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

[2026] SGHC 178

Originating Claim No 130 of 2022

Between

(1) Parastate Labs, Inc

… *Claimant*

And

(1) Wang Li
(2) Yang Zhou
(3) Babel Asia Asset Management Private Limited
(4) Babel Holding Limited

… *Defendants*

JUDGMENT

[Equity — Dishonest assistance]
[Equity — Fiduciary relationships — When arising]
[Equity — Fiduciary relationships — Duties]
[Trusts — Express trusts — Certainties]
[Trusts — Accessory liability]
[Tort — Misrepresentation — Fraud and deceit]
[Tort — Conspiracy]

Version No 1: 01 Sep 2026 (14:13 hrs)

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Parastate Labs, Inc
v
Wang Li and others

[2026] SGHC 178

General Division of the High Court — Originating Claim No 130 of 2022
Sushil Nair JCA
2–5 December 2025, 5 June 2026

1 September 2026 Judgment reserved

Sushil Nair JCA:

Introduction

1 HC/OC 130/2022 ("OC 130") is a claim that has arisen in the aftermath of the collapse of the Babel group of companies ("Babel Group"), which comprises of at least 16 known entities incorporated in Singapore, Hong Kong, the Cayman Islands, the British Virgin Islands ("BVI"), Luxembourg and the United States of America ("USA"). The Babel Group, which operated substantial businesses in the fields of cryptocurrency lending and asset management, has been insolvent to the tune of US$400m from at least June 2022. The fourth defendant, the holding company of the Babel Group, has since entered into, and obtained the court's sanction of, a scheme of arrangement which had the effect of combining the claims against all of the entities in the Babel Group into a single scheme to be compromised together.

2 The claimant, Parastate Labs, Inc ("Parastate"), is an investor in a cryptocurrency fund managed by the Babel Group. The cryptocurrencies which it had invested with the Babel Group have been wiped out following a sell-off precipitated by its failure to meet margin calls on its trading positions with a cryptocurrency exchange platform. Dissatisfied with the returns promised by the Babel Group's scheme of arrangement, Parastate has decided to pursue OC 130 against the first defendant (Wang Li), who is one of the founders of the Babel Group, for a sum equivalent in value to its invested cryptocurrencies. It seeks to hold Wang Li personally liable for such a sum by way of claims in dishonest assistance, fraudulent misrepresentation and unlawful means conspiracy. It has, however, discontinued its claims against the second to fourth defendants.

3 Having considered the parties' submissions and the evidence, I dismiss OC 130 in its entirety.

Facts

The parties

4 The claimant, Parastate, is a corporation incorporated in the state of Delaware in the United States of America.[1] It runs what it calls "a multi-chain smart contract platform" and provides blockchain solutions to its customers.[2] Chen Jiayi, a co-founder and director of Parastate, is the sole witness of Parastate in OC 130.

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1 Affidavit of Evidence-in-Chief of Chen Jiayi dated 11 November 2024 ("CJY") at para 4.

2 CJY at para 4.

5 The fourth defendant, Babel Holdings Ltd ("BHL"), is a company incorporated in the Cayman Islands on 26 March 2019 by Wang Li and Yang Zhou (the second defendant).[3] BHL is the holding company of 15 subsidiaries incorporated in, amongst others, the BVI, the Cayman Islands, Hong Kong, Luxembourg, Singapore and the USA.[4] Until its collapse sometime in late 2022, the Babel Group was engaged in the business of cryptocurrency lending and cryptocurrency asset management under the brand name "Babel Finance".[5]

6 Prior to co-founding BHL with Wang Li, Yang Zhou had incorporated a company named Moonalpha Financial Service Limited ("Moonalpha") in Hong Kong on 23 October 2015.[6] At its inception, Yang Zhou held 50% of the shares of Moonalpha, though it subsequently became a wholly owned subsidiary of one "Moonalpha Holding Limited", a company incorporated in the BVI.[7] Moonalpha is in the cryptocurrency lending business and operates under the "Babel Finance" brand name, even though it is not (and never was) owned by BHL (or any of its subsidiaries).[8] At Yang Zhou's invitation, BHL was subsequently established in March 2019 by Yang Zhou, Wang Li, and three of their friends (Mi Xiaoping, Zhao Jiahong ("Zhao") and Shen Lei) for the purpose of "expanding" upon the cryptocurrency business of Moonalpha to provide a wider range of financial services.[9]

3 Affidavit of Evidence-in-Chief of Wang Li dated 13 November 2024 ("WL") at para 25; CJY at para 9.

4 WL at paras 25 and 35–36.

5 WL at paras 24–25 and 38; CJY at para 9.

6 WL at para 21.

7 WL at para 21, pp 86 and 578 (para 7).

8 WL at paras 23–24.

9 WL at para 20.

7 Yang Zhou was a director of BHL from its inception on 26 March 2019 until he resigned on 17 June 2022.[10] Wang Li was also a director of BHL from 6 March 2020 until he was removed on 28 December 2022.[11] There were three other positions in BHL's board of directors which had been occupied by the following individuals:

(a) Gu Tao, who was appointed on 6 March 2020 and resigned on 23 October 2020. He was appointed as a nominee director to represent the interests of a group of investors in a fundraising round conducted by BHL pursuant to an investor's rights agreement dated 6 March 2020.[12]

(b) Yuan Chen, who was appointed on 27 May 2021 and resigned on 10 June 2022. She was appointed as a nominee director to represent the interests of a group of investors in a fundraising round conducted by BHL pursuant to an investor rights agreement dated 27 May 2021.[13]

(c) Zhao, who was appointed on 23 October 2020. He resigned on 17 June 2022.[14]

8 Between May 2021 and May 2023, Yang Zhou, Wang Li, Mi Xiaoping, Zhao and Shen Lei held 82.72% of the shares in BHL through a company named "Babel" which had been incorporated in the Cayman Islands on 4 January 2021. The shares in Babel were in turn held by the parties' respective corporate

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10 WL at para 26(a); Agreed Bundle of Documents (Volume 2 of 4) ("2AB") at p 141.

11 WL at para 26(b); 2AB at p 141.

12 WL at paras 26(c) and 27–28; 2AB at p 141.

13 WL at paras 26(e) and 29–30; 2AB at p 141.

14 WL at paras 20 and 26(d); 2AB at p 141.

vehicles which they individually owned and controlled.[15] For example, an entity named "ADP10 Limited", the shares of which are wholly owned by Wang Li, owns 34.02% of the shares in Babel.[16] Similarly, an entity named "Quantum Speed Limited", the shares of which are wholly owned by Yang Zhou, owns 45.36% of the shares in Babel.[17] The remainder of the shares in Babel were held by Mi Xiaoping's, Zhao's and Shen Lei's wholly owned corporate vehicles – Roe Deer Limited (5.15%), Spiritual X Limited (10.31%) and SEVENBIT Limited (5.15%) respectively.[18] The 17.28% of the remaining shares in BHL were held by its other "strategic and financial investors".[19]

9 The third defendant, Babel Asia Asset Management Private Limited ("BAAMPL") is a company incorporated in Singapore on 29 July 2021.[20] BAAMPL is a wholly owned subsidiary of BHL that had been incorporated for the purpose of providing cryptocurrency asset management services to the Babel Group's Singapore-based customers.[21] Yu Shanshan was BAAMPL's CEO from July 2021 to June 2022.[22] BAAMPL's board of directors comprised of the following individuals:[23]

(a) Wang Li was a director from 29 July 2021 to 18 January 2022 and from 21 June 2022 to 28 December 2022.

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15 WL at paras 31–32.

16 WL at para 32(a).

17 WL at para 32(e).

18 WL at paras 32(b)-32(d).

19 WL at para 31.

20 WL at para 40; CJY at para 8.

21 WL at paras 41–42; CJY at para 8.

22 WL at para 44.

23 WL at para 43.

(b) Yang Zhou was a director from 29 July 2021 to 18 January 2022. He was re-appointed as director on 29 December 2022.

(c) Guan Bowen, Yu Shanshan and Wu Ruihong were directors from 8 April 2022 to 21 June 2022.

The operations of the Babel Group

10 From the time of BHL's incorporation on 26 March 2019 until sometime in September 2021, Yang Zhou and Wang Li had joint oversight over "the strategic direction and future plans" of the Babel Group.[24] During this period, Yang Zhou served as the Chief Executive Officer ("CEO") and a director of BHL concurrently.[25] On the other hand, Wang Li served as a "co-founder" and a director of BHL. Both parties acted as "co-CEOs" of BHL during this period, as they would often act jointly in making decisions pertaining to its management.[26]

11 In October 2021, Yang Zhou decided to exit from the management of BHL and the wider Babel Group.[27] It was envisaged that he would resign from his position as CEO and assume the role of a research consultant who would independently explore business opportunities in Decentralized Finance (DeFi), non-fungible tokens and the metaverse for the Babel Group.[28] Wang Li, on the

24 WL at para 45.

25 Notes of Evidence dated 3 December 2025 ("NE 031225") at p 97:2–5.

26 NE 031225 at p 97:5–9.

27 WL at para 47; CJY at para 13.

28 WL at para 48 and pp 370–371.

other hand, would take up the position of CEO in Yang Zhou's stead and be "fully responsible for [BHL's] business decisions in the future".[29]

12 In tandem with these proposed changes to BHL's management, Wang Li and Yang Zhou also agreed to effect an adjustment to the equity structure of BHL. To elaborate, as of 1 October 2021, Wang Li and Yang Zhou controlled 23.92% and 31.89% of the shareholding of BHL respectively. It was contemplated that Yang Zhou would transfer 25% of his shareholding in BHL to Wang Li, such that Yang Zhou and Wang Li would control 6.89% and 48.92% of the shares of BHL respectively.[30] These adjustments in the equity and management structure of BHL were intended to improve "the decision-making efficiency" in BHL which had allegedly been hindered by the differences that started to emerge between Yang Zhou and Wang Li in their management of BHL.[31] These contemplated changes are recorded in a letter circulated to BHL's board of directors and investors on 1 October 2021 by Yang Zhou and Wang Li ("Oct 2021 Letter").[32]

13 Consistent with the contents of the Oct 2021 Letter, on 6 December 2021, BHL's board of directors unanimously resolved to: (a) accept and approve Yang Zhou's resignation as BHL's CEO; and (b) appoint Wang Li as the new CEO of BHL who would be "in charge of and fully responsible for the business and operation decision-making" of the Babel Group.[33] Quite apart from his position as CEO, Wang Li also had the right to appoint four of BHL's five

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29 WL at p 370.

30 WL at p 370.

31 NE 031225 at pp 93:19–94:1.

32 WL at pp 369–371.

33 Agreed Bundle of Documents (Volume 1 of 4) dated 19 November 2025 ("1ABOD") at pp 556–557; WL at para 49 and pp 373–374; CJY at para 13.

directors.[34] If Wang Li appointed fewer than four directors to BHL's board and its remaining seats remained vacant, he would be entitled to exercise the number of votes equal to the number of vacant directors in addition to his own vote as director.[35] As such, with Yang Zhou out of the picture, Wang Li controlled BHL's board of directors and became "the main, if not sole, decision-maker" for the Babel Group's businesses and operations.[36]

14 The contemplated transfer of 25% of BHL's shareholding from Yang Zhou to Wang Li, however, was never completed.[37] Though the parties had entered into a share purchase agreement for Yang Zhou to transfer the BHL shares he controlled to Wang Li, Yang Zhou was advised to await regulatory approval for the transfer of his shares to Wang Li from the Hong Kong Securities & Future Commission ("HKSFC") as there was a Hong Kong subsidiary in the Babel Group that was regulated by the HKSFC.[38] As such, there was no adjustment to Wang Li's and Yang Zhou's shareholding in BHL, which remained in the proportions of 23.92% and 31.89% respectively.

15 As the CEO of BHL, Wang Li focused on: (a) chartering the strategic direction of the Babel Group, including its budget and its annual and seasonal business plans; (b) planning the growth of the Babel Group, including fundraising; and (c) managing relations with investors and key customers who invested significant amounts of assets with the Babel Group.[39] Owing to the

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34 Claimant's Core Bundle dated 25 November 2025 ("CCB") at p 87; NE 031225 at p 107:5–7.

35 CCB at p 87; NE 031225 at p 107:8–11.

36 NE 031225 at p 99:2–9.

37 2ABOD at p 483 (para 22); NE 031225 at pp 14:8–17:18.

38 CCB at p 163 (para 22).

39 WL at para 51.

wide-ranging nature and substantial amounts of business that the Babel Group conducted, however, Wang Li delegated the actual running of the day-to-day business and operations of the Babel Group to its employees.[40] These employees were, in turn, pooled across the Babel Group, with the employees of one entity often undertaking work for other entities in the Babel Group.[41]

16 The key departments in the Babel Group involved in its cryptocurrency lending and asset management business were:

(a) The "Global Partnerships" department, which was responsible for business development (including client acquisition and client relations) as well as the marketing of the Babel Group's products. This department was headed by Liu Yulong ("Liu") who was BAAMPL's employee. Jiang Yuchen ("Jiang"), who was also BAAMPL's employee, worked directly under Liu in the Global Partnerships department.[42]

(b) The "Investment and Transactions" department, also known as the "Trading" department, which was responsible for the structuring of certain floating rate investment products and the execution of trades to generate profits.[43] This department was headed by one Wang Wenliang.[44]

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40 WL at paras 52, 54 and 56.

41 WL at para 55.

42 WL at para 59(a).

43 WL at para 59(b).

44 WL at para 59(b).

(c) The "Financial Services" department, also known as the "Lending" department, which was responsible for the structuring of certain lending and fixed rate investment products and the execution of contracts and trades for the purposes of those products.[45]

(d) The "Financial Management" department, which was responsible for the management of the Babel Group's cryptocurrency wallets and the transfers made to (or out of) them to its various customers and exchange platforms the Babel Group conducted its businesses on.[46] This department was headed by Zhao who, as noted at [7(c)] above, was also a director of BHL.[47]

(e) The "Legal and Compliance" department, which was responsible for the contracts and other forms of legal documentation employed in the course of the Babel Group's operations.[48] This department was headed by one Lionel Zhao.[49]

The Babel Group's cryptocurrency asset management business

17 The Babel Group's business comprised of two core aspects. First, a cryptocurrency lending business, which involved the grant of both secured and unsecured lending of cryptocurrencies to borrowers in return for interest.[50] Second, a cryptocurrency asset management business, where cryptocurrency assets deposited by customers with the Babel Group would be traded on an

45 WL at para 59(c).

46 WL at para 59(d).

47 WL at para 59(d).

48 WL at para 59(e).

49 WL at para 59(e).

50 WL at paras 61–62; CJY at para 6.

exchange or over-the-counter ("OTC") pursuant to specific investment strategies devised by the Babel Group.[51] It is this latter aspect of the Babel Group's business which has given rise to the present dispute.

18 As part of its asset management business, the Babel Group would develop and launch investment products to prospective customers. The process would begin by the Trading department of the Babel Group devising and/or conceptualising new investment products to be marketed.[52] Thereafter, the Trading department would pitch the said product to the Financial Management and Global Partnerships departments, which would in turn assess its viability and market interest.[53] If the Financial Management and Global Partnerships departments determined the proposed investment product to be viable, it would be launched and marketed to potential customers.[54] The Global Partnerships department would then prepare the marketing materials for the investment product and market it to potential customers.[55] The Legal and Compliance department, on the other hand, would prepare and vet the contents of the contracts and legal documentations that were used by the Babel Group to govern their legal relationships with its customers.[56]

19 According to Wang Li, there was no practice or procedure within the Babel Group for the employees in the Global Partnerships and Trading departments to seek the approval of BHL's and/or BAAMPL's management

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[51] WL at paras 63–64; CJY at para 6.

[52] WL at para 77(a).

[53] WL at para 77(b).

[54] WL at para 77(c).

[55] WL at para 77(e).

[56] WL at para 77(g).

before launching any new investment products or using any marketing materials to promote them.[57]

20 The Babel Group utilised Moonalpha's accounts on a cryptocurrency trading platform named "Deribit" to trade and/or invest the assets which its customers had deposited with it for the purposes of its asset management business.[58] Deribit is an online platform offering cryptocurrency exchange services that is operated by DRB Panama Inc ("DRB Panama"), a company headquartered in Panama City.[59] At all times material to the present dispute, Moonalpha held a cryptocurrency trading account ("Main Account") and approximately 28 sub-accounts with Deribit.[60] An unspecified number of those sub-accounts were designated for the specific purpose of depositing cryptocurrencies that had been raised pursuant to specific investment strategies promoted and operated by the Babel Group.[61] For example, the cryptocurrencies of a customer who invested into the "Chen Xin 1 Fund" would be transferred into a designated sub-account held with Deribit for the purposes of trading and investing under the Chen Xin 1 Fund.[62]

21 As noted at [16(d)] above, it was the Financial Management department of the Babel Group that was responsible for controlling and authorising the outflows and inflows of cryptocurrencies from the Babel Group's

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57 WL at paras 77(d) and 77(f).

