered, when in truth each party knows perfectly well what case is made by the other side and is able properly to deal with it. …

29 Seen in this light, what the standard of necessity provides is a disciplining effect that ensures that FBPs are only ordered where they are genuinely needed.

30 Second, an order for FBPs should be the *necessary procedural tool*. In other words, the court should be of the opinion that FBPs are what is needed, as opposed to some other mode of eliciting or elucidating the pleading party's case.

31 At a basic level, if FBPs would not serve the purpose for which they were requested even if they were ordered and answered, they would not be necessary: *Access Medical* at [28]. At a broader level, FBPs are not meant to perform functions that properly belong to other procedural tools and processes, such as amendment of pleadings, documentary production and cross-examination. This principle is well established. In *Pang Kim Guan v Lee Cheng Liam* [1968–1970] SLR(R) 206 at [6], the Federal Court of Singapore cited the *Halsbury's Laws of England* for the proposition that "a party is not entitled to an order of particulars for the purpose of ascertaining the evidence upon which his opponent proposes to prove his case, nor is it the function of particulars to

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fill gaps in a statement of claim from which a material statement has been omitted".

32 The distinction between pleadings and evidence was clearly articulated in James Fitzjames Stephen QC, *An Introduction to the Indian Evidence Act* (Thacker, Spink & Co, 1904) at pp 10–11. As the learned author explained:

> The law of procedure includes, amongst others, two main branches,—(1) the law of pleading, which determines *what in particular cases are the questions in dispute* between the parties, and (2) the law of evidence, which determines *how the parties are to convince the court of the existence of that state of facts* which, according to the provision of substantive law, would establish the existence of the right or liability which they allege to exist. [emphasis added]

33 In short, particulars should seek to inform the opposing party of the nature of the case it has to meet, as opposed to the mode in which it is to be proved: *Hii Yii Ann* at [10]; *Surge Electrical Engineering Pte Ltd v Powertec Engineers Pte Ltd* [2002] SGHC 280 at [12].

34 A further distinction is drawn between a pleading defect that can be addressed through the provision of FBPs and one that can only be remedied through an amendment of pleadings. Particulars are not a substitute for necessary averments in a pleading and they cannot be used to "state the material facts omitted from the [pleading] in order, by filling the gaps, to make good an inherently bad pleading": *Pinson v Lloyds and National Provincial Foreign Bank Ltd* [1941] 2 KB 72 at 75 (*per* Scott LJ), cited in *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd and others* [2025] SGHC 82 at [312].

35 Nothing in what I have just stated should be controversial. What this summary seeks to articulate is how the standard of necessity in O 9 r 13 of the

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ROC 2021 (*ie*, that the particulars must be "necessary on the facts of the case") might be used as an organising tool for the principles governing an application under O 9 r 13. But it also serves a second purpose, which is to provide a foundation for the more specific question I have to consider in this case: whether the principles governing an application for FBPs require any modification in an action where the AB4D procedure applies. This issue has arisen because the parties have invoked each other's AEICs in their submissions on FBPs – for instance, to show that the opposing party already understands the nature of the case it has to meet. However, it is not self-evident that all such references would be permissible, and it would be necessary to approach such reliance on a more principled basis.

Further and better particulars in the AB4D context

36 In *Sharikat Logistics*, the High Court explained the specific place that pleadings and particulars occupy in the litigation process in the following terms (at [8]–[9]):

> 8 … *Pleadings are part of the first stage of the litigation process and lawyers must not clog it with material that properly belongs to other stages*. The process leading to trial is an orderly and systematic one, as with most aspects of the practice of law, it requires discipline; and part of that discipline is to be patient with the process. The time will come in every case when the parties have to state their evidence. Pleadings need only state material facts. The difference between material facts for the purposes of pleadings and evidence for trial is an important factor that determines whether a request for further and better particulars is justified.
>
> 9 *After pleadings comes discovery, and after discovery, interrogatories*. For example, if the Statement of Claim pleaded that a contract arose from a series of correspondence from a particular date to another, the other party may ask for sight of those letters in discovery, and having seen them, may interrogate the first party in respect of relevant information found on those documents – such as the name of the second party's clerk if reference was made to a clerk of the second party in the document disclosed. *Finally, the second party will be*

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> *expected to file an affidavit of evidence-in-chief of that clerk giving his account of his involvement in the writing of the letter in question.* All this culminates in the cross-examination of that clerk by counsel for the first party at trial. Just because an action is complex or complicated does not mean that the parties should collapse the various interlocutory stages into one and hope to see evidence when all that is required are statements of material facts that will eventually have to be proved at trial.
>
> [emphasis added]

37 This rationalisation of the role of pleadings and particulars is based on a model of trial preparation that proceeds as a specific sequence of stages, from pleadings and particulars, to discovery and interrogatories, further to the filing of AEICs, and culminating in cross-examination at trial. But that is not the only model of trial preparation that exists. Under O 9 r 8(1) of the ROC 2021, after jurisdiction objections (if any) are dealt with and the parties have filed and served their pleadings, the court may "order the parties to file and serve their lists of witnesses or the [AEICs] of all or some of the witnesses simultaneously or in any sequence" before any exchange of documents (see also O 11 r 3(3)). This is the core of the AB4D procedure. Where such a procedure applies and an application for FBPs is made, the court will likely be deciding the application with the benefit of the AEICs having been filed: see O 9 r 9(1) and 9(4)(*e*) of the ROC 2021. This raises a question as to whether a different set of principles ought to govern applications for FBPs in AB4D cases, where the reasoning in *Sharikat Logistics* would arguably carry less force.

38 In my view, the familiar principles governing applications for FBPs would continue to apply, but they ought to be informed by the aims of the AB4D procedure (see [39]–[41] below). This means that reliance may be placed on the AEICs filed, particularly to assess whether a genuine need for FBPs exists, though such reliance must be kept within principled bounds (see [43]–[45] below).

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39 The AB4D procedure was a recommendation of the Civil Justice Review Committee ("CJRC") as part of the reforms to the Rules of Court. The CJRC had observed that under the prevailing procedural regime where AEICs were filed after discovery, (a) there was a risk of AEICs being adjusted to fit the evidence produced during discovery, and (b) AEICs were being filed too late in proceedings for them to assist in narrowing the issues in dispute and the scope of discovery: CJRC, *Report of the Civil Justice Review Committee* (Chairperson: Senior Minister of State for Law and Finance, Ms Indranee Rajah *SC*) ("*Report of the Civil Justice Review Committee*") at para 67. By adopting the AB4D procedure, the following ends would be served (at para 68):

> The purpose of filing and exchanging AEICs before disclosure is to shift the focus of witness evidence to the case put forward through pleadings. Requiring parties to exchange witness evidence earlier in the proceedings will:
>
> (a) Enhance the authenticity of evidence in the AEICs.
>
> (b) Assist in narrowing the issues in dispute from an earlier stage in the proceedings, hence narrowing the scope of discovery.
>
> (c) Reduce the volume of and amount of time spent on the disclosure of documents since early production of witness evidence may facilitate the identification of crucial issues in court proceedings.
>
> (d) Encourage parties to settle if they are required to have regard to their own evidence without examining their opponent's documents.

40 The CJRC and Civil Justice Commission ("CJC") recognised that the AB4D procedure could give rise to some concerns: see *Report of the Civil Justice Review Committee* at para 69; CJC and CJRC, *Response to Feedback from Public Consultation on the Civil Justice Reports: Recommendations of the Civil Justice Commission and the Civil Justice Review Committee* (11 June 2021) ("*Response to Feedback*") at para 72. One such concern was that the parties may attempt to game the system by initially filing a bare AEIC with a

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view to filing a more substantive supplemental AEIC after production has taken place: *Report of the Civil Justice Review Committee* at para 69(d). Another was that the procedure may be incompatible with complex cases where the parties do not know the allegations or evidence they have to meet before discovery: *Response to Feedback* at para 61(d).

41 In response to the various concerns, the CJRC and CJC highlighted the following:

(a) The intent behind the AB4D proposal is to shift the focus to witness evidence as early as possible, so that the case proceeds in a focused manner and the parties proceed on the basis of the strength of their case as opposed to the weaknesses of their opponents' case. The parties and their counsel will engage in more thorough preparation of witness evidence at an early stage of proceedings, which will result in greater time and costs savings for the parties in the long run: *Report of the Civil Justice Review Committee* at para 70; CJRC and CJC, *Public Consultation on Civil Justice Reforms: Recommendations of the Civil Justice Review Committee and Civil Justice Commission* (26 October 2018) (*"Recommendations of the CJRC and CJC*") at para 69; *Response to Feedback* at para 62; see also *Singapore Rules of Court: A Practice Guide* at para 09.022.

(b) The AB4D procedure is not intended for cases where the parties are unable to prepare their AEICs without production first taking place, especially where there is asymmetry of information. The draft rules would also be amended to expressly state that the court may order AEICs to be filed simultaneously or in any sequence: *Report of the Civil*

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Justice Review Committee at para 71; *Recommendations of the CJRC and CJC* at para 70; *Response to Feedback* at para 64.

42 It may be gleaned from the above that:

(a) One of the key reasons for the AB4D procedure is to enable AEICs to be filed earlier in proceedings, so that they can facilitate the identification of crucial issues and narrow the issues in dispute. This would enable the case to proceed in a more focused manner.

(b) To ensure that this objective is realised, the parties and their counsel ought to engage in more thorough preparation of witness evidence at an early stage of proceedings. This should shift the focus of witness evidence to the case put forward through pleadings.

43 Seen in this light, it would be contrary to the aims of the AB4D procedure to regard AEICs as being completely irrelevant to an application for FBPs. This would weaken the crucial role they play, especially under the AB4D procedure, in illuminating how the parties see and understand their cases based on their pleadings, in identifying what the crucial issues are, and ultimately in narrowing the issues in dispute. In particular, AEICs may shed light on whether there exists a *genuine need* for FBPs. They may reveal that purported ambiguities in a pleading are more theoretical than real, that certain premises are in fact common ground between the parties, or that a party has no real difficulty with understanding the nature of the pleading party's case. They may also dispose of a contention that FBPs are needed to limit the generality of pleadings or evidence, where it is obvious from the AEICs that the parties have already limited their evidence in this way. Conversely, the AEICs may serve to *reinforce* an initial impression that a pleading may be ambiguous or that its generality ought to be delimited. Given that well-drafted pleadings generally set

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out only the party's basic case (*Sharikat Logistics* at [8]; *Access Medical* at [19(b)]), AEICs would enable the court to reach a more informed view of how clear or how ambiguous a party's pleaded case actually is. In turn, this would enable proceedings to advance in a more focused manner.

44 At the same time, there ought to be principled limits on when and how an AEIC is relied on in an application for FBPs. I suggest that there ought to be at least three such limits:

(a) First, AEICs neither substitute for nor stand as the equivalent of pleadings in an originating claim. That would be a category error, and it would contradict the time-honoured rule that defects in pleadings cannot be cured by averments in affidavits: see [32] above and *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [52]. Accordingly, the fact that an AEIC contains evidence on a given point or issue would not automatically mean that particulars are unnecessary. This is especially so since an AEIC may not always exhaustively reflect the four corners of a party's case at trial or represent the last word of a witness on an issue. In a similar vein, that a witness has been able to produce an AEIC of remarkable detail or depth need not mean that there are no deficiencies in the pleading; it could mean instead that the witness has done his or her best to present evidence *in spite* of those deficiencies.

(b) Second, when a party seeks to show that a part of an AEIC relates to a particular part of a pleading, it should be apparent that the two are referable to each other. This is especially the case when the AEIC belongs to the opposing party's witness. This need not be an express reference to the pleaded paragraph, but it should be clear from the

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structure and content of the relevant part of the AEIC that it is directed at the same aspect of the pleaded case.

(c) Third, the purpose for referring to an AEIC should be directed at the inquiry under O 9 r 13 of the ROC 2021. As I have suggested above, this means addressing whether the FBPs requested are necessary on the facts of the case, in the sense that: (i) there is a need to be met, and (ii) an order for FBPs would be the necessary procedural tool. Among other purposes, an AEIC should not be deployed for the purpose of showing that a pleaded position is wrong, unsustainable or unsupported by the evidence. The proper forum for assessing the sufficiency and probative value of the evidence is quite clearly the trial. As a convenient rule of thumb, the point should not be to assess whether the party's pleaded case is *correct*, but to distil what the party's case even *is*.

45 In summary, in an application for FBPs where AEICs have been filed, it would be legitimate for the court and the parties to have recourse to matters stated in the AEICs, subject to the limits outlined at [44] above.

The law on specific production

General principles

46 The basic principles that govern an application for specific production under O 11 r 3 of the ROC 2021 are well established:

(a) As a baseline requirement, an applicant must:

(i) properly identify the requested documents;

(ii) show that the requested documents are material, *ie*, that there is a demonstrable nexus between the requested

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document and at least one of the issues in the case, and that the document has a significant bearing on the issue such that it could potentially affect the court's ultimate decision; and

(iii) provide sufficient evidence that the requested documents are in the requested party's possession or control (O 11 r 3 of the ROC 2021).

(b) However, the court must not order the production of the following types of documents:

(i) documents that merely lead a party on a train of inquiry to other documents – unless it is a special case (O 11 r 5(1));

(ii) documents that are part of a party's private or internal correspondence – unless it is a special case or such correspondence are known adverse documents (O 11 r 5(2));

(iii) documents that are subject to privilege – subject to any written law (O 11 r 5(3)); and

(iv) documents the production of which would be contrary to the public interest – subject to any written law (O 11 r 5(3)).

See: *Cachet Multi Strategy Fund SPC on behalf of Cachet Special Opportunities SP v Feng Shi and others* [2025] 3 SLR 678, [2024] SGHCR 8 ("*Cachet (AR)*") at [25]; *Eng's Wantan Noodle Pte Ltd and*

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another v Eng's Char Siew Wantan Mee Pte Ltd [2023] SGHCR 17 ("*Eng's Wantan Noodle*") at [48]–[50].

47 I will consider more specific aspects of these principles where they are relevant to the individual requests, but there are two issues of a more general nature that I will deal with at the outset.

The plain and obvious standard

48 The first issue relates to how a requesting party might show or evidence that the requested documents exist or that they are in the requested party's possession or control (*ie*, the third baseline requirement at [46(a)(iii)] above). The specific question I have to consider is whether general non-compliance by the requested party with its disclosure obligations (*eg*, under an order for production made under O 11 r 2 of the ROC 2021) can establish, without more, that it is "plain and obvious" that there are further documents to be produced or accounted for. This issue arises because Mr Muzayyin has mounted this argument against TS in SUM 1807 (see [195] below). For reasons that I shall explain, I consider this to be possible in principle, but improbable in practice.

49 The analysis of whether further documents exist and/or are in the requested party's possession or control generally proceeds in three steps.

50 First, the requesting party must have some reason or basis for believing that the documents are in the requested party's possession or control. This condition is not difficult to satisfy, as a deposition on affidavit to the effect that the requested document is in the requested party's possession or control is usually sufficient to constitute "sufficient evidence" of the same: *Cachet (AR)* at [25(a)(iii)], citing *Eng's Wantan Noodle* at [50]. The requesting party may of course elect to flesh out the reasons for its belief in greater detail, in anticipation

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of having to establish that it is plain and obvious that further documents exist or existed, are or were within the requested party's possession or control, or are not protected from production (see the third step at [54] below).

51 Second, if the court is satisfied that there is "sufficient evidence" that the requested documents are in the requested party's possession or control, it will go on to consider whether the requested party has a valid ground of objection. Such a ground ought to be deposed to in an affidavit, since a party who wishes to contest an application in an action must file and serve a reply affidavit that contains "all necessary evidence" in opposition to the application: O 3 r 5(5) and 5(7) of the ROC 2021; *Wesley Widjaja v Ng Wei San (alias Oei Wei San alias Wilson Hasan Widjaja) and others* [2025] 5 SLR 491 ("*Wesley Widjaja*") at [46] and [48] (*cf* [45] and [68(c)]). In this regard, the requested party may depose that:

(a) the requested documents do not exist;

(b) the requested documents have never been in his possession or control; or

(c) the requested documents are protected from production (see *Lutfi Salim bin Talib and another v British and Malayan Trustees Ltd* [2024] 5 SLR 86 ("*Lutfi Salim*") at [20]; *Cachet (AR)* at [25(b)]).

52 In the alternative, the requested party may depose that:

(a) the requested documents were but no longer are in his possession or control, in which case he should explain when he parted with possession or control and what has become of such documents; or

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(b) the requested party does not know or cannot confirm: (i) whether the requested documents were ever in his possession or control, or (ii) what has become of the requested documents that were previously in his possession or control.

53 What these five grounds of objection broadly have in common is that they are either directed at demonstrating an *inability* to produce the requested documents (*Rohan St George v 4Fingers Pte Ltd and another* [2025] 5 SLR 206, [2024] SGHCR 9 ("*Rohan St George*") at [18]) or, in the case of documents protected from production, the *impermissibility* of ordering production. However, a key difference between the grounds of objection in [51] and those in [52] is that the latter grounds may be addressed and explained in a subsequent, court-ordered affidavit under O 11 r 3(2) of the ROC 2021 instead: *Lutfi Salim* at [21]; *Cachet (AR)* at [25(c)]. Rule 3(2) provides that if the requested documents are not in the requested party's possession or control, the court may order it to file an affidavit stating this, as well as whether it had such possession or control previously, and if so, when it parted with possession or control and what has become of the requested documents. In other words, where a party deposes in its reply affidavit that it *does not have* the requested documents in its possession or control, the court may nevertheless decide to make an order under O 11 r 3(2) for the other matters under that rule to be stated on affidavit. In line with [51(b)] above, I suggest that if a party *never had* the requested documents in its possession or control at any point in time, it would be more accurate and complete to state that it *never had* the requested documents, and not merely that it *does not have* them.

54 This last point highlights the need for clarity and precision in stating the *reason* for the requested party's inability to produce the requested documents. A requested party's reply affidavit is generally taken as conclusive, at least in

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the context of the specific production application: *Lutfi Salim* at [22] and [46]. In my view, however, an affidavit can only be conclusive *of the matters that it states*. If a reply affidavit only discloses a *partial* inability to produce the requested documents (*eg*, because it only addresses some documents within a class of requested documents and is silent on the rest), then it is only conclusive of that partial inability, and the requested party would not have provided a complete answer to the request. Accordingly, the requested party's deposition would be expected to: (a) address all documents that the production request relates to; (b) avoid sweeping or rolled-up statements (*eg*, that "no responsive documents exist and/or are in our possession or control"); (c) anticipate readily foreseeable objections and not throw up more questions than it answers; and (d) steer clear of equivocal terms that allow for prevarication (*eg*, by simultaneously relying on inconsistent grounds of objection): *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Co, Ltd and another* [2025] 4 SLR 1262 ("*Wuhu Ruyi Xinbo*") at [70], [77] and [81]–[87]; *Wesley Widjaja* at [63]; *Invest Partners Capital Group Pte Ltd v Deutsche Bank AG* [2026] SGHCR 26 at [39]. These non-exhaustive parameters serve to ensure that the deposition is framed with clarity and precision, so that the reply affidavit provides a conclusive answer to the entirety of a given production request.

55 Turning to the third step, where the court is satisfied that the requested party has raised a valid ground for objecting to a specific production request, the requesting party can attempt to persuade the court to go behind the reply affidavit. It can do so by showing that it is plain and obvious that the requested documents: (a) must exist or have existed, (b) must be or have been in the requested party's possession or control, or (c) are not protected from production (*Lutfi Salim* at [32]; *Cachet (AR)* at [46]). This is regarded as an exception to the conclusiveness of the reply affidavit: *Lutfi Salim* at [22]. In essence, what the requesting party would be seeking to demonstrate is that there are further

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requested documents to be *produced* or *accounted for*. Naturally, the specific point that the requesting party has to show would be determined by the ground of objection that has been relied upon. For example, if the objection is that the documents were never in the requested party's possession or control, then the requesting party would have to show that it is plain and obvious that they are or were in the requested party's possession or control; to show that the documents *exist* would not fully answer the point.

56 The "plain and obvious" standard imports a higher threshold than the "reasonable suspicion" test that applied under earlier versions of the Rules of Court: *Lutfi Salim* at [32]–[34]. For example, where the point the requesting party needs to make is that further documents *exist or existed*, it cannot simply argue that the requested documents must have existed because they would exist in the ordinary course of events: *Lutfi Salim* at [24]. Regardless of the point it needs to make (*viz*, that further documents exist or existed, are or were in the requested party's possession or control, or are not protected from production), the requesting party can rely on the documents that have been produced, the requested party's affidavits or pleadings, or some other objective evidence before the court: *Lutfi Salim* at [32].

57 Returning to the specific question I have to consider (see [48] above), I am of the view that there is nothing in principle that precludes a requesting party from relying on the requested party's non-compliance with its disclosure obligations to establish that it is plain and obvious that there are further documents to be produced or accounted for. As mentioned, it was envisaged in *Lutfi Salim* at [32] that a requesting party may rely on the documents that have been produced, the requested party's affidavits or pleadings or "some other objective evidence before the court". These widely framed categories appear to be illustrative rather than exhaustive of the types of material a party may rely

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on (see also the similarly-worded categories in *Jones v The Monte Video Gas Company* (1880) 5 QBD 556, cited in *Wuhu Ruyi Xinbo* at [70]). In any event, "some other objective evidence before the court" could easily accommodate objective evidence of past non-compliance. That the "plain and obvious" standard sets a higher threshold does not rule out the possibility that serious non-compliance may, in an appropriate case, be probative or even dispositive of whether there are further documents to produce or account for. To provide an illustration under the Rules of Court (2014 Rev Ed), the court in *Natixis, Singapore Branch v Lim Oon Kuin and others* [2023] 3 SLR 1502 formed a reasonable suspicion that further documents existed in that case on the basis that the requested party's list of documents only contained six documents, and did not include any communications between the second defendant and his employees or fellow directors (at [28]–[29]). While that decision did not involve the application of the plain and obvious standard, one can imagine cases where the objective evidence shows a total or near-total lack of disclosure or that documents have been deliberately suppressed or consistently withheld, which could arguably satisfy the plain and obvious standard.

58 Having said this, I anticipate that such cases would be few and far between in practice. The nature and extent of any non-disclosure must be considered against what has already been disclosed and what could reasonably be expected to be disclosed given the nature of the case. Where there has been an appreciable degree of disclosure, it may be difficult for the court to infer that the mere existence of *some instances* of non-compliance in relation to *some classes of documents* would mean that there are further documents to be produced or accounted for under *every class of documents requested*. Ultimately, the question the court has to address is not whether there are further documents to be produced or accounted for at all or in general, but whether this is so in respect of each specific class of requested documents. That inquiry is

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inherently contextual and fact-sensitive, and it would be informed by, among other things, the nature and form of the requested documents. As a simple illustration, the belated disclosure or non-disclosure of emails could in some cases imply that efforts to search for emails have been inadequate and that further emails have yet to be produced, but it would not necessarily imply that there would be further WeChat messages in the requested party's possession or control, especially where the party has already disclosed a lengthy record of such messages. Nor would it cast doubt on a deposition that the requested party has never used WeChat before, *ie*, that such documents never *existed* to begin with.

59 For these reasons, I consider it possible that a requested party's general non-compliance with its disclosure obligations could, without more, satisfy the "plain and obvious" test, but such cases are also likely to be highly exceptional in practice.

Production of known adverse documents

60 The second issue relates to the production of known adverse documents that are also part of a party's private or internal correspondence. To recapitulate, O 11 r 5(2) of the ROC 2021 provides that the court *must not* order the production of any document that is part of a party's private or internal correspondence unless: (a) it is a special case, or (b) such correspondence are known adverse documents. The specific question I have to consider is the appropriate order to be made where there has been no express submission that requested documents constitute or include documents in the requested party's private or internal correspondence, but it nevertheless appears likely that this would be the case. Answering this question requires me to first discuss the

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anterior question of which party bears the burden of persuasion that known adverse documents exist.

61 Known adverse documents bear two qualities: (a) they are adverse to the requested party (and not merely potentially adverse); and (b) they are known to be adverse: *Cachet Multi Strategy Fund SPC (on behalf of Cachet Special Opportunities SP) v Feng Shi and others* [2024] SGHC 327 ("*Cachet (HC)*") at [20], citing *Rohan St George* at [49]. They include documents that a party ought reasonably to know are adverse to its case, such as documents it could have knowledge about through reasonable checks and searches: O 11 r 2(2) of the ROC 2021; *Cachet (AR)* at [56].

62 Known adverse documents appear in two places under O 11 of the ROC 2021. First, under O 11 r 2(1), the court may make an order at a case conference for parties to exchange a list of and a copy of all documents in their possession or control, which potentially includes not only all documents that the party in question will be relying on (O 11 r 2(1)(*a*)), but also all known adverse documents (O 11 r 2(1)(*b*)). Order 11 rule 2(1)(*b*) owes its existence to feedback received during the public consultation on proposed reforms to the Civil Justice System held from October to November 2018. The feedback was unanimous that the initial obligation to disclose documents ought to include the disclosure of adverse documents.

63 The original recommendation of the CJC and CJRC had been to adopt an "arbitration-style disclosure of documents" by reducing the scope of the initial disclosure to the documents that the parties were relying on for their respective cases, so as to "reduce the time and costs expended in the exercise of discovery": CJC, *Civil Justice Commission Report* (29 December 2017) (Chairperson: Justice Tay Yong Kwang) ("*Civil Justice Commission Report*")

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ch 8, paras 2–3; *Report of the Civil Justice Review Committee* at paras 73–74; *Recommendations of the CJRC and CJC* at para 79; *Response to Feedback* at para 72. To this proposal, feedback was received that adverse documents were already discoverable as a matter of right, and excluding adverse documents would both (a) incentivise the hiding or destruction of adverse documents and (b) increase the number of requests or applications for further documents. It was also highlighted that (c) the proposed regime would "operate unfairly in cases where there is information asymmetry between the parties [and that] the availability of specific production would be little comfort to the party in the weaker position if he or she does not know what documents are in the possession of the other party": *Response to Feedback* at paras 70 to 71. I note parenthetically that the committees had been alive to concerns with information asymmetry and had initially envisaged that such concerns could be addressed by vesting a residual discretion in the court to allow a wider scope of discovery, if this would be in the interests of justice: *Report of the Civil Justice Review Committee* at paras 76–77; *Recommendations of the CJRC and CJC* at para 80. Nevertheless, the CJC and CJRC accepted the feedback received and amended the draft rules to require parties to produce all known adverse documents in their possession or control: *Response to Feedback* at paras 73 and 74.

64 Known adverse documents also feature under O 11 r 5(2) of the ROC 2021. They constitute an exception to the rule that any document that is part of a party's private or internal correspondence is not to be produced: O 11 r 5(2)(*b*). The protection afforded to private or internal correspondence stemmed from a concern that parties might otherwise "inundat[e] each other with lengthy correspondence that would have little to no bearing on the issues in dispute in the case": *Response to Feedback* at para 78. Also relevant is O 11 r 1(2)(*b*), which provides that a party who sues or is sued in court does not thereby give up its right to privacy and confidentiality in its documents and

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communications. It was originally recommended by the CJC that the sole exception to the protection of private or internal correspondence ought to be a "special case", a term that was left undefined to "allow for flexibility and good sense should a rare case emerge": *Civil Justice Commission Report*, ch 8, para 5; *Recommendations of the CJRC and CJC* at para 83; *Response to Feedback* at para 76. However, the feedback received was unanimous that if private or internal correspondence were generally carved out, "parties could lose access to documents that could reveal the true state of affairs": *Response to Feedback* at para 77. After considering the feedback, the CJC and CJRC decided to include a second exception for known adverse documents, noting that the call to allow the disclosure of private or internal correspondence had been focused on ensuring that documents adverse to a party's case are disclosed: *Response to Feedback* at paras 79–80.