58 Agreed *Dramatis Personae* dated 25 November 2025 ("ADP") at p 7, S/N 19(2); WL at para 65; CJY at para 6.

59 ADP at p 7, S/N 19(1); WL at para 65; CJY at para 6.

60 ADP at p 7, S/N 20(3); WL at paras 66–67.

61 WL at para 73; NE 041225 at pp 21:9–13 and 27:19–28:7.

62 WL at para 75.

cryptocurrency wallets.[63] On Wang Li's unchallenged evidence, the cryptocurrencies received by the Babel Group as part of its asset management business would be dealt with according to the following procedure:

(a) After a customer entered into an agreement with a subsidiary in the Babel Group for the management of its cryptocurrencies, a representative of the Babel Group would provide a wallet address, linked to one of the Babel Group's cold or custodian wallets, for the said customer to transfer his cryptocurrencies to.[64] These wallets operated as "holding wallets" in which the cryptocurrencies transferred by the Babel Group's customers would be held, before being transferred into a specific sub-account on Deribit to be traded and invested in line with the particular investment programme that the relevant customers had signed up for.[65]

(b) After receiving the customer's cryptocurrencies in these "holding wallets", the Trading department of the Babel Group would send a request to the Financial Management department for the cryptocurrencies to be deposited into the relevant sub-account.[66] The Financial Management department would then arrange for the transfer of the customer's cryptocurrencies to one of the sub-accounts on Deribit to be managed in line with the terms of the customer's agreement.[67]

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63 WL at para 69.

64 WL at paras 72(a)–72(b).

65 NE 041225 at pp 20:16–21:13.

66 WL at para 72(c).

67 WL at para 72(d).

Background to the dispute

Parastate's investment in the Alpha USDT Fund

22 On 16 March 2022, Chen Jiayi was introduced to Liu and Jiang through one Richard Dai on a group chat on Telegram, an online messaging application.[68] Richard Dai informed Liu that Chen Jiayi was the "founder of Parastate" and was looking for treasury management services for Parastate.[69] Following a telephone call on the same day, during which Liu gave Chen Jiayi an overview of the financial services and products provided by the Babel Group,[70] Liu sent a presentation deck dated January 2022 which set out the financial services and products then provided by the Babel Group under the "Babel Finance" brand name ("Presentation Deck").[71]

23 The Presentation Deck stated that the Babel Group provided treasury management solutions that were "tailored to various risk appetite and liquidity needs".[72] There were three types of such "solutions" marketed, the details of which were elaborated on in the Presentation Deck: (a) "Fixed Income" products; (b) "Structured" products and (c) the "Babel Quant Alpha Fund".[73] The Presentation Deck also stated that:

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68 Agreed Chronology of Key Events dated 25 November 2025 ("ACKE") at p 4, S/N 15; CJY at para 22; WL at para 95(a).

69 ACKE at p 4, S/N 15; 2ABOD at p 163.

70 ACKE at p 4, S/N 16; CJY at para 23.

71 ACKE at p 4, S/N 18; CJY at para 25.

72 1ABOD at p 566.

73 1ABOD at p 566.

(a) The Babel Group is the "[c]lear regional leader of US$7 billion crypto balance sheet with fast growth record".[74]

(b) The Babel Group is a "prudent financial innovator" with "[f]inancial innovation in credit, asset management and prime brokerage, led by a professional team with successful entrepreneurship experiences".[75]

(c) The Babel Quant Alpha Fund (i) "primarily uses machine learning to conduct quantitative analysis and identify any arbitrage or mispricing opportunities in crypto spot, future[s] and options markets"; (ii) would provide (or had provided) "resilient performance throughout volatility cycles"; (iii) is the Babel Group's "flagship quant strategy boasting stable return and minimal drawdown"; (iv) has a "Sharpe Ratio" of 5.08; and (v) would provide a "Hurdle Rate" of "8% APR minimum guaranteed in USDT".[76]

(d) Investments into the Babel Quant Alpha Fund could be redeemed with no "Redemption Fee" being payable after 90 days. However, any redemptions within 90 days of investment would be subject to a 5% "Redemption Fee".[77]

A statement "We have your best interest in mind" was also found at the bottom left corner of most of the slides of the Presentation Deck.[78]

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74 1ABOD at p 560.

75 1ABOD at p 560.

76 1ABOD at pp 566 and 579.

77 1ABOD at p 579.

78 1ABOD at pp 562–564, 566, 568–575, 577–579 and 581–583.

24 The Babel Quant Alpha Fund was a fund that utilised an investment strategy which primarily used "machine learning to conduct quantitative analysis and identify any arbitrage or mispricing opportunities in crypto spot, future[s] and options markets".[79] The Babel Group would use "quantitative trading strategies to trade its customer's assets in cryptocurrency spot, options and derivatives to generate profits on those assets".[80] Simply, the intended strategy of the Babel Quant Alpha Fund was to engage in arbitrage and exploit prices differences in various cryptocurrencies.[81] The Babel Quant Alpha Fund comprised of three sub-funds which employed such a trading strategy: (a) the Babel Alpha USDT Fund, which was denominated in USDT ("Alpha USDT Fund"); (b) the Quant Alpha Fund, denominated in BTC; and (c) the Quant Alpha ETH Fund which was denominated in ETH.[82] USDT, BTC and ETH represent different types of cryptocurrencies known as Tether, Bitcoin and Ether respectively. The Babel Group used one designated sub-account that Moonalpha held with Deribit for the purposes of trading the cryptocurrencies of the customers who had invested into the Babel Quant Alpha Fund in line with its marketed investment strategy ("Alpha Sub-Account").[83]

25 Subsequently, sometime at or around 10:11am on 17 March 2022, Liu sent Chen Jiayi a draft copy of a "Cryptocurrency Management Agreement" ("CMA") which contained a page-long schedule titled "Management Program" ("MP").[84] The MP, which was in the form of a table, provided details on the

79 1ABOD at p 566.

80 WL at para 125.

81 NE 041225 at pp 36:19–37:8.

82 WL at para 78; 1ABOD at pp 577–579.

83 WL at para 148.

84 ACKE at p 4, S/N 19; CJY at para 28; WL at p 430.

Alpha USDT Fund that Parastate would be subscribing to by way of the CMA. The MP stated:

(a) The particular "Management Program" that Parastate would be subscribing to would be the Alpha USDT Fund, with the "Start Date" of the programme stated to be 18 March 2022.[85] This was the day on which trading in the Alpha USDT Fund would begin.[86]

(b) The "Management Asset" that BAAMPL would be managing on behalf of Parastate would be 5m USDT.[87]

(c) The "Return rate" provided on Parastate's investment into the Alpha USDT Fund was calculated by the "Excess rate".[88] The Excess rate at any given point of time would be calculated by reference to the difference between the Alpha USDT Fund's net asset value ("NAV") and its initial NAV.[89] If the Alpha USDT Fund obtained an Excess rate of 8%, Parastate would be entitled to a return calculated by reference to the following formula: "8% + (Excess rate – 8%)".[90] On the other hand, if the Alpha USDT achieved an Excess rate of less than or equals to 8%, then Parastate would be entitled to a return "floored at 8%".[91]

(d) Consistent with the Presentation Deck (see [23(d)] above), Parastate had the right to "withdraw" the 5m USDT from BAAMPL at

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85 2ABOD at p 26.

86 NE 041225 at p 46:11–14.

87 2ABOD at p 26.

88 2ABOD at p 26.

89 WL at para 140(d).

90 WL at para 140(e); 2ABOD at p 26.

91 WL at para 141.

any time. Withdrawal requests made after a period of "three months" had elapsed from the Start Date would be "supported" without any "charges" payable. By contrast, withdrawal requests made before the requisite lock-up period of three months had elapsed would result in Parastate incurring a one-time charge equivalent to 5% of the Management Asset.[92]

(e) Weekly disclosures as to the performance of Parastate's investment would be made at 5pm every Friday.[93]

26 The CMA detailed the terms on which Parastate would be contracting with BAAMPL for its investment of 5m USDT into the Alpha USDT Fund. It contained the following recitals and terms:

(a) Under Recital 1, BAAMPL (defined as "Babel Finance" in the CMA) described itself as being "experienced in tokens, coins, vouchers, digital currencies, crypto-currencies and similar digital assets management, and provides certain Management Programs (each a 'Management Program')".[94]

(b) Under Recital 2, Parastate (defined as "Client" in the CMA) stated that it desired "to accept such Management Program and engage Babel Finance to undertake certain cryptocurrency management activities ('Management Services') in respect of the Management Asset… on behalf of and for the benefit of Client".[95]

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92 2ABOD at p 26.

93 2ABOD at p 26.

94 2ABOD at p 19.

95 2ABOD at p 19.

(c) Under clause 2.1.4, each party to the CMA represented that neither the CMA nor "any other information provided in writing or electronic format" to each other contained "any information that is untrue, inaccurate or misleading in any material respects", and that "no information that would cause the information in such documents to be untrue, inaccurate or misleading in any material respect has been omitted".[96]

(d) Under clause 2.8, Parastate acknowledged that, "as with any cryptocurrency investment, the value of the portfolio can go up and down depending on various risk factors". As such, BAAMPL would "not be liable for any direct, indirect or consequential loss or damages suffered" by Parastate (or any of its affiliates or related parties) in ten enumerated circumstances, unless caused by BAAMPL's "intent or gross negligence". Those circumstances included:

(i) the occurrence of "a liquid or illiquid market, unusual market conditions, forking, abnormal price volatility, and information asymmetry in relation to Management Assets" (clause 2.8.2);

(ii) "any trading suspension or termination by exchanges for whatever reason" (clause 2.8.7); and

(iii) "any other situation where the loss caused is beyond the reasonable control and not caused by intentional acts or omissions" of BAAMPL (clause 2.8.10).

96 2ABOD at p 20.

(e) Under clause 2.11, BAAMPL stated that it "shall always endeavor to act in [Parastate's] best interests as [BAAMPL's] client". However, it warned that "circumstances can arise where [BAAMPL] or one of [BAAMPL's] other clients may have some form of interest in business being transacted for [Parastate]". If that happened, or BAAMPL became aware that its interests or those of its other clients conflicted with Parastate's interests, BAAMPL promised to "take appropriate steps to manage the conflict of interests fairly".[97]

(f) Under clause 3.2, each party had the right to terminate the contract should the other party breach a "material term" of the CMA. To that end, clause 3.3 stated that such termination would be "without prejudice to any claims for damages or other remedies" that the parties may have under the CMA or the general law.[98]

(g) Under clause 5, each party covenanted and agreed to "indemnify and hold harmless" the other party from and against "any and all" indemnifiable losses, in so far as such losses arose out of, or were based upon: (a) "any inaccuracy in or breach of any representation, warranty, covenant, schedule or term sheet" made by a party to the CMA; and (b) the failure of a party to "perform or observe any covenant, schedule, term sheet or other provision to be performed or observed" by a party. If and to the extent that such indemnity was unenforceable "for any reason", the relevant party undertook to "make the maximum

[97] 2ABOD at p 22.

[98] 2ABOD at p 22.

contribution to the payment and satisfaction of such indemnified liabilities permissible" under the general law.[99]

(h) Under clause 6.2, the validity, interpretation and enforcement of the CMA was to be governed by Singapore law.[100]

Additionally, the Babel Group's slogan "we have your best interest in mind" was affixed to the top-left corner of each page of the CMA.[101]

27 Sometime at or around 7:42pm on 17 March 2022, the same day on which Chen Jiayi had received the draft copy of the CMA, Chen Jiayi duly signed the CMA on behalf of Parastate. He also caused Parastate to transfer the 5m USDT (then worth approximately US$5m) to a wallet designated in the MP.[102] It is undisputed that this 5m USDT was subsequently transferred onwards to, and kept in, the Alpha Sub-Account to be traded by the Babel Group in line with the trading strategy of the Alpha USDT Fund.[103]

The Babel Group's trading of cryptocurrency derivative contracts

28 Quite apart from its cryptocurrency lending and asset management businesses, the Babel Group carried out certain proprietary trading activities ("PTAs") from the second half of 2019 up until June 2022.[104] The PTAs entailed the Babel Group utilising cash from its profits and capital (raised through equity

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99 2ABOD at p 23.

100 2ABOD at p 24.

101 2ABOD at pp 19–25.

102 ACKE at p 4, S/N 19; CJY at paras 30–31; WL at para 146(a) and p 68.

103 Notes of Evidence dated 2 December 2025 ("NE 021225") at p 23:20–24.

104 Supplementary Affidavit of Evidence-in-chief of Wang Li dated 26 September 2025 ("WL–S") at para 14.

financing) to trade in cryptocurrency derivative contracts for the purposes of increasing its "net equity" and growing the revenue of the Babel Group to US$1b by 2024.[105] This is to be distinguished from the derivative trading that the Babel Group had also engaged in as part of its management of the Babel Quant Alpha Fund (see [24] above).

29 Initially, Yang Zhou and Wang Li jointly managed the trading and investment strategies of the PTAs.[106] After Yang Zhou resigned as the CEO of BHL in December 2021, however, Wang Li began managing and deciding on the trading and investment strategies of the PTAs by himself – though the actual trades were executed by himself, Zhao and Wang Wenliang.[107]

30 The Babel Group's trading of cryptocurrency derivative contracts took place through the sub-accounts that Moonalpha held on Deribit's online exchange platform.[108] Whenever Moonalpha entered into a cryptocurrency derivative contract with Deribit, Moonalpha would be required to deposit a certain amount of cryptocurrency into the relevant sub-account that it was purchasing said derivative contract with as collateral ("Initial Margin").[109] Following that, Moonalpha would have to maintain a minimum amount of cryptocurrency in the relevant sub-account in order to hold its position on the derivative contract that it had purchased ("Maintenance Margin").[110] Depending

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105 WL–S at paras 15–16; Notes of Evidence dated 4 December 2025 ("NE 041225") at pp 64:22–25 and 68:17–23; NE 021225 at pp 18:25–19:6.

106 WL–S at para 17.

107 ACKE at p 3, S/N 13; WL–S at para 19; NE 041225 at p 64:18–21.

108 WL at para 156.

109 WL at para 157.

110 WL at para 158; Statement of Claim (Amendment No. 3) dated 22 July 2025 ("SOC") at para 6K1(1)(b).

on the performance of the derivative contract, Moonalpha would have to deposit more cryptocurrencies as further collateral to avoid triggering the "liquidation" of its positions pursuant to Deribit's "auto-liquidation" policy.[111] Under this auto-liquidation policy, in order to limit its exposure to its accountholders' trades, Deribit had the right to automatically and forcibly close out an accountholder's trading positions in an incremental manner in the event that the Maintenance Margin of a given account exceeded its net asset value.[112] During this process, the accountholder would be logged out of his account and would have no power to stop the liquidation process.[113]

31 To reduce the risks posed by Deribit's auto-liquidation policy, Moonalpha entered into a Non-Liquidating Account Agreement with DRB Panama on 18 May 2020 ("1st NLAA"). Under clause 2.1 of the 1st NLAA, Moonalpha could request Deribit to temporarily disable its auto-liquidation policy in relation to a given account or sub-account even when its Maintenance Margin exceeded its net equity ("Non-Liquidation"). Under clause 2.5 of the 1st NLAA, where Deribit agreed to Moonalpha's request for Non-Liquidation, its account (or sub-account) would be liquidated according to Deribit's auto-liquidation policy if: (a) its Initial Margin (defined as 130% of the Maintenance Margin) exceeded its net asset value for a consecutive period of longer than two business days and its Maintenance Margin exceeded its net asset value; or (b) its net asset value fell below the Maintenance Margin for a consecutive period

111 WL at paras 158–159; SOC at para 6K(1)(b).

112 WL at para 159; SOC at para 6K(1)(b).

113 WL at para 159.

of one business day.[114] Deribit, however, reserved the "sole and absolute discretion" as to accept or decline Moonalpha's request for Non-Liquidation.[115]

32 The 1st NLAA was expressed to apply only to the Main Account and two sub-accounts held in Moonalpha's name with Deribit.[116] In a situation where Moonalpha wished to request for Non-Liquidation by Deribit, Moonalpha had to submit a formal request by way of email, specifying the particular account or sub-account it was requesting the Non-Liquidation of.[117]

33 Subsequently, on 7 August 2020, DRB Panama and Moonalpha entered into another Non-Liquidating Account Agreement ("2nd NLAA"). Save for two key differences, the 2nd NLAA contained terms almost identical to the 1st NLAA. First, clause 2.5 of the 2nd NLAA defined the term "Initial Margin" as 120% of the Maintenance Margin.[118] Apart from this, clause 2.5 of the 2nd NLAA was identical to clause 2.5 of the 1st NLAA. Second, the 2nd NLAA was expressed to be applicable to the Main Account and 13 sub-accounts that were held in Moonalpha's name with Deribit.[119] As the 2nd NLAA also covered the Main Account and the same two sub-accounts covered by the 1st NLAA,[120] its effect was to effectively supersede and replace the 1st NLAA. On the documentary evidence, therefore, only 13 of Moonalpha's sub-accounts with

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114 WL at paras 165–166; 1ABOD at pp 439–440 (clauses 2.1 and 2.5).

115 1ABOD at p 440 (clause 2.3).

116 WL at para 166; 1ABOD at p 442.

117 1ABOD at p 440 (clauses 2.2 and 2.4).

118 WL at paras 167–186; 1ABOD at p 444.

119 1ABOD at p 446.

120 WL at paras 166 and 168; 1ABOD at pp 442 and 446.

Deribit (out of a rough total of 28), as well as its Main Account, were covered by the 1st NLAA and the 2nd NLAA (collectively, the "NLAAs").

34 Quite apart from Deribit's auto-liquidation policy and the NLAAs, it is Wang Li's evidence that Deribit had a policy of treating an accountholder's sub-account as "separate" from other sub-accounts, and that each sub-account "could be used to isolate a margin for a particular trade" ("Sub-Account Policy").[121] As a result of this Sub-Account Policy, Wang Li explained, in a situation where the net asset value of one sub-account fell below the Maintenance Margin, and the accountholder of that sub-account was unable to meet Deribit's margin call to bring the Maintenance Margin back to the requisite level, Deribit would have a right to liquidate only the assets in that specific sub-account.[122] As such, Wang Li asserted that Deribit would have no right to cross-liquidate and effect a consolidation of positions across multiple sub-accounts in breach of this Sub-Account Policy.[123]

Deribit's consolidation of Moonalpha's accounts

35 Sometime in May 2022, the cryptocurrency market entered into a severe downturn. Owing to various events in the cryptocurrency market which need not be detailed for the purposes of the present dispute, the market prices of cryptocurrencies began to crater, with cryptocurrency hedge funds, lenders and trading houses such as Three Arrows Capital ("3AC"), Voyager Digital and Celsius Network suspending withdrawals for its customers and filing for bankruptcy.[124] This turmoil in the cryptocurrency markets precipitated a series

121 WL at para 160.

122 WL at paras 162–163.

123 WL–S at paras 39–40.

124 ACKE at p 5, S/N 21; WL at paras 153–154.

of events which eventually culminated in Deribit consolidating and liquidating all of Moonalpha's trading positions in its Main Account and its sub-accounts.

36 These events, which took place between 10 and 16 June 2022, have been documented by way of correspondence exchanged in a Telegram group chat between representatives of the Babel Group and Deribit ("Telegram Group").[125] The salient parts of the correspondence are set out in the table below:

S/N	Date (Time)	Summary of the messages exchanged
1	10 June (21:26–21:45)	One "Maarten Sentillia" ("Maarten"), an employee of Deribit, sent a message to the Telegram Group requesting the Babel Group to top up bitcoins ("BTC") to the "Babel OTC" and the "Yue Xia" sub-accounts. Wang Wenliang, under the alias "Allen Wang", agreed to do so.[126] It is undisputed that the requisite top-up had been made.[127]
2	13 June (14:26)	One "Shaun Deribit" ("Shaun"), also an employee of Deribit, made a request on behalf of Deribit for the Babel Group to top up BTC to the Babel OTC sub-account, noting that it had a deficit of 146 BTC. Wang Wenliang, on behalf of the Babel Group, agreed but did not do so.[128]

125 2ABOD at pp 209–224.

126 2ABOD at p 219.

127 NE 041225 at p 76:16–23.

128 2ABOD at p 220.

3	14 June (00:04–00:24)	Wang Li, pointing to the volatilities in the cryptocurrency markets, requested for 12 more hours to cover the deficit.[129]
4	14 June (14:43–15:04)	Shaun requested for an update from the Babel Group, noting that 12 hours had passed since Wang Li's update. Wang Li informed Shaun that he had spoken to one "Luuk", the Chief Executive Officer of Deribit at the relevant time,[130] to request for more time to "fill the shortages" in its accounts.[131]
5	14 June (16:37)	Maarten stated that "no efforts [had] been made [in] reducing positions" thus far. He asked whether the Babel Group wished for Deribit to reduce its positions on its behalf.[132]
6	14 June (17:31–17:32)	Maarten noted that there was a shortfall in three of Moonalpha's sub-accounts which collectively amounted to approximately 2,500 BTC and 20,000 ETH.[133] All of those three accounts were covered by the 2nd NLAA.[134] Maarten warned that Deribit had the right to liquidate Moonalpha's positions under the NLAAs if the Maintenance Margin in those sub-accounts were not "brought back to acceptable

129 2ABOD at p 221.

130 NE 041225 at p 74:19–20.

131 2ABOD at p 221.

132 2ABOD at p 222.

133 2ABOD at p 223; WL at p 645.

134 WL at para 170(a).

		levels" within the time stipulated therein.[135] Maarten also warned that Deribit would start liquidating Moonalpha's trading positions if it failed to deposit a minimum of 200 BTC and 2,000 ETH per hour.[136]
7	14 June (17:42)	Wang Wenliang stated that 200 BTC had been deposited in the Main Account. Maarten acknowledged receipt of the 200 BTC.[137]
8	14 June (17:46–18:10)	Wang Li acknowledged Maarten's messages (in S/N 6 above) and requested for "a longer time to react" to the volatilities in the cryptocurrency markets.[138] Maarten replied that he appreciated the volatile and risky situation in the market. However, he stated that Deribit did not know whether the Babel Group had sufficient liquidity to meet the liabilities arising from Moonalpha's open trading positions. Deribit was concerned about having to bear the risks of Moonalpha's positions and had to act accordingly. Wang Li acknowledged Maarten's position and stated that the Babel Group would deposit more assets. [139]

[135] 2ABOD at p 223.

[136] 2ABOD at p 223.

[137] 2ABOD at p 224; WL at para 170(b).

[138] 2ABOD at p 224.

[139] 2ABOD at p 224.

9	14 June (19:37–19:50)	Maarten stated that Deribit had begun liquidating Moonalpha's positions.[140] Luuk and Maarten stated that Deribit would stop the liquidation if more BTC and ETH were deposited.[141]
10	14 June (19:59–20:02)	Wang Li requested for 30 minutes to discuss the matter with his team. Shaun informed Wang Li that Deribit had given the Babel Group "a lot of warnings and… leeway" and that it had to "act now" owing to the market situation, the size of Moonalpha's positions and the duration of which the Maintenance Margins had remained in breach.[142]
11	14 June (20:11–22:08)	Luuk noted that the Babel Group had 1718 ETH and 2m USDT in a "withdrawal account". He asked if those assets could be sent over to Deribit.[143] Wang Li replied that it would not be possible for the Babel Group to do so, as those assets did not belong to its "trading company".[144] Wang Li made a proposal for Deribit to: (a) "just" liquidate the Babel OTC sub-account to reduce the risk, with the Babel Group "tak[ing] all the los[ses]" (estimated to be around 800 BTC); and (b) return control over the rest of the accounts back to the Babel Group, following which it would make the

140 2ABOD at p 209.

141 2ABOD at p 209.

142 2ABOD at p 210.

143 2ABOD at p 211.

144 2ABOD at pp 211–212.

		requisite top-ups in 48 hours "to make the total equity positive". This proposal was rejected by Maarten.[145] Wang Li also informed Deribit that the Babel Group could not promise topping up 200 BTC and 2,000 ETH per hour as Deribit had requested.[146]
12	14 June (22:18–22:22)	Wang Li lamented the fact that Deribit had begun liquidating Moonalpha's positions less than an hour after the Babel Group had made the deposit of 200 BTC. He stated that Deribit's actions were "a big hurt", since the Babel Group (through Moonalpha) had been one of Deribit's "largest client for 3 years".[147] Luuk replied that Deribit had no real choice in the matter as no response had been forthcoming from the Babel Group in the face of its repeated requests for proof of funds.[148]
13	15 June (06:24)	Shaun stated that Deribit planned to "move all the positions from your [sub-accounts] to [the Main Account]". He asked Moonalpha (and/or the Babel Group) to "[l]et us know if that causes any big issues on your end".[149]

145 2ABOD at p 211.

146 2ABOD at p 211.

147 2ABOD at p 212.

148 2ABOD at p 212.

149 2ABOD at p 213.

14	15 June (17:16)	Shaun stated that Deribit would be moving all of Moonalpha's positions in its sub-accounts to the Main Account in 45 minutes.[150]
15	15 June (18:02)	Shaun stated that Deribit would be moving all of Moonalpha's positions in its sub-accounts to the Main Account.[151]
16	15 June (18:02–21:21)	Shaun explained that, post-consolidation, Moonalpha's Main-Account required a top-up of around 400 BTC and around 12,000 ETH to "cover the negative equity and margin".[152]
17	16 June (00:01–11:25)	Luuk requested for a call with Wang Li and Yang Zhou to be arranged to "discuss the situation".[153] Wang Li and Yang Zhou did not respond. Instead, on behalf of Wang Li and "team", Liu requested that Deribit "keep the situation within this group only" while the Babel Group was working towards a solution.[154]
18	16 June (18:50–18:53)	John Jansen, a representative of Deribit, asked whether the representatives of the Babel Group had anything to "discuss further" with Deribit. Liu replied that it would be appreciated

150 2ABOD at p 213.

151 2ABOD at p 213.

152 2ABOD at pp 214–215.

153 2ABOD at p 215.

154 2ABOD at p 215.

		"if these info are strictly contained to this group" while the Babel Group worked "diligently for a solution".[155]

37 It is evident from the correspondence in the Telegram Group that Deribit had begun liquidating the accounts held by Moonalpha on 14 June 2022. Specifically, on 15 June 2022, Deribit transferred all the derivative contracts and the cryptocurrencies deposited by way of margin in every account held by Moonalpha to the Main Account, following which it consolidated Moonalpha's positions across all its accounts.[156] Deribit eventually liquidated all of Moonalpha's trading positions a couple of days thereafter,[157] resulting in a total deficit of US$12,533,733 (218.1618 BTC at a price of US$ 21,070.67 per BTC and 7340.5263 ETH at a price of US$ 1,081.20 per ETH) across all its accounts with Deribit.[158] This meant that the Babel Group's customers' investments, in so far as they were held by the Babel Group through Moonalpha's accounts with Deribit, were completely wiped out. Throughout this process, Moonalpha and/or the entities that formed the Babel Group remained locked out of, and was unable to access, its Main Account or any of its sub-accounts.[159]

38 Subsequently, Moonalpha received a letter dated 29 June 2022 from DRB Panama ("29 June Letter"), where the latter demanded Moonalpha pay a sum of US$12,533,733 to make good the total deficit remaining in its Main Account.[160] In the 29 June Letter, DRB Panama asserted that it was entirely

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155 2ABOD at pp 216–217.

156 WL at para 170(c).

157 WL at para 170(c).

158 WL at pp 645–646.

159 WL at para 170(d); Notes of Evidence dated 5 December 2025 ("NE 051225") at p 88:11–18.

160 WL at para 173 and pp 645–646.

within its rights to liquidate Moonalpha's Main Account and all of its sub-accounts pursuant to "clause 2.5 of the [2nd NLAA] and our terms of service".[161]

Parastate's discovery of the loss of the Management Asset

39 On 17 June 2022, the Babel Group issued a notice to its customers stating that the cryptocurrency had "seen major fluctuations" and that it was "facing unusual liquidity pressures". In the same notice, it was stated that the Babel Group would be suspending redemptions and withdrawals of all its financial products for an unspecified period.[162]

40 Two days later, on 19 June 2022, Chen Jiayi requested, by way of a Telegram message to Liu and Jiang, that the Management Asset be withdrawn.[163] He did not receive a response.[164] As such, on 20 June 2022, Chen Jiayi, on behalf of Parastate, issued a written withdrawal notice to BAAMPL, Yang Zhou, Wang Li and Wang Wenliang, formally requesting the withdrawal of the Management Asset by 24 June 2022, failing which legal action would be taken for breach of the CMA.[165] In that notice, Chen Jiayi asserted Parastate's contractual right under the CMA to withdraw the Management Asset since the requisite period of three months had elapsed since the commencement date of the MP (see [25(d)] above).[166]

161 WL at p 645.

162 ACKE of p 5, S/N 23; WL at paras 176–177 and p 648.

163 ACKE at p 5, S/N 24; CJY at para 34 and pp 137–138.

164 CJY at p 138.

165 ACKE at p 5, S/N 25; CJY at para 35 and pp 180–181.

166 CJY at p 180.

41 Parastate did not receive a refund of the Management Asset. Instead, at or around 2:30 pm on 20 June 2022, Chen Jiayi was added to a Telegram group chat with Wang Li, Yang Zhou, Liu and Lionel Zhao.[167] At around 8pm on the same day, Chen Jiayi spoke to Wang Li over two telephone calls,[168] which have been transcribed and tendered as evidence to this court.[169] In the first call on 20 June 2022 ("First Call"), Wang Li informed Chen Jiayi of the following:

(a) First, Deribit had liquidated the Main Account and all the sub-accounts. He explained that the reasons for the liquidation were "complex". Though the Maintenance Margin of three of the sub-accounts had "reached 100%", Wang Li explained that Deribit would not, in "normal circumstances", have automatically liquidated its accounts as the Babel Group: (i) was "the biggest client of Deribit"; and (ii) had "rights of non-automatic liquidation".[170]

(b) Second, Wang Li stated that Deribit had "suddenly contacted" the Babel Group when the value of cryptocurrencies fell and informed it that "we have to up within one hour". Instead of being given the full one hour, Deribit had begun liquidating the accounts "after about 45 minutes".[171] At that point, Wang Li explained, the Alpha Sub-Account was "definitely without problem". However, Deribit had proceeded to consolidate and liquidate all of Moonalpha's trading positions, causing the Babel Group "massive" losses. Wang Li also informed Chen Jiayi that it was for this reason that the Babel Group had suspended all

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167 ACKE at p 5, S/N 25; WL at para 180.

168 ACKE at p 6, S/N 25; WL at para 183; CJY at para 36.

169 2ABOD at pp 244–259.

170 2ABOD at p 245.

171 2ABOD at p 245.

withdrawals, and that it was working on various solutions to overcome its present liquidity crisis.[172]

42 In the second call that took place on 20 June 2022 ("Second Call"), Chen Jiayi informed Wang Li that the proposed solutions that the Babel Group was working on were "slow remedies" which were unacceptable to Parastate. Wang Li also stated that the Babel Group was balance sheet insolvent to the tune of approximately of US$400m and requested for more time to come up to deal with its problems.[173] After this, the following exchange took place between Wang Li and Chen Jiayi:[174]

[Chen Jiayi]:	I can give you time. We all know that these are extreme circumstances that no one wants to see happen, and we would also like to see whether there is any good solution. However, this matter is a result of your inadequate risk management to achieve complete segregation of funds and thus have affected us, the investors and creditors of the end March Alpha Fund. The responsibility is entirely on your side, Wang LI. Do you understand? It is equivalent to you using our investment money as guarantee money for your other positions. Factually, this is the outcome. How Deribit did the liquidation is based on the agreement and terms between you and Deribit, on which we cannot comment. Do you understand? We can only comment on the situation between us, the two parties, and the solution. Do you agree with this?
[Wang Li]:	I agree with this.

43 Chen Jiayi then agreed to give Wang Li until 22 June 2022 to provide an update on the return of the Management Asset to Parastate.[175] Again, Wang

172 2ABOD pp 245–246.

173 2ABOD at pp 253 and 255.

174 2ABOD at p 253.

175 2ABOD at pp 256–257; CJY at para 39.

Li requested that the information he had shared with Chen Jiayi be kept "confidential" because it would "not [be] good for this information to spread", to which Chen Jiayi agreed.[176]

Events following the commencement of OC 130

44 The Babel Group did not return the Management Asset (or repay a sum equivalent to the value of the Management Asset) to Parastate. Accordingly, on 13 July 2022, Parastate commenced OC 130 against Wang Li, Yang Zhou, BAAMPL and BHL. On the same day, Parastate filed HC/SUM 2564/2022, seeking a worldwide freezing injunction against Wang Li for the sum of US$5m.[177] Andre Maniam J granted the injunction on 28 November 2022 following an *inter partes* hearing on the same day, though limited to a quantum of US$2.5m instead of the US$5m sought by Parastate (*Parastate Labs Inc v Wang Li* [2023] SGHC 153 ("*Parastate (Mareva)*") at [10]).[178] Dissatisfied with the learned judge's decision not to injunct the full US$5m sought, Parastate filed an appeal against the decision in *Parastate (Mareva)*. On 23 September 2023, the Court of Appeal ("CA") allowed Parastate's appeal against Maniam J's decision and ordered, amongst other things, that the injunction granted against Wang Li be extended to cover assets of up to US$5m (*Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [33]).

45 Further, on 30 September 2022, BAAMPL filed HC/SUM 3639/2022, seeking an order that OC 130 be stayed as between Parastate and BAAMPL pursuant to s 6 of the International Arbitration Act 1994 (2020 Rev Ed) on the basis that clause 6.3 of the CMA contained an arbitration agreement. The stay

176 2ABOD at p 258.

177 ACKE at p 6, S/N 28.

178 ACKE at p 6, S/N 35.

was granted by Maniam J on 28 November 2023 (see *Parastate Labs Inc v Wang Li* [2023] SGHC 48 ("*Parastate (Stay)*") at [1]). On the same day, Maniam J ordered that OC 130 be stayed in its entirety on a case management basis pending the resolution of the putative arbitration between Parastate and BAAMPL pursuant to Wang Li's application in HC/SUM 3651/2022 (*Parastate (Stay)* at [2]).