65 In applications for specific production under O 11 r 3 of the ROC 2021, requested parties sometimes seek to argue that a document is part of their private or internal correspondence, and that it would be for the requesting party to invoke any of the exceptions, *viz*, that there is a special case for production or that the requested documents are known adverse documents. However, where the exception for known adverse documents is concerned, this argument has been expressly rejected by Choo Han Teck J in *Cachet (HC*) at [22] and [24]. The court's views at [23]–[24] bear repeating:

> 23 In this regard, I am of the view that *Mr Liu [ie, the requested party] is under an initial and continuing duty to produce all known adverse documents.* Mr Liu does not deny that he possesses known adverse documents falling under the Appeal Requests. His reasons for not producing those documents are that they are internal documents, and they are privileged. In my view, however, *because the ban against the production of internal documents does not apply to known adverse documents, Mr Liu remains obliged, as part of his continuing duty, to produce internal documents that he knows or reasonably ought to know are adverse to his case*, unless there

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> are other reasons for non-production (eg, privilege, which I will get to shortly).
>
> 24 *It is not the requesting party's duty to show that internal documents may include "known adverse documents". A party has an initial and continuing obligation to produce known adverse documents (see [20] above), whether they are internal documents or not (see [21] above).* Barring other exceptions under O 11 rr 5(1) and (3) of the ROC 2021, a party is expected to disclose private and confidential documents which may also be known adverse documents. *The expectation is thus on the requested party to either deny the existence or possession of known adverse documents (which include internal documents), assert privilege or other reasons for non-disclosure, or disclose those known adverse documents.*
>
> [emphasis added]

66 In my view, O 11 r 5(2)(*b*) of the ROC 2021 cannot be read in isolation from O 11 r 2(1)(*b*), and the considerations that informed the inclusion of known adverse documents under O 11 r 2(1) would also be relevant to how O 11 r 5(2)(*b*) is understood. A party who is required to produce all known adverse documents as part of its initial disclosure obligations should not have its position improved or the burden of persuasion shifted simply because the requested documents are part of its private or internal correspondence. In my view, this was the very concern raised in the public consultation: that allowing the requested party to resist production on this basis would risk the requesting party "los[ing] access to documents that could reveal the true state of affairs" (see [64] above). This should be seen as a qualification to the general principle that under the production regime in O 11, a claimant is to sue and proceed on the strength of its case and not on the weakness of the defendant's case: O 11 r 1(2)(*a*).

67 In practical terms, such access would almost certainly be lost if the requesting party were required to demonstrate that known adverse documents exist. Of course, a requesting party would still be required to have some reason or basis for believing that the requested documents are in the requested party's

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possession or control: see O 11 r 3 of the ROC 2021 and [50] above. But requiring it to show that the requested documents *also* constitute or include known adverse documents goes much further than that. It is one thing to believe that documents of a particular description exist; it is another to show that they bear the two qualities of known adverse documents set out at [61] above. This would require the requesting party to show, first, that the documents are adverse, which would require some form of knowledge not only as to the subject matter of the document but also which party's case it supports. It would further require the requesting party to show that the requested party *knows* that they are adverse, including whether the requested party would have come across those documents had it conducted reasonable searches. These are matters that would rarely be within the knowledge of a requesting party who has no possession or control over the documents in the first place, and would instead be matters entirely within the requested party's knowledge. This is especially so given that the documents in question form part of the requested party's private or internal correspondence. They would, by definition, be documents that are not meant to be seen or received by parties outside the correspondence (*Cachet (AR)* at [55]; *Rohan St George* at [48]) – including, in the ordinary case, the requesting party. These practical concerns were reflected in the feedback that was received by the CJC and CJRC, which highlighted both the risk that adverse documents may be hidden or destroyed, as well as the reality that in cases where an information asymmetry exists between the parties, "the availability of specific production would be little comfort to the party in the weaker position if he or she does not know what documents are in the possession of the other party" (see [63] above).

68 Accordingly, where a requested party seeks to resist production on the ground that the requested documents constitute or include documents that form part of its private or internal correspondence, its reply affidavit should not only address the ground of objection, but also whether the protected documents

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contain any known adverse documents. If they do, then the requested party should either:

(a) disclose the known adverse documents, bearing in mind its initial and continuing obligations of disclosure under O 11 r 2(1)(*b*) and O 11 r 6 of the ROC 2021; or

(b) rely on additional ground(s) for resisting production, if these exist.

69 Where a party deposes that the requested documents are or include documents that form part of its private or internal correspondence, but *does not* then address whether they contain known adverse documents, the court may nevertheless decide to grant the specific production request in respect of the known adverse documents. This was the approach adopted in *Cachet (HC)*. The court was of the view that the documents requested (which were part of the requested party's private or internal correspondence) were of such broad description that they might have included documents that were not material. It therefore limited the scope of production to known adverse documents falling under the requests, as opposed to all documents. It reasoned that this would merely hold the requested party to his continuing obligation to disclose all known adverse documents. This subset of documents would also satisfy the baseline of materiality since known adverse documents are necessarily material: at [19] and [25]. Of course, if the requesting party can show that the case is a special case, a court may make a wider order to include all responsive documents.

70 Finally, there may be cases where a requested party *does not* depose that the requested documents constitute or include documents that form part of its private or internal correspondence, but it is plain to the court that this would be

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so. This was how Categories 15 and 16 of Mr Muzayyin's production application appeared to me: see [255]–[263] below. In such a case, I suggest that the court could decide, for reasons of clarity, to include a qualification to its order that expressly addresses the treatment of private or internal correspondence. This might state, for example, that the production order is made subject to a limitation to known adverse documents where the requested documents form part of the requested party's private or internal correspondence. This would give effect to the mandatory language of O 11 r 5(2) of the ROC 2021, which provides that the court *must not* order the production of documents that form part of a party's private or internal correspondence, unless the correspondence are known adverse documents (or it is a special case). These observations should be understood in the light of two key caveats:

(a) First, none of this displaces the responsibility borne by the requested party to consider whether the requested documents constitute or include documents that are part of its private or internal correspondence, to depose to this effect in its reply affidavit, and to submit that O 11 r 5(2) of the ROC 2021 applies (as the case may be). What the approach above caters for is a case where no such submission has been made, but it is *plain* to the court that the production order sought is inconsistent with the proscription in O 11 r 5(2), such that it would not be appropriate to make the order in the terms sought.

(b) Second, the absence of such an express limitation in a production order should not be taken to mean that the court is thereby permitting the disclosure of private or internal correspondence beyond known adverse documents. The qualification is chiefly clarificatory.

71 With these principles in mind, I turn to the individual applications.

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Mr Muzayyin's applications for further and better particulars (*viz*, SUM 1808 in OC 496 and SUM 1807 in OC 585)

72 In SUM 1808, Mr Muzayyin seeks FBPs of TSPL's SOC in OC 496. In SUM 1807, he seeks FBPs of TSPL's and TOSPL's joint Defence in OC 585. As the requests in SUM 1808 are more extensive, I will use them as a scaffold for my analysis, and deal with the corresponding and overlapping requests in SUM 1807 as they arise. Unless otherwise stated, a reference to a request number is a reference to the request in SUM 1808.

73 Mr Muzayyin has divided his requests into four groups:

(a) the identity of TS's controlling mind and Mr Bartlett's authority;

(b) the acquisition of Rubicon and the US$900k fee paid by Faro;

(c) the Loan Agreement; and

(d) the Conspiracy Agreement.

Group 1: The identity of TS's controlling mind and Mr Bartlett's authority

Requests 1 to 13: TSPL's and TOSPL's representatives

74 I disallow Requests 1 to 13 of SUM 1808. These seek particulars of the identity of TSPL's and TOSPL's representatives in the following 13 contexts:

(a) The individual who would represent TSPL in each of its business dealings with Mr Muzayyin (Request 1).

(b) The individual who represented TSPL in entering into the Loan Agreement (Request 2).

(c) The individual who represented TSPL in each of its dealings with Mr Muzayyin, in relation to a course of dealings in which

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Mr Muzayyin "did not deny that the Loan was a loan and referred to the Loan as loan" (Request 3).

(d) The individual who made a request on 31 January 2025 that Mr Muzayyin repay the Loan on behalf of TSPL (Request 4).

(e) The individual who made a reminder on 27 March 2025 on TSPL's behalf that the Loan remains outstanding, cannot be written off and that TSPL must initiate a collection process if there is no resolution (Request 5).

(f) The individuals who disbursed and arranged for the disbursement of the sums of US$400k and US$300k to Mr Muzayyin (Request 6).

(g) The individual who introduced the opportunity to acquire Rubicon to Mr Muzayyin and to Oro (Request 7).

(h) The individual who first identified, learnt of, and/or came across the opportunity to invest in Rubicon (Request 8).

(i) The individual who represented TSPL in the "discussion" between TSPL, SHPL and Oro that led to the agreement to acquire Rubicon (Request 9).

(j) The individual who represented TSPL and TOSPL in the agreement for TSPL to be paid a consultancy fee for introducing the opportunity to acquire Rubicon, and for the Consultancy Fee to be paid by Faro to TOSPL (Request 10).

(k) The individual who represented TOSPL in the agreement for TOSPL to be issued preference shares in Faro after SHPL and Oro received their agreed returns (Request 11).

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(l) The individual who represented TSPL in becoming a party to the "Agreement to Acquire Rubicon" (Request 12).

(m) The individuals within TOSPL who issued and arranged for the issuance of the invoice of US$900k to Faro (Request 13).

(1) General analysis

75 Mr Muzayyin's overarching submission is that the requested particulars "are necessary as they would shed light on one of the key issues in dispute in OC 496", namely, whether Mr Bartlett was the controlling mind of TSPL and TOSPL and had the authority to enter into the Brokering Fee Agreement on TOSPL's behalf and make representations about the Loan Agreement on TSPL's behalf.[14] He contends that a company can only act through natural persons, and it is only these natural persons who can have a state of mind such as knowledge or intention.[15]

76 In my view, Mr Muzayyin has no genuine need for the requested particulars. His submission approaches the test for FBPs at too high a level of generality. It focuses on the relationship between a given particular and an issue in dispute. It implies that so long as a particular can be shown to be material to the issue, then it ought to be provided. Lost from this equation, however, is the specific averment in question, the case that the averment seeks to advance, and whether the requested particular is ultimately necessary to understanding and responding to that case.

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14 SUM 1808 (FBP) Summary Table, S/N 2, col C, para 10. S/N 3 to 13 repeat the submission made at S/N 2.

15 SUM 1808 (FBP) Summary Table, S/N 2, col C, para 9.

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77 I will take Request 1 as an example. This seeks particulars of the ongoing business that TSPL and Mr Muzayyin have (including its nature and the dates of all business dealings) and the identity of TSPL's representatives in each of those dealings. What the request arises from, however, is a rather simple and innocuous pleading at paragraph 3 of TSPL's OC 496 SOC – that TSPL and Mr Muzayyin "have ongoing business with each other". Paragraph 1 introduces the claimant, TSPL, as a Singapore-incorporated company. Paragraph 2 introduces the defendant, Mr Muzayyin, as a Singapore citizen. Paragraph 3 then establishes their relationship as persons with "ongoing business with each other". Following this brief background, paragraph 4 dives right into the heart of the OC 496 SOC, by introducing the Loan. Viewed in context, by way of paragraph 3, TSPL is plainly not pleading a case that the business relationship was of a certain nature, type or frequency; it is not about any particular transaction; and it is not addressing issues of authority and agency. The mere fact that it features the words "ongoing business" is not an invitation to fasten on any query that Mr Muzayyin may have about the business, so long as this can be traced in some way to an issue in dispute. The particulars sought must be moored to *the case being pleaded* in the specific averment. Quite simply, Mr Muzayyin can either agree with the characterisation that the parties had an ongoing business relationship or he can disagree with it. It should also not be lost on Mr Muzayyin that he, too, pleads in his OC 496 Defence that TSPL, SHPL and/or he have had various partnerships and business ventures together, without having particularised what these are.[16]

78 As to Mr Muzayyin's submission that companies must ultimately act through natural persons, that may be true as a matter of fact, but it is also well-established that companies are separate legal persons who are regarded in law

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16 OC 496 Defence at para 7(a).

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as capable of acting in their own names and having a state of mind attributed to them: *Red Star Marine Consultants Pte Ltd v Personal Representatives of Satwant Kaur d/o Sardara Singh, deceased and another* [2020] 1 SLR 115 at [1]; *Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd)* [2014] 3 SLR 329 at [47]. Unless the representative's identity or conduct is legally *relevant* to the case being pleaded by TSPL, there is no reason for TSPL to systematically account for the representatives through whom it acted.

79 These issues form a recurring theme across Requests 1 to 13, which were essentially presented to me as a blanket request. This is itself significant, as the adoption of a decontextualised approach reinforces the impression that Mr Muzayyin is not genuinely concerned with the individual averments or seeking particulars with a view to clarifying a specific averment, limiting its generality, or enabling him to respond to TS's pleaded case. On the contrary, Mr Muzayyin's goal appears to be to collect evidence (framed as particulars) and to piece together a picture of Mr Bartlett's involvement in TSPL, with a view to buttressing *his own* pleaded case that Mr Bartlett wielded broad authority as TSPL's representative.[17] For some requests, such as Request 1 that was discussed at [77] above, this attempt is further strained: in order to create a basis for his request for the representatives' identities, Mr Muzayyin has had to first seek particulars about the individual business dealings. In effect, he has attempted to construct a convenient footstool that would aid him in reaching into TS's cabinets and retrieving evidence about the individuals who participated in past transactions.

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[17] See also SUM 1808 (FBP) Summary Table, S/N 6, col D, para 4 and S/N 10, col D, para 4.

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80 For these reasons, I disallow Requests 1 to 13 of SUM 1808. My reasons apply *mutatis mutandis* to Requests 3 and 5 to 11 of SUM 1807, which seek similar particulars of TS's OC 585 Defence. Before moving to Request 14, I will just add brief observations on two pairs of requests.

(2) Request 1: Ongoing business (and Request 3 of SUM 1807)

81 I have considered Request 1 of SUM 1808 at length above, and would only add that my concerns apply with even greater force to Request 3 of SUM 1807. This seeks particulars of TS's Defence in OC 585, and more precisely of an *admission* to Mr Muzayyin's pleading that TSPL had various business dealings with Mr Muzayyin and SHPL. It is hard to understand why, as the party putting forth the positive case and having done so without providing particulars of its own, Mr Muzayyin would then seek particulars from TS on its admission. An admission effectively removes a potential issue from dispute, and this would logically render particulars unnecessary in almost all such cases.

(3) Request 6: Disbursement of US$700k to Mr Muzayyin (and Request 9 of SUM 1807)

82 Request 6 concerns a pleading that TSPL disbursed the sums of US$400k and US$300k to Mr Muzayyin because it was induced by, and acted in reliance on, Mr Muzayyin's representation that he would repay the Loan. The request seeks the identity of the individual who disbursed the sums and/or who arranged for their disbursement. I disallow this category for the general reasons I have identified above: TSPL's case is that *it* disbursed the sum, being the contracting party that undertook this obligation under the Loan Agreement. The identity and role of the individual officer or employee who disbursed the sums or arranged for their disbursement is not part of the case being pleaded and advanced here.

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83 What I would acknowledge is that in assessing whether TSPL was in fact induced by Mr Muzayyin's representation, it may prove relevant to examine the process by which TSPL reached this decision and the individuals who were involved in that decision-making process. But these matters are relevant in an *evidentiary* sense, in that they go towards *how* TSPL will prove the elements of inducement and reliance at trial. These are properly the subject of other processes such as production and cross-examination.

Request 14: Material decisions made by Ms Thiam (and Requests 1 and 2 of SUM 1807)

84 I allow Request 14 of SUM 1808 in a modified form. This request is directed at TS's pleading that TSPL's director is Ms Thiam and that all of TSPL's material decisions have to be made via its director.[18] Request 14 seeks full facts and particulars of the "material decisions" that had to be made via Ms Thiam. This is also the subject of a specific production request where TOSPL is concerned (see [238] below).

85 I agree with Mr Muzayyin that what qualifies as a material decision is uncertain. TS has not provided any definition, standard or measure for ascertaining whether a given decision constitutes a material decision or not. This is not to say that every concept or description that exists on a spectrum (*eg*, "substantial", "consistent", "close relationship") must be particularised using some authoritative yardstick. In my view, the need for a yardstick will depend on a practical assessment of the risk that the parties might hold different conceptions of what a given concept or description means, in the context of the particular case. In this case, there is a reasonably wide field of corporate and commercial decisions that Ms Thiam could have been required to make as the

18 OC 496 SOC at para 19(a).

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sole director of TSPL. There is no inherent hierarchy or ordinal scale with which such decisions can be lined up and ranked, such that the task would simply be to determine where the dividing line between material and non-material decisions should be drawn. Moreover, what constitutes a material decision could be something that has been pre-defined or pre-agreed between the parties, or it may represent a practical standard that has emerged organically over time. These are just some indicators of the uncertainty surrounding the phrase "material decisions". They point to a risk that if the pleading were left unparticularised, the parties may proceed to trial with differing conceptions of TS's case. To be sure, TS has clarified in its submissions that Ms Thiam's authority arises by virtue of her role as sole shareholder of TSPL and sole director of both TSPL and TOSPL.[19] However, this clarification does not resolve the uncertainty as to *what* constitutes a material decision from TS's perspective; it only explains *why* Ms Thiam would be authorised to make such decisions. This uncertainty would, in turn, limit Mr Muzayyin's ability to plead and respond to TSPL's case.

86 TS has a valid concern that the request might require it to "identify and particularise potentially every significant corporate decision made over several years", since the request is made "without limitation as to subject matter, transaction or period".[20] This is a valid concern because what is necessary to ameliorate the difficulty that Mr Muzayyin faces is not an exhaustive historical record of every material decision Ms Thiam has made, much less the full facts and particulars of all of those decisions. That would be a matter of evidence, and if the disclosure of such evidence had been sought by way of a production application, it would be further subject to legal controls – including the baseline

19 SUM 1808 (FBP) Summary Table, S/N 14, col D, paras 3 and 5.

20 SUM 1808 (FBP) Summary Table, S/N 14, col D, para 7.

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of materiality and the safeguards against the production of private and internal correspondence and privileged documents. What Mr Muzayyin needs is not evidence of Ms Thiam making material decisions, but a conceptual *understanding* of what qualifies as a material decision. That can be suitably achieved by particularising the *types* of decisions that qualify as material decisions.

87 I am less inclined to circumscribe the scope of particulars based on subject matter, transaction or period – whether as a further or alternative limitation – because TSPL's averment is itself not circumscribed in this way. If a party intends to assert a point in broad and all-encompassing terms, it would be reasonable to expect it to be prepared to provide particulars that match the width of its assertion. At trial, TSPL could conceivably rely on its pleading to lead evidence relating to any number of decisions made by Ms Thiam, for instance, to support a submission that she was regularly involved in making certain types of decisions and that the same must be true in respect of the transactions in the present case. Hence, it would be inappropriate and potentially artificial for me to confine the ordered particulars to specific subject matters, transactions or time periods.

88 In the premises, TS is ordered to state the types of material decisions of TSPL that had to be made via Ms Thiam. My reasons above apply *mutatis mutandis* to Requests 1 and 2 of SUM 1807, which are corresponding requests in OC 585 concerning the material decisions that could only be made with Ms Thiam's concurrence. TS is to state the types of material decisions of TSPL and TOSPL that could only be made with Ms Thiam's concurrence.

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Request 15: Mr Bartlett's employment relationship (and Request 4 of SUM 1807)

89 I partially allow Request 15 of SUM 1808 for particulars of Mr Bartlett's employment relationship with TSPL. Paragraphs (a) to (e) are allowed, while paragraph (f) is not:

> State:
>
> (a) The date on which Mr Bartlett commenced his employment with the Claimant.
>
> (b) The job title(s) and/or position(s) that Mr Bartlett has held within the Claimant since the start of his employment, including the dates on which he attained these job title(s) and/or position(s).
>
> (c) Mr Bartlett's role(s) and/or scope of duties for each job title(s) and/or position(s) that he has held within the Claimant since the start of his employment.
>
> (d) The date on which Mr Bartlett became a "key employee" of the Claimant.
>
> (e) Mr Bartlett's role(s) and/or scope of duties as a "key employee" of the Claimant.
>
> (f) Whether Mr Bartlett was at any time an employee of TOSPL. If so, state:
>
> > (i) The date on which Mr Bartlett commenced his employment with TOSPL.
> >
> > (ii) The job title(s) and/or position(s) that Mr Bartlett has held within TOSPL since the start of his employment, including the dates on which he attained these job title(s) and/or position(s).
> >
> > (iii) Mr Bartlett's role(s) and/or scope of duties for each job title(s) and/or position(s) that Mr Bartlett has held within TOSPL since the start of his employment.

90 This request relates to TSPL's alternative claim in unlawful means conspiracy, where one of the unlawful means alleged is Mr Bartlett's breach of the fiduciary duties he owed to TSPL as its "key employee".

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91 My reasons for making an order for particulars differ from those given by Mr Muzayyin. His submission is that these particulars are necessary because key issues include whether Mr Bartlett was TSPL's employee, and a key employee at that, and if so, what his scope of authority was. In my view, this faces the same methodological problem as Requests 1 to 13 (see [76]–[79] above): it seeks particulars by naming a key issue and identifying particulars relevant to that issue, without situating the analysis within the specific words and context of the averment in question and without being directed at the requesting party's ability to meet that case.

92 Instead, the reason the requested particulars are necessary is to be found in the specific allegation made – that Mr Bartlett breached his fiduciary duties – and the nature of such an allegation. This brings three questions into issue: (a) did Mr Bartlett owe TSPL a fiduciary duty; (b) what was the content of that duty; and (c) did Mr Bartlett's conduct breach that duty. Request 15 touches on the first and second of these questions; I shall have occasion to revisit the second and third questions under Request 35 (see [174] below).

(1) Pleading requirements: Fiduciary duties

93 On the first question (*viz*, whether a fiduciary duty exists), the essence of the employment relationship is typically not fiduciary at all, and the imposition of fiduciary duties represents the exception rather than the norm: *GTL Agencies (S) Pte Ltd v Neo Boon Huat* [2026] SGHC(A) 6 at [23]; *Clearlab SG Pte Ltd v Ting Chong Chai and others* [2015] 1 SLR 163 ("*Clearlab*") at [272]; *Nagase Singapore Pte Ltd v Ching Kai Huat and others* [2007] 3 SLR(R) 265 ("*Nagase*") at [26]–[28]. For a fiduciary duty to arise, the employee must be in a position where he has to act with undivided loyalty to the employer; this is typically a relationship that is characterised by qualities such as ascendancy,

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vulnerability and dependence: *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 1 SLR 707 ("*How Weng Fan*") at [172] and [174]; *Clearlab* at [272] and [275]. To ascertain if this is the case, the court will "scrutinise the specific facts and context of [the] case" to ascertain whether the duty had been "voluntarily undertaken" through the alleged fiduciary's conduct: *How Weng Fan* at [173]–[174]. In *Nagase*, for example, the court held that the relevant employees did not owe fiduciary duties, as they were members of middle management who had to obtain sanction for their decisions, and the fact that they had the authority to negotiate contracts and authorise the payment of invoices was insufficient to give rise to such duties: *Nagase* at [29].

94 The second question relates to the content of the fiduciary duty. This duty has different facets and manifestations, including the quintessential no-conflict rule and no-profit rule, but these are not necessarily its only manifestations: *Credit Suisse Trust Limited v Ivanishvili, Bidzina and others* [2024] 2 SLR 164 ("*Ivanishvili*") at [42]; *How Weng Fan* at [172]. There is no fixed set of obligations that applies to all fiduciaries, and in this sense, labelling someone as a "fiduciary" is more of a conclusion than a premise: *Ivanishvili* at [41]–[42]; *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 at [193], [200] and [205]. The content of a given employee's fiduciary duty will ultimately be determined by reference to the circumstances of the case, including the employment contract; the scope of fiduciary obligation should be accommodated within the terms of the contract and not alter its intended operation: *Clearlab* at [273]; *Nagase* at [28]. For instance, it has been held that fiduciary duties akin to those owed by a director would likely be imposed on senior employees whose domain extends to all or substantially all of the business of a company: *OUE Lippo Healthcare Ltd (formerly known as International Healthway Corp Ltd) and another v Crest Capital Asia Pte Ltd and others* [2020] SGHC 142 at [112]–[116] (this proposition was not

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challenged on appeal: *Crest Capital Asia Pte Ltd and others v OUE Lippo Healthcare Ltd (formerly known as International Healthway Corp Ltd) and another and other appeals* [2021] 1 SLR 1337).

95 Translating these principles into pleading requirements, a party who asserts that an employee owes a fiduciary duty would need to:

(a) identify the relationship that created the fiduciary duty and particularise the circumstances that gave rise to it; and

(b) identify the facets or manifestations of the duty applicable to the fiduciary and particularise the circumstances that give the duty its content (see also *3D Networks Singapore Pte Ltd v Voon South Shiong and another* [2023] 4 SLR 396 ("*3D Networks*") at [142]–[143]; *Sharikat Logistics* at [6]).

96 In practice, the particulars described in [95(a)] and [95(b)] may overlap, since the circumstances that give rise to a fiduciary duty may also operate to shape the content of the duty, and these are inquiries that are often taken together. Even so, the pleading party's case must adequately address each inquiry. The case of *3D Networks* illustrates this point well. The first defendant had resigned from the plaintiff company to join a competitor. He had been the plaintiff's Country Manager for Singapore and Head of Global Accounts Management. The court accepted that a fiduciary relationship existed between the plaintiff and the defendant: he may not have been a director, but he occupied a position of substantial seniority as a member of the plaintiff's senior management and reported only to the chief executive officer. He was also in a position to act in his own interests at the expense of the plaintiff's: *3D Networks* at [7] and [139]. Nevertheless, the court dismissed the claim in breach of fiduciary duty, because the plaintiff failed to plead the content of the fiduciary

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duty owed by the first defendant, and merely pleaded "fiduciary duty" as one of several duties that the first defendant owed. There were also no particulars given on the circumstances giving rise to the specific facets of the duty, which prejudiced the first defendant's ability to marshal his evidence and arguments: *3D Networks* at [140]–[144].

(2) My decision

97 The relevant averment in the present case merely states that there were:[21]

> 20(c)(ii) … breaches by Mr Bartlett of his fiduciary duties owed to [TSPL] as its key employee, in that he:
>
> a) acted in conflict with [TSPL's] interests;
>
> b) neglected and failed to disclose the Conspiracy Agreement to [TSPL], or intentionally concealed that Conspiracy Agreement from [TSPL];
>
> c) led [TSPL] to enter into the Loan Agreement and disbursed the Loan to [Mr Muzayyin], knowing that [Mr Muzayyin] had no intention to repay the Loan.

98 No particulars have been provided, whether in this paragraph or elsewhere in the OC 496 SOC, as to the role that Mr Bartlett held or the nature of his employment relationship with TSPL. The SOC's only other reference to Mr Bartlett's employment is a line which states that "[Mr Muzayyin] did not dispute the Loan and asked to speak with [TSPL's] employee, [Mr Bartlett]".[22] The phrase "key employee" is therefore little more than a label or a conclusion, and it is unclear what facts this conclusion is based on and why Mr Bartlett is said to owe fiduciary duties, including the duty not to act in conflict with TSPL's interests. I therefore allow paragraphs (a) to (e) of the request for particulars.

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21 OC 496 SOC at para 20(c)(ii).

22 OC 496 SOC at para 11.

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99 However, I do not allow the request in paragraph (f). This seeks particulars of Mr Bartlett's employment relationship with TOSPL, if one exists. The request does not arise from TSPL's pleaded case, which is that Mr Bartlett was *TSPL's* key employee and which is otherwise silent on whether Mr Bartlett was employed by TOSPL. It is important to distinguish a pleading that is cryptic or ambiguous as to a particular fact from one that is completely silent on that fact. The former may support a request for particulars, if resolving the ambiguity would be necessary for achieving one or more of the objectives of furnishing particulars. Examples of this may include averments that refer collectively to TSPL and TOSPL as Mr Bartlett's employer or that obliquely refer to Mr Bartlett's employer without naming the entity. The latter is more likely to be viewed as a collateral attempt at requiring the responding party to plead a fact or address an issue that is more properly achieved through an amendment to the pleading.