The Babel Group's scheme of arrangement

46 Following Deribit's liquidation of Moonalpha's positions and the Babel Group's suspension of withdrawals, the Babel Group decided to embark on a restructuring of its debts and liabilities to its creditors and customers.[179] Sometime in August 2022, the Babel Group distributed an "initial restructuring plan" to creditors who signed non-disclosure agreements.[180] Subsequently, on 6 March 2023, BHL, BAAMPL, Moonalpha and two other wholly-owned subsidiaries of the Babel Group (Babel Block Limited and Shinar Trading Services Private Limited) applied, individually, for moratoria protection for a period of six months under s 64 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA") by way of HC/OA 192/2023, HC/OA 193/2023, HC/OA 194/2023, HC/OA 195/2023 and HC/OA 196/2023.[181] Aidan Xu J granted the applications on 17 April 2023, with the moratoria relief ordered to apply until 21 June 2023 (*Re Babel Holding Ltd* [2024] 4 SLR 1087 ("*Babel (Convening Order)*") at [2]).[182] On 26 June 2023, Maniam J ordered that the case management stay in respect of Wang Li and

179 WL at para 192.

180 ACKE at p 6, S/N 29; WL at para 194.

181 ACKE at p 7, S/N 38.

182 ACKE at p 7, S/N 39.

Yang Zhou be lifted with effect from 22 July 2023 in light of the grant of those moratoria orders.[183]

47 Subsequently, on 17 July 2023, Xu J granted the five entities' applications for an extension of the moratoria orders until 15 September 2023 (*Babel (Convening Order)* at [3]; see *Re Babel Holding Ltd* [2023] 5 SLR 900).[184] On the same day, Xu J also granted Wang Li's and Yang Zhou's applications in HC/SUM 2092/2023 and HC/SUM 2093/2023 for OC 130 to be stayed on case management grounds until the expiry of the extended moratoria orders (15 September 2023) ("CMS").[185] On 13 September 2023, Xu J ordered for the CMS to be extended co-extensively with the moratoria orders granted in favour of the five entities in the Babel Group ("Extended CMS").[186] Parastate did not object to Xu J's grant of the Extended CMS.[187]

48 The moratoria applications were based on a proposed scheme of arrangement that the Babel Group had proposed to its creditors sometime in August 2022 ("Scheme") (see *Babel (Convening Order)* at [4]). The terms of the Scheme envisioned the use of a deed poll structure that would combine the claims against all the companies in the Babel Group into a single scheme to be compromised together (see *Babel (Convening Order)* at [4(a)]). Further, the scheme creditors could elect between two types of consideration in exchange for releasing the companies in the Babel Group from all scheme claims.[188] The

183 1ABOD at pp 192–193.

184 ACKE at p 7, S/N 40.

185 ACKE at p 7, S/N 41.

186 Notes of Evidence for HC/SUM 2810/2023 dated 15 September 2023 at p 2:1–2.

187 Notes of Evidence for HC/SUM 2810/2023 dated 15 September 2023 at p 1.

188 WL at para 208; CJY at para 50.

first type of consideration took the form of tokens called the "Babel Recovery Coin" ("BRC"), which entitled a scheme creditor the right to redeem a *pro rata* share of a sinking fund established by the Babel Group for the purposes of the Scheme.[189] The second type of consideration took the form of an option to subscribe for contingent value rights ("CVRs") in HOPE Maintenance Centre ("HOPE"), a newly established investment holding company in the Cayman Islands. A scheme creditor who elected for CVRs would acquire "economic rights broadly equivalent" to shares in HOPE.[190] The details of the scheme were elaborated on in the explanatory statement ("ES") and a supplementary explanatory statement ("SES") issued by BHL to its creditors under s 211(1) of the Companies Act 1967 (2020 Rev Ed) ("CA") on 18 September 2023 and 9 December 2023 respectively.[191]

49 On 20 September 2023, Xu J granted BHL permission under s 210(1) of the Companies Act 1967 (2020 Rev Ed) to convene a meeting of a single class of creditors on or before 17 December 2023 for the purposes of considering and, if thought fit, approving (with or without modifications) the proposed Scheme (see generally, Xu J's decision in *Babel (Convening Order)*).[192] On the same day, Xu J also ordered a further extension of the extended moratoria orders until three weeks after the scheme meeting is held.[193]

50 On 1 December 2023, Xu J granted Parastate's application in HC/SUM 3190/2023 for the case management stay extended on 15 September

189 WL at para 208; CJY at para 50(a).

190 WL at para 208; CJY at para 50(b).

191 ACKE at p 8, S/N 42 and S/N 48; CJY at paras 49–50 and 56–57.

192 ACKE at p 8, S/N 44.

193 Agreed Bundle of Documents (Volume 4 of 4) dated 19 November 2025 ("4ABOD") at p 22.

2023 to be lifted, on the basis that the Scheme "contemplate[d] no nexus with [Wang Li]".[194] Based on a perusal of the notes of evidence of the hearing of HC/SUM 3190/2023 on 1 December 2023, it was clear that the learned judge was relying on the fact that BHL (and the scheme manager) had expressly rejected the possibility of granting a third-party release to Wang Li under the terms of the Scheme.[195] Given that the terms of the Scheme would have had no impact on the right of Parastate to proceed against Wang Li (see also, in this regard, *Babel (Convening Order)* at [20]), the learned judge saw it appropriate to lift the case management stay of OC 130.

51 On 17 December 2023, BHL convened the scheme meeting with 46 scheme creditors present and voting.[196] 37 creditors representing 80.43% in number and 90.15% in value voted in favour of the Scheme,[197] thereby meeting the requisite statutory majority for a scheme of arrangement to become binding on a company and its creditors under ss 210(3AA) and 210(3AB) of the CA. Parastate voted against the Scheme in view of its conclusion that the Scheme would not permit it to recover the full value of its lost Management Asset.[198]

52 On 22 January 2024, Xu J heard and granted BHL's application in HC/SUM 47/2024 for the Scheme to be sanctioned by the court so as for it to become binding on the Babel Group and all Scheme creditors.[199] Being bound by the terms of the Scheme as a scheme creditor, Parastate:

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194 Notes of Evidence of HC/SUM 3190/2023 dated 1 December 2023 at p 4:12–16.

195 CJY at paras 64–65.

196 ACKE at p 8, S/N 49; CJY at para 58.

197 ACKE at p 8, S/N 49; CJY at para 59.

198 CJY at para 58.

199 ACKE at p 9, S/N 52.

(a) elected to receive BRCs as consideration under the Scheme for its admitted scheme claim amount of US$5m by way of an election form submitted to the scheme manager on 28 February 2024.[200]

(b) discontinued OC 130 against BAAMPL and BHL on 18 March 2025 as they were parties to the Scheme, the terms of which required that Parastate's claims against BAAMPL and BHL in OC 130 be discontinued.[201]

(c) discontinued OC 130 against Yang Zhou on 16 January 2025, who has a third-party release under the Scheme.[202]

Procedural history

53 On 3 November 2025, Parastate filed HC/SUM 3226/2025, where it sought an order to attend court be issued under O 15 r 4 of the Rules of Court 2021 ("ROC") to one Tan Wei Cheong ("Tam"), the scheme manager of the Scheme, compelling him to give oral evidence on the ES and the SES. Concurrently, Parastate also sought an order for Tam's affidavit of evidence-in-chief ("AEIC") to be dispensed with under O 15 r 16(2) of the ROC. Parastate had, by this application, sought to question Tam about the PTAs undertaken by the Babel Group and the positions taken in relation to them in the ES and the SES.[203] Parastate was of the view that the oral evidence elicited from Tam in relation to such matters would assist it in proving Parastate's assertions that the

200 CJY at para 61 and p 1047.

201 ACKE at p 9, S/N 60; NE 011225 at pp 10:22–11:4.

202 ACKE at p 9, S/N 57; NE 011225 at p 10:18–22.

203 Affidavit of Chen Jiayi dated 27 November 2025 ("CJY SUM 3226") at p 113.

Babel Group's collapse had been caused by PTAs, and the losses incurred therefrom had led to the wiping out of the Management Assets.[204]

54 On 17 November 2025, I dismissed the application with brief oral grounds on the basis that Tam was not in a position to provide evidence that would have been of assistance to the present proceedings.[205] Specifically, I was of the view that Tam did not have personal knowledge of the specific allegations pertaining to the PTAs which Parastate intended to rely on for the purposes of the present proceedings, given: (a) that the ES and the SES had been prepared by BHL and finalised before Tam's appointment; (b) the existence of specific disclaimers in the ES stating that BHL's Scheme advisers had not verified the accuracy or the completeness of its contents; and (c) the specific position taken by Tam on affidavit that he has no personal knowledge of the allegations advanced by Parastate in OC 130, which pertained to events which had occurred before his appointment as scheme manager.

The parties' cases

55 In OC 130, Parastate has advanced claims against Wang Li for dishonestly assisting "Babel Finance" in its alleged breaches of trust and/or fiduciary duties.[206] Parastate has also claimed against "Babel Finance" for making various fraudulent misrepresentations in the Presentation Deck and the CMA, and seeks to pierce "Babel Finance's" corporate veil to hold Wang Li personally liable for those misrepresentations.[207] Lastly, Parastate has also

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204 CJY SUM 3226 at paras 25–26.

205 Notes of Evidence for HC/SUM 3226/2025 dated 17 November 2025 at p 17:5–10.

206 Claimant's Closing Submissions dated 4 February 2026 ("CCS") at para 5; SOC at paras 6J–6M.

207 SOC at paras 6N–15.

claimed against all of the defendants in unlawful means conspiracy for allegedly combining together to defraud, and/or make fraudulent misrepresentations to, Parastate.[208]

56 I note that, following the discontinuance of its claims against Yang Zhou, BAAMPL and BHL, Parastate appears to be only pursuing its claim in dishonest assistance against Wang Li.[209] Parastate has not made any legal submissions on its claims in fraudulent misrepresentation and unlawful means conspiracy. The only live cause of action in these proceedings, therefore, is whether Wang Li is liable to Parastate for dishonestly assisting the alleged breaches of trust and/or fiduciary duties by BAAMPL or BHL.

Parastate's case

57 I start with Parastate's claim against Wang Li for dishonest assistance. Parastate began by arguing that BAAMPL and/or BHL held the Management Assets for it on an express trust. Though Parastate's pleaded case appeared to be that the purported trust entailed BAAMPL and/or BHL holding *only* the Management Assets on trust for Parastate (only),[210] it took the position in its closing submissions that BAAMPL and/or BHL held the entirety of the invested assets in the Alpha USDT Fund (approximately US\$50m) on trust for all of its subscribers (approximately 16).[211]

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208 SOC at paras 16–18.

209 CCS at paras 5, 8 and 119; 1st Defendant's Reply Submissions dated 5 June 2026 ("DRS") at para 47.

210 SOC at para 6C.

211 CCS at paras 71–72 and 74.

58 Following this, Parastate argues that the subject matter and the objects of the purported trust were certain – there were 16 investors investing US$50m in the Alpha USDT Fund held in the Alpha Sub-Account, with each investor being entitled to "a proportionate co-ownership" of that US$50m.[212] Parastate also argues that there was a clear intention for BAAMPL and/or BHL to hold the US$50m for the 16 investors on trust. In doing so, it relies on, among others, the grounds that: (a) Recital 2 of the CMA provided that the Management Assets were to be managed by BAAMPL "on behalf of" and "for the benefit" of Parastate; (b) the investors' assets were segregated in the Alpha Sub-Account; (c) BAAMPL and/or BHL would provide weekly disclosures and updates to those investors in relation to the status of the Alpha USDT Fund; and (d) clause 2.11 of the CMA provided that BAAMPL would "always endeavour" to act in Parastate's best interests as its client.[213]

59 In addition, or alternative, to its case that BAAMPL and/or BHL held the Management Assets for it on an express trust, Parastate also submits that BAAMPL and/or BHL owed it fiduciary duties in respect of its management of the Management Assets.[214] BAAMPL and/or BHL had, firstly, made "an undertaking of responsibility" to Parastate, as evidenced by the fact that BAAMPL and/or BHL had: (a) held themselves out as being experienced in asset management; (b) undertaken to manage the Management Assets "on behalf of" and "for the benefit of" Parastate in Recital 2 of the CMA; and (c) promised to always endeavour to act in Parastate's best interests and resolve

212 CCS at paras 71–72.

213 CCS at paras 69–70 and 74; Claimant's Reply Submissions dated 5 June 2026 ("CRS") at para 27.

214 SOC at para 6C; CCS at para 89(1).

conflicts of interests fairly in clause 2.11 of the CMA.[215] Parastate further points to how BAAMPL and/or BHL had "full" and "absolute discretion" in relation to the management of the Alpha USDT Fund (within the confines of its mandate), and how investors had "no say or influence" over how such management would be carried out.[216] Parastate was therefore vulnerable, especially given that the CMA had not been the subject of any negotiation.[217] Owing to these facts, Parastate submits that BAAMPL and/or BHL owed it fiduciary duties to, amongst others: (a) act in the best interests of Parastate; (b) act in good faith and honestly in respect of the Management Assets; and (c) "properly safeguard the Management Assets and to ensure that it is only used for the purposes of investing in the [Alpha] USDT Fund".[218]

60 Next, Parastate argues that BAAMPL and/or BHL had breached its duties *qua* fiduciary and/or trustee by "failing to take steps to stop Deribit from consolidating the sub-accounts with the Main Account and to safeguard the Management Asset".[219] By failing to so act, Parastate argues that the Management Assets had "in fact" been used to "pay down the losses [BAAMPL and/or BHL] had suffered (and which it owed to Deribit) as a result of the PTAs that Wang Li carried out".[220] Parastate submits that, when Deribit had asked in the Telegram Group whether consolidating all of Moonalpha's sub-accounts with its Main Account would cause "any issues" on the Babel Group's end, BAAMPL and BHL were obliged by virtue of their fiduciary duties to "speak

215 CCS at paras 83–89; CRS at para 36(3).

216 CCS at paras 85 and 91(1)–(2); CRS at para 36(1).

217 CRS at para 36(2); CCS at para 90.

218 SOC at paras 6D(1)–(2) and 6D(6).

219 CCS at para 104; CRS at para 51; SOC at para 6E.

220 CCS at paras 98 and 103.

up and to tell Deribit that the assets in the Alpha Sub-Account belonged to the investors of the Alpha USDT Fund and are not assets of Babel Finance”.[221] In failing to do so, Parastate submits that BAAMPL and/or BHL had been in breach of its duties to: (a) act in good faith and honestly in relation to the Management Assets; and (b) safeguard the Management Assets.[222]

61 Additionally, Parastate also appears to be arguing that BAAMPL and/or BHL had breached its duty to act in good faith and honestly in respect of the Management Assets (as well as to properly safeguard them) by using them to: (a) finance, underwrite and/or guarantee its own and/or its other client’s investment positions; and/or (b) to obtain additional margin quantum for its own and/or its other clients’ investments.[223] According to Parastate, the Management Assets had been “used as collateral” for the PTAs conducted by the Babel Group, when BAAMPL and/or BHL were under a duty to ensure that the Management Assets were used “solely for the purposes of the Alpha USDT Fund”.[224] Though it is unclear, Parastate appears to be arguing that, had BAAMPL and/or BHL duly discharged its duties, Deribit would not have used the Management Assets to pay down the losses suffered on the PTAs.[225]

62 Turning to the element of assistance, Parastate asserts that Wang Li’s inaction in failing to respond to Deribit’s messages in the Telegram Groupbetween 14 and 15 June 2022 amounted to him assisting the abovementioned breaches of BAAMPL’s and/or BHL’s fiduciary and/or trustee

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[221] CCS at para 104(4).

[222] CCS at para 104.

[223] SOC at para 6E.

[224] CCS at paras 102; SOC at paras 6E and 6K–6K1.

[225] CCS at paras 102–103; CRS at paras 56–58.

duties.[226] At that point, Wang Li knew that Deribit had been continuously requesting the Babel Group to bring the Maintenance Margins for the three sub-accounts back to acceptable levels, as well as the fact that its customers' assets were at risk.[227] Parastate argues that Wang Li had "a duty to speak in those circumstances" and that its failure to do so "procured, facilitated, caused and/or led to [BAAMPL's and/or BHL's] breach of trust and/or fiduciary duties".[228]

63 Finally, Parastate submits that Wang Li's alleged assistance of BAAMPL's and/or BHL's breaches of trust and/or fiduciary duties was dishonest. It has marshalled the following evidence in support. First, Wang Li knew that BAAMPL and/or BHL would benefit from the consolidation and the cross-liquidation of the sub-accounts and the Main Account "through a reduction of [BAAMPL's and/or BHL's] debts owed to Deribit".[229] Second, Liu's request (on behalf of the Babel Group) to Deribit requesting it to "strictly contain" the information in the Telegram Group allegedly showed Wang Li's "desire to keep the truth under cover as long as possible" (see [36], S/Ns 17 and 18).[230] Third, Wang Li knew that the Alpha Sub-Account "did not belong" to BAAMPL and/or BHL and was not to be used for any unauthorised purposes.[231] Fourth, Wang Li had failed to inform Chen Jiayi, during the two calls that took place on 20 June 2022, that: (a) the reason why BAAMPL and/or BHL had to top up the Maintenance Margins on its sub-accounts was because they had suffered massive losses in the PTAs; (b) it was untrue that Deribit had "suddenly

226 CCS at paras 108–109; CRS at para 59.

227 CCS at para 107.

228 CCS at para 109.

229 CCS at para 109.

230 CCS at para 110.

231 CCS at para 111.

contacted" BAAMPL and/or BHL before liquidating its accounts; and (c) Deribit had asked Wang Li whether it would cause "any issues" if it were to effect a consolidation of all the sub-accounts with the Main Account.[232]

Wang Li's case

64 Wang Li denies every aspect of Parastate's claim in dishonest assistance. Wang Li's first argument is that Parastate has, since its opening statement, been attempting to advance a new case on dishonest assistance from that which has been pleaded in its SOC. According to Wang Li, Parastate's pleaded case in its SOC was that BAAMPL and/or BHL had been in breach of its trustee and/or fiduciary duties by using the Management Assets for the unauthorised purposes of: (a) financing, underwriting and/or guaranteeing its own and/or its other clients' investments; and (b) obtaining additional margin quantum for its own and/or its other clients' investments.[233] The assistance that is alleged to have been rendered by Wang Li was that he had caused, procured, and/or directed BAAMPL and/or BHL to enter into PTAs using: (a) "funds and/or assets of which the Management Assets formed part of"; and/or (b) the Management Assets as collateral ("Pleaded Case").[234]

65 By contrast, in Parastate's opening statement dated 25 November 2025 (which had been filed a week before trial), Parastate allegedly took the position that BAAMPL and/or BHL had breached its trustee and/or fiduciary duties by "allowing Deribit to collateralise and use the Management Assets to cover the losses incurred by [BAAMPL's and/or BHL's] trades" or the trades of its other

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232 CCS at para 112.