100 Turning to SUM 1807, a corresponding request is found in Request 4. I disallow this, save that TS is to state the date on which Mr Bartlett commenced his employment with TSPL. Unlike in OC 496, TS does not plead a claim in unlawful means conspiracy in OC 585, and so it does not plead that Mr Bartlett breached his fiduciary duties as part of that claim. Mr Bartlett's employment instead comes up in OC 585 as a response to Mr Muzayyin's case that Mr Bartlett incorporated TSPL to conduct his business dealings and investments.[23] In response to this, TS stated that Mr Bartlett was TSPL's employee at all material times.[24] The basis for my decision on Request 15 of SUM 1808 therefore does not extend to Request 4 of SUM 1807, and there is little that is unclear or uncertain about TS's pleading that would create a genuine

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23 OC 585 SOC at para 5(a).

24 OC 585 Defence at para 9.

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need for particulars. This is subject to one qualification. It is uncertain what "all material times" means, especially as there is evidence suggesting that TSPL first entered into an employment relationship with Mr Bartlett only in January 2020.[25] Accordingly, TS is to state the date on which Mr Bartlett commenced his employment with TSPL.

Group 2: The acquisition of Rubicon and the US$900k fee paid by Faro

Requests 16 and 20: Formation of the Agreement to Acquire Rubicon (and Requests 12 and 13 of SUM 1807)

101 I disallow Requests 16 and 20 of SUM 1808 and Request 12 of SUM 1807, but allow Request 13 of SUM 1807. These requests seek particulars of the agreement to acquire Rubicon and the discussions that precipitated it. For this set of requests, I will begin with the pleadings in OC 585 rather than OC 496, as they offer a clearer starting point.

102 In OC 585, Mr Muzayyin pleaded at paragraph 6 of his SOC that in 2017, Mr Bartlett (and another individual) informed him of the opportunity to invest in or acquire Rubicon. Following discussions between Mr Muzayyin, Mr Bartlett and Mr Chia, it was agreed that:[26]

(a) Faro would be incorporated to facilitate the Acquisition of Rubicon;

(b) SHPL (Mr Muzayyin's company) and Oro (Mr Chia's company) would provide all of the funding for the Acquisition of Rubicon through Faro, this being a sum in excess of USD15m; and

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25 SUM 1807 (FBP) Summary Table, S/N 4, col C, para 14; Ms Thiam's 1st AEIC at para 18; Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at paras 10 and 13.

26 OC 585 SOC at para 6.

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(c) SHPL and Oro would receive agreed returns at 15% above their respective capital or cash injections and, thereafter, TOSPL would be issued preference shares in Faro amounting to 33.70% of Faro's shareholding and a 49% economic share of the dividends or returns.

103 I pause to note that the capitalised expression "Acquisition of Rubicon" was used by Mr Muzayyin in his SOC. In paragraph 7, Mr Muzayyin then pleaded the details of the Brokering Fee Agreement (summarised at [10] above).

104 Turning to TS's Defence, TS responded to paragraph 6 of the SOC by admitting to the agreed terms for the Acquisition of Rubicon (summarised at [102(a)]–[102(c)] above).[27] It further averred that:[28]

> 16 …
>
> …
>
> b. The Agreement to Acquire Rubicon was entered into at arms' length and relevant parties to that agreement (namely, [TSPL], SHPL and Oro) acted as principals at all material times. The alleged Brokering Fee Agreement is not a collateral contract to the Agreement to Acquire Rubicon.
>
> c. Save for the consulting fee of [US$900k] that Faro III Pte. Ltd. ("Faro") paid to [TOSPL] in consideration of identifying Rubicon as an acquisition target (the "Consultancy Fee"), *the agreement described in Paragraph 6 of the SOC (the "Agreement to Acquire Rubicon")* did not include any other agreement to pay any brokering fee [to] any other person, whether to [Mr Muzayyin], SHPL, Oro, [TSPL] or any of their representatives in their personal capacity.
>
> …
>
> [emphasis added]

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27 OC 585 Defence at paras 13 to 15.

28 OC 585 Defence at para 16.

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105 As for the Brokering Fee Agreement, TS pleaded that it had no knowledge of this and put Mr Muzayyin to strict proof.[29]

106 With this background in mind, I begin with Request 12 of SUM 1807 (OC 585). This seeks particulars concerning the formation of the "Agreement to Acquire Rubicon" referred to in paragraph 16(b) of TS's Defence, such as whether the agreement was made orally or in writing. Mr Muzayyin submits that an agreement must be specifically pleaded with sufficient particularity.[30]

107 In my view, the "Agreement to Acquire Rubicon" referred to in paragraph 16(b) and the "Agreement to Acquire Rubicon" defined in paragraph 16(c) clearly refer to the same agreement. They are both references to "the agreement described in Paragraph 6 of the SOC". This makes Request 12 a somewhat curious request. TS is merely referring, in its responsive pleading, to an agreement that was first pleaded by Mr Muzayyin, the terms of which TS has admitted. If anything, it may be queried whether *Mr Muzayyin* has provided sufficient particulars of the pleaded agreement at paragraph 6 of his SOC. That pleading refers generally to "discussions between [Mr Muzayyin], Mr Bartlett and … [Mr Chia] from around mid to late 2017", without going into the sorts of particulars that Mr Muzayyin now seeks – such as whether the agreement was made orally or in writing, and the relevant details of the oral discussions or the documents and correspondence containing the alleged agreement. Fairness would suggest that what is sauce for the goose would be sauce for the gander.

108 Mr Muzayyin also submits that while TS has referred to "the agreement described in Paragraph 6 of the SOC", that is not what TS actually has in mind.

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29 OC 585 Defence at para 16.

30 SUM 1807 (FBP) Summary Table, S/N 12, col C, para 28.

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He points to two differences in how the parties have described the agreement in their pleadings. Whereas TS claims that the parties to the agreement are TSPL, SHPL and Oro, Mr Muzayyin claims that they are Mr Bartlett, Mr Muzayyin and Mr Chia. And whereas TS refers to the payment of the US$900k fee as forming part of the agreement, Mr Muzayyin pleads that it is part of a separate agreement, *viz*, the Brokering Fee Agreement. I accept that these differences exist. However, it is not apparent that they point to a different set of oral or written communications altogether (which may justify particulars), as opposed to the same set of communications and discussions being characterised in different ways. After all, TSPL, SHPL and Oro are companies that Mr Bartlett, Mr Muzayyin and Mr Chia respectively represent or are associated with. The difference is not one of identity but capacity: whether the three individuals dealt with each other as principals or as agents for their companies. As for the sum of US$900k, the parties both accept that an agreement had been reached for Faro to pay US$900k to TOSPL.[31] Again, the difference lies in whether the sum should be characterised as a brokering fee or as a consultancy fee. In the final analysis, the fact that TS has expressly defined the Agreement to Acquire Rubicon as "the agreement described in Paragraph 6 of the SOC" should not be too conveniently ignored. It is plainly not referring to some separate arrangement altogether. TS has also confirmed as much on affidavit.[32]

109 For these reasons, it would not be necessary for TS to furnish Mr Muzayyin with particulars on the formation of an agreement that was first pleaded by him and for which he has not provided what he says are necessary particulars. Request 12 of SUM 1807 is disallowed. These reasons apply *mutatis mutandis* to Requests 16 and 20 of SUM 1808 (OC 496), which are similarly

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31 OC 585 SOC at para 7; OC 585 Defence at para 16(c).

32 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 22.

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disallowed as they seek the same types of particulars in relation to the discussions between TSPL, SHPL and Oro (Request 16) and the Agreement to Acquire Rubicon (Request 20). Mr Muzayyin's entitlement to particulars should not be enlarged simply because the parties occupy different pleading positions in OC 585 and OC 496. The fundamental reality is that TS's case on the Agreement to Acquire Rubicon in both actions has, as its root, the agreement that was first pleaded by Mr Muzayyin. Regardless of whether Mr Muzayyin assumes the role of the claimant in OC 585 or the defendant in OC 496, he cannot seriously contend that he will be taken by surprise at the combined trial of both actions.

110 Finally, I come to Request 13 of SUM 1807 (OC 585), which I allow. Mr Muzayyin seeks particulars of how it came to be agreed that Faro would pay TOSPL a sum of US$900k in consideration of identifying Rubicon as an acquisition target, as pleaded at paragraph 16(c) of TS's Defence (see [104] above). In its Defence, TS disavows knowledge of the Brokering Fee Agreement and the antecedent discussions between Mr Muzayyin and Mr Bartlett.[33] Instead, it positively avers that there was a different agreement reached under which Faro would pay the sum of US$900k to TOSPL as a consultancy fee for identifying Rubicon as an acquisition target.[34] Since it pleads and relies on the existence and content of such an agreement, it should provide particulars as to how this agreement came to be. This should help to put beyond doubt whether TS's case is that the payment of the US$900k fee to TOSPL forms part of the Agreement to Acquire Rubicon or that it is an independent agreement.

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33 OC 585 Defence at para 16.

34 OC 585 Defence at para 16(c).

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Requests 17 to 19: Terms of the Agreement to Acquire Rubicon

111 I disallow Requests 17 to 19 of SUM 1808. They concern alleged inconsistencies in how TS has pleaded the terms of the Agreement to Acquire Rubicon in its OC 496 SOC and its OC 585 Defence. Mr Muzayyin pinpoints three differences:

	OC 496 SOC	**OC 585 Defence**
Amount of acquisition funding	SHPL and Oro would provide all the funding for the acquisition of Rubicon through Faro.[35]	Admits[36] to para 6(b) of Mr Muzayyin's SOC, which states: "SHPL and [Oro] would provide all the funding for the Acquisition of Rubicon amounting to more than [US$15m] through Faro; …"
Recipient of Consultancy Fee	[TSPL] would be paid a consultancy fee for introducing the opportunity to acquire Rubicon ("Consultancy Fee"). This Consultancy Fee would be paid by Faro to [TSPL's] subsidiary, [TOSPL].[37]	Save for the consulting fee of [US$900k] that [Faro] paid to [TOSPL] in consideration of identifying Rubicon as an acquisition target (the "Consultancy Fee"), the agreement described in Paragraph 6 of the SOC (the "Agreement to Acquire Rubicon") did not include any other agreement to pay any brokering fee [to] any other person, whether to [Mr Muzayyin], SHPL, Oro, TSPL or any of their representatives in their personal capacity.

35 OC 496 SOC at para 17(c)(ii).

36 OC 585 Defence at para 14.

37 OC 496 SOC at para 17(c)(iii).

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	OC 496 SOC	**OC 585 Defence**
Amount of agreed returns and preference shares	TOSPL would be issued preference shares in Faro after SHPL and Oro have received certain agreed returns on their respective capital investments into Faro.[38]	Admits[39] to para 6(c) of Mr Muzayyin's SOC, which states: "TOSPL would be issued preference shares in Faro after SHPL and Oro have received certain agreed returns on their respective capital injections / investments in Faro. The agreed returns were the amount of SHPL's and Oro's respective capital or cash injections for the Acquisition of Rubicon plus 15% (the "Agreed Returns"). TOSPL would be issued 33.70% of Faro's shareholding, but would receive a 49% economic share of the dividends or returns."

112 Mr Muzayyin submits that, by virtue of these differences, TS's case on the Agreement to Acquire Rubicon is "entirely unclear", and he should not be left to guess at whether the pleaded cases are identical or whether they have just been pleaded at different levels of specificity. Hence, he makes Requests 17 to 19 to seek particulars on: (a) the amount of funding to be provided by SHPL and Oro; (b) how it came to be agreed that TSPL would be paid a consultancy fee; and (c) the number and/or percentage of preference shares that TOSPL was to be issued and the amount of agreed returns that SHPL and Oro were to receive.

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38 OC 496 SOC at para 17(c)(iv).

39 OC 585 Defence at para 15.

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113 I shall first deal with points (a) and (c), *viz*, the amount of acquisition funding, agreed returns and preference shares. These particulars are not necessary to understand TS's case. Its case rests on the fact that an agreement was entered into to acquire Rubicon that would result in TSPL (or TOSPL) ultimately receiving US$900k as a consultancy fee. Mr Muzayyin may have chosen to include details relating to the amount of acquisition funding, agreed returns and preference shares in his OC 585 SOC as part of his case, but it does not follow that the same details matter to TSPL's claim in OC 496. While both actions arise from the same factual matrix, each has a different claimant who is advancing different claims.

114 Mr Muzayyin's deeper concern is that he might be placed in the invidious position of having to face inconsistent cases at trial. I suggest that this concern is overstated in some respects. TS has admitted Mr Muzayyin's case on the amount of acquisition funding, agreed returns and preference shares. Nothing in TSPL's OC 496 SOC contradicts this: it contains fewer details, not inconsistent ones. There is nothing unusual or sinister about this. Differences in the level of generality are not only explicable but to be expected, since OC 496 and OC 585 are not perfect mirror images of each other, and litigants are expected to tailor the granularity of their pleadings to fit the particular case at hand and to set out their basic case without narrating it in excessive or irrelevant detail: *Sharikat Logistics* at [8]; *Element Six Technologies* at [12(b)]–[12(c)]. For Mr Muzayyin to credibly contend that he does not know the case he has to meet at trial, TSPL would have to simultaneously and rather tortuously advance two competing narratives within the same trial, by admitting to the amount of acquisition funding, agreed returns and preference shares for the purposes of OC 585 while adopting some other position altogether for OC 496. I consider the likelihood of such needless vacillation by TS to be so slight as to be *de minimis*.

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115 Granted, the discrepancies with the Consultancy Fee are more glaring. While TS has pleaded in both actions that the sum of US$900k would first be paid to TOSPL, that symmetry disappears when it comes to the identity of the sum's ultimate intended beneficiary. In the OC 496 SOC, this would be TSPL, for its role in introducing the acquisition opportunity. In the OC 585 Defence, the fee is said to be paid to TOSPL in consideration of identifying Rubicon as an acquisition target, and it is further stated that the Agreement to Acquire Rubicon did not include any agreement to pay a brokering fee to TSPL. There is therefore a manifest difference between the fee being paid in consideration of *TSPL*'s role in *introducing* the acquisition opportunity, and *TOSPL*'s role in *identifying* the opportunity. This is not mere pedantry. On Mr Muzayyin's case, it was initially agreed that TOSPL would pay the US$700k brokering fee to Mr Muzayyin, but this was changed several months later when Mr Bartlett informed him the fee would be paid by TSPL instead, and that this had to be paid as a loan under a loan agreement for internal business reasons.[40] Seen in this light, it matters whether TS's case is that TSPL was meant to be the ultimate beneficiary of the sum of US$900k all along, or whether the substitution of TOSPL with TSPL was an unplanned development.

116 TS has not furnished a satisfactory explanation for this discrepancy or offered a logical way to reconcile its cases. Be that as it may, it does not follow that an order for FBPs would be the necessary procedural tool. The disparity lies between two sets of pleadings. In my view, particulars may clarify, delimit and in some cases expand on the meaning of pleaded words, but they are not, in the main, intended to contradict or rectify words in the way that Mr Muzayyin is seeking, much less to put TS to an election between its cases. If TS intends to clarify, for instance, that its OC 585 Defence ought to have referred to the fee

[40] OC 585 SOC at paras 15 to 17.

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being paid in consideration of TSPL's introduction of the opportunity, and not TOSPL's identification of the same, it cannot simply give particulars stating that the pleaded words "TOSPL's identification" should be understood to mean "TSPL's introduction", while leaving the pleading untouched. The proper recourse is found elsewhere. Depending on the circumstances, this may include an application for striking out or amendment of pleadings, or a submission that the party is running inconsistent cases: see also *Lim Chee Seng v Phang Yew Kiat* [2024] 5 SLR 106 at [32]–[34]. An order for particulars would not achieve the outcome that Mr Muzayyin seeks.

Request 21: Date of TOSPL's invoice to Faro

117 I make no order on Request 21 in SUM 1808, which seeks the date on which TOSPL issued Faro with an invoice for the alleged Consultancy Fee. Mr Muzayyin made this request as he understands that two invoices were issued, not one. At the hearing, counsel for TS conceded that there were two invoices, and the parties agreed that this could be clarified through TSPL's reply in OC 496 if permission were granted for one to be filed. As I have decided to grant such permission for reasons that I shall explain at the end of this judgment, no order is made on this request.

Group 3: The Loan Agreement

Request 22: Genuineness of the Loan (and Requests 14 and 15 of SUM 1807)

118 I disallow Request 22 of SUM 1808 and Requests 14 and 15 of SUM 1807. Each relates to the issue of whether the Loan Agreement is genuine and enforceable. I address each request in turn.

119 Request 22 of SUM 1808 seeks particulars of the facts that TSPL relies on in support of its assertion that it "lent" the sum of US$700k to Mr Muzayyin

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– including the facts, matters, circumstances surrounding and leading up to the Loan and the reasons for it. The request pertains to TSPL's OC 496 SOC, where it pleads that it lent the sum of US$700k to Mr Muzayyin under the Loan Agreement.

120 In my view, these particulars are unnecessary. TSPL seeks to rely on the Loan Agreement for its full force and effect. As would be expected in an action for breach of contract, it pleads material facts concerning the contract's formation, contents and breach. TSPL's cause of action does not require it to go further to plead that the contract is genuine, or as Mr Muzayyin submits, "particularise the precise basis on which [the Loan Agreement] was a binding agreement"[41] or "provide … particulars as to the circumstances leading up to the loan, including why and how the alleged loan came to be and the reasons why Mr Muzayyin required the loan".[42] Such requirements would be incompatible with the "very strong presumption" under the law that the parties intend to be bound by the agreements they enter into: *Toh Eng Tiah v Jiang Angelina and another appeal* [2021] 1 SLR 1176 ("*Toh Eng Tiah*") at [80]. It is Mr Muzayyin who has responded with a defence that the Loan Agreement is a sham, thereby putting the parties' intentions and reasons for entering into the Loan Agreement in issue. It is not for TSPL to pre-empt Mr Muzayyin's defence in its SOC.

121 Turning to SUM 1807, the analysis is slightly more nuanced since TS has to address the Loan Agreement as part of its *responsive* case. Mr Muzayyin's SOC recounts how he had been induced to execute the Loan Agreement in reliance on Mr Bartlett's representations that the Loan would not

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41 SUM 1808 (FBP) Summary Table, S/N 22, col C, para 46.

42 SUM 1808 (FBP) Summary Table, S/N 22, col E, para 43.

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need to be repaid and that the Loan Agreement would not be enforced.[43] Mr Muzayyin also explained that he had no reason to take a loan from TSPL, since Rubicon (of which SHPL was the majority shareholder) and his other businesses were doing well.[44]

122 In its Defence, TS denied that Mr Bartlett made representations on TS's behalf, and put Mr Muzayyin to strict proof of the other matters, including the alleged inducement and reliance. It further averred as follows (at paragraph 29):[45]

> (29) …
>
> a. On 3 July 2018, [TSPL] entered into the Loan Agreement and agreed to loan [Mr Muzayyin] [US$700k].
>
> b. The Loan Agreement was a genuine and binding agreement between the parties, pursuant to which [Mr Muzayyin] is indebted.
>
> c. At the material time of the Loan Agreement, [Mr Muzayyin] asked for and [TSPL] agreed to reduce the applicable interest rate from 3.5% to 1.5% per annum.
>
> d. By executing the Loan Agreement, [Mr Muzayyin] intentionally deceived [TSPL] and Ms Thiam into a belief that [Mr Muzayyin] intends to repay the Loan when [he] did not intend to repay the Loan, and thereby dishonestly induced [TSPL] to lend him money, and [Mr Muzayyin] cheated [TSPL] and Ms Thiam.

123 The scope of Request 14 of SUM 1807 mirrors that of Request 22 of SUM 1808. It relates to the averment in paragraph 29(b) of TS's Defence that the Loan Agreement was genuine and binding.

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43 OC 585 SOC at paras 17 and 19.

44 OC 585 SOC at para 18.

45 OC 585 Defence at para 29.

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124 TS submits that the material facts that support its position have been pleaded, namely at paragraphs 29(c) and 29(d) of the Defence: Mr Muzayyin had requested and obtained a reduction in the interest rate, and by executing the Loan Agreement, he induced TSPL to believe that he intended to repay the Loan.[46]

125 Given this submission, I am of the view that an order for FBPs would not serve any useful purpose and would not be necessary. To the extent that Mr Muzayyin disagrees that these facts are sufficient to demonstrate that the Loan Agreement is genuine and binding, that is a matter going to the merits, not a basis for inferring that further unpleaded facts must exist. To the extent that his request goes further and seeks particulars such as the reasons for the Loan, this does not appear to be aimed at clarifying TS's pleadings, but rather at investigating issues that TS has not pleaded. A party can believe and aver that a contract is intended to be genuine and binding even if he does not understand his counterparty's subjective reasons for entering into the contract.

126 Finally, Request 15 of SUM 1807 seeks particulars of Mr Muzayyin's request to reduce the applicable interest rate (see [122] above), the reasons for his request, and the manner in which this was made (*eg*, if it was made orally or in writing). To the extent that Mr Muzayyin's submission is that it is unclear what request TS is referring to, I disagree with this. It refers to a very specific act of amending a particular draft term in a particular way. It is not a generic request in the way that a request for payment or a request for a meeting might be, for example, in that requests of such broad description could readily encompass a multitude of different events. Mr Muzayyin's AEIC reveals that he understands what TS is referring to perfectly, as he states that "[w]hen I

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46 SUM 1807 (FBP) Summary Table, S/N 14, col D, para 3.

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reviewed the Purported Loan Agreement, I was surprised to see that the loan would bear interest at 3.5% per annum … Accordingly, I amended the interest rate from 3.5% to 1.5% and inserted my initial and signature next to the amendment".[47] I would add that even if there had been some ambiguity as to the precise request being referred to, that would still not justify the full suite of particulars sought, such as particulars of what TS understands to be Mr Muzayyin's reasons for making the request.

Request 23: Mr Muzayyin's references to the nature of the loan

127 I allow Request 23 of SUM 1808 in part. This seeks particulars of two averments in TSPL's OC 496 SOC: that over "the course of dealings with [Mr Muzayyin]", he "did not deny that the Loan was a loan", and that he "referred to the Loan as a loan".[48] The requested particulars are based on the familiar form below, which I will refer to in this judgment as the "Situational Particulars" for convenience:

> Full facts and particulars of [the alleged event(s) or agreement], including whether this took place orally or in writing.
>
> (i) If orally, state:
>
> (1) The date, time and place [where the event(s) took place or the agreement was made];
>
> (2) The circumstances [of the event(s) or in which the agreement was made] and the gist of the conversation [at the event(s) or giving rise to the agreement]; and
>
> (3) The identities of all individuals who were present [at the event(s) or when the agreement was made].
>
> (ii) If in writing, please identify all relevant documents and/or correspondence of [the event(s) or the

47 Mr Muzayyin's AEIC at para 56.

48 OC 496 SOC at para 10A.

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> agreement] and the date of such documents and/or correspondence.

128 Situational Particulars are sought in respect of: (a) each instance where Mr Muzayyin did not deny that the Loan was a loan, and (b) each instance where Mr Muzayyin referred to the Loan as a loan.

129 I agree with TS that FBPs are not necessary for the first averment, *viz*, that Mr Muzayyin did not deny that the Loan was a loan. TSPL's SOC already elaborates on this allegation at paragraphs 11 and 12 and, as I explain below in relation to Requests 24 to 27, it is clear that Mr Muzayyin knows what these communications refer to:[49]

> 10A. In the course of dealings with [Mr Muzayyin], [he] did not deny that the Loan [*ie*, the loan of US$700k] was a loan and referred to the Loan as a loan.
>
> 11. On 31 January 2025, [TSPL] requested that [Mr Muzayyin] pay the Loan. *[Mr Muzayyin] did not dispute the Loan* and asked to speak with [TSPL's] employee, Mr Bartlett.
>
> 12. On 27 March 2025, [TSPL] reminded [Mr Muzayyin] that the Loan remains outstanding, the Loan cannot be written off, and [TSPL] must initiate a collection process if there is no resolution. *[Mr Muzayyin] did not dispute that he must repay the Loan.*
>
> [emphasis added]

130 However, further particulars should be provided of the second averment, *ie*, that Mr Muzayyin referred to the Loan as a loan. This amounts to a positive allegation that, on one or more occasions, Mr Muzayyin made statements to the effect that he acknowledged the Loan as such. To respond to this allegation, Mr Muzayyin will need to know the gist of what he is alleged to have said and when. As it stands, there is only an unqualified reference to the "course of

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[49] OC 496 SOC at paras 10A to 12.

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dealings with [Mr Muzayyin]", such that TS could conceivably be referring to anything from a single reference to dozens of them, made at any point in time. It is also no answer to submit, as TS has, that its Defence in OC 585 already particularises the relevant communications in greater detail, since those communications are raised in respect of a separate pleading.[50] Nor is it sufficient to contend that these are facts within Mr Muzayyin's knowledge; what Mr Muzayyin needs to know is what *TS's case* is and what TS alleges Mr Muzayyin to have said, which is not a matter within his knowledge: *Prima Bulkship Pte Ltd (in creditors' voluntary liquidation) and another v Lim Say Wan and another* [2015] SGHCR 10 at [38].

131 For these reasons, TS is to provide the Situational Particulars in respect of the instances where, over the course of dealings, Mr Muzayyin referred to the Loan as a loan.

Requests 24 to 27: Request and reminder on 31 January and 27 March 2025 (and Requests 17 to 20 of SUM 1807)

132 I disallow Requests 24 to 27 of SUM 1808 and Requests 17 to 20 of SUM 1807. These are requests for Situational Particulars in respect of specific events:

(a) TS's request for payment on 31 January 2025;

(b) Mr Muzayyin's purported response to the 31 January request, *viz*, that he "did not dispute the Loan and asked to speak with [Mr Bartlett]";

(c) TS's reminder of payment on 27 March 2025; and

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50 SUM 1808 (FBP) Summary Table, S/N 23, col D, para 4.

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(d) Mr Muzayyin's purported response to the 27 March reminder, *viz*, that he "did not dispute that he must repay the Loan" (see [129] above).

133 Unlike the averment that was just considered in Request 23, which referred generally to "the course of dealings with Mr Muzayyin", the present averments identify the dates of the communications, the parties to those communications and the gist of what was discussed. The temporal, personal and material scope of the pleading is sufficient for Mr Muzayyin to triangulate the relevant communication in question, especially as these communications are said to have personally involved Mr Muzayyin. Significantly, Mr Muzayyin's Defence does not deny that such communications took place, and instead goes further to expressly identify and describe the two communications in question – he quotes directly an email from Ms Thiam dated 31 January 2025 and an email from Mr Bartlett dated 27 March 2025.[51] His AEIC exhibits these emails,[52] and openly describes one of them as the email referenced in TSPL's pleading: "I understand that *TSPL has relied on this email exchange* and alleged that I 'did not dispute the [purported] Loan and asked to speak with [Mr Bartlett]' (*see the OC 496 SOC at paragraph 11*)" [emphasis added].[53] This puts beyond doubt Mr Muzayyin's knowledge of the communication in question. His real disagreement lies with how the communications should be interpreted, but that is not a matter for which the Situational Particulars would be necessary.

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51 OC 496 Defence at paras 34, 35 and 44.

52 Mr Muzayyin's AEIC at paras 63, 64 and 68, and Exhibits NLM-24 and NLM-25. See also Mr Muzayyin's 5th Affidavit (SUM 1862 and SUM 1863) at pp 493 to 496.

53 Mr Muzayyin's AEIC at para 65.

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134 Mr Muzayyin submits that particulars would help tie TS down to a position at trial, so that it cannot surprise him with other communications that may have taken place on those two days.[54] However, this concern rests on the slim likelihood that there exist further exchanges on the same day, between the same parties, fitting the same description, which TS has deliberately chosen to not adduce in evidence but intends to ambush Mr Muzayyin with at trial. This risk is more theoretical than real and does not establish a genuine need for FBPs.

135 My reasons apply *mutatis mutandis* to the mirror requests in OC 585, *viz*, Requests 17 to 20 of SUM 1807, which are accordingly disallowed.

Request 28: Contractual interest

136 I disallow Request 28 of SUM 1808. In OC 496, TSPL claims interest under the Loan Agreement, at a rate of 1.5% per annum, on the sum of US$400k from 6 July 2018 and on the sum of US$300k from 23 July 2018. These are the dates on which the Loan had been disbursed, in two tranches, to Mr Muzayyin. Request 28 seeks particulars of TSPL's basis for claiming interest from these dates. Mr Muzayyin's contention is that interest should only run from a year after the first disbursement, *ie*, from 6 July 2019, because the Loan Agreement provided that repayment was to be made within 12 months of the first disbursement of funds. He explains that FBPs are needed so that he can address the court not only as to why his interpretation is correct, but also as to why TSPL's interpretation is wrong.

137 I agree with TS that it has sufficiently pleaded its claim for interest, starting with the dates, amounts and rate of interest:[55]

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54 SUM 1808 (FBP) Summary Table, S/N 26, col E, para 56.

55 OC 496 SOC at para 13.

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Interest accrued as at 26 June 2025

Principal (USD)	**Interest Rate**	**Start Date**	**End Date**	**Days**	**Daily interest (USD)**	**Total interest (USD)**
400,000.00	1.50%	6/7/18	26/6/25	2548	16.44	41,889.12
300,000.00	1.50%	23/7/18	26/6/25	2531	12.33	31,207.23
Total:						**73,096.35**

138 TS has also identified the contractual provision that gives rise to its entitlement, which provides that "The Borrower shall repay the Loan, in full or in part, within 12 months of the first disbursement of funds. The loan shall be interest bearing at 1.5% pa and unsecured."[56]

139 In seeking TSPL's *basis* for claiming interest from the date of disbursement, Mr Muzayyin is not seeking clarification of any material fact, but rather TSPL's legal justification for its entitlement to interest from 6 July 2018. That is a matter of contractual interpretation, properly addressed by way of legal submission, and need not be pleaded: *SYT Consultants Pte Ltd v QBE Insurance (Singapore) Pte Ltd* [2022] SGHC 251 at [26]. Of course, where a party advances a contextual interpretation of a contractual provision, it would be required to plead additional matters, such as each fact in the factual matrix it wishes to rely on in support of its construction of the contract: *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 at [73] and paragraph 61 of the Supreme Court Practice Directions 2021. But TS has not suggested that it intends to rely on contextual facts and that requirement has no application in the present case.

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[56] OC 496 SOC at paras 5 and 13. See also paras 8 and 9.

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Request 29: Preparation of the Loan Agreement

140 I allow Request 29 of SUM 1808. In OC 496, TSPL pleads that Ms Thiam had no reason to doubt that Mr Muzayyin wanted the Loan and intended to repay the Loan; he prepared, signed and amended the interest rate in the Loan Agreement. Mr Muzayyin denies this, save for the fact that he signed the Loan Agreement and amended its interest rate. Request 29 seeks the facts that TSPL relies on in support of its assertion that Mr Muzayyin "prepared the Loan Agreement". It is Mr Muzayyin's case that it was Mr Bartlett who prepared the Loan Agreement and provided it to him.[57]

141 In my view, what TS means by the words "prepared the Loan Agreement" is uncertain, and TS's submissions and evidence on this point generate more heat than light. On its face, TSPL's averment lists three separate acts: Mr Muzayyin prepared the Loan Agreement, he signed it and he amended the interest rate. However, these categories are collapsed in TSPL's written submissions on SUM 1808, which conflate the acts of preparation and amendment. It argues that an amendment of a document's terms is an act of preparation and not merely execution, and therefore, Mr Muzayyin already knows "*the* factual basis" [emphasis added] upon which he is alleged to have been involved in preparing the agreement.[58] This seems to imply that Mr Muzayyin prepared the Loan Agreement because, and only because, he amended the interest rate. It raises doubts as to whether TS's case is that Mr Muzayyin engaged in three separate acts, or just the two acts that Mr Muzayyin has already admitted to (*ie*, signing the agreement and amending the interest rate).

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57 SUM 1808 (FBP) Summary Table, S/N 29, col C, para 65; Mr Muzayyin's AEIC at paras 55 and 56.

58 SUM 1808 (FBP) Summary Table, S/N 29, col D, para 4.

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142 The confusion grows when one turns to Ms Thiam's 1st AEIC. It recasts Mr Muzayyin's involvement in much wider terms as the originator of the Loan Agreement's terms and as the individual who prepared the document. It bears noting that Ms Thiam's 1st AEIC was filed a few months ahead of TS's written submissions in SUM 1808, yet its factual narrative is neither referenced nor reproduced in the submissions:[59]

> I recall that the Loan Agreement was presented to me by [Mr Bartlett] as an agreement already signed by [Mr Muzayyin], reflecting that *the request to borrow (and the proposed terms) originated from [Mr Muzayyin]* and had been put to me for approval. This sequence – where the borrower signs first and the lender is then asked to countersign – is unusual in commercial lending. It is, however, consistent with my understanding at the time that *it was [Mr Muzayyin's] request* and [Mr Bartlett] had brought me *a pre-prepared document for my decision*. [emphasis added]

143 The question of whether an averment is ambiguous is frequently approached as a matter of patent ambiguity, or ambiguity that is apparent from the language of the pleading. But latent ambiguity, or ambiguity that becomes apparent only when that language is considered in the wider context against extrinsic material, can equally undermine a party's ability to understand the case it has to meet. What may initially appear to be a reasonably straightforward or well understood concept, such as the "preparation" of an agreement, may acquire a materially or radically different complexion after it has been fleshed out in a party's evidence and submissions. While it should not be the case that every discrepancy or inconsistency between a party's pleadings, submissions and evidence would necessitate the giving of particulars (for such cases are no doubt numerous and differences can exist for good reason), there may be cases where the gap becomes so wide that the responding party is effectively left without fair notice of the nature of the case it has to meet.

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59 Ms Thiam's 1st AEIC at para 65.

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144 This is one such case. The issue is not merely that "preparation" could encompass a range of granular acts. That, in itself, might not render FBPs necessary. The issue is that the distinction between two pleaded acts (*viz*, preparation and amendment) has been elided, and the notion of preparing an agreement has acquired a chameleonic character under TS's case. At some points, it seems that the case Mr Muzayyin has to meet is that he proposed the Loan Agreement's terms and drafted the relevant document; at others, the case is reduced to Mr Muzayyin amending a single term. In the circumstances, fair notice requires that Request 29 be allowed, so that Mr Muzayyin is not expected to deal with a moving target.

Requests 30 and 31: Mr Bartlett's communications with Mr Muzayyin and Ms Thiam

145 I disallow Request 30 of SUM 1808, but allow Request 31 of SUM 1808 in a significantly more limited form. Both relate to TS's assertion that, at all material times after the Loan was disbursed to Mr Muzayyin, (a) Mr Bartlett informed Ms Thiam that he would speak with Mr Muzayyin on its repayment, and (b) Mr Muzayyin communicated with Mr Bartlett to Ms Thiam's exclusion. Request 30 seeks the Situational Particulars (as defined at [127] above) in respect of point (a). Request 31 seeks the Situational Particulars in respect of point (b), as well as particulars of the facts it relies on to support that point.

146 The particulars sought in Request 30 are unnecessary. There is no genuine need for them, because Mr Muzayyin accepts that he is not privy to any of the alleged conversations between Mr Bartlett and Ms Thiam, including any representation made by Mr Bartlett to Ms Thiam that he would speak with Mr Muzayyin on the repayment of the Loan.[60] In this situation, Mr Muzayyin

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60 SUM 1808 (FBP) Summary Table, S/N 30, col C, para 68 and col E, para 63.

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can either admit to TS's case or not admit to it and put TS to strict proof thereof. The latter is precisely what he has done in his Defence.[61] Further particularisation would not enhance his ability to respond to an allegation concerning facts that he does not know and cannot verify. Moreover, an order for FBPs would not be the necessary procedural tool. Mr Muzayyin is entitled to challenge the *evidence* that TS will use to support its assertion, but if that is his intention, then the appropriate precursor would be an application for the production of documents rather than particulars.

147 As for Request 31, the Situational Particulars are not necessary. TS's case is a negative one: that there was a consistent pattern of conduct in which Ms Thiam would be *excluded* from communications between Mr Bartlett and Mr Muzayyin on the Loan. The Situational Particulars would require Ms Thiam to identify and particularise the very communications from which she claims to have been excluded.

148 Having said this, there is some uncertainty as to what it means for Mr Bartlett to have communicated with Mr Muzayyin to Ms Thiam's "exclusion". On a plain and natural reading of the allegation, it means that Ms Thiam was not privy to those communications, because she had been left out or kept out of them. Indeed, TS makes this exact point in other parts of its Defence.[62] Yet, when Ms Thiam's 1st AEIC addresses the relevant conduct, it paints a rather different picture: that Mr Muzayyin "consistently directed his communications and attention to [Mr Bartlett] rather than [Ms Thiam]" even when, in Ms Thiam's view, she would have been the appropriate point of contact. As to what "directed his communications" means in this context, a

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61 OC 496 Defence at para 60.

62 OC 585 Defence at paras 40, 41 and 43.

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single example is given of how Mr Muzayyin replied to an email that had been sent from Ms Thiam's email address by naming Mr Bartlett rather than Ms Thiam as the addressee.[63] In other words, Ms Thiam *was* privy to the communication but sidelined within it. Further particulars are necessary to confirm whether TS's case is something wider than or different from what "exclusion" entails in ordinary usage. I therefore require TS to state the manner in which Ms Thiam was excluded from the communications between Mr Muzayyin and Mr Bartlett.

Request 16 of SUM 1807: Mr Bartlett's relationship with Mr Muzayyin

149 I allow Request 16 of SUM 1807. This seeks particulars of Mr Bartlett's "relationship" with Mr Muzayyin, including the nature of the relationship and the date on which it commenced. Mr Muzayyin pleads that the fact that TSPL did not request or demand repayment of any loan until nearly six years after the repayment date is consistent with an understanding that the Loan Agreement was a sham.[64] TS denies this and pleads, among other things, that Mr Bartlett had the responsibility of collecting the Loan from Mr Muzayyin at all material times "owing to his relationship with [Mr Muzayyin]".[65]

150 In my view, the reference to Mr Bartlett's "relationship" with Mr Muzayyin is cryptic. TS's Defence is entirely silent as to the nature of the alleged relationship. When presented with Mr Muzayyin's portrayal of his relationship with Mr Bartlett in his SOC, TS disavowed knowledge of Mr Bartlett's "history or prior dealings" with Mr Muzayyin and SHPL and

63 Ms Thiam's 1st AEIC at paras 51, 52 and 82(a).

64 OC 585 SOC at para 23.

65 OC 585 Defence at para 38(a).

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expressly declined to plead to those matters.[66] Ms Thiam's 1st AEIC adds to the uncertainty, because it contains references to Mr Muzayyin and Mr Bartlett variously having a "substantial working relationship", a "long-standing and close personal friendship", and a creditor-debtor relationship.[67] The nature of their relationship is not just an incidental or peripheral detail in TS's pleaded case. TS has raised it as its justification for why other individuals from TSPL did not make requests or demands for repayment for an extended period. Nor is this a request for the evidence that TS will rely on to prove the asserted relationship. I therefore allow Request 16.

Group 4: The Conspiracy Agreement

Request 32: The formation of the Conspiracy Agreement

151 Request 32 of SUM 1808 is allowed. This pertains to TS's averment that Mr Muzayyin and Mr Bartlett, acting in concert and pursuant to a common design and interest, "agreed that [Mr Muzayyin] should receive [US$700k] (the 'Conspiracy Agreement')" for reasons known only to them. Situational Particulars (as defined at [127] above) are sought of the Conspiracy Agreement, save that no request is made in respect of the identities of the agreement's parties.

152 TS has submitted that the "Conspiracy Agreement" is not pleaded as a separate commercial agreement distinct from the facts already pleaded by the parties.[68] I therefore have to consider whether TS is referring to an agreement of a contractual kind or a combination in a broader sense.

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66 OC 585 SOC at para 4; OC 585 Defence at para 7.

67 Ms Thiam's 1st AEIC at paras 30, 68, 106 and 109.

68 SUM 1808 (FBP) Summary Table, S/N 32, col D, para 4.

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(1) Pleading requirements: Conspiracy

153 In a claim for conspiracy by unlawful means, it is well-established that a claimant must show the following (*EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [112]):

(a) there was a combination of two or more persons to do certain acts;

(b) the alleged conspirators had the intention to cause damage or injury to the claimant by those acts;

(c) the acts were unlawful;

(d) the acts were performed in furtherance of the agreement; and

(e) the claimant suffered loss as a result of the conspiracy.

154 In respect of the first element of combination, it is instructive to refer to the following observations from *Clerk & Lindsell on Torts* (Andrew Tettenborn, gen ed) (Sweet & Maxwell, 24th Ed, 2023) at para 23-103 (which were cited in *Kapital Fund SPC v Lee Tze Wee Andrew and another* [2024] SGHC 289 ("*Kapital Fund*") at [69]):

> The tort [of conspiracy] requires an agreement, combination, understanding, or concert to injure, involving two or more persons. Of the various words used to describe a conspiracy, 'combination' has been preferred to 'agreement' on the ground that 'agreement' might be thought to require some agreement of a contractual kind, whereas all that is needed is a combination and common intention.

155 What must be pleaded in respect of this element is how the conspirators came together to take some form of concerted action in pursuit of a common object or design, including the role that each conspirator played and what each

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co-conspirator did or omitted to do as a participant in the conspiracy: *Lo Yew Seng v Astrawati Aluwi* [2026] SGHC(A) 18 at [81]; *Kapital Fund* at [80]–[81]; *SW Trustees Pte Ltd (in compulsory liquidation) and another v Teodros Ashenafi Tesemma and others (Teodros Ashenafi Tesemma, third party)* [2024] 3 SLR 1410 at [37].

156 It follows that a conspiracy may be pleaded on the basis of a combination or common understanding without identifying any contractual agreement. That said, a party is not precluded from pleading a contractual agreement if it so chooses. Where it has done so and the agreement forms part of its case, I am of the view that the agreement ought to be pleaded and particularised in the same way that contractual agreements generally would (on which, see *W Power Group EEOD v Ming Yang Wind Power (International) Co Ltd* [2024] SGHC(I) 29 at [151]; *Singapore Airlines Ltd v CSDS Aircraft Sales & Leasing Inc* [2020] 5 SLR 221 at [9]–[12]; *Arovin Ltd and another v Hadiran Sridjaja* [2018] 5 SLR 117 ("*Arovin*") at [10]–[12]).

157 In determining whether an agreement is being pleaded in a contractual sense, it should be appreciated that words such as "agreement" may in some cases be used in a lay or non-contractual sense, particularly where they are used interchangeably with words like "combination" or "understanding". Form should not be allowed to displace or obscure substance. In other cases, however, the characteristics of the pleaded agreement may be difficult to reconcile with anything other than a contract.

(2) My decision

158 In TSPL's OC 496 SOC, the expression "Conspiracy Agreement" has been deployed in a manner strongly indicative of a contract. TS not only avers that the Conspiracy Agreement is unlawful, but also that it is *void* for illegality

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– a phrase typically used in a contractual setting.[69] It describes the Conspiracy Agreement as having been "obtained, prepared or used" by Mr Muzayyin to defraud the Inland Revenue Authority of Singapore ("IRAS") – language that presupposes the existence of some written document capable of being produced or relied upon. These statements reveal that the "Conspiracy Agreement" is not merely a general label for what the alleged co-conspirators agreed or combined to do, but an agreement in a contractual sense.

159 As an agreement is not, strictly speaking, a fact but an inference drawn from facts, particulars must be provided of the gist of what was discussed that gave rise to the agreement: *Arovin* at [10]–[11]. Accordingly, TS is to provide the requested Situational Particulars. In this connection, TS has submitted that it would face difficulties giving full particulars, because the agreement was secret between Mr Muzayyin and Mr Bartlett and entered into "for reasons known only to the two of them".[70] This is unpersuasive, because TS has also submitted that the pleaded Conspiracy Agreement is based on facts *already pleaded* by the parties (see [152] above). Moreover, TS is evidently prepared to positively allege that the Conspiracy Agreement was obtained, prepared or used to defraud IRAS, which itself suggests some awareness of what had been agreed and how the agreement came to be used. In any event, these limitations should not preclude particulars from being ordered altogether, in respect of an agreement that TS has chosen to plead and that squarely forms part of its case.

Request 33: Mr Bartlett's loans from SHPL and the agreement to forbear

160 I allow Request 33 of SUM 1808 in a modified form. This concerns TS's averment that pursuant to the Conspiracy Agreement, Mr Muzayyin agreed to

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69 OC 496 SOC at para 20.

70 OC 496 SOC at para 19 (chapeau) and 19(b).

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receive, and did receive, the sum of US$700k as an inducement or reward for him "doing or forbearing to do anything in respect of Mr Bartlett's loans from SHPL".[71] Request 33 seeks: (a) particulars of Mr Bartlett's loans from SHPL, including their amounts and dates as well as the Situational Particulars; and (b) particulars of Mr Muzayyin's alleged agreement to do or forbear to do anything in respect of Mr Bartlett's loans from SHPL, including the Situational Particulars.

161 In my view, particulars should be given both of Mr Bartlett's loans and the alleged agreement, which I will refer to as the agreement to forbear. The fact that Mr Bartlett had taken loans from SHPL was not foreshadowed earlier in the SOC, and unless one takes notice of the pleadings in OC 585, there is virtually nothing in TSPL's OC 496 SOC that states what these loans are. The pleading is equally bare on the agreement to forbear, and the same considerations that warranted particulars of the Conspiracy Agreement (at [159] above) apply with equal force here.

162 However, I would not mandate that the amounts and dates of each loan be individually particularised. Depending on how the agreement to forbear was reached, it is conceivable that the contracting parties could have referred to Mr Bartlett's indebtedness globally without exhaustively enumerating his individual loans. If that were the case, requiring individual particularisation would go further than what the agreement provides and beyond what is necessary to understand TS's case. I also do not require the Situational Particulars of the loans to be provided, since TS's pleading is not concerned with the formation of those loan agreements but with their enforcement.

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[71] OC 496 SOC at para 20(b).

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163 I therefore order TS to provide particulars on the following modified terms:

> State:
>
> (a) The transfers, transactions or agreements comprised in the reference to 'Mr Bartlett's loans from SHPL'.
>
> (b) Insofar as the phrase 'Mr Bartlett's loans from SHPL' refers to particular loans extended to Mr Bartlett, the amount and date of each loan.
>
> (c) Full facts and particulars of the alleged agreement by Mr Muzayyin to receive the sum of US$700k in exchange for him 'doing or forbearing to do anything in respect of Mr Bartlett's loans from SHPL', including whether this alleged agreement was made orally or in writing.
>
> (i) If orally, state:
>
> (1) The date, time and place where this alleged agreement was made;
>
> (2) The circumstances in which the alleged agreement was made and the gist of the conversation giving rise to the alleged agreement; and
>
> (3) The identities of all individuals who were present when the alleged agreement was made.
>
> (ii) If in writing, identify all relevant documents and/or correspondence containing the alleged agreement and the date of such documents and/or correspondence.

Requests 34 and 36: Sham contract and fraud on authorities

164 I allow Requests 34 and 36 of SUM 1808. Both concern the unlawful means allegedly employed by the co-conspirators. Request 34 relates to an allegation that the Loan Agreement was created as a sham contract, with the intention of misrepresenting the nature of the US$700k payment to "[TSPL], Ms Thiam, Faro and the stakeholders of Faro, [TSPL's] bank, the tax authorities and/or other stakeholders".[72] Request 36 relates to an allegation that the

[72] OC 496 SOC at para 20(c)(i).

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Conspiracy Agreement was obtained, prepared or used by Mr Muzayyin for the purpose of defrauding "[IRAS] or such competent authorities of Singapore by concealing from the lawful authorities" that Mr Muzayyin had personally received US$700k as income in 2018.[73]

165 I begin with Request 34, which seeks: (a) the identities of the "stakeholders of Faro", "[TSPL's] bank" and "other stakeholders"; and (b) the full facts and particulars that TSPL relies on in support of its assertion that the Loan Agreement was created and executed as a sham contract to misrepresent the nature of the US$700k payment to the stakeholders of Faro, TSPL's bank, the tax authorities and other stakeholders.

(1) Pleading requirements: Sham agreements

166 The essence of a sham is that all parties to the sham did not intend to create the legal relations that the acts done or documents executed give the impression of creating: *Toh Eng Tiah* at [74] and [80]. A distinction is drawn between two purposes (at [118]). The first is the purpose *of the sham document*, namely, to serve as a smokescreen that conceals the true relations between the parties. The second is the particular purpose or purposes that the parties may have *for the sham*, such as to defraud a specific third party.

167 This distinction was illustrated on the facts of *Toh Eng Tiah*. It was alleged that the respondent failed to properly plead the purposes for which the sham was entered into. The sham contract in question was a "loan facility agreement" ("LFA"). On the appellant's case, a sum of $2m that he transferred to the respondent constituted a loan under the LFA. The respondent submitted that the sum was in reality a gift and that the LFA was unenforceable as a sham.

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73 OC 496 SOC at para 20(d).

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On her case, the parties were having a romantic affair at the time (which subsequently went awry), and the LFA had been given to "'assuage' [the appellant's] family, friends and employees, as a 'ploy' to improve his standing among them, and to obtain a loan of $2m from his company" to facilitate the purchase of real property (at [25]). The appellant's pleading objection related to a further submission that the LFA also served to placate the appellant's wife (who had learnt of the affair) and to convince her that the moneys would be repaid so that she would not seek further assets as part of their divorce (at [81]). The appellant contended that this particular purpose was not pleaded and so it could not be argued. The Court of Appeal determined that it did not have to squarely decide the pleading objection, because it could already conclude that a sham existed on the other evidence, but it also drew a distinction between the purpose of the sham document and the purpose for the sham (at [118]):

> … [E]ven if [the respondent] could not raise these specific allegations since they were not pleaded (and we do not rely on this argument in our analysis in any event), it would not have had a significant effect on the analysis above. Whatever the *specific purpose* alleged, the central facts identified above would remain the same and point towards a sham. [The respondent] has been consistent from the beginning that the LFA was intended to give the impression of a loan to others, including [the appellant's] wife, company, employees and friends, and whether it was also for the purpose of the divorce does not change any of the inferences to be drawn from the circumstances. A distinction should be drawn between the *purposes* that parties may have *for* the sham and the *common intention* that the document would not truly reflect the parties' legal relationship, *ie,* the purpose that the document would conceal the true relations between the parties. While the *specific* purposes are *relevant* to the factual question of whether there is a sham, they are *not,* logically speaking, an *essential* requirement for finding that the agreement was a sham. [emphasis in original]

168 In short, the purpose that parties may have *for* a sham is not an essential requirement for finding that a sham exists. That said, it remains "relevant to the factual question of whether there is a sham". Given its relevance, it follows in

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my view that where a party has pleaded that a sham was entered into for specific purposes or to mislead specific third parties, it ought to do so with sufficient particularity, so that the opposing party understands what those purposes are and who those third parties are and can marshal the necessary evidence to meet the pleaded case.

(2) My decision

169 The foregoing is of some significance in the present case, because TSPL's pleading alleges that the Loan Agreement was created and executed to misrepresent the nature of the US$700k payment to no fewer than six categories of persons and entities (*viz*, TSPL, Ms Thiam, Faro, the stakeholders of Faro, TSPL's bank and the tax authorities). These are not examples of third parties who may be affected or misled by the sham as an objective matter. The allegation is that the Loan Agreement was entered into *for the purpose* of misrepresenting the transfer to each and every one of these persons and entities.

170 It would be incumbent on TS to identify who "the stakeholders of Faro" and the "other stakeholders" refer to. It may be reasonable to infer that "the stakeholders of Faro" refer primarily to Faro's shareholders. However, the terms are not coterminous. The residual category "other stakeholders" should similarly be clarified. Taken literally, a stakeholder is a person who holds a stake or interest in *something*, but it is not clear what that something is here. As for TSPL's bank, I am of the view that the precise identity of the bank is not a necessary particular but a matter of evidence; it suffices that the nature of the relationship between TSPL and this entity is clear.

171 TS is to also provide particulars of the facts it relies on to infer the pleaded intention, namely, that the Loan Agreement was created and executed as a sham contract with the intention of misrepresenting the nature of the

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US$700k payment to each of the persons and entities it has pleaded. This is because a sham is based on the subjective intentions of the parties, and particulars are to be provided where there is an allegation as to the condition of the mind of any person: see *Toh Eng Tiah* at [80]; *Tan Tien Sek v Tan Tien Sai* [2023] SGHC 81 at [66]; Form 9 of Appendix A to the Supreme Court Practice Directions 2021.

172 This last point applies with equal, if not greater, force to Request 36 of SUM 1808 (see [164] above). Request 36 seeks: (a) the identities of the "competent authorities of Singapore", and (b) the full facts and particulars relied on by TSPL in support of its assertion that the Conspiracy Agreement was obtained, prepared or used by Mr Muzayyin for the purpose of defrauding IRAS or such competent authorities of Singapore. At the oral hearing, counsel for TS suggested that the competent authorities *may* include authorities such as the Central Provident Fund ("CPF") Board and the Monetary Authority of Singapore ("MAS"), subject to what evidence comes to light before trial. In my view, maintaining an open-ended case in this manner risks Mr Muzayyin being taken by surprise at trial. A fraudulent intention to deceive the CPF Board is not the same as a fraudulent intention to deceive the MAS (or IRAS for that matter). Each authority has distinct regulatory concerns and powers; the alleged concealment of US$700k as income would be relevant to each of them in different ways; and the evidence that Mr Muzayyin would have to lead to respond to each allegation may also differ. It bears highlighting that the allegation in question – that Mr Muzayyin committed a fraud on one or more public authorities – is itself a serious allegation that, if proven, may expose him to criminal or regulatory consequences. It is therefore necessary for TS to identify the "competent authorities" it refers to, and to disclose the full facts and particulars it relies on to infer the pleaded fraudulent intention.

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173 For completeness, I do not understand TS to be alleging that the various stakeholders and authorities described above are also the intended victims of the *conspiracy*. That matter has been pleaded in a *separate* paragraph, which states that Mr Muzayyin and Mr Bartlett "intended, and/or were recklessly indifferent to the likelihood, that [TSPL] would suffer loss and damage as a result of the said unlawful means".[74] Should my reading be incorrect, such that the alleged victims of the conspiracy include the various stakeholders and/or authorities, then the Court of Appeal's decision in *EFT Holdings* supplies a further reason why particulars would be necessary. The court held that the class of victims in a conspiracy must be ascertainable at the time the conspiracy was entered into, or it must at least be shown that the conspiracy was referable to them. It favoured a stricter approach to assessing the nexus between the intention of co-conspirators and the persons or class of persons targeted, and cautioned that "[a] contrary approach which leaves the membership of the class indeterminate would threaten to blur the conceptual distinction that needs to be maintained between the tort of negligence and conspiracy torts": at [102]–[111]. In *Capajet Pte Ltd v EV Technology Pte Ltd and others and other matters* [2026] SGHC(A) 16, the Appellate Division was satisfied that the class of victims pleaded in that case was not indeterminate, because it consisted only of the respondents and remained constant through the period identified in their counterclaim (at [62]). By contrast, the classes referred to in the present case, such as "other stakeholders" and "such competent authorities", are open-ended and indeterminate and do not describe victims ascertainable at the time of the alleged conspiracy. This is the sort of indeterminacy that FBPs are meant to cure.

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74 OC 496 SOC at para 21.

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Request 35: Mr Bartlett's breaches of fiduciary duties

174 I partially allow Request 35 of SUM 1808. This returns to the allegation that Mr Bartlett breached his fiduciary duties, which I considered at [89]–[100] above under Request 15. Whereas Request 15 was concerned more generally with the nature and scope of Mr Bartlett's employment relationship with TSPL, Request 35 seeks particulars as to: (a) the specific fiduciary duties that Mr Bartlett breached, and (b) the full facts and circumstances giving rise to these duties.