233 DCS at para 5(a); SOC at para 6K.

234 DCS at para 5(c); SOC at para 6K1.

clients.[235] The assistance that Wang Li is alleged to have rendered in this regard was his "substantive inaction" in "not preventing, objecting and/or taking any remedial steps to stop Deribit's actions", which had in turn caused the Management Assets to be used to reduce BAAMPL's and/or BHL's losses in other accounts which had deficits in their Maintenance Margin ("Unpleaded Case").[236] Wang Li argues that this Unpleaded Case is "clearly substantially and fundamentally different" from the Pleaded Case, and that Parastate should not be permitted to pursue it at this stage of the proceedings.[237]

66 Turning next to the questions as to whether BAAMPL and/or BHL were constituted as the express trustees or fiduciaries of the assets in the Alpha Sub-Account, Wang Li began by arguing that the only legal relationship that Parastate had with the Babel Group was that with BAAMPL. He argued that, therefore, the only entity in the Babel Group that could have been constituted as a trustee or fiduciary *vis-à-vis* Parastate was BAAMPL.[238]

67 Following this, Wang Li argues that Parastate's case that BAAMPL was a trustee of the assets in the Alpha USDT Fund is entirely without merit. First, he argues that there was no evidence, or a lack of clarity, as to: (a) the amount of cryptocurrency held in the Alpha Sub-Account; (b) the contribution of each investor of the Alpha USDT Fund; and (c) precisely who the 16 investors of the Alpha USDT Fund were.[239] Therefore, he argues, the subject matter and objects of the purported trust were uncertain. Second, Wang Li also argued that there

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235 CCS at para 4; Claimant's Opening Statement dated 25 November 2025 ("COS") at para 44.

236 CCS at para 4; COS at para 49.

237 DCS at paras 6–9.

238 1st Defendant's Closing Submissions dated 4 February 2026 ("DCS") at para 24.

239 DCS at para 30; DRS at paras 18–19 and 22.

was no clear intention for BAAMPL to have held the assets in the Alpha USDT Fund on an express trust for the investors. He argued that the CMA and the MP, which governed the legal relationship between Parastate and BAAMPL, are "bereft of any language alluding to a trust structure".[240] In addition, Wang Li pointed to the finding of Xu J in *Babel (Convening Order)* that the Management Assets were not held on trust for Parastate (at [18]–[19]). As Parastate had subsequently withdrawn its appeal (CA/CA 33/2023) against the learned judge's decision in *Babel (Convening Order)*, Wang Li argues that Parastate "must therefore be taken to have accepted all the findings" therein.[241]

68 Wang Li also denies the existence of any fiduciary relationship between BAAMPL and Parastate. First, he submits that Parastate and BAAMPL were commercial parties dealing with each other at arm's length, and that it is inappropriate to have expected BAAMPL to subordinate its interests to Parastate's.[242] Second, Wang Li points out that Parastate was "a seasoned player in the cryptocurrency industry" who was "more than capable of advancing and protecting its own interests".[243] Third, Wang Li argues that the terms of the CMA militated against the finding of a fiduciary relationship between BAAMPL and Parastate. Specifically, he argues that clause 2.11 of the CMA made it plain that the parties had not intended for BAAMPL to be subject to the fiduciary duties to act in the best interests of Parastate and to avoid positions of conflicts of interests.[244] Fourth, Wang Li argues that Parastate was not

240 DCS at paras 32–44.

241 DCS at para 45.

242 DCS at paras 52–53.

243 DCS at paras 53–55.

244 DCS at paras 56–58.

vulnerable as the discretion that BAAMPL had over the management of the Management Assets was "limited" by the confines of the MP and the CMA.[245]

69 In relation to the alleged breaches of trustee and/or fiduciary duties by BAAMPL, Wang Li has segmented his submissions based on what he terms the "Pleaded Case" and the "Unpleaded Case" (see [64]–[65] above). Wang Li has made two main arguments in relation to the Pleaded Case. First, Wang Li submits that Parastate has "not provided a shred of evidence whatsoever to back up its allegations".[246] To the extent that Parastate is relying on the ES and SES to prove that BAAMPL and/or BHL had used the Management Assets as collateral for the PTAs (or exposed them to the risks of the PTAs), Wang Li argues that they are inadmissible hearsay evidence as their makers had not been called to give evidence.[247] Second, there is "clear evidence" showing that: (a) BAAMPL and/or BHL had not used the Management Assets (or any portion thereof) in relation to the PTAs; and (b) the Management Assets had not been exposed to the risks of the PTAs.[248] Said evidence took the form of: (a) how the PTAs had not been conducted with the Management Assets; (b) how the Management Assets had been deposited into the Alpha Sub-Account; and (c) the existence of the Sub-Account Policy.[249]

70 In relation to the Unpleaded Case, Wang Li argues that there was no breach of any trustee/fiduciary duties on the part of BAAMPL as they had taken clear steps to ensure that the sub-accounts were not consolidated and

245 DCS at para 59.

246 DCS at para 68.

247 DCS at paras 69–73.

248 DCS at para 75.

249 DCS at paras 75–77.

liquidated.[250] Additionally, Wang Li argues that Parastate has adduced no evidence to show that Deribit would not have liquidated the Alpha Sub-Account even if Wang Li, BAAMPL had spoken up and informed Deribit that the assets in the Alpha Sub-Account belonged to its clients.[251] Given that there was no breach of any trustee/fiduciary duties by BAAMPL, Wang Li submits that he did not, and could not have, assisted in any such breach.[252]

71 Lastly, Wang Li submits that Parastate has failed to show that he had acted dishonestly during the relevant course of events. First, Parastate has not pleaded any allegation or particulars of dishonesty on the part of Wang Li.[253] Second, Wang Li did not have any knowledge of the underlying facts and circumstances giving rise to BAAMPL's trust or fiduciary obligations.[254] This was because, until 20 June 2022, Wang Li had not even known that Parastate was a customer of BAAMPL (or the Babel Group), nor about the details of the Alpha USDT Fund.[255] Third, Wang Li asserts that his inaction, in the circumstances, did not offend "ordinary standards of honesty".[256]

Issues to be determined

72 It is not disputed by the parties that a claimant bringing a claim in dishonest assistance must show: (a) the existence of a trust or fiduciary obligation; (b) a breach of a trust or fiduciary obligation; (c) assistance rendered

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250 DCS at paras 78–79.

251 DCS at para 80.

252 DCS at paras 81–82.

253 DCS at paras 84–87.

254 DCS at paras 88–92.

255 DCS at paras 89 and 91.

256 DCS at para 93.

by the defendant towards the breach; and (d) that the assistance rendered was dishonest (*Miao Weiguo v Tendcare Medical Group Holdings Pte Ltd* [2022] 1 SLR 884 ("*Tendcare Medical*") at [45]; see also *George Raymond Zage III v Ho Chi Kwong* [2010] 2 SLR 589 ("*George Raymond*") at [20]).

73 Accordingly, the broad issues that arise in this case are:

(a) first, whether BAAMPL and/or BHL held the assets in the Alpha Sub-Account on an express trust for the subscribers of the Alpha USDT Fund;

(b) second, whether BAAMPL and/or BHL was in a fiduciary relationship with Parastate in respect of the Management Assets, and if so, what fiduciary duties were owed;

(c) third, whether BAAMPL and/or BHL had breached its duties as trustee and/or fiduciary;

(d) fourth, whether Wang Li had rendered assistance to BAAMPL's and/or BHL's breach(es) of its duties as trustee and/or fiduciary; and

(e) fifth, whether the assistance rendered by Wang Li to BAAMPL's and/or BHL's breach(es) of its duties as trustee and/or fiduciary had been dishonest.

Issue 1: Whether BAAMPL and/or BHL held the assets in the Alpha Sub-Account on an express trust for the subscribers of the Alpha USDT Fund

The law

74 The creation of an express trust requires the presence of "three certainties": (a) certainty of intention; (b) certainty of subject matter; and (c)

certainty of objects (*Guy Neale v Nine Squares Pty Ltd* [2015] 1 SLR 1097 ("*Guy Neale*") at [51]; *Baker, Michael A v BCS Business Consulting Services Pte Ltd* [2020] 4 SLR 85 ("*Michael Baker*") at [217]). The burden of proving these lies on Parastate as the party alleging the creation of the trust (*Hyhonie Holdings Pty Ltd v Leroy* [2004] NSWCA 72 at [45]).

Certainty of Intention

75 The first certainty, certainty of intention, requires proof that the alleged settlor had intended to create a trust and subject property to trust obligations (*The State-Owned Company Yugoimport SDPR v Westacre Investments Inc* [2016] 5 SLR 372 ("*Westacre Investments*") at [55]). Such an intention may be inferred from the settlor's words or conduct, the surrounding circumstances and the interpretation of any agreements that might have been entered into (*Michael Baker* at [217]; *Guy Neale* at [50] and [52]–[53]). Regardless of whether the trust is created by way of a unilateral declaration over a settlor's own property or a transfer of property to a third party pursuant to a bilateral arrangement, the intention to create a trust is to be discerned objectively from the words used. The required analysis, in this regard, is similar to the familiar exercise of contractual interpretation (*Byrnes v Kendle* (2011) 279 ALR 212 at [102] and [113]–[115] (*per* Heydon & Crennan JJ); see also *Quoine Pte Ltd v B2C2 Ltd* [2020] 2 SLR 20 ("*Quoine v B2C2*") at [144], citing with approval *Korda v Australia Executor Trustees (SA) Ltd* (2015) 255 CLR 62 ("*Korda*") at [11]; see also *Korda* at [108]–[109]). As the relevant intention is assessed at the time of the creation of the purported trust, the words and conduct of the settlor after such time will often be less probative (*Wilkinson v North* [2018] 4 WLR 41 at [2]).

76 A requirement or obligation on the part of the alleged trustee to segregate the alleged trust property from his own property (or those of third parties) is a useful indication of an intention to create a trust (see *Henry v Hammond* [1913] 2 KB 515 at 521, cited with approval in *Hinckley Singapore Trading Pte Ltd v Sogo Department Stores (S) Pte Ltd* [2001] 3 SLR(R) 119 ("*Sogo Department*") at [18]). Similarly, the fact that the alleged trustee had in fact segregated the alleged trust assets by, for example, payment into a separate bank account is "a useful (though by no means conclusive) indication" of an intention to create a trust (*Re Kayford* [1975] 1 WLR 279 at 282, noted in *Guy Neale* at [54]). Segregation, however, is merely a factor that is to be weighed in the overall evidential calculus as to whether a trust had been intended. The mere fact of segregation, therefore, should not be taken as being conclusive as to the existence of a trust (*Quoine v B2C2* at [145]; *Vintage Bullion DMCC v Chay Fook Yuen* [2016] 4 SLR 1248 ("*Vintage Bullion*") at [61]). Similarly, a lack of segregation should not be taken as automatically precluding the existence of a trust (*Sogo Department* at [39]).

77 Generally, it is permissible to consider the commercial context of the transaction, as well as the expectations of the parties to the alleged trust, in determining whether there was an intention to create a trust (see *Vintage Bullion* at [61], citing *Sogo Department* at [40]; see also *Westacre Investments* at [56]). As a starting position, "the courts have been reluctant to introduce the intricacies and doctrines of trust into ordinary commercial affairs" (*Vintage Bullion* at [63]). It is particularly inappropriate for a court to infer a trust "simply because a court thinks it is an appropriate means of protecting or creating an interest" (*Quoine* at [144], citing *Korda* at [11]). The "unthinking extension" of trusts to the commercial context, without cogent evidence as to the certainty of the settlor's intention to create one, has a real potential to upset the usual

proportionate distribution of assets in the putative beneficiary's insolvency (see *Pearson v Lehman Brothers Finance SA* [2010] All ER (D) 232 ("*Lehman Brothers*") at [225(x)] and [264] and *Snell's Equity* (Steven Elliott gen ed) (Sweet & Maxwell, 35th Ed, 2025) ("*Snell's Equity*") at para 22–015). As noted by Keane J in *Korda* (at [205]):

> The need for clarity as to the intention to create a trust and its subject matter is of particular importance in a commercial context where acceptance of an assertion that assets are held in trust is apt to defeat the interests of creditors of the putative trustee. The traditional inclination of the courts is to protect creditors against the use of a straw company as a trading trustee.

Certainty of Subject matter

78 The second certainty, certainty of subject matter, requires: (a) the assets which are to be held on trust to be identifiable and clearly defined; and (b) the kind of interest that the beneficiaries are to take in them to be sufficiently certain (see *Guy Neale* at [59]). The parties are in agreement that cryptocurrencies are a species of intangible property – specifically, a chose in action – capable of being held on trust (see *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748 at [29]–[36]; see also the CA's tentative views in *Quoine* at [137]–[144], as well as *David Ian Ruscoe and Malcolm Russell Moore v Cryptopia Limited* [2020] NZHC 728 ("*Crytopia*") at [124] and [133]; *Re Gatecoin Ltd* [2023] 3 HKC 401 ("*Gatecoin*") at [59]).[257]

79 Generally, where a defined portion of an unsegregated bulk of property is alleged to have been held on trust, the said trust will fail unless it is certain precisely which assets forming part of that bulk constitute the subject matter of the trust (see generally, *Re London Wine Co (Shippers) Ltd* [1986] PCC 121

[257] CCS at para 54; DCS at para 29.

("*London Wine*") and *Re Goldcorp Exchange Ltd* [1994] 3 WLR 199 ("*Goldcorp*")). This is due to what the late Professor Sir Roy Goode referred to as the "allocation principle", which refers to "the law's insistence that proprietary rights cannot be acquired in fungibles forming an unidentified part of a bulk until they have been separated by some suitable act of appropriation" (Roy Goode, "Ownership and Obligation in Commercial Transactions" (1987) 103 LQR 433 at 436). The point may be illustrated by way of an example set out in Vincent Ooi and Christopher Hare, *Singapore Trusts Law* (LexisNexis, 2021) ("*Singapore Trusts Law*") at para 2–53:

> [I]f a farmer, who owns a flock of twenty sheep absolutely, attempts to declare in favour of his son an immediate *inter vivos* trust over five sheep that will continue to be part of the flock, but without specifying or identifying which sheep they are, the trust will fail for a lack of certainty as to the trust's subject matter. This is because it would be impossible (without some act of segregation) for the farmer, as trustee, to know which five sheep he held on trust for his son (and in respect of which he owed fiduciary duties) and which sheep remained his own property absolutely (and at his free disposal).

80 The point is also illustrated by Oliver J's decision in *London Wine*, where London Wine Company ("LWC"), a vintner, sold bottles of wine to its customers which it would store on their behalf. Those customers would not receive the wine bottles themselves, but instead a certificate of title confirming their beneficial ownership of the relevant quantities and types of wine they had purchased. The LWC pooled these bottles in its warehouses unsegregated from its general trading stock. Subsequently, the LWC went into receivership. Its customers asserted that they had a proprietary claim to their bottles of wine under a trust. Though the case was substantially disposed on a point pertaining to the law on the sale of goods, Oliver J noted that there was no certainty as to the subject matter of the alleged trust, reasoning that the customers were unable

to identify specifically which bottles of wine had been held for their benefit by the LWC (*London Wine* at 137):

> I appreciate the point taken that the subject matter is a part of a homogenous mass so that specific identity is of as little importance as it is, for instance, in the case of money. Nevertheless, as it seems to me, to create a trust it must be possible to ascertain with certainty not only what the interest of the beneficiary is to be but to what property it is to attach.

81 The position above should be contrasted with the decision of the English and Wales Court of Appeal ("EWCA") in *Hunter v Moss* [1994] 1 WLR 452 ("*Hunter (CA)*"; see *Hunter v Moss* [1994] 1 WLR 614 where permission to appeal to the House of Lords was dismissed). There, Mr Moss held 950 shares in a company with an issued share capital of 1,000 shares. He was taken to have made an oral declaration of trust over 50 shares (out of the 950 shares he owned) for the benefit of Mr Hunter, his employee. Notwithstanding the fact that the 50 shares said to constitute the subject matter of the trust had not been specifically identified, it was held that the trust did not fail for uncertainty of subject matter (*Hunter (CA)* at 457–458). Dillon LJ (delivering the judgment of the court) appeared to agree with the decision of Colin Rimer QC (as he then was), the first instance judge, who had reasoned that the fungible nature of the 950 shares were such that it was entirely irrelevant "which particular 50 shares were to be regarded as [being] held" on trust for Mr Hunter (see *Hunter (CA)* at 459F and *Hunter v Moss* [1993] 1 WLR 934 ("*Hunter (HC)*") at 946F; see also *Lehman Brothers* at [229]). *London Wine* was distinguished on the basis that it was "concerned with the appropriation of chattels and when the property in chattels passes" as opposed to a declaration of trust (*Hunter (CA)* at 458G–H). On one interpretation of *Hunter (CA)*, therefore, it may be said that a trust over an unidentified part of an unsegregated bulk of fungible assets does not fail for uncertainty of subject matter, on the ground that there are no relevant differences between the individual assets forming the bulk to justify specifying

the assets that are subject to the trust (*Snell's Equity* at para 22–018; see also Lynton Tucker, Nicholas Le Poidevin KC & James Brightwell, *Lewin on Trusts* (Sweet & Maxwell, 20th Ed, 2020) at para 3–007).

82 It has been said that the true distinction between cases like *London Wine* and *Hunter v Moss* lies in the difference between tangible assets (or chattels) like bottles of wine (as in *London Wine*) and gold bullions (as in *Goldcorp*) on the one hand, and intangible assets like dematerialised securities or cryptocurrencies on the other (see *Re Harvard Securities Ltd* [1997] 2 BCLC 369 ("*Harvard Securities*") at 382–383 and *Gatecoin* at [61]–[62]). Others have suggested that the true distinction lies between fungible and non-fungible assets – that is, whether each asset forming part of the relevant bulk is "identical in its qualities" and effectively interchangeable (see *Singapore Trusts Law* at para 2–66 and *Snell's Equity* at para 22–108; though, *cf* Roy Goode, "Are intangible assets fungible?" [2003] LMCLQ 379 ("*Intangible Assets*") at 383–384). There has been much judicial and academic ink split over the correctness of the reasoning in *Hunter (CA)* and how it should be reconciled with authorities like *London Wine* and *Goldcorp* (see, for example, the commentaries cited in *White v Shortall* [2006] 9 ITELR 470 ("*White v Shortall*") at [155]–[163]; see also *Lehman Brothers* at [231]–[232], *Singapore Trusts Law* at paras 2–67 to 2–76 and Alastair Hudson, *Equity and Trusts* (Routledge, 8th Ed, 2015) at pp 124–126).

83 Be that as it may, the conclusion reached in *Hunter (CA)* that a trust over a part of a shareholding does not fail for uncertainty of subject-matter has been generally followed (see *Lehman Brothers* at [231], citing *Harvard Securities* (England and Wales); *White v Shortall* (Australia); *Gatecoin* at [61(1)] and *Re CA Pacific Finance Ltd* [2000] 1 BCLC 494 ("*Pacific Finance*") at 508–509 (Hong Kong)). The trend in the authorities, however, has been to re-interpret

Hunter (CA) as involving a declaration of trust over one-nineteenth of Moss's bloc of 950 shares. On this approach, Hunter would have been equitably entitled to one-nineteenth of each of Moss's 950 shares, the relationship between Hunter and Moss being one of equitable tenants in common of the entire bloc of 950 shares in the ratio of 1:18 (see *Singapore Trusts Law* at para 2–77 and David Hayton, "Uncertainty of subject-matter of trusts" (1994) 110 LQR 335 at 339). As Briggs J (as he then was) explained in *Lehman Brothers*, such a trust works by creating a beneficial co-ownership share in the identified fund, instead of having to identify a particular part of that fund which each beneficiary owns outright (*Lehman Brothers* at [232]). The relevant trust is, therefore, not defeated by any uncertainty as to its subject-matter.

84 Such a recharacterisation of the analysis in *Hunter (CA)*, however, is strictly speaking inconsistent with the express finding of Rimer QC at first instance (which was affirmed on appeal) that the trust declared by Moss in that case entailed Hunter being the equitable owner of 50 shares, and not an equitable tenant in common with Moss in relation to the entire bulk of the 950 shares (see Jamie Glister & James Lee, *Hanbury & Martin: Modern Equity* (Sweet & Maxwell, 22nd Ed, 2021) at para 4–007). This co-ownership analysis, however, is entirely consistent with the orthodox proposition that there is no subject-matter uncertainty in a situation whereby X declares himself a trustee of a specified bulk of assets in proportionate shares for himself and Y. In such a case, the trust is capable of taking effect as an equitable tenancy in common between X and Y in the agreed proportions (see *Wilkinson v North* at [23], citing *Re London Wine* at 137). Therefore, as explained by Prof Charles Mitchell in Charles Mitchell, *Hayton and Mitchell: Commentary and Cases on the Law of Trusts and Equitable Remedies* (Sweet & Maxwell, 13th Ed, 2010) at para 4–102:

> T can validly declare that he holds the chose in action representing his 950 shares on trust as to eighteen nineteenths for himself and one nineteenth for B: it is then clear that the subject matter of the trust is the entire shareholding, and that T and B have eighteen nineteenths and one nineteenth undivided shares in the chose.

85 A similar analysis was adopted in *White v Shortall*, where the defendant was found to have made a declaration of trust over 222,000 out of a total of 1.5 million shares in favour of the claimant. An argument was made by the defendant's counsel that the purported trust failed for want of certainty of subject matter (at [152]). At the risk of oversimplification, Campell J (as he then was) in the Supreme Court of New South Wales held that the claimant held the entire 1.5 million shares on trust, of which 220,000 was held for the benefit of the defendant and the rest held for his own benefit. The learned judge found the defendant's declaration of trust was, "in substance", a declaration that "220,000 of the shares he held were on trust for the [claimant], and the rest were on trust for himself" (at [210]). Specifically, in relation to the defendant's argument about the alleged lack of certainty as to the subject matter of the purported trust, Campbell J explained (at [212]):

> A trust of this kind is not analogous to a simple trust, where a single and discrete item of property is held on a bare trust for a single beneficiary. Rather, it is a trust of a fund (the entire shareholding of 1.5m shares) for two different beneficiaries (the [claimant] and the defendant himself) … It is because the trust is construed as being of the entire shareholding that it is not necessary for the plaintiff to be able to point to some particular share and be able to say 'That share is mine'. It is because of this feature of the trust that the defendant declared that an attempt to draw an analogy with cases concerning whether property passes in items of goods when the goods are not appropriated to the contract (like *London Wine Co* or *Re Goldcorp Exchange*) fails—because in those cases, identification of the individual items in which property has passed is essential if the property in them is to pass … It does not require there to be identification of particular shares in which the beneficiary has the beneficial interest. Given the nature of shares in a company, it is perfectly sensible to talk about an individual

> having a beneficial interest in 222,000 shares out of a parcel of 1.5m, even if it is not possible to identify individual shares that are held on trust.

86 Subsequently, in *Lehman Brothers* (at [232]), Briggs J endorsed the co-ownership analysis as elucidated in Campbell J's decision in *White v Shortall* (at [212]) and Prof Sir Roy Goode's article in *Intangible Assets* (see 381–382) which was described to be "the most persuasive" approach to the creation of a trust over a part of an unsegregated bulk (at [212]). In Briggs J's view, the principle to be derived from *Hunter (CA)*, and the judicial and academic authorities thereon, was that a trust over a part of a fungible mass of intangible assets without the appropriation of any specific parts of it for the beneficiaries does not fail for uncertainty of subject matter, provided that: (a) the mass is sufficiently defined; and (b) each beneficiary's proportionate share of the mass is not uncertain (*Lehman Brothers* at [225(iii)] and [227]). This analysis, I note, has been applied in the context of cryptocurrencies (see *Gatecoin* at [61]–[62]; see also United Kingdom, The Law Commission, *Digital Assets: Final report* (No 412, 2023) at paras 7.53–7.55). I also note that Briggs J's statement of principle was not overruled (or challenged before) the EWCA in the appeal against his decision (*Re Lehman Brothers International (Europe)* [2012] 2 BCLC 151 ("*Lehman Brothers (CA)*") at [69]–[77]).

87 The parties have agreed that the approach that should be taken *vis-à-vis* the alleged trust over the assets in the Alpha Sub-Account is that of Briggs J's analysis of *Hunter (CA)* in *Lehman Brothers*.[258] I agree and find no reason to disagree with the parties on this point, or Briggs J's co-ownership analysis in *Lehman Brothers*, which in turn built upon the persuasive reasoning of Campbell J in *White v Shortall* and Prof Sir Roy Goode in *Intangible Assets*.

[258] CCS at paras 64(1) and 71; DCS at para 29; DRS at para 16.

Certainty of Objects

88 The third certainty, certainty of objects, requires that the objects of the trust be definable by reference to a conceptually certain criterion. In the case of a fixed trust, it suffices if there is a conceptually certain criterion by which the trustee can, in theory, draw up a complete list of the beneficiaries intended to take an interest under the trust. Practical or evidential difficulties, such as identifying or locating the relevant beneficiaries, will not render the alleged trust invalid (*Halsbury's Laws of Singapore* vol 9(3) (LexisNexis Singapore, 2026) at para 110.496; *In re Gulbenkian's Settlements* [1970] AC 508 at 523–524; *In re Saxone Shoe Co Ltd's Trustee Deed* [1962] 1 WLR 943 at 955).

My decision: Neither BAAMPL nor BHL held the assets in the Alpha Sub-Account on an express trust

89 To recall, Parastate's case is that BAAMPL and/or BHL held the entirety of the cryptocurrencies in the Alpha Sub-Account on an express trust for all of the subscribers of the Alpha USDT Fund. I note that Parastate has not, in its pleadings or submissions, specifically identified the trustee of this alleged trust. Instead, it has pleaded that "Babel Finance was constituted as [Parastate's] trustees and/or fiduciaries in respect of [Parastate's] investments and/or the Management Assets",[259] with Babel Finance defined "collectively" as BAAMPL and BHL.[260]

90 In relation to the identity of the trustee (if any) in this case, I am of the judgment that BHL could not have been the trustee of the Management

[259] SOC at para 6C.

[260] SOC at para 3.

Assets.[261] That is for the simple reason that Parastate had only dealt with BAAMPL and its representatives in investing the Management Assets into the Alpha USDT Fund. First, Liu and Jiang, who were Parastate's only points of contact for its investment into the Alpha USDT Fund, were BAAMPL's employees (see [16(a)] above). Second, there was no legal relationship of any sort between Parastate and BHL – nor any factual encounters between the two – in the lead up to Parastate's investment to the Alpha USDT Fund. As Chen Jiayi himself acknowledged, the terms of Parastate's investment into the Alpha USDT Fund was governed by the "four corners" of the CMA (and the MP) entered into between Parastate and BAAMPL.[262] There was simply no basis to argue that BHL was a trustee of the Management Assets on the present facts; the trustee of those assets, if any, must have been BAAMPL.

91 To recall, Parastate's case is that BAAMPL held the *all* the assets in the Alpha Sub-Account on an express trust for *all* of the subscribers of the Alpha USDT Fund (see [57] above). Though Parastate has not specified precisely when this alleged trust had been created, I find that it must have been created at the Start Date as specified in the MP (18 March 2022), for that is when the initial offering period came to an end and trading in the Alpha USDT Fund commenced.[263] Per the MP, the Alpha USDT Fund was in the nature of a "closed-end fund", which meant that there would be "no new subscribers" after the Start Date.[264] As such, until 18 March 2022, the number of subscribers to the Alpha USDT Fund and the quantum of the cryptocurrencies raised would have

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261 DCS at para 24.

262 NE 021225 at pp 107:25–108:7.

263 1ABOD at p 579.

264 NE 041225 at p 46:15–19.

remained in flux, and it would not have been possible to ascertain with certainty the objects or the subject-matter of the trust.

92 As part of its attempt to prove that the objects and the subject matter of the alleged trust are certain, Parastate relies on Wang Li's evidence in his AEIC that "there were *about* 16 customers who had invested into *the Alpha Funds* and the *estimated* total value of the investments in the Alpha Funds was around US$50 million" [emphasis added].[265] When questioned about this aspect of his evidence at trial, Wang Li agreed with Parastate's counsel, Mr Chu Hua Yi ("Mr Chu"), that there were "16 investors investing 50 million into the [Alpha] *USDT Fund*" [emphasis added].[266] However, the evidence in Wang Li's AEIC was that there were about 16 subscribers who had invested an estimated total of US$50m in the "Alpha Funds", which was defined in Wang Li's AEIC to mean <u>all three sub-funds</u> in the Babel Quant Alpha Fund (see [24] above).[267] It was clear that Wang Li, in his AEIC, was referring not to the number of subscribers and the value of the investment in the Alpha USDT Fund *per se*, but instead to the collective number of subscribers and value of the investments across the Alpha USDT Fund, the Quant Alpha Fund and the Quant Alpha ETH Fund. This was consistent with the fact that the Alpha Sub-Account held not only the cryptocurrencies invested in the Alpha USDT Fund, but also those invested in the Quant Alpha Fund and the Quant Alpha ETH Fund (see [24] above).

93 Parastate has adduced no other evidence (apart from the contents of Wang Li's AEIC and his answers to Mr Chu's questions on the same at trial), to satisfy its burden of proving the fact that there had been 16 investors who had

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265 WL at para 83; CCS at paras 71–72.

266 NE 041225 at pp 30:22–25 and 47:5–8.

267 WL at para 78.

invested a total of US$50m into the Alpha USDT Fund. Quite apart from this, it is Wang Li's unchallenged evidence that: (a) he was not involved in the launch of the Alpha USDT Fund; and (b) he had no knowledge about the details of the Babel Quant Alpha Fund and its investors until at least the commencement of the Babel Group's restructuring, owing to the fact that its size was "very small" relative to other funds that the Babel Group managed.[268] In the premises, I am of the view that Parastate has failed to prove, on a balance of probabilities, that there were 16 investors who had invested US$50m into the Alpha USDT Fund.

Certainty of objects

94 Nonetheless, I am satisfied that the objects of the alleged trust are certain as they can be defined by reference to a conceptually clear criterion – that is, the subscribers of the Alpha USDT Fund as at the Start Date. The evidential uncertainty in identifying precisely who these subscribers are does not defeat the alleged trust (see [88] above; see also *Cryptopia* at [149]). As noted above at [91], the Alpha USDT Fund was in the nature of a closed-end fund, meaning that there would be "no new subscribers" after the Start Date. Though Wang Li suggested that it was possible for the Babel Group to have permitted the entry of new subscribers after the Start Date notwithstanding the nature of the Alpha USDT Fund as a closed-end fund, he was unable to confirm whether any new subscribers had in fact been taken on by the Babel Group after the Start Date.[269] I am therefore of the view that it would have been entirely possible for BAAMPL to have drawn up a complete list of the subscribers to the Alpha USDT Fund as at the Start Date.

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268 WL at paras 79–83; DRS at para 19; NE 041225 at p 47:14–21.

269 NE 041225 at pp 46:20–47:4.

Certainty of subject matter

95 As I have found at [93] above, Parastate has failed to prove that there had been a total investment of US$50m into the Alpha USDT Fund. Even if it were to be assumed that there had in fact been a total of US$50m invested into the Alpha USDT Fund, that says nothing about the number and type of cryptocurrencies which were held in the Alpha Sub-Account as at the Start Date. This is fatal to Parastate's claim that the subject matter of the alleged trust is certain, for it is unable to show a sufficiently defined fungible mass which the subscribers of the Alpha USDT Fund beneficially co-owned as equitable tenants in common (see [83] above).

96 Parastate has argued that the relevant mass was sufficiently identified based on Wang Li's evidence at trial, where he had allegedly alluded to the fact that the Babel Group had kept internal records pertaining to its customers and their investments.[270] It has, in this regard, pointed to me to *Cryptopia* and *Gatecoin*, which are decisions of the New Zealand High Court ("NZHC") and the Hong Kong Court of First Instance respectively. I do not, however, think that those decisions assist Parastate's case.

(a) In *Cryptopia*, the liquidators of a cryptocurrency exchange ("Cryptopia") sought directions from the court as to whether certain quantities of cryptocurrencies were held on express trusts by Cryptopia for accountholders operating on its exchange platform. In holding that there was sufficient certainty of subject matter for the various trusts alleged, Gendall J reasoned that the relevant quantities of cryptocurrencies alleged to form the subject matter of the relevant trusts

270 NE 041225 at pp 22:15–25 and 31:5–6; CRS at para 25(1); CCS at paras 57 and 64.

had been clearly recorded in Cryptopia's "SQL database" (at [147]). The SQL database was an internal database maintained by Cryptopia which recorded transactions carried out, as well as the coin balances of each account, on its exchange (at [34] and [143]).