175 I allow request (b) for the same reasons that I have allowed Request 15. I am mindful that this may appear duplicative or superfluous (and therefore unnecessary) given that Request 15 has been allowed. However, I consider their scope to be sufficiently different such that each request may attract different responses.

176 I do not allow request (a) regarding the specific fiduciary duties that Mr Bartlett breached. While TS is expected to particularise the content of Mr Bartlett's fiduciary duty (see [93]–[96] above), it has already done so through its averment that Mr Bartlett acted in conflict with TSPL's interests:[75]

> 20 [TSPL] avers that the Conspiracy Agreement between [Mr Muzayyin] and Mr Bartlett is unlawful and void for illegality.
>
> …
>
> c. The common design and interest in the Conspiracy Agreement involved and was carried into effect by unlawful means, including:
>
> …
>
> ii. breaches by Mr Bartlett of his fiduciary duties owed to [TSPL] as its key employee, in that he:

[75] OC 496 SOC at para 20(c)(ii)(a).

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> a) *acted in conflict with [TSPL's] interests*;
>
> b) neglected and failed to disclose the Conspiracy Agreement to [TSPL], or intentionally concealed that Conspiracy Agreement from [TSPL];
>
> c) led [TSPL] to enter into the Loan Agreement and disbursed the Loan to [Mr Muzayyin], knowing that [Mr Muzayyin] had no intention to repay the Loan.
>
> …
>
> [emphasis added]

177 Insofar as Mr Muzayyin's submission is that it is not clear what duties sub-paragraphs 20(c)(ii)(b) and (c) disclose, those sub-paragraphs are not, in my view, intended to describe additional facets of Mr Bartlett's fiduciary duty. Sub-paragraphs 20(c)(ii)(a) to 20(c)(ii)(c) collectively serve to explain how Mr Bartlett breached his fiduciary duty; they do not set out three distinct facets of Mr Bartlett's duty and three corresponding breaches. This much was confirmed by counsel for TS at the hearing.

TS's applications for further and better particulars (*viz*, SUM 1863 in OC 496, SUM 1862 in OC 585)

178 In SUM 1863, TS seeks FBPs of Mr Muzayyin's Defence in OC 496. In SUM 1862, it seeks FBPs of Mr Muzayyin's SOC in OC 585. The two requests in SUM 1862 form a proper subset of the three requests in SUM 1863. I will therefore address both summonses together.

Request 1: Mr Bartlett's ostensible authority and agency

179 I disallow Request 1 of both SUM 1862 and SUM 1863. In both summonses, Request 1 seeks particulars of the facts that Mr Muzayyin relies on in support of his allegation that Mr Bartlett had ostensible authority (S/N 1.1) and/or agency (S/N 1.2) from TSPL and/or TOSPL in all dealings and

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interactions with Mr Muzayyin and SHPL.[76] This includes particulars of the representations made by TSPL and/or TOSPL to Mr Muzayyin and/or SHPL that allegedly clothed him with ostensible authority, and the scope and nature of his alleged authority. TS contends that Mr Muzayyin has not identified any of these facts or representations, only representations that were made by Mr Bartlett himself.[77]

Pleading requirements: Ostensible authority

180 It is settled law that ostensible authority arises where two elements are met (*Tian Kong Buddhist Temple v Tuan Kong Beo (Teochew) Temple* [2021] 4 SLR 286 ("*Tian Kong Buddhist Temple*") at [15], citing the *locus classicus* of *Freeman & Lockyer (a firm) v Buckhurst Park Properties (Mangal) Ltd and another* [1964] 2 QB 480 ("*Freeman & Lockyer*") at 503 (*per* Diplock LJ)):

> (a) there must be a representation, made by the principal to the contractor, that the agent has the authority to enter on behalf of the principal into a contract of a kind within the scope of the ostensible authority; and
>
> (b) the contractor must rely or act upon the representation when entering into a contract with the agent.

181 Where both elements are met, the representation will operate as an estoppel, preventing the principal from asserting that he is not bound by the contract. A party who seeks to establish such an estoppel must plead facts going to these elements. In *Tian Kong Buddhist Temple*, as the party failed to plead

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76 This is pleaded in Mr Muzayyin's OC 585 SOC at para 3 and his OC 496 Defence at para 7.

77 Ms Thiam's 3rd Affidavit (SUM 1862 and SUM 1863) at paras 14, 17 and 25.

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facts or particulars to show that the elements are satisfied, the court declined to simply draw a legal inference that the purported agent was cloaked with ostensible authority: at [15].

182 Under the first element, the relevant representation must be one made by the principal. The law does not recognise a "self-authorising" agent, in that an agent who lacks authority (whether actual or ostensible) cannot pull himself up by his bootstraps and confer authority upon himself merely by representing that he has such authority: *Lew, Solomon v Kaikhushru Shiavax Nargolwala and others and another appeal* [2021] 2 SLR 1 ("*Lew Solomon*") at [56]; *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another appeal* [2011] 3 SLR 540 at [38].

183 As to the form of the representation, this may be made directly or indirectly, and by conduct or by words: *Lew Solomon* at [56]. The touchstone is whether the representation in question is one for which the principal can be said to be responsible: *The "Bunga Melati 5*" [2016] 2 SLR 1114 ("*The Bunga Melati 5*") at [12]; *Freeman & Lockyer* at 498 (*per* Willmer LJ). For example, the Court of Appeal observed in *The Bunga Melati 5* at [9] that where a bank placed a manager in a position where she held a certain title, status and facilities, as well as a bank stamp and copies of certain letters of indemnity, this could be understood as amounting to a representation by the bank that the manager had the authority to sign letters of indemnity (rationalising *Pacific Carriers Ltd v BNP Paribas* (2004) 218 CLR 451). Such a representation could also potentially be found where the principal has a duty to correct the contractor's mistaken belief as to the agent's scope of authority, but fails to do so (see *The Bunga Melati 5* at [10], rationalising *Spiro v Lintern* [1973] 1 WLR 1002), or where the principal stood by in circumstances calculated to give the impression that

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the agent had authority (*Lew Solomon* at [55]–[56], rationalising *A Nesbitt & Co Ltd v McClure* [1971] Lexis Citation 22). The upshot is that the representation in question need not be a *direct* communication from the principal. Indeed, as Diplock LJ observed in *Freeman & Lockyer* (at 503–504), the most common form of representation is one of conduct, "that is, by permitting the agent to act in some way in the conduct of the principal's business with other persons" (see also *Hely-Hutchinson v Brayhead Ltd and another* [1968] 1 QB 549 at 593, *per* Lord Pearson).

My decision

184 In my view, Mr Muzayyin has pleaded sufficient particulars for his case on ostensible authority and an order for FBPs would not be necessary. He submits that the following pleaded facts constitute his case that TS held Mr Bartlett out as the person who would conduct business with Mr Muzayyin on its behalf:[78]

(a) Mr Bartlett's incorporation of TSPL and TOSPL for the purposes of various business dealings and the acquisition of Rubicon;

(b) the limited communications that Mr Muzayyin had with Ms Thiam, their nominee director, regarding business dealings; and

(c) the fact that the Acquisition of Rubicon was discussed and agreed between Mr Muzayyin, Mr Bartlett and Mr Chia.

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78 SUM 1863 (FBP) Summary Table, S/N 1, col D, paras 8 to 14; SUM 1862 (FBP) Summary Table, S/N 1, col D, paras 8 to 17.

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185 TS may dispute, as a matter of law, whether the pleaded facts constitute representations from the principal, or whether these facts, if proven, are sufficient to establish the existence and scope of Mr Bartlett's authority. However, these are matters for submission at trial. Similarly, the question of which acts and representations are properly attributable to TSPL and which to TOSPL is one of evidence and legal submission.

186 TS further submits that Mr Muzayyin's pleadings are silent on the *nature and scope* of Mr Bartlett's alleged authority. They do not address, for instance, whether he was held out as having authority to "negotiate commercial opportunities, to bind [TSPL], to bind TOSPL, to enter into the Loan Agreement on behalf of either company, to make representations concerning the Loan Agreement, or to do something else".[79] Based on the case that Mr Muzayyin is mounting, I do not consider it necessary for him to tabulate a checklist of tasks that Mr Bartlett was authorised to perform. Mr Muzayyin has asserted that Mr Bartlett had authority in "all dealings and interactions with [Mr Muzayyin] and SHPL", being "the representative, the controlling mind and the ultimate beneficial owner of both TSPL and TOSPL".[80] By employing such unqualified language and appealing to Mr Bartlett's alleged status as the controlling mind of TS, Mr Muzayyin is referring to authority in the widest possible sense. By framing his case in this all-encompassing way, as opposed to a more limited scope of authority (such as the authority to propose and negotiate deals but not conclude contracts), it would not be necessary for Mr Muzayyin to enumerate all of the tasks that Mr Bartlett could perform in order for TS to understand the nature of the case it has to meet. TS can respond to this by averring that

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79 SUM 1863 (FBP) Summary Table, S/N 1, col E, para 6; SUM 1862 (FBP) Summary Table, S/N 1, col E, para 6.

80 OC 496 Defence at para 7; OC 585 SOC at para 3.

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Mr Bartlett's authority was not absolute but restricted in some ways. This is indeed what it has done by pleading that material decisions still had to be made by Ms Thiam, and indeed, by describing the limits of Mr Bartlett's role in Ms Thiam's 1st AEIC.[81] For these reasons, I do not allow Request 1.

Request 2: Mr Bartlett's representations to Mr Muzayyin

187 I allow Request 2 of both SUM 1862 and SUM 1863 in a modified form. These seek particulars concerning *Mr Bartlett's* representations that: (a) TSPL and TOSPL were his companies, (b) he was the individual responsible for their business decisions, and (c) he was their beneficial owner and controlling mind.[82] Mr Muzayyin has pleaded that Mr Bartlett had made these representations to him "at all material times". The particulars sought are:

> (a) For each representation made in words orally, (i) the date, time, place and participants of the conversation, and (ii) the exact or material express words amounting to the representation.
>
> (b) For each representation made in words in writing, the documents containing the representation, the date and timestamp (if any) of each document, the author and the recipient.

188 Mr Muzayyin submits that Mr Bartlett's representation of his beneficial ownership of TS is a "straightforward allegation", because he either made the representation or he did not.[83] In my view, the difficulty is that it is not clear

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81 See Ms Thiam's 1st AEIC at paras 91 to 94.

82 This is pleaded in Mr Muzayyin's OC 585 SOC at para 5 and his OC 496 Defence at para 7.

83 SUM 1863 (FBP) Summary Table, S/N 2, col D, para 26; SUM 1862 (FBP) Summary Table, S/N 2, col D, para 29.

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what it is that Mr Bartlett is alleged to have said or done to have made the representations. TS has no way of pinpointing the number of such representations made, the form they took or the circumstances in which they were made, because Mr Muzayyin simply refers to these representations as having been made "[a]t all material times". On his own case, Mr Muzayyin has had business dealings with Mr Bartlett since 2010.[84] It is unclear whether Mr Muzayyin is referring to a period that commenced around the time that TSPL and TOSPL were respectively incorporated, or a much shorter period around the time of the Rubicon acquisition, or some other period altogether. It is also unclear whether Mr Muzayyin's case is that Mr Bartlett had described himself as "the beneficial owner of TSPL and TOSPL" in such direct terms, or if the representations have been pieced together from other facts. Mr Muzayyin's AEIC seems to suggest that it is the latter. At the hearing, counsel for Mr Muzayyin drew my attention primarily to statements made by Mr Bartlett to Mr Muzayyin that Ms Thiam worked for him, that she was more of an assistant and that he had paid her a salary.[85]

189 For these reasons, I grant Request 2 of both summonses, save that instead of particulars of the "exact or material express words amounting to the representation", Mr Muzayyin need only provide particulars of "the circumstances in which the representation was made and the gist of the conversation giving rise to the representation". In the circumstances, I consider the former to be too exacting a requirement and more in the nature of evidence.

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84 OC 585 SOC at para 4; OC 496 Defence at para 8.

85 SUM 1863 (FBP) Summary Table, S/N 2, col D, para 28; SUM 1862 (FBP) Summary Table, S/N 2, col D, para 31; Mr Muzayyin's AEIC at para 16(a), 16(d) and 16(e).

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Request 3: Mr Muzayyin's dispute of the Loan

190 I allow Request 3 of SUM 1863 in a modified form. This seeks particulars of when and how Mr Muzayyin is said to have disputed the obligation to repay the Loan. At the root of this request is TSPL's pleading in OC 496 that on 27 March 2025, it reminded Mr Muzayyin that the Loan remained outstanding, that it could not be written off and that TSPL must initiate a collection process if there was no resolution. TSPL further pleads in this connection that Mr Muzayyin did not dispute that he must repay the Loan.[86] The response in Mr Muzayyin's Defence is two-fold. First, he denies the averment and disputes the characterisation of the 27 March communication as a reminder to him to repay the Loan, as opposed to Mr Bartlett relaying what he had been advised or told. Second, and "[i]n any event, it is denied that [Mr Muzayyin] did not dispute that he had to repay the purported loan. From around February 2025 to June 2025, the parties were still discussing how to restructure or write off the purported loan. The parties' understanding at that time was still that the purported loan was not to be paid."

191 Mr Muzayyin's averment contains what has been described as a "pregnant negative": a traverse by denial of a negative averment that imports a positive assertion of fact, for which particulars may be requested. As explained in *Arul Chandran v Chew Chin Aik Victor JP* [2000] SGHC 111 at [204]:

> A traverse by denial of a negative averment may simply remain as a mere denial with nothing to be implied and as a consequence, the defendant will not be allowed at the trial to call evidence and set up in his defence an affirmative case to the contrary, which has not been specifically pleaded. Essentially, the defendant by such a mere denial would be simply putting the plaintiff to strict proof. *But in certain cases, the double negative contains within itself an affirmative allegation. This is the 'pregnant negative', which clearly imports*

86 OC 496 SOC at para 12.

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> *a positive assertion of fact, where particulars may be ordered, if not so given.* The third possibility is that the matter is left in doubt in which case the pleading may be struck out as being embarrassing unless made clearer by an amendment. [emphasis added]

192 TS construes Mr Muzayyin's averment to mean that he *positively disputed* the Loan; by denying that he did not dispute the loan, he is affirming that he did. Mr Muzayyin submits that this reading is incorrect. By stating that the parties' understanding at the time was that the purported loan was not to be paid, Mr Muzayyin implies that there was no subsisting repayment obligation to begin with, and accordingly, there was nothing to dispute. Read in this context, Mr Muzayyin did not aver that he positively disputed the Loan.[87]

193 I am not persuaded that Mr Muzayyin's submission is borne out by his averment. His belief that there was no repayment obligation to begin with may explain why there was *no need* to raise a dispute, but that is a distinct question from whether he *did in fact* raise a dispute. His averment could equally be read to mean that he did raise a dispute, precisely because he disagreed with TS's premise that the loan was repayable. This uncertainty is compounded by Mr Muzayyin's reply affidavit in SUM 1862, where he characterised his denial differently. He explained that what he was denying was the proposition that his "interactions with TSPL on or around 27 March 2025 *show* that [he] did not dispute the alleged repayment obligation" [emphasis added].[88] This introduces a third construction of his averment, and one that is somewhat strained. The averment does not deny that the 27 March exchange *shows* that he did not dispute the repayment obligation. What it denies is the *fact* that "the Defendant

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87 SUM 1863 (FBP) Summary Table, S/N 3, col D, paras 34 to 37.

88 Mr Muzayyin's 5th Affidavit (SUM 1862 and SUM 1863) at para 41.

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did not dispute that he had to repay the purported loan".[89] For these reasons, I order Mr Muzayyin to provide particulars that state *whether, when and how* he disputed the obligation to repay the Loan following the 27 March 2025 communication.

Mr Muzayyin's application for specific production (*viz*, SUM 1807)

194 Mr Muzayyin's requests for specific production fall into three groups:

(a) documents relating to the identity of TS's controlling mind and Mr Bartlett's authority;

(b) documents relating to the acquisition of Rubicon and the US$900k fee paid by Faro; and

(c) documents which form part of documents that have been disclosed by TS.

TS's alleged failures to disclose documents

195 As alluded to at [48] above, Mr Muzayyin submits that TS has failed to disclose material documents and known adverse documents. He relies on these alleged failures not only to support the necessity of the production orders sought, but also to contend that it is plain and obvious that further responsive documents exist under various categories.[90]

196 He points to three alleged failures. First, TS allegedly withheld an email from Mr Bartlett that was material to the dispute and a known adverse

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89 OC 496 Defence at para 45.

90 Mr Muzayyin's 4th Affidavit (SUM 1807 and SUM 1808) at para 28; SUM 1807 (Production) Summary Table, S/N 1, col C, paras 12 and 14.

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document. In the list of documents that TS served pursuant to O 11 r 2 of the ROC 2021, TS had disclosed WhatsApp conversations between Mr Bartlett and Mr Muzayyin from 14 June 2019 to 23 July 2020. These were attached as a Zip folder to an email that Mr Bartlett had sent to himself, which was also disclosed. This email was sent on 10 December 2020 at 9.51pm from his Scale Solution email address to his TSPL email address. When Mr Muzayyin's solicitors sought inspection of these documents, however, they were provided instead with WhatsApp conversations from 5 October 2019 to 7 December 2020, and the email in question was an email sent on 10 December 2020 at *9.46pm*. It later emerged that Mr Bartlett had sent himself two emails minutes apart, each attaching a different set of WhatsApp conversations.[91] The 9.46pm email attached a Zip folder titled "WhatsApp Chat - Nas - Personal", while the 9.51pm email attached one titled "WhatsApp Chat - Nas". The two labels appear to correspond to different phone numbers used by Mr Muzayyin.[92]

197 When Mr Muzayyin's solicitors sought clarification on these differences, TS's solicitors explained in a letter that the 9.46pm email and its attachment had been "inadvertently provided" at the inspection. They had been granted access by TS to Mr Bartlett's Scale Solution email account for the purpose of the inspection, and in their search for the documents disclosed in TS's list of documents, a date filter was applied to narrow the search results. The 9.46pm email was inadvertently provided as it was sent minutes prior to the 9.51pm email.[93] In Ms Thiam's reply affidavit to SUM 1807, she added that at the time of initial disclosures, she had been unaware that Mr Muzayyin had

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91 Mr Muzayyin's 4th Affidavit (SUM 1807 and SUM 1808) at paras 30 to 32, and Tabs 21, 22 and 27, pp 383 to 673 and 683.

92 Mr Muzayyin's 4th Affidavit (SUM 1807 and SUM 1808) at paras 41(a) and (b).

93 Mr Muzayyin's 4th Affidavit (SUM 1807 and SUM 1808) at Tab 25, pp 678 and 679.

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communicated with Mr Bartlett using more than one phone number.[94] In her 2nd AEIC, she similarly described the discovery of the 9.46pm email as "unexpected", before proceeding to cite parts of the inadvertently disclosed WhatsApp chat to substantiate a point on the relationship between Mr Muzayyin and Mr Bartlett.[95] Mr Muzayyin submits that this shows that the WhatsApp chat is obviously material, and he points further to other parts of the chat which he says are adverse to TS. He contends that the belated disclosure raises "serious doubts" as to the adequacy of TS's document searches. He further contends that there may be other documents in TS's possession or control that have yet to be disclosed, especially since Mr Bartlett's Scale Solution inbox appears to contain over 60,000 items.[96]

198 Second, TS is alleged to have conducted the production exercise in a "shadowy manner" by failing to adequately account for two different versions of a document, namely a purported sale and purchase agreement between TSPL and an entity known as Curve Energy Pte Ltd ("Curve SPA").[97] The Curve SPA had been disclosed in TS's list of documents and exhibited in Ms Thiam's 1st AEIC. Mr Muzayyin's solicitors requested inspection because the execution section of the document appeared to be obscured by its first schedule, concealing the identities of the signatories.[98] After the inspection request was made, TS said that it required additional time to locate the original document,

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94 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 31.

95 Ms Thiam's 2nd AEIC at paras 50 to 52.

96 Mr Muzayyin's 4th Affidavit (SUM 1807 and SUM 1808) at paras 43 and 44; SUM 1807 (Production) Summary Table, S/N 1, col C, para 14.

97 Mr Muzayyin's 4th Affidavit (SUM 1807 and SUM 1808) at para 55.

98 Mr Muzayyin's 4th Affidavit (SUM 1807 and SUM 1808) at para 46.

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which Mr Muzayyin found surprising given that Ms Thiam's 1st AEIC had been filed just a few weeks earlier.[99]

199 TS's solicitors subsequently explained in an email that the copy of the Curve SPA exhibited in Ms Thiam's 1st AEIC was an "incomplete scanned copy of the original document". They had since located the original hardcopy and attached an electronic copy of the same to the email. On a comparison of the copies of the Curve SPA, Mr Muzayyin's solicitors noticed that a schedule concerning loan releases now contained Mr Donnelly and another individual's signatures, and that hole-punch and staple marks were present in the document. Mr Muzayyin submits that TS has failed to explain "their attempt to pass off" this copy of the Curve SPA as the original hardcopy that was disclosed and exhibited.[100]

200 In her reply affidavit to SUM 1807, Ms Thiam explained that the Curve SPA had been "executed in duplicate". She retained one original and Mr Mathew Wyatt (who was involved in the Curve Energy Business[101]) retained the other. She had initially "located and provided the scanned copy of the executed agreement that had been made from [Mr Wyatt's] copy", which she retained a digital record of, and subsequently produced for inspection the original hardcopy in her possession. Both versions thus relate to the same executed agreement. She also exhibited a copy of her "original hardcopy counterpart" in the affidavit.[102] Counsel for Mr Muzayyin suggested that this

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99 Mr Muzayyin's 4th Affidavit (SUM 1807 and SUM 1808) at para 47.

100 Mr Muzayyin's 4th Affidavit (SUM 1807 and SUM 1808) at paras 48 to 53; SUM 1807 (Production) Summary Table, S/N 1, col C, para 15.

101 Ms Thiam's 1st AEIC at para 6.

102 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 35, and Exhibit ATXM-57, pp 156 to 164.

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was inconsistent with the impression they had formed after reading the earlier email from TS's solicitors (see [199] above), which was that there was only ever a single document and that the execution portion had been obscured due to a scanning issue.

201 Third, it was submitted at the hearing that TS's piecemeal disclosure of documents continued into the SAPT stage. In particular, Ms Thiam's reply affidavit to SUM 1807 stated that in the course of preparing that affidavit, she carried out further searches for documents relevant to issues raised in Mr Muzayyin's application. This led to her discovery of various emails from 2021 to 2025 that were consistent with TS's case.[103] Mr Muzayyin submits that these emails ought to have been disclosed prior to the SAPTs, as several of them are material documents adverse to TS's case.

202 Taking Mr Muzayyin's case at its highest, these instances of belated or incomplete disclosure do not, without more, establish that it is plain and obvious that further responsive documents exist or are within TS's possession or control *in respect of each requested category*. To the extent that Mr Muzayyin submits that the non-disclosures show that the requested documents *exist*, that is a category error for the reasons at [57] above, and would not overcome an affirmation by Ms Thiam that no further documents exist. At best, the inference that might be drawn is that there are further documents in TS's *possession or control*. But even that inference is difficult to sustain across all requested categories when it rests solely on some instances of non-compliance with some classes of documents: see [58] above. This is not a case of clear suppression or withholding, or a near-total lack of disclosure, from which a broader inference might be warranted: see [57] above. TS's list of documents discloses 58

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103 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 7.

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documents and its supplementary list discloses a further 17.[104] These documents include, among others, correspondence and agreements relating to the acquisition of Rubicon, the Loan and Mr Bartlett's relationship with TSPL, and they extend to otherwise-privileged material, tax documents and internal correspondence between Ms Thiam and her team members.

203 In any event, the alleged non-disclosures are not as grave as Mr Muzayyin suggests. First, the failure to notice and disclose the 9.46pm email sooner (see [196] above) appears to have been a genuine error on the part of TS and TS's solicitors. The two emails had the same sender and recipient, had no email subject or body, contained similarly named Zip folders, and were sent within minutes of each other. Nor has the inadvertently disclosed attachment revealed anything that, in itself, suggests a deliberate attempt at concealment. To be sure, it is unclear how the use of a date filter led TS's solicitors to notice the 9.46pm email but miss the 9.51pm email. Be that as it may, the most that the episode might show is that TS ought to have taken greater care in complying with its disclosure obligations. I should also refer to the Court of Appeal's observations in *Teo Wai Cheong v Crédit Industriel et Commercial and another appeal* [2013] 3 SLR 573 at [47]. The court noted that while authorities suggest that a solicitor ought to go through all the documents disclosed by a client to ensure that, as far as possible, no relevant documents have been omitted, "this may have to be tempered in appropriate cases, particularly where the volume of electronic or other documents might necessitate some degree of considered, informed or adequately supervised delegation". In this light, the fact that Mr Bartlett's inbox contained more than 60,000 emails does not necessarily assist Mr Muzayyin's case.

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104 Mr Muzayyin's 4th Affidavit (SUM 1807 and SUM 1808), Tabs 19 and 20, pp 370 to 381.

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204 Second, the existence of two executed versions of the Curve SPA is not remarkable, nor is the fact that Ms Thiam had in her possession the physical original of one version and a scanned copy of the other. Whatever the precise explanation for the differing signatures, that issue does not require resolution in this application. The point is that the discrepancy is not as significant as Mr Muzayyin suggests.

205 Third, the additional emails disclosed in Ms Thiam's reply affidavit to SUM 1807 are admittedly of some concern, especially since they are said to be uniformly favourable to TS and no explanation has been given for why they were not located earlier. Even so, their belated discovery does not itself establish that further responsive documents must remain undisclosed. A party responding to a specific production application may reasonably be expected to conduct further searches directed to the requests made, and those searches may uncover documents not previously identified.

206 For these reasons, I am not prepared to infer that there must be further responsive documents within TS's possession or control across all categories in SUM 1807.

Group 1: The identity of TS's controlling mind and Mr Bartlett's authority

Category 1: Documents regarding TSPL's incorporation

207 I allow Category 1, which is a request for: "All Documents and/or Correspondence exchanged between [Mr Bartlett] and [Ms Thiam] regarding the incorporation of TSPL, including but not limited to the offer allegedly made by Ms Thiam to Mr Bartlett in November 2016 for 'a formal interest in [TSPL]', as set out in paragraph 16 of [Ms Thiam's 1st AEIC]."

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208 I agree with Mr Muzayyin that the requested documents are material to whether TSPL was incorporated to enable Mr Bartlett to conduct his own business dealings and investments, or whether it was incorporated by Ms Thiam on her own initiative.[105]

209 TS's objections are three-fold. First, it refers to the existence of other evidence that supports Ms Thiam's ownership and control over TS. It is unclear how this affects the question of materiality: see [46(a)(ii)] above.[106] Second, TS's written submissions state that the requested documents do not exist.[107] However, Ms Thiam's reply affidavit to SUM 1807 only frames this objection in respect of a *subset* of documents, namely, those relating to Ms Thiam's offer of a formal interest in TSPL to Mr Bartlett in or around November 2016.[108] As I observed above (at [54]), this would not provide a complete answer to the request made. Her affidavit goes on to explain that her offer of a formal interest was made in discussions that were "oral and informal", for which "[n]o documents were prepared and there was no written correspondence".[109] But this does not establish that Mr Bartlett and Ms Thiam never discussed TSPL's incorporation thereafter, or more broadly, that no such documents or correspondence on the topic were ever exchanged between them. She concludes this section of her affidavit by stating that apart from the discussion on the formal interest, she is "not aware of any documents or written correspondence relating to [Mr Bartlett's] decision not to participate as a shareholder in

105 Ms Thiam's 1st AEIC at para 91(a).

106 SUM 1807 (Production) Summary Table, S/N 1, col D, paras 3 to 6.

107 SUM 1807 (Production) Summary Table, S/N 1, col D, para 1.

108 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 36.

109 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 37.

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[TSPL]".[110] Once again, this is a narrower sub-category than what has been sought.

210 Third, TS takes issue with the width of the request, as it relates to a "broad category of internal communications and business correspondence accumulated over several years".[111] This is a somewhat surprising submission given TS's position above that no responsive documents exist. In any event, I consider the category to be appropriately circumscribed, because it relates to a specific event (*ie*, TSPL's incorporation) and the correspondence is limited to correspondence exchanged between Ms Thiam and Mr Bartlett. The absence of a temporal limitation is not determinative, provided that the requested documents are described with sufficient particularity: *DFD v DFE and another* [2025] 3 SLR 362 at [41]. For completeness, I note that TS has not stated that the requested documents would include internal correspondence. It is also not plain to me that this would be the case, especially as regards correspondence exchanged prior to TSPL's incorporation.

Category 2: Documents showing instructions from Ms Thiam and reporting by Mr Bartlett

211 I disallow Category 2, which is a request for: "All Documents and/or Correspondence until 3 July 2018 (*ie*, the date of the Purported Loan Agreement) showing Ms Thiam giving instructions to Mr Bartlett or Mr Bartlett reporting to Ms Thiam regarding the business and affairs of TSPL and TOSPL. This includes but is not limited to TSPL's and TOSPL's investments in [Faro], TSO Power Solutions Private Limited ('TSO Power') and Todai Industries Private Limited ('Todai')." At the hearing, counsel for Mr Muzayyin clarified

110 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 41.

111 SUM 1807 (Production) Summary Table, S/N 1, col D, para 13.

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that Mr Muzayyin was withdrawing the request in respect of TSO Power and Todai, as those entities were incorporated after 3 July 2018.

212 In my view, the requested documents are internal correspondence, as they regard "the business and affairs of TSPL and TOSPL" and concern instructions and reporting between Ms Thiam and Mr Bartlett. The parties have referred to the definition of internal correspondence in *Cachet (AR)*,[112] which refers to documents "internal to the party from which the document is requested (such as emails between individuals and/or departments in the organisation), and not intended to be received by persons outside the party" (at [55]). I note that the court in *Cachet (AR)* observed at the same paragraph that while "these general definitions [were] sufficient for present purposes, [it would] leave their precise contours to be defined in another case". Be that as it may, as neither party has suggested that a different definition ought to be applied, I similarly adopt this definition and am satisfied that the requested documents qualify as internal correspondence.

213 Mr Muzayyin has not argued that there exists a special case for the production of all documents under this category. While a narrower order could still be made in relation to known adverse documents, the more fundamental difficulty I have with this category is that the requested documents have not been properly identified and therefore do not satisfy the requirement in O 11 r 3(1)(*a*) of the ROC 2021.

214 Documents must be described with sufficient particularity so that the requested party will know what documents are being requested and can ascertain whether the documents are in that party's possession or control: *Eng's*

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112 SUM 1807 (Production) Summary Table, S/N 2, col C, para 19 and n 24.

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Wantan Noodle at [48]. In my view, the description provided should place the requested party in a position to determine, in a reasonably certain and straightforward manner, whether a given document falls within or without that description. The requested party should not have to guess at the precise contours of the category or be in doubt as to what its production obligations require of it. It bears emphasising that non-compliance with a production order can carry serious consequences, such as the dismissal of an action, the striking out of a defence, or a finding of contempt of court: O 11 r 7 of the ROC 2021.

215 In my view, what constitutes an "instruction" and what constitutes "reporting" is ambiguous. I accept that there will be a core of documents that squarely matches these descriptions, and counsel for Mr Muzayyin has done her best to refer me to such correspondence.[113] Nevertheless, there remains a wide penumbra of cases that would not fall decisively on either side of the category's boundary, because it is not clear where each phrase starts and where it ends. This concern is especially pronounced on the present facts, as Ms Thiam and Mr Bartlett do not operate through a conventional line management relationship where correspondence in the nature of instruction-and-reporting is routinely generated.[114] Ms Thiam has deposed,[115] and Mr Muzayyin has not seriously disputed,[116] that:

> [Mr Bartlett] and I worked together on a number of commercial opportunities through [TSPL] and TOSPL. I relied on [Mr Bartlett], [Mr Thomas Donnelly] and others to identify commercial opportunities, introduce business contacts and participate in commercial discussions with third parties. [Mr Bartlett] brought industry experience, business contacts

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113 See also Ms Thiam's 1st AEIC at paras 19 and 23.

114 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at paras 42 to 44.

115 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 15.

116 *Cf* SUM 1807 (Production) Summary Table, S/N 2, col E, paras 19 and 20.

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> and potential opportunities. I was responsible for the management and corporate affairs of [TSPL] and TOSPL.

216 According to Ms Thiam, Mr Bartlett's role was to "identif[y] commercial opportunities", "share his views on business matters" and "update" her on his discussions with Mr Muzayyin.[117] It is not self-evident whether some or all of these acts would or would not amount to an act of "reporting" to Ms Thiam. Is it reporting when (and only when) Mr Bartlett was following up on an instruction Ms Thiam had given him and, in this sense, reporting or accounting for his assigned work? Or does it extend to him furnishing information relevant to Ms Thiam's decisions, or whenever he provided views or updates on business matters? The yardstick for this is unclear, largely because Ms Thiam is not in any meaningful sense someone he had to "report" to, and the attempt to transpose the language of reporting to the relationship at hand is inapt. In a similar vein, it is similarly unclear whether an instruction would encompass the posing of questions, making of requests and solicitation of views by Ms Thiam, or only the giving of a direction that Mr Bartlett would be required or expected to comply with.

217 Mr Muzayyin submits that TS is already aware of the types of documents the category seeks. As an example of such a document, counsel for Mr Muzayyin referred me to an email where Mr Bartlett allegedly sought Ms Thiam's directions on a matter. She submitted that such an act of seeking directions would constitute reporting.[118] However, this email only confirms my concerns. In it, Mr Bartlett aired his grievances concerning Mr Thomas Donnelly ("Mr Donnelly"), the group managing director, and informed Ms Thiam that he "need[ed] to know where [her] head is". He added that he

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117 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at paras 42 to 44.

118 Ms Thiam's 1st AEIC at para 85 and Exhibit ATXM-7 at p 155.

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"will look after [Ms Thiam] for as long as [he] can, but [he] can't be treated like this anymore". He proposed that they "meet Monday afternoon with [Mr Donnelly] on a revised agenda", and added "please don't process salaries this month (unless you have already)". Evidently, Mr Bartlett was not reporting to Ms Thiam about his work and was instead making requests for her intervention, for a meeting, and for salaries not to be processed. It is arguable that it was Mr Bartlett who was giving Ms Thiam instructions. This reinforces the view that Category 2 describes an amorphous and subjective category of documents.

218 At the hearing, I invited counsel for Mr Muzayyin to consider how Category 2 might be rescoped. As no alternatives were raised, I disallow Category 2.

Categories 3 and 8: Documents regarding the dividends declared by TSPL and TOSPL

219 I disallow Categories 3 and 8. Category 3 seeks: "All Documents and/or Correspondence showing: (a) the dividends declared by TSPL from 16 March 2017 onwards; (b) the persons to whom such dividends were paid; and (c) the transaction records showing the payment of dividends to such persons." Category 8 makes the same request in respect of TOSPL from 10 October 2017 onwards.

220 Ms Thiam has confirmed on affidavit that neither TSPL nor TOSPL has "ever declared or paid any dividends. Accordingly, there are no directors' resolutions, dividend vouchers, payment records, bank records or other documents relating to the declaration nor payment of dividends by either

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company".[119] Mr Muzayyin's submissions do not identify any other documents that would be responsive to his request that have not been accounted for. Nor has he shown that it is plain and obvious that such documents exist. He merely repeats his general submission on TS's non-compliance with its disclosure obligations, which does not go far in rebutting an assertion that the requested documents do not exist.

Categories 4, 5, 9, 10 and 11: Documents showing the remuneration of Mr Bartlett and Ms Thiam by TSPL and TOSPL

221 I allow Categories 4, 5, 9 and 10 in a modified form, and make no order on Category 11. This group of requests relates to the remuneration of Mr Bartlett and Ms Thiam by TSPL and TOSPL.

(a) Category 4 seeks: "All Documents and/or Correspondence, including but not limited to payslips and remittance records, showing the monthly and/or annual salaries paid by TSPL to Ms Thiam from 16 March 2017 onwards".

(b) Category 5 makes the same request in respect of Mr Bartlett.

(c) Categories 9 and 10 make the same request in respect of Ms Thiam and Mr Bartlett respectively, but in respect of salaries paid by TOSPL from 10 October 2017.

(d) Category 11 seeks: "All personal income tax returns filed by Ms Thiam with IRAS from 2017 onwards, save for Years of Assessment 2021 and 2022 which TSPL and TOSPL have provided together with their List of Documents on 9 March 2026".

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119 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 47.

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222 Mr Muzayyin submits that these documents would be material to showing who the controlling mind and ultimate beneficial owner of TSPL was, and whether Mr Bartlett was truly merely an employee.[120] TS contends that the documents lack a demonstrable nexus to the pleaded issues and would not have a significant bearing on their determination. This is because remuneration, ownership and control are distinct concepts, and examining Ms Thiam and Mr Bartlett's remuneration – whether in isolation or relative to each other – would not provide a reliable basis upon which matters such as ownership and decision-making authority can be assessed.[121]

223 There is some force to TS's submission, especially since it is not clear how the remuneration that Mr Bartlett and Ms Thiam received would shed light on issues such as their decision-making authority. The nexus with the issue of beneficial ownership is clearer, since the remuneration they received could shed light on the economic benefits that each individual in fact derived and the true economic substance of the corporate arrangements. Even then, it may be queried whether documents that disclose their remuneration would have a significant bearing on the determination of the dispute, if more pertinent facts and evidence on the issue of beneficial ownership were available.

224 However, it appears that the cases of both parties may be based, not insubstantially, on matters of remuneration. One plank of Mr Muzayyin's case is that Mr Bartlett conveyed to him on multiple occasions that Ms Thiam worked for him and that he paid her a salary. Reliance is placed on at least three conversations where Mr Muzayyin and Mr Bartlett discussed how much

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120 SUM 1807 (Production) Summary Table, S/N 4, col C, para 32.

121 SUM 1807 (Production) Summary Table, S/N 4, col D, paras 2 to 4, and S/N 9, col D, paras 3 to 5.

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Ms Thiam had been paid, and details were given of what she received in 2014, 2016, 2017 and 2020.[122] TS's own evidence refers to matters of remuneration. Ms Thiam's 1st AEIC discloses how much Ms Thiam received in 2020 and 2021 and her other benefits, such as her use of company funds to pay for a family holiday. It also discusses the monthly salaries that TSPL's key personnel received.[123] Her reply affidavit to SUM 1807 specifically points out how Mr Donnelly, the group managing director, had been paid more than Mr Bartlett.[124] Viewed in the round, TS appears poised to rely on facts and evidence relating to Ms Thiam's and Mr Bartlett's remuneration. Its submission that the requested documents have no significant bearing on the issues in dispute is thus difficult to accept. If these are matters that TS considers material and intends to explore at trial, parity would require that the documents be disclosed, so that the parties conduct their litigation on an equal footing and "with their cards face up on the table": *Teo Wai Cheong v Crédit Industriel et Commercial and another appeal* [2013] 3 SLR 573 at [41]–[42].

225 I therefore allow Categories 4, 5, 9 and 10, but in a modified form that is agnostic to the type of remuneration paid. Ms Thiam has deposed by affidavit that she did not draw a "regular salary" or "fixed salary" from TSPL, does not have and has never had an employment contract with TSPL, and instead received her remuneration as a director.[125] Moreover, while Mr Muzayyin contests this,[126] TOSPL is said to have had no employees, maintained no payroll

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122 Mr Muzayyin's AEIC at para 16.

123 Ms Thiam's 1st AEIC at paras 88 and 89.

124 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 50.

125 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at paras 48 and 49; Ms Thiam's 1st AEIC at para 88.

126 Mr Muzayyin refers to Ms Thiam's 1st AEIC at para 59 and p 74.

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and paid no salaries.[127] Accounting for this, Category 4 is allowed on the following terms: "All Documents and/or Correspondence, including but not limited to payslips and remittance records, showing the remuneration received by Ms Thiam from TSPL from 16 March 2017 onwards." Categories 5, 9 and 10 are allowed *mutatis mutandis*. As for Category 11, counsel for Mr Muzayyin indicated at the hearing that Mr Muzayyin would not pursue this category if Categories 9 and 10 were allowed. I therefore make no order on Category 11.

Categories 6 and 13: Documents regarding TOSPL's incorporation and Mr Bartlett's Consultancy Agreement

226 I allow Categories 6 and 13. I begin with Category 6, which seeks: "All Documents and/or Correspondence exchanged between Mr Bartlett and Ms Thiam regarding the incorporation of [TOSPL], including but not limited to TOSPL's alleged entry into the Consultancy Agreement with Mr Bartlett on the day of TOSPL's incorporation (as stated at [33] and [34] of Ms Thiam's 1st AEIC)."

227 The reference to Mr Bartlett's Consultancy Agreement is a reference to one of two agreements executed on 10 October 2017, the date on which TOSPL was incorporated. Under this agreement, Mr Bartlett would be engaged for a two-month period to provide advisory services to TOSPL in relation to "Project FARO" at a fee of US$45k.[128] The other agreement was the "FARO III Consultancy Agreement", under which Faro agreed to pay TOSPL a US$900k consultancy fee.[129]

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127 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at paras 63 to 65.

128 Ms Thiam's 1st AEIC at para 34 and Exhibit ATXM-13, pp 185 to 188.

129 Ms Thiam's 1st AEIC at para 38 and Exhibit ATXM-14, pp 189 to 192.

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228 Mr Muzayyin submits that the requested documents are material to whether Mr Bartlett was the controlling mind and ultimate beneficial owner of TOSPL and whether TOSPL was incorporated for Mr Bartlett's investment in the acquisition of Rubicon.[130] TS does not dispute this, and I agree with Mr Muzayyin. Moreover, as with Category 1, which concerns documents regarding *TSPL's* incorporation, TS has not submitted that the requested documents would qualify as internal correspondence. It is also not plain to me that they would qualify as such, given that the parties dispute whether the acquisition of Rubicon (for which purpose TOSPL was incorporated) had been pursued by Mr Muzayyin, Mr Bartlett and Mr Chia as principals or as agents of SHPL, TSPL and Oro respectively.

229 TS's objection is that apart from the incorporation records and agreements it has already disclosed, there are no further documents or correspondence concerning the incorporation of TOSPL (*ie*, no further documents exist).[131] I note that in an earlier process of voluntary disclosure, TS's response was that aside from an *email* from Ms Thiam to Mr Bartlett dated 31 May 2018, there were no other documents or correspondence regarding the incorporation of TOSPL.[132] It is unclear why no reference is now made to this email as a responsive document, and why no reference was previously made to the incorporation records and agreements, but I am prepared to give TS the benefit of the doubt.

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130 SUM 1807 (Production) Summary Table, S/N 6, col C, paras 37 and 38.

131 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 58.

132 SUM 1807 (Production) Summary Table, S/N 6, col C, para 39; Mr Muzayyin's 4th Affidavit (SUM 1807 and SUM 1808) at p 352.

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230 Mr Muzayyin submits that it is plain and obvious that further documents exist. Apart from the general submission that he has made on TS's non-compliance with its disclosure obligations, he highlights the following points:[133]

(a) Ms Thiam has deposed in her 1st AEIC that the incorporation of TOSPL and the entry into the Consultancy Agreement with Mr Bartlett "all took place on the same date as a deliberate, planned and carefully structured set of arrangements".[134] Given the care that Ms Thiam took in arranging for TOSPL's incorporation and Mr Bartlett's engagement as TOSPL's consultant, it is entirely unbelievable that no further documents exist. Mr Bartlett had brought the opportunity to acquire Rubicon to Ms Thiam's attention as early as February 2017, and it is unbelievable that the entire sequence of events over eight months was conducted without any documentation or correspondence.

(b) It is highly implausible that there was no document or correspondence trail leading up to the signing of Mr Bartlett's Consultancy Agreement. This would mean that Mr Bartlett signed it without any prior discussions or correspondence with Ms Thiam on the engagement.

231 TS's rejoinder is that although the incorporation of TOSPL and the execution of the agreements were indeed a deliberate and structured arrangement, this simply describes how the documents had been "prepared and executed on that single day [*ie*, 10 October 2017] *as a coordinated act*"

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133 SUM 1807 (Production) Summary Table, S/N 6, col C, paras 41 to 43, and col E, paras 29 and 30.

134 Ms Thiam's 1st AEIC at para 33.

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[emphasis added].[135] While Ms Thiam understood that TSPL might receive a fee in connection with the Rubicon acquisition, there was no agreement or commitment to this prior to 10 October 2017, when Mr Bartlett finally informed her that he had secured an arrangement for such a fee. It was in response to this that she incorporated TOSPL to operate as the vehicle through which the consultancy agreement would be contracted for and the consultancy fee received.[136]

232 In my view, Mr Muzayyin's submissions at [230] above are insufficient on their own to demonstrate that it is plain and obvious that responsive documents exist. The fact that the arrangements were carefully structured does not inescapably mean that they could not have been pursued and implemented within a single day. Mr Bartlett's Consultancy Agreement and the FARO III Consultancy Agreement are relatively short documents that are substantively similar to each other, each being three pages long and containing no more than 10 clauses. As TS submits, there was no extensive detailing of the scope of work, project milestones or delivery timetables.[137] Mr Bartlett's duties, for instance, were encapsulated in a brief line: "to provide advisory services to the Company in relation to 'Project FARO'".[138] Even if there had been prior discussions concerning Mr Bartlett's Consultancy Agreement, there is no reason why these would have necessarily taken place in writing. The agreement's terms are neither lengthy nor complex and it is plausible that Mr Bartlett and Ms Thiam, who worked together, had discussed them orally.

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135 Ms Thiam's 1st AEIC at para 33.

136 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at paras 53 and 54.

137 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 57.

138 Ms Thiam's 1st AEIC at Exhibit ATXM-13, p 185.

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233 Nevertheless, I am satisfied that the plain and obvious standard is met when one combines Mr Muzayyin's arguments with the following disclosures in Ms Thiam's 1st AEIC:

(a) First, although she describes TOSPL's incorporation and the two agreements as "one coordinated act", she also states that "[t]he fee structure was agreed in advance, *documented in advance*, and executed in real time as the structure was put in place" [emphasis added].[139] Reading "in advance" against "in real time as the structure was put in place", the phrase "documented in advance" must refer to the creation of documents at some point prior to 10 October 2017.

(b) Second, she states that as Mr Bartlett went about sounding out potential investors, he would "keep[] [her] apprised so that [she] could decide whether [TS] should participate on the terms discussed".[140] She also describes the FARO III Consultancy Agreement as a "pre-agreed, commercially negotiated arrangement and binding contract".[141] This is not an agreement entered into between TSPL, TOSPL, Ms Thiam and/or Mr Bartlett, but an external agreement entered into between TOSPL and Faro. If Ms Thiam's evidence is that this was commercially negotiated with an external party and *pre-agreed* with that party, the claim that all steps were taken on 10 October 2017 without any prior written correspondence or agreement is difficult to sustain.

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139 Ms Thiam's 1st AEIC at para 39.

140 Ms Thiam's 1st AEIC at paras 27 and 28.

141 Ms Thiam's 1st AEIC at para 40.

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234 For these reasons, it is plain and obvious that there exist further documents responsive to the request that are or were in TS's possession or control. Category 6 is allowed.

235 I also allow Category 13, which seeks: "All Documents and/or Correspondence exchanged between Mr Bartlett, Ms Thiam, TSPL and/or TOSPL regarding the understanding between Mr Bartlett and Ms Thiam that 'if [TSPL] were to receive a brokerage fee from the Rubicon opportunity, [TSPL] would remunerate [Mr Bartlett] for his efforts in originating and advancing the opportunity, and potentially hiring him', as stated at [28] of Ms Thiam's 1st AEIC."

236 The context for this request is found in Ms Thiam's 1st AEIC. In brief, she deposed that: (a) Mr Bartlett (and Mr Donnelly) had brought to her attention an opportunity for TS to participate in the acquisition of Rubicon in February 2017, and (b) the arrangements for acquiring Rubicon were all executed on 10 October 2017. As quoted in the request, she also alluded to the existence of an understanding with Mr Bartlett that he would be remunerated for his efforts if a brokerage fee were received.[142]

237 TS does not object to the materiality of this request, and instead submits that there "are no further documents or correspondence concerning the understanding beyond those produced", namely Mr Bartlett's Consultancy Agreement.[143] However, this statement is not deposed to in Ms Thiam's affidavit and, in any event, it is equivocal: are there no further documents of the relevant description that *exist*, or are there no further documents of the relevant

142 Ms Thiam's 1st AEIC at para 28.

143 SUM 1807 (Production) Summary Table, S/N 13, col D, paras 1, 2 and 6.

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description in TS's *possession or control*? What *is* stated on affidavit is that apart from the consultancy agreements executed on 10 October 2017, "there was no separate written agreement documenting the payment of the [US$900k] consultancy fee". This is of a narrower compass than documents regarding the understanding that Mr Bartlett would be remunerated. Ms Thiam also stated that she is not "aware of any agreement under which Faro agreed to pay a separate brokering fee to Mr Muzayyin, SHPL, [Oro], [TSPL] or any other person in connection with the Rubicon acquisition",[144] but this, too, is a different point. Finally, Ms Thiam claimed that her understanding with Mr Bartlett was an oral understanding.[145] This may address whether there were documents recording or containing the understanding, but it does not fully address whether there were documents "regarding" the understanding, which is a manifestly wider category. For these reasons, I am unable to accept TS's submission that there are no further documents (that exist or are in its possession or control), and accordingly allow Category 13.

Category 7: Documents showing that all of TOSPL's material decisions had to be made by Ms Thiam

238 I disallow Category 7, which is a request for: "All Documents and/or Correspondence from 10 October 2017 onwards showing that all of TOSPL's material decisions had to be made by Ms Thiam." This is a direct reference to an averment in TS's OC 585 Defence that all material decisions of TOSPL "could only be made with the concurrence [of Ms Thiam]".[146]

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144 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 78.

145 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 77.

146 OC 585 Defence at para 6.

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239 TS resists this request on several grounds. First, it submits that Mr Muzayyin has not identified how the documents are material. I am unable to follow this argument. The request echoes an averment made by *TS*, to resist Mr Muzayyin's claim that Mr Bartlett was the representative, controlling mind and ultimate beneficial owner of TOSPL (and TSPL) and that he had ostensible authority or agency from TOSPL (and TSPL) in all dealings and interactions with Mr Muzayyin and SHPL. This is clearly a fact that TS itself considers material and one that goes towards a key issue in the case.

240 Second, TS submits that the requested documents do not exist "in the form described",[147] because Ms Thiam's authority over TOSPL did not arise from "any separate mandate, delegation, internal policy or board resolution", but from the "corporate structure of the companies and the offices which [she] held". Therefore, no documents were created stating that her concurrence was required before material decisions could be made.[148] There is more force to this argument, because the parties seem to be at cross-purposes as to what the category refers to. TS appears to understand the category as comprising documents *constitutive or declarative* of Ms Thiam's authority. By contrast, what Mr Muzayyin appears to seek are documents *illustrative* of her authority. This is apparent from Mr Muzayyin's submission that the requested documents may include "correspondence allegedly showing Ms Thiam giving instructions to Mr Bartlett"[149] and "documents showing that Ms Thiam had to give her approval before a transaction could proceed, or before transactions could be made from the companies' bank accounts".[150]

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147 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 59.

148 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 60.

149 SUM 1807 (Production) Summary Table, S/N 7, col C, para 46.

150 SUM 1807 (Production) Summary Table, S/N 7, col E, para 34.

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241 I consider TS's interpretation to be the more natural reading of Category 7. The request is not framed as a request for documents showing Ms Thiam giving concurrence to material decisions, but for documents that would show that *all* of TOSPL's material decisions *had* to be made with her concurrence. This description must apply not only to the documents as a whole but to each document individually; each document requested must be one which shows that all of TOSPL's material decisions had to be made with Ms Thiam's concurrence.

242 On this footing, I would have been prepared to regard Ms Thiam's reply affidavit as being conclusive that no documents responsive to this request exist. However, in fairness to Mr Muzayyin, it appears that TS did appreciate that he is in fact seeking documents illustrative of Ms Thiam's authority. This would explain TS's submission that the request is impermissibly broad and would "potentially encompass a substantial volume of documents … such as lease agreements, letters of engagement with external counsel, etc".[151] These plainly refer to documents illustrative of, rather than constitutive of, Ms Thiam's authority.

243 I will therefore go on to consider whether a modified form of the request should be granted as regards documents illustrative of Ms Thiam's authority. The main difficulty here is that such documents are not likely to have a significant bearing on the issues in dispute. Each document may show that Ms Thiam concurred with one material decision or another, but unless Mr Muzayyin has evidence of the entire set of material decisions that have been made in respect of TOSPL (which is not what his request seeks), he would not be able to establish as a historical or empirical fact whether all material

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151 SUM 1807 (Production) Summary Table, S/N 7, col D, para 2.

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decisions were made with her concurrence. Even if this could be proved, it would still be one step removed from the issue in the case, which is whether Ms Thiam *had to* make all material decisions, and not simply whether she *had made* all material decisions. To have such a wide class of documents produced when they are unlikely to have a significant bearing on the issues in the case would be contrary to the Ideals, and in particular the need for expeditious proceedings and proportionate and cost-effective work: O 3 r 1(2)(*b*) and 1(2)(*c*) of the ROC 2021.

244 I also observe that Category 7 does not seek documents adverse to TS's case. If documents exist showing material decisions being made without Ms Thiam's concurrence, this would be more clearly adverse to TS's case and may have a greater bearing on the disputed issues. However, what Category 7 seeks are documents "showing that" all of TOSPL's material decisions had to be made with Ms Thiam's concurrence (*ie*, only documents that are favourable to TS), and not documents "showing whether" all of TOSPL's material decisions had to be made with her concurrence (*ie*, both favourable and unfavourable documents). The court could, of course, grant a modified order that uses the phrase "showing whether". However, this would prejudice TS, which has not had the opportunity to consider and confirm on affidavit whether this wider category of documents exists.

245 Finally, I note that Ms Thiam's affidavits refer to a number of corporate decisions that she has made or had to make, such as decisions to proceed with transactions, the authorisation of banking transactions, the execution of transaction documents and the commitment of the companies' funds.[152] If

[152] Ms Thiam's 1st AEIC at paras 23 and 91; Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at paras 10(b) and 16.

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Mr Muzayyin harboured any doubts about the veracity of these claims, he could have formulated one or more production requests of a narrower scope.

246 For these reasons, Category 7 is disallowed.

Category 12: Documents regarding Mr Bartlett's employment of Ms Thiam

247 I disallow Category 12, which is a request for: "All Documents and/or Correspondence exchanged between Ms Thiam and Mr Bartlett regarding Mr Bartlett's employment of Ms Thiam to 'assist' in Mr Bartlett's affairs (as pleaded at [7(c)] of the OC 496 Defence), including but not limited to any employment contracts, payslips, and remittance records for payment of Ms Thiam's salary".

248 Mr Muzayyin submits, and I agree, that the requested documents would be material to the disputed issue of whether Ms Thiam was the controlling mind of TSPL and TOSPL or whether her role was essentially that of a nominee director.[153]

249 However, Ms Thiam has deposed that no documents regarding an alleged employment relationship between Mr Bartlett and her exist, as she maintains that no such employment relationship ever existed.[154] I accept this as conclusive, and it is not plain and obvious that such documents exist:

(a) The premise that Mr Bartlett employed Ms Thiam to assist in his affairs is contested. It is not based on any position pleaded or adopted by Ms Thiam, but on Mr Muzayyin's own averment in his OC 496

153 SUM 1807 (Production) Summary Table, S/N 12, col C, para 60.

154 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 70.

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Defence that "[a]t all times, [Mr Muzayyin] understood [Ms Thiam] to be merely assisting Mr Bartlett".[155] The idea that Mr Bartlett personally employed Ms Thiam to assist him appears to be based on WhatsApp messages from Mr Bartlett to Mr Muzayyin stating how much he or TS had been paying Ms Thiam.[156] Whether responsive documents exist therefore turns on whether Mr Bartlett's representations are to be believed.