(b) In *Gatecoin*, the liquidators of a cryptocurrency exchange ("Gatecoin") sought directions from the court as to whether certain quantities of cryptocurrencies were held on express trusts by Gatecoin for its customers who operated accounts on its exchange platform. There were three different sets of terms and conditions governing the relationship between Gatecoin and its customers at three different periods of time, which need not detain us for the present purposes. It suffices to note that Chan J was satisfied that the subject matter of the trusts alleged in that case was sufficiently certain, on the ground that the precise quantity of cryptocurrencies which each customer was entitled to was reflected in Gatecoin's "Exchange Ledger", an internal ledger that recorded details pertaining to all transactions conducted through Gatecoin's exchange platform (at [22(2)] and [62(4)]). In coming to this conclusion, the learned judge took notice of Gendall J's reasoning in *Cryptopia* that the SQL database in that case "clearly recorded the contributions of each accountholder [and therefore] provided sufficient certainty of subject matter" (at [62(3)]).

97 In both *Cryptopia* and *Gatecoin*, the court was satisfied as to the existence of an internal ledger setting out the precise quantities of the cryptocurrencies alleged to have been held on trust as well as the relative entitlement of each accountholder. This was unsurprising, given that the applications in those cases had been made by the liquidators of the relevant companies who would have had access to its books. No such evidence, however,

has been adduced in this case. All that Parastate relies upon is Wang Li's answer at trial that the Babel Group would record the quantities of cryptocurrencies invested with it by its customers – these internal records allegedly kept by the Babel Group have not been brought before me, nor has any evidence as to their existence been adduced by Parastate. A vague allusion to internal records, the comprehensiveness and contents of which are unknown, is hardly sufficient to prove that the subject matter of the alleged trust in this case is certain.

98 For those reasons, Parastate is also unable to show each beneficiary's proportionate share of the mass of cryptocurrencies that were present in the Alpha Sub-Account. In seeking to show otherwise, Parastate relied on Wang Li's evidence at trial that it would have been entitled to a proportionate return of whatever was left in the Alpha USDT Fund, calculated by reference to the quantum of the size of its investment (US$5m) relative to the total sums invested (US$50m).[271] Parastate also relied on Wang Li's evidence that the "other investors" who had invested the remaining US$45m out of the US$50m "would also get back their proportionate share of the assets in the USDT Fund multiplied by whatever is in the fund".[272] None of these, however, went towards showing the relative entitlement of *each* subscriber to the cryptocurrencies that were held in the Alpha USDT Fund. Wang Li's evidence simply affirmed what was already a known truth set out in the Presentation Deck, which is that a subscriber to the Alpha USDT Fund would be entitled to withdraw or redeem their investments after a 90-day period without any redemption fees.[273] Wang Li's evidence on this point could therefore be explained by reference to the terms on which the investments into the Alpha USDT Fund had been made. It

271 NE 041225 at p 32:10–14; CCS at para 71; CRS at para 25.

272 NE 041225 at p 33:9–14; CCS at para 71; CRS at para 25.

273 1ABOD at p 579.

went nowhere towards proving each beneficiary's proportionate share of the cryptocurrencies that were held in the Alpha Sub-Account.

Certainty of intention

99 In my judgment, Parastate has also failed to show that there was a certain intention to create a trust for two key reasons. First, Parastate was relying on the terms of the CMA entered into between it and BAAMPL to establish that a trust had been created over *all* the assets in the Alpha Sub-Account for *all* the subscribers of the Alpha USDT Fund (see [57] above), when it had adduced no evidence as to the terms on which those subscribers had contracted with the Babel Group. The difficulty with such an approach was that there was no evidence indicating that all the subscribers of the Alpha USDT Fund had agreed to invest on identical (or even similar) terms as Parastate. I appreciate Wang Li's evidence that, as far as he was aware, the Babel Group would use "standard form agreements to contract with customers in respect of its financial products".[274] However, as noted at [93] above, Wang Li's evidence was that he did not know about the details of the Babel Quant Alpha Fund. I did not, therefore, understand Wang Li's evidence as being that the Babel Group had used standard form contracts *vis-à-vis* the subscribers of the Alpha USDT Fund.

100 Second, it was uncertain if BAAMPL was the counterparty to every contract for subscriptions to the Alpha USDT Fund. It is undisputed that BAAMPL had been set up as a wholly owned subsidiary of BHL for the purposes of dealing with the Babel Group's Singapore-based customers. However, BHL had at least 15 other wholly owned subsidiaries operating in the

274 WL at paras 77(g) and 77(i).

BVI, the Cayman Islands, Hong Kong, Luxembourg and the USA.[275] It was therefore not a given that customers who wished to invest in the funds managed by the Babel Group would contract solely with BAAMPL. As Wang Li alluded to in his AEIC, there were multiple subsidiaries in the Babel Group who acted as counterparties to the relevant agreements with their customers for the management of cryptocurrency assets.[276] The upshot of this was that it was not possible for this court to conclude with any semblance of certainty that the subscribers of the Alpha USDT Fund – the beneficiaries of the alleged trust – had envisioned that BAAMPL would be the trustee of the cryptocurrencies they had invested into the Alpha USDT Fund.

101 In any case, even if I were to assume that all the subscribers of the Alpha USDT Fund had invested on terms identical (or at least similar) to Parastate, I do not think that the words used in the CMA disclose any intention for BAAMPL to have held the cryptocurrencies in the Alpha Sub-Account on a trust. The CMA was bereft of any language alluding to a trust structure (see *Robert Tantular v The Stephanie Karina* [2025] 1 SLR 1083 ("*Robert Tantular*") at [102] and *Guy Neale* at [52]). Specifically, Recital 2 of the CMA, which Parastate relied on to argue that the CMA evinced a clear intention to create a trust,[277] simply stated that Parastate would be engaging BAAMPL to undertake "cryptocurrency management activities" in respect of the Management Asset "on behalf of and for the benefit of" Parastate. To argue that this amounted to an undertaking on the part of BAAMPL to *hold* the Management Assets "for the benefit of" Parastate is, in my view, a misreading

275 WL at para 36.

276 WL at para 72(a).

277 CCS at paras 70(2) and 74(1)(e); CRS at para 27(1).

of the express words of recital 2. Additionally, as Wang Li pointed out,[278] such an interpretation cuts against the general principle that recitals are not usually regarded as the operative terms of a contract (see *Equation Recycling Pte Ltd v Leading Bio-Energy (S) Pte Ltd* [2026] SGHC 126 at [51]).

102 Parastate also pointed to the fact that the cryptocurrencies of the subscribers of the Alpha USDT Fund had been segregated (from other cryptocurrencies managed by the Babel Group) in the Alpha Sub-Account, arguing that this was an indication that a trust had been intended.[279] I was not persuaded by such an argument. First, there was no requirement or obligation in the CMA requiring BAAMPL (or any other entity within the Babel Group) to segregate the cryptocurrencies invested into a separate sub-account.

103 Second, the fact that those cryptocurrencies had *subsequently* been segregated did not adequately deal with the reality that the cryptocurrencies invested into the Alpha USDT Fund had *initially* been transferred to and commingled with the cryptocurrencies of other investors in the holding wallets of the Babel Group (see [21] above).[280] It would have been highly likely that these holding wallets contained USDT-denominated investments from other customers of the Babel Group, considering that it also accepted investments in its Fixed Income and Structured products in USDT.[281] There was thus no guarantee that, for example, the USDT that was subsequently transferred onwards into the Alpha Sub-Account comprised of the 5m USDT that Parastate had transferred into the designated wallet set out in the CMA.

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278 DCS at para 37.

279 CCS at para 74(1)(a); CRS at para 26.

280 NE 041225 at pp 21:14–24:10 and 25:13–18.

281 1ABOD at pp 566 and 570–575.

104 Third, the significance of the segregation of assets to an intention to create a trust lies not in the fact of segregation itself, but in indicating that the recipient of those assets were not intended to have free disposal of them, which is consistent with an intention to confer beneficial ownership of those assets of another (*MF Global Singapore Pte Ltd v Vintage Bullion DMCC* [2015] 4 SLR 831 at [190] (this part of Hoo Sheau Peng JC's (as she then was) decision was affirmed by the CA on appeal: *Vintage Bullion* at [60]–[63])). In the present case, the segregation of cryptocurrencies based on separate sub-accounts was to "make sure that clients with the same investment strategy are put into the same sub-account",[282] so as to ensure that any given customer's cryptocurrencies were "actually invested for the specific programme that they [had] signed up for".[283] The subsequent segregation of the investments into separate sub-accounts was therefore an administrative arrangement made by the Babel Group – to which Parastate was not privy – in order to facilitate its management of the cryptocurrencies transferred by its customers. It did not evince an intention or recognition on the part of BAAMPL (or the Babel Group) that it was not intended to have free disposal of those cryptocurrencies.

105 That was, after all, consistent with the purpose of the commercial arrangement between Parastate and BAAMPL as embodied in the CMA and the MP. Under that arrangement, it was envisaged that BAAMPL (or the Babel Group) would be authorised, and have "full" and "absolute" discretion (within the confines of the MP), to engage in trades with the invested assets to exploit price differences in cryptocurrencies on the market (see [24] above).[284] If those assets, as Parastate contends, had been impressed with a trust in favour of the

282 NE 041225 at p 28:1–7.

283 NE 041225 at p 21:9–13.

284 NE 041225 at p 52:18–23.

subscribers of the Alpha USDT Fund, the conclusion that follows must be that those trades had been conducted by Moonalpha (on BAAMPL's behalf) using trust assets in which the subscribers of the Alpha USDT Fund had a beneficial interest. Those trades being authorised by the terms on which the subscribers had invested their funds with the Babel Group, their beneficial interests in the cryptocurrencies which they had transferred would have been overreached and extinguished following each trade, with the counterparties to the trade receiving title clear of the subscribers' beneficial interests in the traded cryptocurrencies. They would then have acquired beneficial interests in the substituted assets that Moonalpha received on account of those authorised trades *qua* trustee (see *Space Investments Ltd v Canadian Imperial Bank of Commerce Trust Co (Bahamas) Ltd* [1986] 1 WLR 1072 at 1075G–H; *Snell's Equity* at para 4–013; *Byers v Saudi National Bank* [2024] AC 1191 at [19]).

106 I find it commercially unrealistic, and indeed, wholly artificial, to find that such an arrangement was what the parties had intended. The simpler analysis, which I find more likely to have been intended, was for the subscribers of the Alpha USDT Fund to transfer absolute title to their cryptocurrencies to BAAMPL, which then transferred them to Moonalpha for the purposes of depositing those cryptocurrencies with Deribit in the Alpha Sub-Account for the purposes of trading them unencumbered by any kind of beneficial interests in favour of the subscribers of the Alpha USDT Fund. BAAMPL would then come under a contractual obligation to return an equivalent sum of cryptocurrencies to the subscribers (with the promised returns) upon the exercise of their right of redemption.

107 That this was the true position was augmented by the fact that the cryptocurrencies in the Alpha Sub-Account would have been constantly traded in line with the Babel Group's proprietary strategy, resulting in the nature of the

assets in which the subscribers of the Alpha USDT Fund purportedly had a beneficial interest being constantly fluctuating and ever-changing. A similar factual situation was faced by Yuen J in *Pacific Finance* in relation to a pool of securities held on a computerised clearing system for the trading of shares ("CCASS") by a broker-dealer ("CAPS") in liquidation. A question arose as to whether CAPS's clients, who had instructed it to acquire certain securities on their behalf, had equitable interests in the unappropriated pool of securities held by CAPS on the CCASS. The observations of Yuen J (as she then was) in *Pacific Finance*, in response to an argument that CAPS's clients with interests in a particular type of securities had beneficial interests in the entire pool of those securities as equitable tenants in common, are relevant to the present case (at 509):

> I find it difficult to infer a tenancy-in-common of a pool of securities (which may change in quantity from day to day) when the language of the client agreement is in terms of an individual proprietary interest. And as recognised by Oliver J in [*London Wine*], *where the numerical whole is unknown because of its ever-changing nature, it would be even more difficult to infer an intention of the client that his interest would be that of a tenant-in-common of an ever-changing proportion of an unknown quantity.*
>
> [emphasis added]

I do not preclude the possibility that a constantly changing fund can form the subject matter of a valid trust (see, on this point, *Wilkinson v North* at [19], citing *Lehman Brothers (CA)* at [69]–[77]). On the facts of the present case, however, I do not think that a clear intention that the subscribers of the Alpha USDT Fund should hold the fluctuating mass of cryptocurrencies in the Alpha USDT Fund pursuant to an equitable tenancy in common has been shown.

108 Lastly, I note that the cryptocurrencies which are alleged to have formed the subject matter of the trust were held by Moonalpha in the Alpha Sub-

Account on Deribit's exchange platform. As Moonalpha would have deposited those cryptocurrencies with Deribit for the use of its exchange services, it would likely have been Deribit – and not BAAMPL – which held the title to those assets. Neither of the parties appears to have recognised the difficulty that this posed to Parastate's contention that it was *BAAMPL* which held the assets in the Alpha Sub-Account on trust for the subscribers of the Alpha USDT Fund. Given my conclusions above, however, I will say no more on this.

109 In the premises, I find that Parastate has failed to show that: (a) there is a certain intention to create a trust over all the assets in the Alpha Sub-Account in favour of all the subscribers of the Alpha USDT Fund; and (b) the subject matter of such a trust is certain. It follows that I need not deal with Wang Li's argument that Parastate must "be taken to have accepted all the findings" by Xu J in *Babel (Convening Order)*, including the learned judge's finding that there was no certainty of intention on the part of BHL to create a trust, and whether Xu J's decision gave rise to an issue estoppel in the present case. In any case, and for avoidance of doubt, I have not relied on the conclusions reached by Xu J in his learned decision in arriving at the conclusions reached above.

Issue 2: Whether BAAMPL and/or BHL were in a fiduciary relationship with Parastate in respect of the Management Assets

The law

110 A "fiduciary" was defined by Millet LJ (as he then was) in *Bristol and West Building Society v Mothew* [1998] Ch 1 ("*Bristol v Mothew*") at 18A–C (cited with approval in *Tan Yok Koon v Tan Choo Suan* [2017] 1 SLR 654 ("*Tan Yok Koon*") at [192]; see also *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* [2018] 2 SLR 655 ("*Turf Club*") at [42]):

> A fiduciary is *someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence*. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to *the single-minded loyalty of his fiduciary*. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are *the defining characteristics of the fiduciary*.
>
> [emphasis added]

111 It is well established that the law recognises various settled categories of relationships as generally being fiduciary in nature – these include the relationships of trustee-beneficiary, director-company and solicitor-client. It is, however, equally well-established that fiduciary duties may be owed in relationships that fall outside of these settled categories on an *ad hoc* basis, provided that the circumstances justify the imposition of such duties (*Turf Club* at [43]). The relevant inquiry, in this regard, is whether the putative fiduciary had "voluntarily place[d] himself in a position where the law can objectively impute an intention on his or her part to undertake those obligations" (*Tan Teck Kee v Ratan Kumar Rai* [2002] 2 SLR 1250 ("*Tan Teck Kee*") at [69], citing *Tan Yok Koon* [194]). This inquiry is said to be "notoriously open-ended", and that the court can "rarely be more precise – without being unduly dogmatic – than broadly examining the specific nature of the role played by the putative fiduciary" (*Robert Tantular* at [106], citing *Tan Teck Kee* at [69]).

112 In an attempt to provide some structure to this open-ended inquiry, this court has endorsed the analytical framework set out by the Supreme Court of Canada ("SCC") in *Alberta v Elder Advocates of Alberta Society* [2011] 2 SCR 261 ("*Alberta*") at [30]–[36] (*OK Tedi Fly River Development Foundation Ltd*

v OK Tedi Mining Ltd [2023] 3 SLR 155 ("*OK Tedi*") at [84]; *Yeo Xueli Celeste v Sin David* [2025] SGHC 166 ("*Celeste Yeo*") at [30]). There, McLachlin CJ refined an earlier analytical framework in ascertaining the existence of an *ad hoc* fiduciary relationship as set out by Wilson J in *Richard Hugh Frame v Eleanor Margaret Smith* [1987] 2 SCR 99 at [60] (endorsed by the CA in *Susilawati v American Express Bank Pte Ltd* [2009] 2 SLR(R) 737 ("*Susilawati*") at [41] and *Clearlab SG Pte Ltd v Ting Chong Chai* [2015] 1 SLR 163 at [275]). Under the revised framework in *Alberta*, F becomes an *ad hoc* fiduciary for B if:

(a) F gives an undertaking of responsibility, express or implied, to act in B's interests. What this requires is "an undertaking by [F], express or implied, to act in accordance with the duty of loyalty reposed in him or her". Specifically, B must be able to point to "a forsaking by the alleged fiduciary of the interests of all others in favour of those of the beneficiary, in relation to the specific legal interest at stake" (*Alberta* at [30]–[31], citing *Galambos v Perez* [2009] 3 SCR 247 ("*Galambos*") at [75] and [77]).

(b) B is vulnerable to F in the sense that F has a discretionary power over B or over the class to which B belongs (*Alberta* at [33]).

(c) F's power may affect B's legal interests or his substantial practical interests (*Alberta* at [34]).