(b) By contrast, in her reply affidavit to SUM 1807, Ms Thiam explains that she has never been employed by Mr Bartlett in any personal capacity, that she does not have "any employment contract, appointment letter, salary arrangement or other employment documentation with [Mr Bartlett]" and that she "did not receive any remuneration from [Mr Bartlett] personally". Throughout the material period, any work performed for TSPL and TOSPL was done in her capacity as sole shareholder of TSPL and sole director of both companies.[157]

(c) In my view, these competing factual claims cannot be resolved on affidavit evidence alone, and it would be challenging to conclude that it is plain and obvious that responsive documents exist.

Category 14: Documents exchanged between TSPL, Ms Thiam and/or Mr Bartlett from January 2025

250 I disallow Category 14, which is a request for: "All Documents and/or Correspondence exchanged either: (a) internally within TSPL, or (b) between

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155 OC 496 Defence at para 7(c).

156 Mr Muzayyin's AEIC at para 16.

157 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at paras 71 to 73.

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TSPL, Ms Thiam and/or Mr Bartlett, from January 2025 onwards, which was around the time TSPL discovered the 'Conspiracy Agreement' (as pleaded at [19] of the OC 496 SOC) and/or Mr Bartlett's breaches of his fiduciary duties owed to TSPL (as pleaded at [20(c)(ii)] of the OC 496 SOC)." At the hearing, counsel for Mr Muzayyin acknowledged that sub-categories (a) and (b) overlap, in that documents exchanged between Ms Thiam and Mr Bartlett concerning TSPL's business and affairs would also constitute documents exchanged "internally within TSPL". Nevertheless, she submitted that there may be other documents that fall exclusively within sub-category (a), such as documents exchanged among TSPL's other personnel.

251 Mr Muzayyin submits that the requested documents are material to whether there was a conspiracy between Mr Bartlett and Mr Muzayyin to deceive and cause loss to TSPL.[158] They would demonstrate whether TSPL "genuinely believed its case on the Conspiracy Agreement". If they show that Ms Thiam did not confront Mr Bartlett about the conspiracy after she allegedly learnt of it, this would "make it clear that [TSPL's] case on the Conspiracy Agreement is baseless".[159]

252 Even assuming that there are grounds for Mr Muzayyin's speculation, my core difficulty with Category 14 is that it is impermissibly broad. It is well recognised that materiality must be established in respect of a class of requested documents *as a whole*. A production order should not cast a net over an appreciable number of documents that are likely to have no demonstrable nexus with the issues in the case or no significant bearing on the determination of those issues: *Cachet (AR)* at [39]–[42]. Category 14 is a request for all documents and

158 SUM 1807 (Production) Summary Table, S/N 14, col C, paras 68 to 70.

159 SUM 1807 (Production) Summary Table, S/N 14, col E, paras 47 and 48.

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correspondence exchanged from January 2025 onwards without any subject-matter limitation. It seeks correspondence exchanged not only as between Ms Thiam and Mr Bartlett, but also as among TSPL, Ms Thiam and/or Mr Bartlett (*ie*, it includes correspondence between TSPL and Ms Thiam and between TSPL and Mr Bartlett), and also other correspondence exchanged internally within TSPL. Such documents could conceivably include documents concerning TSPL's current day-to-day operations and finances, for example, which have no nexus with the disputed issues or transactions, still less a significant bearing on those issues. To the extent that internal correspondence is sought, Mr Muzayyin has also not shown why this is a special case that would warrant their production.

253 Based on the foregoing, the request appears to be a fishing exercise, in that it entails "the opportunistic use of the process for production … to randomly search for information in the hope that documents which may be beneficial or advantageous to [Mr Muzayyin] in some way will emerge": *Rohan St George* at [57]. It seeks to uncover, among the many documents and correspondence that must have been exchanged since January 2025, a smoking gun that might suggest a lack of genuine belief in the alleged conspiracy.

254 TS had objected to the breadth of Category 14 in its written submissions.[160] Mr Muzayyin made no proposal to narrow the category's scope. As presently framed, Category 14 is disallowed.

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160 SUM 1807 (Production) Summary Table, S/N 14, col D, para 6.

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Group 2: The acquisition of Rubicon and the US$900k fee paid by Faro

Category 15: US$900k fee paid by Faro

255 I allow Category 15 subject to a qualification in respect of private or internal correspondence (see [259] below). Category 15 is a request for: "All Documents and/or Correspondence exchanged between Mr Bartlett, Ms Thiam, TSPL and/or TOSPL regarding the sum of [US$900k] to be paid by Faro to TSPL (as pleaded at [17.c.iii] of the OC 496 SOC), or to TOSPL (as pleaded at [16.c] of the OC 585 Defence)."

256 Mr Muzayyin submits that the requested documents are material to whether there was in fact an agreement for Faro to pay a consultancy fee to TSPL or TOSPL and no other agreement for a brokering fee to be paid to any other person.[161] TS does not dispute their materiality or object to the category's breadth.

257 TS's ground of objection is that "there are no further documents or correspondence between Mr Bartlett and Ms Thiam concerning the negotiation of the [US$900k] consultancy fee".[162] In line with my analysis of Category 13 (see [237] above), it cannot be taken as conclusive that TS is unable to produce further documents, since (a) it is not clear whether the statement pertains to the existence of documents or TS's possession and control over those documents; and (b) the class of documents it addresses, namely those "concerning the negotiation" of the consultancy fee, is narrower than the requested class.

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161 SUM 1807 (Production) Summary Table, S/N 15, col C, para 76.

162 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 87.

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258 I therefore allow Category 15, but add a necessary qualification in respect of the private or internal correspondence of the parties to the litigation, in line with the approach proposed at [70] above. It is common ground between the parties that private correspondence is taken to refer to communications intended to be private as between the persons who corresponded with each other, while internal correspondence refers to correspondence internal to the party from which the document is requested and not intended to be received by persons outside that party: see *Cachet (AR)* at [55]; *Rohan St George* at [48]. It is plain to me that a substantial part of the correspondence exchanged between Mr Bartlett, Ms Thiam, TSPL and/or TOSPL regarding the US$900k fee would qualify as private or internal correspondence, save perhaps correspondence intended to be shared with a third party, such as correspondence to be relayed to or exchanged with Faro.

259 Accordingly, I allow Category 15 in the following terms: "All Documents and/or Correspondence exchanged between Mr Bartlett, Ms Thiam, TSPL and/or TOSPL regarding the sum of [US$900k] to be paid by Faro to TSPL or to TOSPL, subject to a limitation to known adverse documents where the Document or Correspondence is part of TSPL's or TOSPL's private or internal correspondence".

Category 16: Transfer of US$900k from TOSPL to TSPL

260 I allow Category 16 with a necessary qualification to account for private or internal correspondence (see [263] below). This is a request for: "All Documents and Correspondence in respect of any transfer of the sum of [US$900k] from TOSPL to TSPL, which TOSPL received from Faro."

261 Mr Muzayyin submits that the requested documents are material because they will shed light on why his share of the brokering fee had to be paid

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by TSPL instead of TOSPL.[163] TS disagrees on the basis that the subsequent movement of funds between TOSPL and TSPL does not establish the alleged Brokering Fee Agreement nor the nature of the US$700k advanced.[164] I prefer Mr Muzayyin's submission. On his pleaded case, the agreement reached by Mr Muzayyin, Mr Bartlett and TOSPL under the Brokering Fee Agreement was for Faro to pay the US$900k fee to TOSPL, which would then transfer US$700k to Mr Muzayyin and US$200k to Mr Bartlett.[165] After this agreement had been reached in or around 2017, Mr Muzayyin was informed by Mr Bartlett in June or July 2018 that Mr Muzayyin's share of the fee would be paid by TSPL instead for "internal business reasons". It was in this context that the Loan Agreement was proposed, as a necessary step for Mr Muzayyin to receive the fee.[166] Seen in this light, the movement of funds between TOSPL and TSPL is not an irrelevant or internal matter, but one bound up with Mr Muzayyin's alleged version of events and whether the Loan Agreement came into existence in the manner he described. I considered whether the category could be limited to documents and correspondence in respect of the *reason* for the transfer of the sum from TOSPL to TSPL. However, this could prove under-inclusive, in that even documents showing the date of the transfer or the identity of the individual who gave instructions to effect the transfer could shed light on the veracity of Mr Muzayyin's account.

262 TS also submits that "[s]ave for the bank records and accounting records reflecting the transfer, the requested documents do not exist". Its submission is that there were no board meetings convened, resolutions prepared or agreements

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163 SUM 1807 (Production) Summary Table, S/N 16, col C, paras 80 to 82.

164 SUM 1807 (Production) Summary Table, S/N 16, col D, para 2.

165 OC 585 SOC at para 7.

166 OC 585 SOC at para 17.

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entered into that record the transfer, nor other correspondence concerning the transfer, since it was an internal transfer between two companies owned and controlled by Ms Thiam.[167] However, Ms Thiam has not deposed to these points in her reply affidavit, and I have no basis for accepting TS's submissions at face value.

263 I therefore allow Category 16, but add a necessary qualification in respect of the private or internal correspondence of the parties to the litigation: "All Documents and Correspondence in respect of any transfer of the sum of [US$900k] from TOSPL to TSPL, which TOSPL received from Faro, subject to a limitation to known adverse documents where the Document or Correspondence is part of TSPL's or TOSPL's private or internal correspondence".

Group 3: Documents which are part of documents that have been disclosed by TS

Category 17: Attachments to CSP Legal's email to Ms Thiam dated 28 January 2020

264 I allow Category 17, which is a request for: "The following attachments to Mr Tan Heng Thye's email to Ms Thiam on 28 January 2020 (11:04 pm), as disclosed at S/N 21 of DLOD and pages 69 to 72 of Ms Thiam's 1st AEIC: (a) the '200128 Subscription and Shareholding Agreement (TTSPL).docx'; and (b) '200128 Subscription and Shareholding Agreement (TOSPL).docx'." TS's sole ground of objection is that the documents are privileged and that privilege has not been waived.

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167 SUM 1807 (Production) Summary Table, S/N 16, col D, paras 3 to 4.

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265 Before addressing the specific request, I will first consider the legal principles applicable to: (a) documents disclosed in a party's list of documents; (b) documents referred to in a party's pleadings or affidavits; and (c) implied waiver of legal professional privilege.

(1) The law on documents disclosed in a party's list of documents

266 Under O 11 r 2 of the ROC 2021, the production of documents takes place between the parties by exchanging or providing a list of documents and copies of all documents described in the list (*Hu Yinan v Peh Chin Hua and others* [2026] 3 SLR 1705, [2026] SGHC 103 ("*Hu Yinan*") at [24]), save that it is not necessary for the parties to exchange documents common to them that are in their possession or control as this would avoid duplication and save costs: O 11 r 2(4).

267 Parties must endeavour to be as specific as possible when describing documents as a class: *Hu Yinan* at [18]. However, the scope of disclosure would ultimately be determined both by a party's list of documents *and* the copies of documents provided together with the list: at [25]. On the facts of *Hu Yinan*, the claimant's list of documents included three categories of Weixin messages exchanged between different parties, such as "Weixin messages between the Claimant and the 3rd Defendant, with media attachments". When the claimant served its list of documents on the defendants and provided them with copies of the documents disclosed, only extracts of various Weixin messages were disclosed, and the claimant's solicitors' cover letter stated that the claimant was only producing the documents enclosed within the letter. The first and second defendants then applied under O 11 r 12 of the ROC 2021 for the claimant to produce the originals of all documents falling within the descriptions of the three categories in the claimant's list of documents: at [11]–[14].

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268 The court allowed the originals to be inspected but only in respect of the documents that the claimant had provided. The court noted that the claimant had made its position patently clear as to which documents it was intending to disclose in the cover letter, and it was not a case where documents had been inadvertently omitted: at [19]–[20] and [25].

(2) The law on documents referred to in pleadings and affidavits

269 Where a party seeks production of a document referred to in the requested party's *pleadings*, the court has the power to order its production under O 11 r 4 and O 3 r 2(2) of the ROC 2021: *Interactive Digital Finance Ltd and another v Credit Suisse AG and another* [2023] 5 SLR 1735 ("*Interactive Digital Finance*") at [31]–[38]. The underlying principle is that the requesting party should be conferred the same advantage as if the document referred to had been fully set out in the pleadings, since a reference to the document in the pleading should itself be seen as a form of disclosure: *Interactive Digital Finance* at [32]–[33]. Cases where production could be opposed are likely to be rare and exceptional: *Interactive Digital Finance* at [34].

270 Where a party seeks production of a document referred to in the requested party's *affidavits*, the court similarly has a power to order production that likewise traces to O 11 r 4 and O 3 r 2(2) of the ROC 2021: *eSave AG v eSave APAC Pte Ltd and another* [2026] SGHCR 17 ("*eSave*") at [40] and [76(a)]. This is underpinned by three principles: (a) the entitlement of the requesting party to know the case that has been pleaded against him, which includes documents forming part of that pleaded case; (b) the likely probative value of the document, inferred from the fact that the deponent has deliberately chosen to refer to the document; and (c) the desirability of promoting an approach to litigation that focuses on the merits of the case and that reduces the

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scope of selective disclosure of documents based on tactical considerations (at [32]–[40]).

271 To resist production of a document referred to in the requested party's pleadings or affidavits, the court in *eSave* observed that a requested party will have to show good cause: at [55] and [76(e)(i)]. In *eSave*, the court reasoned that what amounts to good cause ought to be guided by the purposes and contents of the ROC 2021, having regard to considerations such as: (a) the time, expense and intrusiveness of discovery that led to the refreshed approach to production under ROC 2021; (b) the differences in the degree of precision with which pleadings and affidavits are typically drafted; and (c) the risk of undermining the AB4D procedure if the requesting party were to seek the production of documents referred to in AEICs indiscriminately or abusively (at [42]–[47]).

272 The court considered that good cause may be shown where: (a) the production sought would not be proportionate, having regard to the issues in the case; (b) there are applicable bars to production; or (c) the documents sought are not in the requested party's possession or control (at [47]–[68] and [76(e)]). The following observations are material for present purposes:

> (a) The assessment of whether production would be *proportionate* entails striking a just balance between competing interests, while bearing in mind that there are generally strong reasons why a document referred to in a pleading or affidavit should be produced (see [269]–[270] above). This is a wide discretion that may include a consideration of the cost-effectiveness of producing the document, having regard to the issues in the case, their importance, and their complexity and difficulty: *eSave* at [57] and [76(e)(ii)].

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(b) As for the applicable *bars to production*, the court observed that because the court's power to order production under O 11 r 4 is expressly subject to O 11 rr 5, 8 and 9, those limits would apply, save that it would generally not be open to a party to object to production on the basis of O 11 r 5(1) (*viz*, that the document merely leads a party on a train of inquiry to other documents). Hence, in practical terms, a party may oppose production where: (i) the document is part of its private or internal correspondence (unless it is a special case or the correspondence are known adverse documents); (ii) the document is subject to any privilege (subject to any written law); or (iii) the production of the document would be contrary to the public interest (subject to any written law): *eSave* at [62]–[64] and [76(e)(iii)].

273 It is indeed well-established that a mere reference in a pleading or an affidavit to a privileged document does not result in an automatic waiver of privilege:

(a) For the purposes of determining whether a waiver of legal professional privilege can be implied, the mere fact that a party has voluntarily put privileged material before the court does not *ipso facto* result in a waiver: *ARX v Comptroller of Income Tax* [2016] 5 SLR 590 ("*ARX*") at [53], [64]–[69] and [78]. The position was less clear-cut under some English authorities that drew a distinction between cases where there was a mere "reference" to the privileged document and those where the privileged document was "deployed", where only the latter resulted in implied waiver: see *Great Atlantic Insurance Co v Home Insurance Co* [1981] 1 WLR 529 ("*Great Atlantic Insurance*"), cited in *ARX* at [59]–[61]. Because the concept of deployment had originally been conceived to mean the introduction of material into the

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trial record, the Court of Appeal observed in *ARX* that it would have been difficult to determine under that test when a mention of privileged material in a *pleading or affidavit* would progress from mere reference to deployment (at [60]). However, that concern is no longer a live one, as the binary distinction between mere reference and deployment was rejected by the court: *ARX* at [61]–[64].

(b) For the purposes of determining whether a document has been "referred to" in a pleading or affidavit, the court examines whether there is a specific mention of the document or at least a direct allusion to the document on a fair meaning of the words in their context. By way of a negative example, an allusion to a transaction might be seen as a reference to the document only by inference or to its effects, and not a reference to the document itself: *eSave* at [69]–[75] and [76(b)].

(c) Combining these propositions, the mere fact that a pleading or affidavit specifically mentions or directly alludes to a privileged document does not invariably result in a waiver of legal professional privilege. It follows, as observed in *eSave*, that there will be cases where the production of a document referred to in a pleading or affidavit would be barred on grounds of privilege.

(3) The law on implied waiver of legal professional privilege

274 As with any right, legal professional privilege may be waived: *ARX* at [51]. The essence of implied waiver is that the right in question is implicitly relinquished through inconsistent conduct: *ARX* at [67]. The animating concern is a form of inconsistency that leads to a specific form of unfairness, where a party engages in cherry-picking or "voluntarily puts privileged material before the court [and seeks to rely] on the advantageous aspects of it to advance his

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case but claim privilege in respect of the other less advantageous aspects of the documents for fear that it might damage his case": *ARX* at [65]–[67].

275 A disclosing party may well assert that it is not relying on the contents of the advice, but as the Court of Appeal observed in *ARX* at [69], that is not dispositive because it is the objective role played by the legal advice that is relevant. At the same time, the importance of legal professional privilege means that waiver is not to be lightly implied. The court must undertake an objective and fact-sensitive exercise of judgment after examining all the circumstances of the case, including the following non-exhaustive factors (*ARX* at [69]):

(a) What has been disclosed and its materiality to the proceedings;

(b) The circumstances under which disclosure took place (here, the authorities suggest that disclosures during trial almost invariably result in waiver);

(c) Whether the disclosing party "relied" on or "deployed" the advice to advance his case; and

(d) Whether there is a risk that an incomplete and misleading impression has been given.

276 Where there has been an implied waiver of privilege, the court may nevertheless form the view that a more limited extent of disclosure would be sufficient to remedy the unfairness (*ARX* at [71]):

> … In certain circumstances, disclosure of only a part of the document might suffice if that is all that is needed to correct the unfairness; in other cases, remedial action can be taken to obviate the need for disclosure (see *Great Atlantic* ([59] supra) at 539H per Templeman LJ). For instance, if reference was made only to a part of a document which is clearly severable from the whole, then disclosure of just the implicated section might suffice to remedy the prejudice. In other instances, for

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> example if the reference was inadvertent and the material had yet to enter the trial record, it might be possible for the references to be deleted and privilege to be preserved (see *The Law of Privilege at para 5.34*).

277 In determining whether different parts of a document that is *entirely privileged* are "clearly severable", I suggest that the primary consideration should be whether the subject matters contained in the document are so closely related that partial disclosure of the document would occasion the sort of unfairness that the doctrine of implied waiver is designed to guard against. *A fortiori*, an entirely privileged document that only concerns a single subject matter would hardly be a suitable candidate for an order of partial disclosure. A subsidiary consideration would be the form that the document takes or the medium that it occupies, to the extent that this might pose a practical or technical challenge to effecting partial disclosure. As the learned author of Colin Liew, *Legal Professional Privilege* (Academy Publishing, 2nd Ed, 2023) ("*Legal Professional Privilege*") observes at paras 8.138–8.139:

> (d) Extent of implied waiver
>
> (ii) Disclosing part only of privileged material leading to collateral waiver of the remainder
>
> 8.138 The best-known example of collateral waiver is *Great Atlantic Insurance*, where the claimant's counsel read out the first two paragraphs of a privileged document at the opening of the trial. The defendants sought production of the remainder of the document, and Templeman LJ held that the entire document should be produced as it concerned the same "subject matter".
>
> 8.139 *Great Atlantic Insurance* must be understood in its proper context, namely the partial disclosure of an *entirely* privileged document which cannot be separated into different subject matters. Where the document is only *partially* privileged, and the unprivileged parts are separable from the privileged parts, there is nothing wrong with redacting the privileged portions and disclosing the rest, notwithstanding that the document deals with the same subject matter. In this regard, the type of medium may be relevant: for instance, it may be more difficult to sever parts of a tape-recorded conversation than a document.

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> [emphasis in original]

278 The privileged material in *Great Atlantic Insurance* was a memorandum that the plaintiffs had received from their US attorneys, who were acting in their capacity as the plaintiffs' legal advisors. The plaintiffs' English solicitors incorrectly believed that the first two paragraphs of the memorandum were not privileged, as they were an account of a discussion that was itself not privileged. They intended to give disclosure of those two paragraphs, while claiming privilege over the parts of the memorandum that addressed case strategy (which they duly excluded from the trial copies disclosed). Unaware of the existence of the additional material on case strategy, the plaintiffs' counsel read out the first two paragraphs in an opening statement in open court. The defendant contended that since a part of a document had been put before the court, they were entitled to see the whole and disclosure ought to be given (at 532–534).

279 Templeman LJ (with whom Dunn LJ agreed) held that the whole of the memorandum was privileged, as it was a communication from the plaintiffs' American attorneys relating to a matter that they had been instructed to advise on. The memorandum's inclusion of a conversation that was not privileged did not alter the confidentiality that attached to the whole: at 534–535. He then proceeded to consider whether the plaintiffs could waive privilege over the first two paragraphs while asserting privilege over the additional matter. He answered this in the negative, as the memorandum dealt with only a single subject matter and partial disclosure would be potentially misleading (at 536–537):

> … In my judgment, severance would be possible if the memorandum dealt with *entirely different subject matters or different incidents and could in effect be divided into two separate memoranda* each dealing with a separate subject matter. The judge, with the experience of 14 days of the trial and after reading the whole of the memorandum, came to the conclusion that the first two paragraphs of the memorandum

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> and the additional matter dealt with the same subject matter. Knowing far less about the circumstances, I would be slow to come to a different conclusion. Having read the whole memorandum, I agree with him. Indeed the affidavit of Mr Williams, of the plaintiffs' English solicitors, makes this plain.
>
> Mr Phillips who appeared for the plaintiffs argued that severance is permissible where the part disclosed is only an account of a discussion which itself is not privileged. *But once it is decided that the memorandum deals with only one subject matter, it seems to me that it might be or appear dangerous or misleading to allow the plaintiffs to disclose part of the memorandum and to assert privilege over the remainder. …*
>
> …
>
> It is true that in the present case the first two paragraphs can be divided from the remainder of the memorandum but they deal with the same subject matter. Waiver of part of a document is bound to lead to grave difficulties for all parties and to many unjustified suspicions.
>
> [emphasis added]

280 As highlighted in *Legal Professional Privilege* (at [277] above), these observations in *Great Atlantic Insurance* should be understood as being concerned with cases involving documents that are entirely privileged. They are not concerned with the separability of the privileged and unprivileged parts of a *partially privileged* document: see *Bailey v Director-General Dept of Land and Water Conservation* [2009] NSWCA 100 at [123]–[133] (*per* Tobias JA). A different, albeit related, set of considerations applies to such documents: see *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and other appeals* [2007] 2 SLR(R) 367 ("*Skandinaviska (Privilege)*") at [98]–[100].

(4) My decision

281 Turning to the request in Category 17, Mr Muzayyin seeks production of two draft subscription and shareholding agreements ("Attachments") that

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were attached to an email from Mr Tan Heng Thye of CSP Legal to Ms Thiam dated 28 January 2020 ("Subject Email"). The Subject Email forms part of an email chain ("Email Chain") that TS disclosed in its list of documents dated 9 March 2026, which it served on Mr Muzayyin in compliance with directions given at the RCC on 27 January 2026.[168] The document disclosed was described as "20/11/2019 – 28/01/2020, Email between CSP Legal and Ms Thiam titled '*Re: Group Restructuring Documents*'". Save for the Attachments, the Email Chain has been exhibited in Ms Thiam's 1st AEIC.[169]

282 I address the following issues in turn:

(a) Is TS already required to disclose the Attachments, by virtue of the disclosure of the Email Chain in TS's list of documents?

(b) If TS is not already required to disclose the Attachments, should an order for production be made? In this regard:

(i) Are the Attachments documents (or parts of a document) referred to in the affidavits filed on behalf of TS?

(ii) If they are, is there good cause for not ordering their production? In particular, does legal advice privilege apply, and if so, has it been impliedly waived?

(A) TS IS NOT ALREADY REQUIRED TO DISCLOSE THE ATTACHMENTS

283 First, TS did not purport to disclose the Attachments merely by including the Email Chain in its list of documents. As the court held in *Hu Yinan* (at [25]), the scope of a party's disclosure is determined both by the list of

168 Mr Muzayyin's 4th Affidavit (SUM 1807 and SUM 1808), Tab 19, p 372, S/N 21.

169 Ms Thiam's 1st AEIC at Exhibit ATXM-3, pp 69 to 72.

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documents *and the copies of the documents* provided together with the list: see [267]–[268] above. Here, the Subject Email has been disclosed without copies of the Attachments being provided, and it is clear from TS's assertion of privilege that its omission of the Attachments was not inadvertent. I note that Mr Muzayyin's contention is not that TS is already required to disclose the Attachments, but rather that: (a) the inclusion of the Email Chain in the list of documents and Ms Thiam's 1st AEIC shows that TS accepts the materiality of the Subject Email to the proceedings; and (b) the Attachments should be provided so that the complete document is placed before the court and made available to him.[170]

284 For completeness:

(a) I should acknowledge that it would have been clearer if TS had specified in its list of documents that the Email Chain excluded the Attachments. That said, for the reasons above, I do not consider this to be dispositive.

(b) I was also referred to the decision in *Rohan St George* at [55]–[56], where the court ordered the production of attachments to an email on the basis that the defendants' list of documents had not excluded the attachments. Insofar as that decision might be seen as pointing to a different analysis or outcome for the present case, I would respectfully suggest that it is distinguishable on its facts and would, in any event, be understood today in the light of the later decision of *Hu Yinan*.

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170 Mr Muzayyin's 4th Affidavit (SUM 1807 and SUM 1808) at para 95.

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(B) THE ATTACHMENTS ARE DOCUMENTS REFERRED TO IN MS THIAM'S AEIC

285 I next consider if an order for production ought to be made on the basis that the Attachments have been referred to in Ms Thiam's 1st AEIC.

286 It is undisputed that the *Email Chain* has been referred to in Ms Thiam's 1st AEIC. In my view, the same applies to the *Attachments*. At paragraph 16, the Attachments are specifically mentioned alongside the Email Chain, and parts of their contents are even described, *viz*, that they refer to a new holding vehicle known as EBP Holdings NewCo. At paragraph 86, there is again an allusion to the Attachments having been provided in January 2020:[171]

> 16. … When I offered Peter a formal interest in [TSPL] in November 2016, he declined it. I understand now that he could not hold a formal interest without those assets vesting in [the] Official Assignee. When I explored a group restructuring with CSP Legal in late 2019 that would result in [Mr Bartlett] participating through a holding vehicle referred to in the drafts as 'EBP Holdings NewCo', those discussions likewise never completed. A copy of my correspondence with CSP Legal dated 20 November 2019 to 28 January 2020 is exhibited at [ATXM-3]. Peter never obtained any formal interest in [TSPL] at any time.
>
> …
>
> 86. … In December 2019, I engaged CSP Legal to explore a group restructuring of [TSPL], exhibited at [ATXM-3]. Drafts were provided in January 2020, but we never proceeded. The discussions stalled in part due to the unresolved tensions between [Mr Bartlett] and [Mr Donnelly].

(C) THERE IS NO GOOD CAUSE TO DISALLOW PRODUCTION

287 Given that the Attachments have been referred to in Ms Thiam's 1st AEIC, the final question I have to consider is whether there is good cause not to order production.

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171 Ms Thiam's 1st AEIC at paras 16 and 86.

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288 TS has not submitted that ordering production of the Attachments would be disproportionate. I would be slow to reach this conclusion in any event, given: (a) the presumptive importance of the Email Chain to Ms Thiam's case, which stems from her deliberate inclusion of and reliance on it; (b) the relevance of the corporate restructuring to the issues of TSPL's beneficial ownership and the reasons for its incorporation; and (c) the fact that production is sought of just two attachments that are quite clearly within TS's possession or control.

289 TS's objection is that the Subject Email and the Attachments are subject to legal professional privilege, which has not been waived.

290 It is undisputed that legal advice privilege applies. As Ms Thiam's reply affidavit to SUM 1807 explains, CSP Legal had been engaged to provide legal advice on a contemplated restructuring of TSPL's shareholding, and the Subject Email and its Attachments were prepared and communicated as part of that advice for Ms Thiam's consideration.[172] In my view, Ms Thiam's affidavit has established, on a *prima facie* basis, that the preconditions for legal advice privilege exist: *Wesley Widjaja* at [65]; *Skandinaviska (Privilege)* at [23] and [43].

291 TS submits that privilege has not been waived for the following reasons. Ms Thiam did not intend to waive privilege by merely exhibiting the Subject Email.[173] Moreover, what her 1st AEIC relies on is the fact that advice was sought as to the restructuring, rather than the contents of the advice obtained. The Subject Email was included as a contemporaneous document showing that, as at 28 January 2020, Ms Thiam had been contemplating whether to bring in

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172 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at paras 90 to 92; SUM 1807 (Production) Summary Table, S/N 17, col D, paras 2 to 4.

173 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at para 92.

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Mr Bartlett as a shareholder of TS. This would be inconsistent with Mr Muzayyin's case that Mr Bartlett was already TSPL's beneficial owner, controlling mind and representative.[174] In response, Mr Muzayyin submits that an implied waiver has arisen, as TS's selective disclosure of part of CSP Legal's advice is precisely the sort of cherry-picking that *ARX* was concerned with.[175]

292 Applying the principles set out at [274]–[275] above, I agree with Mr Muzayyin that there is an implied waiver of privilege that extends to the entirety of the Email Chain, including the Attachments. Contrary to TS's submission, it does not merely rely on the fact that legal advice had been sought on the restructuring of TSPL's shareholding on a certain date. It is relying on the contents of the correspondence and indeed of the Attachments, to draw inferences about the existing shareholding structure of TS and Mr Bartlett's absence from it. Ms Thiam's 1st AEIC does not merely refer to the fact that legal advice was sought or received on a given date. It goes on to describe what the correspondence shows and even what the Attachments say, when she alludes to the "holding vehicle *referred to in the drafts* as 'EBP Holdings NewCo'" [emphasis added]. She may not have subjectively intended to waive privilege over the Attachments, but that is immaterial since the existence of an implied waiver is to be objectively assessed: *ARX* at [69]–[70].

293 On TS's own submission, the existence of the restructuring is material to the issues in the case, which is why it has voluntarily put the Email Chain into evidence. But it has provided selective access to the advice, by including only what *it* considers necessary for its case. The Attachments are not incidental or tangential to the Subject Email. The stated purpose of the email was to

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174 Ms Thiam's 4th Affidavit (SUM 1807 and SUM 1808) at paras 91 and 92.

175 SUM 1807 (Production) Summary Table, S/N 17, col E, paras 60 to 63.

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transmit the draft subscription and shareholding agreements for TSPL and TOSPL to Ms Thiam for her review. The email goes on to identify some of the salient features of the Attachments, such as issues of management control and reserved powers. In other words, the Subject Email makes a factual claim about the contents of the Attachments. If the Attachments are not then produced, and the accuracy of this factual claim cannot be independently verified, the court and Mr Muzayyin would be left with an incomplete and potentially misleading impression of the facts. Fairness and consistency would require the production of the Attachments.

294 I have considered whether a more limited extent of disclosure would be adequate to remedy the unfairness: see [276]–[279] above. As should be evident, however, this is not possible. The Email Chain and the Attachments are plainly of the same subject matter and are inseparable in substance. Partial disclosure would occasion the very unfairness that the doctrine of implied waiver is meant to prevent.

295 For these reasons, I find that legal professional privilege over the Email Chain and the Attachments has been impliedly waived. As no good cause has been shown for not ordering production, I allow Category 17.

Category 18: Attachment to Ms Thiam's email to Mr Bartlett dated 31 May 2018

296 I make no order on Category 18. Counsel for Mr Muzayyin clarified at the hearing that the request is no longer being pursued as the requested document has been produced by way of Ms Thiam's reply affidavit to SUM 1807.

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TS's application for specific production (*viz*, SUM 1862)

297 TS's application for specific production seeks two groups of documents:

(a) documents relating to the Brokering Fee Agreement; and

(b) documents relating to Mr Bartlett's authority in, and beneficial ownership of, TS.

298 For the reasons below, I do not allow any of the requests.

Group 1: Brokering Fee Agreement

Category 1: Mr Muzayyin's and Mr Bartlett's discussions and agreements on the Brokering Fee Agreement

299 I disallow Category 1, which is a request for: "Documents and correspondence between Mr Muzayyin and Mr Bartlett setting out details and matters discussed/agreed in calls, meetings or discussions, arising out of or in connection with the alleged Brokering Fee Agreement for the period: (a) 23 July 2018 to May 2019; (b) August 2020 to June 2025". As a temporal marker, 23 July 2018 is the date on which the second and final tranche of the US$700k Loan was disbursed to Mr Muzayyin. There is a gap between the periods in (a) and (b) because TS already possesses the WhatsApp chats between Mr Bartlett and Mr Muzayyin from 14 June 2019 to 23 July 2020.[176]

300 TS submits that the requested documents are material as they shed light on how Mr Muzayyin and Mr Bartlett characterised the sum of US$700k that Mr Muzayyin received (*ie*, as a loan or a brokering fee), whether they regarded the Loan Agreement as a sham, and whether the Brokering Fee Agreement

176 Mr Muzayyin's 4th Affidavit (SUM 1807 and SUM 1808) at p 373, S/N 24.

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existed and if so, on what terms.[177] While the requested documents post-date the alleged Brokering Fee Agreement, it contends that relevant communications may nevertheless exist, especially since Mr Muzayyin's own case relies on events occurring long after 23 July 2018, such as discussions that took place between February and June 2025 concerning the restructuring of the Loan.[178] Mr Muzayyin disagrees that the requested documents are material, given that the Brokering Fee Agreement had been reached in mid to late 2017 and paid out by July 2018, whereas the request seeks documents that stretch eight years into the future. The post-2018 events that Mr Muzayyin relies on also do not relate to the Brokering Fee Agreement but to the Loan Agreement.[179]

301 In my view, Mr Muzayyin's submissions go more to the question of whether responsive documents exist than to the question of materiality. Materiality is to be assessed against the request framed. Category 1 seeks documents "arising out of or in connection with the alleged Brokering Fee Agreement". Given the centrality of the Brokering Fee Agreement to Mr Muzayyin's case – as the basis for his alleged entitlement to the sum of US$700k and the reason why the Loan Agreement is purportedly an unenforceable sham – it cannot be said that documents of this description are not material. Furthermore, the Brokering Fee Agreement and Loan Agreement cannot be clinically separated in the way that Mr Muzayyin has proposed. Under his own case, they are essentially two sides of the same coin, as the Loan Agreement served to cloak and repackage the transaction in a way that enabled the sum of US$700k to be paid out to him. The materiality analysis may have differed had Mr Muzayyin argued instead that documents of this description are

177 Ms Thiam's 3rd Affidavit (SUM 1862 and SUM 1863) at para 35(c).

178 Ms Thiam's 3rd Affidavit (SUM 1862 and SUM 1863) at paras 35(a) and 35(d).

179 Mr Muzayyin's 5th Affidavit (SUM 1862 and SUM 1863) at paras 60 to 62.

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less likely to have a *significant bearing* on the issues, especially if they came into existence years after the agreement had been entered into and performed. But that is not the argument that Mr Muzayyin has raised, nor is it self-evidently correct.

302 Of course, if Mr Muzayyin and Mr Bartlett had no reason to discuss the Brokering Fee Agreement after July 2018, then this might mean that no such correspondence was generated and no responsive documents exist. This comes closer to the second argument that Mr Muzayyin advances. He submits that since the Brokering Fee Agreement was entered into orally, TS's belief that documents exist is speculative, and it is not enough for TS to venture that "one would ordinarily expect there to be contemporaneous documents referring to its existence, discussing its terms, recording steps taken before, after and pursuant to the agreement, or referencing the payments under it".[180] In his reply affidavit to SUM 1862, he deposes that he "[does] not have in [his] possession or control any documents falling under Request 1 which has not already been produced in [his] AEIC and in [his] LOD".[181] TS contends that this deposition does not answer the request, because it "does not say whether the documents disclosed comprise all the documents within the Request (*ie*, no further documents exist) or whether other requested documents once existed but are no longer in his possession or control".[182]

303 In my view, it is acceptable for Mr Muzayyin to state that he does not have further responsive documents in his possession or control without more.

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180 SUM 1862 (Production) Summary Table, S/N 1, col D, paras 9 and 10; Mr Muzayyin 's 5th Affidavit (SUM 1862 and SUM 1863) at para 63, referring to Ms Thiam's 3rd Affidavit (SUM 1862 and SUM 1863) at para 35(b).

181 Mr Muzayyin's 5th Affidavit (SUM 1862 and SUM 1863) at para 64.

182 SUM 1862 (Production) Summary Table, S/N 1, col E, para 5.

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The distinction drawn by TS is not immediately apparent, but I am prepared to assume that it is between no further documents existing at all, and further documents existing but no longer being in Mr Muzayyin's possession or control. This is, in any event, a false dichotomy. A party who claims to have no possession or control over the requested documents is not *also* required to positively attest that further documents exist. It suffices, as Mr Muzayyin has done, for the requested party to state that it has no possession or control. This is because what the party needs to account for is the reason for its inability to produce the requested documents: see [51]–[53] above.

304 I therefore accept Mr Muzayyin's affidavit as conclusive of the fact that no further responsive documents are in his possession or control. It falls on TS to show that it is plain and obvious that there are. For the following reasons, I am not satisfied that this has been shown.

305 I agree with Mr Muzayyin that it is insufficient for TS to argue that "one would ordinarily expect" such documents to exist: see [56] above; *Lutfi Salim* at [24]. TS also refers to WhatsApp conversations between Mr Muzayyin and Mr Bartlett from 3 September 2017 to 25 June 2025, which it says show that the two communicated extensively on the Rubicon transaction and matters arising therefrom.[183] Unfortunately for TS, those communications do not assist its case. Most of them were made in the period leading up to the conclusion and performance of the Brokering Fee Agreement, from 3 September 2017 to 23 July 2018.[184] The remaining handful of messages concern:

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183 SUM 1862 (Production) Summary Table, S/N 1, col C, para 7, referring to Mr Muzayyin's AEIC at pp 161 to 224 and pp 407 to 425.

184 Mr Muzayyin's AEIC at pp 161 to 213.

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(a) Mr Bartlett's claim that he employed Ms Thiam (8 February and 27 May 2020);[185]

(b) a project in Germany (29 November 2024);[186]

(c) some attempts at scheduling calls (February to June 2025);[187] and finally,

(d) the restructuring of the Loan and the fallout between Mr Muzayyin and Mr Bartlett (12 to 25 June 2025).[188]

306 On their face, only the last of these communications has some relation to the Loan Agreement. Yet, even here, the Brokering Fee Agreement is conspicuously absent from the conversation. In the circumstances, TS is still some distance away from meeting the plain and obvious standard. Category 1 is accordingly disallowed.

Category 4: Consideration provided by Mr Muzayyin for the Brokering Fee Agreement

307 I disallow Category 4, which is a request for: "All documents and correspondence that show the consideration provided by Mr Muzayyin for the alleged Brokering Fee Agreement".

308 TS submits that these documents are material to whether the Brokering Fee Agreement existed and what consideration, if any, Mr Muzayyin provided for the alleged brokering fee. It has pleaded in its OC 585 Defence that the

185 Mr Muzayyin's AEIC at pp 214 to 219.

186 Mr Muzayyin's AEIC at pp 220 to 223.

187 Mr Muzayyin's AEIC at pp 407 to 412.

188 Mr Muzayyin's AEIC at pp 413 to 426.

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Brokering Fee Agreement is void for lack of consideration.[189] Mr Muzayyin does not challenge the materiality of the documents. Instead, his objection is that he has disclosed all responsive documents in his possession or control:[190]

> I confirm that I have already disclosed in my AEIC and in my LOD all the documents in my possession or control falling under Request 4. To the best of my knowledge, there are no further documents to be disclosed in relation to Request 4, and I note that [TSPL and TOSPL] have not identified any specific document(s) that they claim I should have but did not disclose.

309 I interpret the statement that "there are no further documents to be disclosed" to mean that there are no further documents in Mr Muzayyin's possession or control, and not that no further documents exist. This is because: (a) the phrase "further documents" must mean documents further to those mentioned in the first sentence, and the first sentence refers to documents in Mr Muzayyin's "possession or control"; and (b) the second sentence ends by referring to documents that Mr Muzayyin "*should have* but did not disclose" [emphasis added], which speaks to possession or control. Hence, while Mr Muzayyin could have framed his position more precisely, I do not accept TS's argument that it is equivocal.

310 TS submits that it is plain and obvious that further documents exist. This is because: (a) Mr Muzayyin's AEIC has not identified what consideration he has provided; and (b) if discussions took place culminating in him being paid US$700k, then contemporaneous documents or communications recording the basis of payment "may exist or may have existed", especially given the substantial quantum involved.[191]

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189 OC 585 Defence at para 35.

190 Mr Muzayyin's 5th Affidavit (SUM 1862 and SUM 1863) at para 77.

191 SUM 1862 (Production) Summary Table, S/N 4, col E, para 21; Ms Thiam's 3rd Affidavit (SUM 1862 and SUM 1863) at paras 50 and 51.

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311 In my view, this does not go far enough in satisfying the plain and obvious test. Mr Muzayyin has deposed that the Brokering Fee Agreement was an oral agreement.[192] Granted, Mr Muzayyin has pleaded that there were negotiations leading up to the agreement,[193] but there is nothing in the pleading or the available evidence which suggests that the parties' negotiations would have taken place in writing or that they have been recorded or documented. It is not plain and obvious that further documents exist or are in Mr Muzayyin's possession or control, and Category 4 is therefore disallowed.

Category 7: Documents of Faro relating to Mr Muzayyin's brokering fee

312 I disallow Category 7, which is a request for: "All directors' resolutions, board minutes, approvals, correspondence and related documents of [Faro] relating to any decision, arrangement or understanding that Mr Muzayyin is entitled to the alleged Brokering Fee and the said Brokering Fee would be paid via consultancy fee received by TOSPL by way of loan."

313 This request was made under the header "Documents Relating to the Alleged Payment of the Brokering Fee by Way of Loan". At the hearing, counsel for TS clarified that Category 7 comprised both the narrower request above (*ie*, on Mr Muzayyin's entitlement to the brokering fee and its transfer as a loan) and the wider request represented by the header. I note at the outset that the header is plainly too wide to be regarded as a properly scoped request, and the request cannot be granted on those terms. It is also potentially prejudicial to a requested party for two different requests to be bundled together and simultaneously maintained, without the requesting party making it clear that this

192 Mr Muzayyin's 5th Affidavit (SUM 1862 and SUM 1863) at p 162, para 10.5.

193 OC 585 SOC at para 7; Mr Muzayyin's AEIC at para 29.

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is its intention. I will therefore proceed to consider only the more specific request reproduced at [312] above.

314 On TS's submission, the requested documents may show whether an arrangement truly existed for Mr Muzayyin's brokering fee to be satisfied through the Consultancy Fee that was paid by Faro to TOSPL. It reasons that any such arrangement would have been disclosed by Mr Muzayyin to Faro, since he was a director of Faro. If Faro had agreed to the arrangement, this would have been reflected in its corporate records.[194] On Mr Muzayyin's submission, whether Faro was aware of, approved or participated in the arrangement is entirely irrelevant to the issues in dispute. The Brokering Fee Agreement was entered into between Mr Muzayyin, Mr Bartlett and TOSPL, and any payment made by TOSPL to Mr Muzayyin would not be a matter that concerned Faro.[195] Notably, however, Mr Muzayyin does not go so far as to depose that no responsive documents exist or that they are not within his possession or control.

315 In my view, there are serious doubts as to whether the requested documents exist. Faro's involvement formally ended with the payment of the Consultancy Fee to TOSPL. Neither party claims that Faro was involved in or had an interest in the further transfers involving Mr Muzayyin, Mr Bartlett and TOSPL. There is only an assumption that Mr Muzayyin would have disclosed the Brokering Fee Agreement and the preceding discussions to Faro. TS contends that it "would be reasonable to expect" this, since Mr Muzayyin would be receiving the sum of US$700k personally, "whereas the efforts and funding

194 SUM 1862 (Production) Summary Table, S/N 7, col C, paras 4 to 9.

195 Mr Muzayyin's 5th Affidavit (SUM 1862 and SUM 1863) at para 73.

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relied upon are said to have been provided through SHPL".[196] But that is not an exact reflection of Mr Muzayyin's pleaded position, which is that the effort and funding were *his* (but provided *through* SHPL).[197] Moreover, even accepting for the moment that Mr Muzayyin had an obligation to declare a profit or a conflict of interest, it is not clear from the limited submissions on this point that this declaration would have been addressed to Faro rather than SHPL.

316 Even if the requested documents exist, they would not be material. I can accept that they have a demonstrable nexus with the issues in dispute, since they are documents relating to the Brokering Fee Agreement and the decision to transfer Mr Muzayyin's brokering fee as a loan. However, they are unlikely to have a significant bearing on the determination of the dispute. For example, if Mr Muzayyin had declared to Faro that the sum of US$700k constituted a loan, that could be consistent with TS's case that there was a genuine loan, but such a declaration could equally be consistent with Mr Muzayyin's case that the Loan Agreement was a sham and that third parties (including Faro) were merely being given the impression that it was a loan. For these reasons, Category 7 is disallowed.

Category 8: Mr Muzayyin's tax-related documents

317 I disallow Category 8, which is a request for: "Mr Muzayyin's tax related documents such as Inland Revenue Authority of Singapore (IRAS) Form IR8A, Form B or Form B1 in connection with the alleged broker fees in the sum of [US$700k] received from [TSPL]".

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196 SUM 1862 (Production) Summary Table, S/N 7, col C, para 6.

197 OC 585 SOC at para 7.

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318 TS submits that the manner in which Mr Muzayyin contemporaneously declared and treated the sum of US$700k for tax purposes would shed light on whether it was a brokering fee or a loan.[198] Mr Muzayyin disagrees that they are material, and submits that Forms IR8A, B and B1 either do not apply to Mr Muzayyin or would not show how the sum was treated for tax purposes.[199] I am not convinced that Mr Muzayyin's treatment of the sum for tax purposes would have a significant bearing on whether it was in fact a brokering fee or a loan. In line with my views at [316] above, Mr Muzayyin's declaration could be a genuine reflection of the nature of the sum or a false appearance that has been contrived. Category 8 is accordingly disallowed.

Group 2: Mr Bartlett's authority in and beneficial ownership of TS

Categories 2 and 3: Holding out of Mr Bartlett as having authority

319 I disallow both Categories 2 and 3. Category 2 is a request for: "All documents and correspondence that show or evidence how [TSPL] and/or [TOSPL] held out Mr Bartlett as having ostensible authority and/or agency to act on behalf of [TSPL] and/or TOSPL in relation to the alleged Brokering Fee Agreement with Mr Muzayyin for the period mid 2017 and July 2018".

320 Category 3 is a request for: "All documents and correspondence that show or evidence how [TSPL] and/or TOSPL held out Mr Bartlett as having ostensible authority and/or agency to act on behalf of [TSPL] and/or TOSPL in relation to the Loan Agreement with Mr Muzayyin for the period mid 2017 and July 2018."

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198 SUM 1862 (Production) Summary Table, S/N 8, col C, paras 3 and 5.

199 Mr Muzayyin's 5th Affidavit (SUM 1862 and SUM 1863) at paras 74 and 75 and pp 508 to 527.

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321 I accept that the documents requested are material to the issues in the case, since a central plank of Mr Muzayyin's case is that Mr Bartlett had ostensible authority to act in relation to the Brokering Fee Agreement and the Loan Agreement and that Mr Muzayyin was entitled to rely on the same. Mr Muzayyin does not dispute the materiality of these documents. His submission is that there are no further documents to disclose. His reply affidavit contains substantially the same declaration as the declaration at [308] above.

322 TS submits that it is plain and obvious that further documents exist. As with Category 4 above, this is because: (a) the documents produced thus far do not show TS holding Mr Bartlett out as having authority to act on its behalf; and (b) if representations had been made by TS, then documents or communications evidencing the representations "may exist or may have existed".[200]

323 In my view, it is not plain and obvious that further documents exist. Mr Muzayyin has pleaded certain facts which he says amount to holding out (see [184] above) and deposed that he has disclosed all responsive documents in his possession or control. It is open to TS to disagree that the facts and evidence on which Mr Muzayyin relies are sufficient to establish Mr Bartlett's ostensible authority. But that disagreement is not a basis for inferring that documents evidencing some *other* acts of holding out plainly and obviously exist. TS's submissions appear to be premised on a particular understanding of what it means for a principal to hold out an agent as having authority to conduct business on its behalf – that there must have been something going beyond the acts pleaded at [184] above, such as an express confirmation of Mr Bartlett's authority from Ms Thiam. It also assumes, for the purposes of seeking production, that the communications would have been in writing or otherwise

[200] SUM 1862 (Production) Summary Table, S/N 2, col E, paras 14 and 15.

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documented or recorded. Yet, neither premise has been established. Accordingly, Categories 2 and 3 are disallowed.

Category 5: Register of Registrable Controllers of Oro, SHPL and Faro

324 Category 5 was withdrawn, as TS has separately discovered the requested documents.

Category 6: Mr Bartlett's representations to Mr Chia that Ms Thiam was his nominee

325 I disallow Category 6, which is a request for: "All documents, correspondence, messages and communications (including emails and WhatsApp messages) sent by Mr Bartlett to Mr Chia stating, suggesting or representing that Ms Thiam was acting as his nominee director, nominee shareholder, or otherwise holding [TSPL] and/or TOSPL on his behalf."

326 As with Category 7, this request was made under a header – "Documents and Correspondence Evidencing Any Representation that Ms Thiam was Mr Bartlett's Nominee". For the reasons given at [313] above, I will only consider the more precisely-formulated request. In any event, in his reply affidavit, Mr Muzayyin has deposed that all documents in his possession or control "evidencing any representation that Ms Thiam was Mr Bartlett's nominee" have been disclosed in his AEIC and list of documents.[201]

327 TS submits that the requested documents are material to whether Mr Bartlett is the beneficial owner of TS and whether Ms Thiam acted as his nominee.[202] Mr Muzayyin does not dispute this. What he disputes is possession

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201 Mr Muzayyin's 5th Affidavit (SUM 1862 and SUM 1863) at para 70.

202 SUM 1862 (Production) Summary Table, S/N 6, col C, paras 1 to 6.

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or control of the requested documents. He explains that since these are documents that had been sent by Mr Bartlett to Mr Chia, he would not have been privy to them; for the avoidance of doubt, he has also confirmed on affidavit that he does not have such documents in his possession or control.[203] In response, TS argues that: (a) Mr Chia has given evidence in his AEIC concerning Ms Thiam's alleged nominee status; (b) Mr Chia is Mr Muzayyin's witness; and so (c) if Mr Muzayyin relies on Mr Chia's evidence, there is an objective basis to infer that contemporaneous communications may exist or have existed.

328 TS's response appears to conflate two questions. The first is whether such communications between Mr Bartlett and Mr Chia exist. In this regard, the submission at (c) is a non-sequitur: whether Mr Muzayyin eventually decides to rely on those aspects of Mr Chia's evidence at trial need not imply anything about whether that evidence is based on documents evidencing contemporaneous communications or something else. Even more fundamentally, the evidence that Mr Chia has given in his AEIC is not that Mr Bartlett had communicated to him that Ms Thiam was his nominee, but that he was "under the impression all along that Ms Thiam was only [Mr Bartlett's] assistant or nominee, and that [Mr Bartlett] was the sole decision maker and Ms Thiam was taking instructions from him".[204] He does not pinpoint the source of this impression. He may have formed it in various ways, from representations made by Mr Muzayyin to Mr Chia's own observations of Mr Bartlett's and/or Ms Thiam's conduct. TS seems to recognise this, because Ms Thiam's affidavit for SUM 1862 does not assert that such communications between Mr Bartlett

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203 Mr Muzayyin's 5th Affidavit (SUM 1862 and SUM 1863) at para 71.

204 Mr Chia's AEIC at paras 18 and 25.

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and Mr Chia exist or even that they must exist, but that they would be relevant "if" they exist.[205]

329 Even if these documents exist, however, there is a further question as to whether they would be in *Mr Muzayyin's* possession or control. Ms Thiam's affidavit states that the documents "would have been received by Mr Chia and are within his possession, custody or control".[206] But the more pertinent question is whether Mr Muzayyin, being the party to the litigation and the respondent to the production application, has possession or control of any such documents and correspondence. Since Mr Muzayyin has deposed that he does not, TS will need to show that it is plain and obvious that he does. It has not explained why this would be so. At the hearing, counsel for TS indicated that he may decide to explore at trial whether Mr Muzayyin asked Mr Chia about the documents. I will therefore refrain from commenting on whether Mr Muzayyin has control over the requested documents. In the circumstances, Category 6 is disallowed.

TS's application to file a reply in OC 496 (SUM 1863)

330 Finally, I deal with TSPL's request for permission to file a reply to Mr Muzayyin's Defence in OC 496. It submits that a reply is necessary because OC 496 and OC 585 will be heard together and evidence adduced in OC 585 may be used in OC 496, but OC 496 will ultimately fall to be determined on its own pleadings. Filing a reply will ensure that the pleadings are aligned and prevent needless disputes over unanswered pleadings.[207] The reply proposed would be limited to responding to Mr Muzayyin's positive allegations as to: (a) Mr Bartlett's relationship with TSPL and his authority; (b) the Brokering

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205 Ms Thiam's 3rd Affidavit (SUM 1862 and SUM 1863) at para 44.

206 Ms Thiam's 3rd Affidavit (SUM 1862 and SUM 1863) at para 44.

207 Ms Thiam's 3rd Affidavit (SUM 1862 and SUM 1863) at paras 54 to 61.

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Fee Agreement; (c) the Loan Agreement being a sham entered into without consideration; (d) Mr Bartlett's and Mr Muzayyin's discussions on restructuring the Loan; and (e) the waiver of the agreement to arbitrate under the Loan Agreement.[208] The reply's substance would be based on matters already pleaded in TS's OC 585 Defence and it would not introduce any new cause of action, defence or factual issue. Mr Muzayyin does not object to the application.[209]

331 I grant TSPL permission to file a reply in OC 496, for the reasons and on the terms it has put forth. Given that both actions will be heard together and that TSPL may be prejudiced at trial if it lacks a reply in OC 496, I consider a reply to be necessary for the purposes of O 9 r 15(1) of the ROC 2021. For the avoidance of doubt, TSPL may also address the number of invoices that were issued by TOSPL (see [117] above).

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208 These specifically relate to paragraphs 7, 12, 20 to 22, 25, 26, 36 to 41 and 53 of the OC 496 Defence.

209 Mr Muzayyin's 5th Affidavit (SUM 1862 and SUM 1863) at paras 79 and 80.

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Conclusion

332 In conclusion, I allow each of the four SAPTs in part. I will hear the parties on the costs of the applications, their proposed timelines for compliance and any other consequential directions required.

333 I record my appreciation to counsel for their clear and comprehensive submissions, which have been of significant assistance to me.

Ong Kye Jing
Assistant Registrar

Ong Zhenhui Wayne and Lim Xiao Ping (Wayne Ong Law Practice) for the claimant in OC 496 and the first and second defendants in OC 585;
Tang Xi-Rui Charlotte and Liu Enning (Drew & Napier LLC) for the defendant in OC 496 and the claimant in OC 585.

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