113 In my judgment, the crucial indicator pointing towards the existence of an *ad hoc* fiduciary relationship lies in the factor identified at [112(a)], namely, the existence of an undertaking (or an agreement) on the part of the putative fiduciary to act for or on behalf of the interests of his principal with single-minded loyalty (see *Galambos* at [77]; *Snell's Equity* at para 7–005). Such an

undertaking need not have been made expressly; it suffices if the objectively assessed circumstances enable the court to identify such an undertaking (see *Tan Teck Kee* at [76] and *Hopcraft v Close Brothers Ltd* [2025] 3 WLR 423 ("*Close Brothers*") at [100] and [109]). This is consistent with Millett LJ's classic definition of a "fiduciary" in *Bristol v Mothew*, as well as the well-established position in Singapore law that the "hallmark of a fiduciary obligation" is that a fiduciary is "to act in the interests of another person with a single-minded duty of loyalty to that person" (*Tan Yok Koon* at [192]; *Robert Tantular* at [104]; see also *Ng Eng Ghee v Mamata Kapildev Dave* [2009] 3 SLR(R) 109 at [135]). It is consistent with Mason J's statement in *Hospital Products v United States Surgical Corporation* (1984) 55 ALR 417 at 454 (endorsed in *Susilawati* at [41]) that the "critical feature" of a fiduciary relationship is one where the putative fiduciary "undertakes or agrees to act for or on behalf of or in the interests of another person in the exercise of a power or discretion which will affect the interests of that other person in a legal or practical sense" (see also *Naaman v Jaken Properties Australia Pty Ltd* (2025) 421 ALR 227 ("*Jaken Properties*") at [76]). It is also consistent with the principle that fiduciary duties are voluntarily undertaken "in the sense that it arises as a consequence of the fiduciary's conduct and is not imposed by law independently of the fiduciary's intentions" [emphasis in original removed] (*Tan Yok Koon* at [194]).

114 It is because a fiduciary has undertaken to act loyally in the interests of his principal that the latter is vulnerable to the exercises of discretionary power by the former. Therefore, the mere fact of a vulnerability on the part of the putative principal cannot lead to a finding of a fiduciary duty. As the United Kingdom Supreme Court ("UKSC") put it in its unanimous judgment in *Close Brothers* (at [108]; see, in a similar vein, the observations of Gageler CJ,

Gleeson, Jagot and Beech-Jones JJ in *Jaken Properties* at [43] and *Snell's Equity* at para 7–006):

> [T]he vulnerability which is the typical characteristic of a person to whom a fiduciary duty is owed, is *a consequence and not a cause of a fiduciary relationship*. It is *because the fiduciary has undertaken to act solely in the best interests of the principal*, and the latter trusts the fiduciary to do so, in a situation where it is usually possible for the fiduciary to act in a self-interested way, that the vulnerability typically arises.
>
> [emphasis added]

115 Similarly, the mere fact that one party subjectively reposed trust and confidence in his counterparty to a commercial transaction does not result in a finding of a fiduciary relationship: "one may trust a plumber to do a job properly without the plumber being a fiduciary" (*Close Brothers* at [110]). As Leggatt LJ (as he then was) noted in *Nehayan v Kent* [2018] All ER (D) 156 ("*Nehayan*") at [164], there are "many situations in which a party to a commercial transaction may legitimately repose trust and confidence in another without the other party owing fiduciary duties". A misplaced assessment as to trustworthiness or the reliability of the putative fiduciary does not give rise to a fiduciary duty: "[h]igh expectations do not necessarily lead to equitable remedies" (*Goldcorp* at 98; see also *Hospital Products* at 492 (*per* Dawson J), cited with approval in *OK Tedi* at [87]). In *Nehayan*, Leggatt LJ explained that the type of trust and confidence which is characteristic of fiduciary relationships is founded on (at [165]):

> [T]he acceptance by one party of a role which requires exercising judgment and making discretionary decisions on behalf of another and constitutes *trust and confidence in the loyalty of the decision-maker to put aside his or her own interests and act solely in the interests of the principal*.
>
> [emphasis added]

116 It is this voluntary acceptance or assumption of a role which requires the exercise of discretionary power on behalf of another which enables the court to conclude that the putative fiduciary has objectively undertaken to forsake his own interests in favour of his putative principal (see also *Attorney General v Blake* [1998] Ch 439 at 454 and *Close Brothers* at [97]). The relationship of trust and confidence is, therefore, "the consequence, and not the cause, of a fiduciary duty" (*Close Brothers* at [108] and *Snell's Equity* at para 7–006).

117 It has been said that the courts will, and should, be slow in finding that fiduciary obligations have been established in the context of a purely commercial relationship. This is because it is "normally inappropriate" to expect a commercial party to undertake to subordinate its own interests to those of another commercial party (*Turf Club* at [45]; *OK Tedi* at [87]). Nevertheless, it is clear that fiduciary obligations may be found to have been owed if an undertaking to put aside self-interest and act solely in the interests of the other party can be objectively identified in the circumstances of the relationship between the parties (*Snell's Equity* at para 7–007).

118 The precise scope of the fiduciary obligations owed in any given case must be "moulded" according to the nature of the parties' relationship (*New Zealand Netherlands Society "Oranje" Inc v Kuys* [1973] 2 All ER 1222 ("*Oranje*") at 1225). Hence, where there is a contractual relationship between the parties, the contract is of first importance as that is what must have been intended by the parties to regulate their basic rights and liabilities. The fiduciary relationship must therefore "accommodate itself to the terms of the contract so that it is consistent with, and conforms to, them. The fiduciary relationship cannot be superimposed upon the contract in such a way as to alter the operation which the contract was intended to have according to its true construction"

(*Hospital Products* at 455, cited with approval in *OK Tedi* at [87] and *Clearlab* at [273]).

My decision: Neither BAAMPL nor BHL was in a fiduciary relationship with Parastate

119 In my judgment, neither BAAMPL nor BHL was in a fiduciary relationship with Parastate. For the reasons set out at [90] above, I do not think that it is arguable that BHL was in a fiduciary relationship with Parastate. I begin first with the CMA entered into between BAAMPL and Parastate, the terms of which have primacy in assessing the existence of an *ad hoc* fiduciary relationship (see *OK Tedi* at [87] and [118] above), and which the parties accept sets out the "four corners of the parties' legal obligations to each other".[285]

120 Parastate relies on three portions of the CMA as constituting "objective indicia" of "an undertaking of responsibility" on Parastate's part.[286] First, Recital 2 of the CMA, which states that Parastate would be engaging BAAMPL to "undertake" certain cryptocurrency management activities in respect of the Management Assets "on behalf of and for the benefit of" Parastate. Second, clause 2.11 of the CMA, the first sentence of which provides that BAAMPL "shall always endeavour to act in [Parastate's] best interests as [BAAMPL's] client". Third, the statement "We have your best interest in mind", which is emblazoned on the top-left corner of each page of the CMA.

121 In my judgment, none of these portions of the CMA, whether individually or cumulatively, shows that the parties were in a fiduciary relationship. It is undeniable that BAAMPL had undertaken to manage the

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285 NE 021225 at p 108:4–7; DCS at para 56.

286 CRS at para 36(3).

Management Assets on behalf of and for the benefit of Parastate under Recital 2 of the CMA. The type of undertaking that is relevant in the search for a fiduciary relationship, however, is an undertaking to act *loyally* and to forsake the interests of all others (including one's own interests) in favour of the putative principal in relation to the particular interest at stake (see [112(a)] above; see also *Celeste Yeo* at [31]). The undertaking by BAAMPL in Recital 2 was merely a recognition that it would be undertaking to perform the terms of the CMA and the MP, which in and of itself was insufficient to ground a finding that it had undertaken to act with a duty of single-minded loyalty. In *Hospital Products*, Gibbs CJ referred to Asquith LJ's decision in *Reading v R* [1949] 2 KB 232, where the learned judge had stated that a fiduciary relationship exists "whenever the plaintiff entrusts to the defendant a job to be performed, for instance, the negotiation of a contract on his behalf or for his benefit, and relies on the defendant to procure for the plaintiff the best terms available" (at 236). Gibbs CJ regarded such a proposition to be "far too wide", as "the fact that there is a duty to be performed – a job to do – cannot in every case create a fiduciary obligation" (*Hospital Products* at 433–434). I respectfully agree with Gibbs CJ's analysis, which I find consistent with my findings on Recital 2 above. The mere fact that a contracting party has undertaken contractual duties clearly cannot suffice to give rise to a fiduciary relationship.

122 Second, clause 2.11 of the CMA did not indicate that BAAMPL had undertaken to forsake its interests (and those of third parties) and act with a duty of single-minded loyalty to Parastate. The first sentence of clause 2.11 of the CMA clearly states that BAAMPL promises to *always endeavour* to act in Parastate's best interests. In this regard, I accept Wang Li's submission that guidance should be sought from the case law on the construction of "endeavours" clauses in *Travista Development Pte Ltd v Tan Kim Swee*

Augustine [2008] 2 SLR(R) 474 ("*Travista Development*") and *KS Energy Services Ltd v BR Energy (M) Sdn Bhd* [2014] 2 SLR 905 ("*KS Energy*"). As the CA noted in *KS Energy*, decisions on the meaning and effect of certain commonly-used phrases in contracts can provide "authoritative guidance on the *prima facie* meaning of similar phrases" in other contracts, since: (a) the contracting parties would likely have taken into account the general law in reaching their agreement; and (b) attributing such *prima facie* meanings to similar phrases promotes commercial certainty (see *KS Energy* at [45]). The following propositions from those two cases are helpful in the present case:

(a) First, a "best endeavours" obligation is a non-absolute obligation which requires the obligor to "do everything reasonable in good faith with a view to procuring the contractually-stipulated outcome within the time allowed". This involves taking "all those reasonable steps which a prudent and determined man, acting in the interests of the *obligee* and anxious to procure the contractually-stipulated outcome within the available time, would have taken" (*Travista Development* at [22]; *KS Energy* at [47(a)]).

(b) Second, a "best endeavours" obligation is not a warranty to procure the contractually-stipulated outcome (*Travista Development* at [22]; *KS Energy* at [47(d)]).

(c) Third, in fulfilling a "best endeavours" obligation, the obligor may take into account its own interests (*Travista Development* at [22]; *KS Energy* at [47(c)] and [82]–[88]). The position taken in several English cases, where it has been said that the obligor is a *quasi*-fiduciary position *vis-à-vis* the obligee and may not subordinate the latter's interests to the former's own interests, does not represent the law in Singapore (*KS Energy* at [48]–[52]).

(d) Fourth, the test for determining whether an "all reasonable endeavours" obligation has been fulfilled is ordinarily the same as that for determining whether a "best endeavours" obligation has been fulfilled. The same test should ordinarily apply "even if the parties used a variation of the phrase 'all reasonable endeavours' or 'best endeavours' (as the case may be)" – unless the parties have expressly stipulated the steps which are to be taken by the obligor to discharge its obligation (*KS Energy* at [62] and [94]).

(e) Fifth, an "all reasonable endeavours" obligation is ordinarily more onerous than a "reasonable endeavours" obligation. A "reasonable endeavours" obligation merely requires an obligor to act reasonably to procure the contractually-stipulated outcome (*KS Energy* at [63]).

(f) Sixth, a distinction must be drawn between an obligation to use "all reasonable endeavours" to have a third party to do a thing and an obligation to use "all reasonable endeavours" to do that thing on one's own (*KS Energy* at [137]).

123 The obligation in the first sentence of clause 2.11 of the CMA for BAAMPL to "always endeavour" to act in the best interests of Parastate was not one that fit in neatly in the categories of "all reasonable endeavours", "best endeavours" or "reasonable endeavours" clauses that the CA discussed in *KS Energy*. In my view, and without deciding the point, the standard required of BAAMPL under first sentence of clause 2.11 is more onerous than a "reasonable endeavours" clause, but less onerous than that required by an "all reasonable endeavours" or a "best endeavours" clause. That is because the adjective, *viz*,

"reasonable" which qualifies and delimits the endeavours obligation in "reasonable endeavours" clauses is missing in clause 2.11 of the CMA.

124 Regardless of whether that is a meaningful distinction to be drawn as against a "reasonable endeavours" clause, it is clear, as Chen Jiayi accepted under cross-examination, that clause 2.11 only envisioned that BAAMPL was only under an obligation to "*try* [its] best to act in a client's best interests" [emphasis added].[287] Similarly, Wang Li's evidence was also that BAAMPL was only under an obligation to "try [its] best" to act in the best interests of Parastate.[288] Consistent with the legal principle that an obligor under an "endeavours" clause may take its own financial and commercial interests in discharging its obligations thereunder (see [122(c)] above), Wang Li's evidence was that the word "endeavour" had been used because BAAMPL would "not be able to act in the best interests of the clients at all times".[289] Therefore, it was clear that BAAMPL was expressly permitted to engage in a balancing of interests and was not required to eliminate any and all conflict of interests that arose in discharging its obligations under the CMA (see *Hospital Products* at 435–436 (*per* Gibbs CJ) and 490 (*per* Dawson J)). The very fact that BAAMPL's contractual obligation to act in the best interests of Parastate was "non-absolute" in nature (see *KS Energy* at [42]) was incompatible with the "absolute and disinterested loyalty" that equity demands of fiduciaries (*Phelan v Middle States Oil Corporation* (1955) 220 F (2d) 593 at 602–3 (*per* Learned Hand J)).

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287 NE 021225 at p 109:1–4.

288 NE 041225 at p 54:25.

289 NE 041225 at p 58:3–6.

125 This was consistent with rest of clause 2.11 of the CMA, the second sentence of which expressly envisaged that "circumstances can arise where [BAAMPL] or one of [BAAMPL's] other clients may have some form of interest in business being transacted for [Parastate]". The following (third) sentence then provided that, in such circumstances, or where BAAMPL became aware that its *personal* interests or those of its other clients' conflicts with that of Parastate's, BAAMPL "will take appropriate steps to manage the conflict of interests fairly". Clause 2.11 of the CMA therefore embodied a mutual recognition by the parties that any conflicts between the interests of Parastate on the one hand, and the interests of BAAMPL and/or those of its other clients on the other, would not necessarily be resolved in Parastate's favour. This was accepted by Chen Jiayi under cross-examination.[290] It is not difficult to imagine examples of such a conflict. Based on the Presentation Deck, the Babel Group was only entitled to charge a "Performance Fee" of 40% of whatever gains that had been earned on the assets in the Alpha USDT Fund after deducting the 8% return due to its subscribers.[291] It would therefore have had the incentive to enter into riskier trades, or to time the crystallisation of its gains, such that it would be able to maximise its Performance Fees, as opposed to merely securing the 8% return it had promised its subscribers. The pursuit of such an incentive, even if adverse to Parastate's interests, would have been expressly permitted by clause 2.11 of the CMA so long as it was done "fairly".

126 The contractual relationship between the parties therefore policed and defined what is a "core" fiduciary obligation and a "defining characteristic" of a fiduciary – namely, the fiduciary obligation not to place oneself in a position where his interests (or the interests of a third party) conflicts with duty to his

290 NE 021225 at pp 110:23–111:5.

291 1ABOD at p 579.

principal (see [110] above; see also *Sim Poh Ping v Winsta Holding Pte Ltd* [2020] 1 SLR 1199 at [68]–[69]). In these circumstances, I did not see how the terms of the CMA could provide a viable foundation for the erection of a fiduciary relationship between BAAMPL and Parastate. Its terms, in my view, militated against the conclusion that BAAMPL had voluntarily accepted a position from which an undertaking to act solely in the interests of Parastate could be objectively inferred.

127 Parastate also relies on the statement "We have your best interests in mind" which is emblazoned on the top-left corner of each page of the CMA. However, as both parties accepted,[292] this was merely a *slogan* used by the Babel Group in the course of conducting its businesses, as opposed to a "form of commitment or promise" on the part of BAAMPL. Wang Li's unchallenged evidence was that this slogan was "widely used" by the Babel Group across the entire gamut of its businesses on its website, promotional materials and contracts,[293] and had been intended to show its clients that it was "willing to act in [their] best interests".[294] To say that this slogan should be elevated to a fiduciary undertaking to act in the sole interests of Parastate was, with respect, a hopeless argument.

128 Parastate also argues that it was vulnerable given that: (a) BAAMPL had full and absolute discretion in relation to the management of the Alpha USDT Fund; (b) it had "no practical means of monitoring, controlling or withdrawing" the Management Assets during the three-month closed term; and (c) it remained under an asymmetry of information throughout the course of their

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292 NE 041225 at pp 50:9–51:10; CCS at paras 31 and 84(5).

293 NE 051225 at p 66:13–18.

294 NE 041225 at p 51:1–10.

relationship.[295] The short answer to these arguments is that these features were precisely what Parastate had bargained for by entering into the CMA with BAAMPL. Though Parastate argues that the CMA had not been the subject of any negotiation or bargaining between the parties,[296] I place no significance on this fact for the following reasons, which have been pointed out by Wang Li:[297]

(a) First, Parastate accepted that it is a "seasoned cryptocurrency investor" and an "institutional investor" which would "assess the suitability of who [it] put [its] money with".[298]

(b) Second, Chen Jiayi, who made investment decisions on behalf of Parastate,[299] is also "an experienced cryptocurrency investor" who had "about seven to eight years of experience" in the cryptocurrency industry.[300] He would conduct his own due diligence, look at the relevant legal documents and marketing materials, before making an investment decision on behalf of Parastate.[301]

(c) Third, Parastate would engage "external lawyers" to review contracts in order to ensure that their contents are "aligned to what [it] intend[s] to invest in".[302] I also find, as a matter of fact, that Parastate had been legally advised before entering into the CMA with BAAMPL

295 CCS at paras 91(1)–(2); CRS at para 36(2).

296 CCS at para 90.

297 DCS at paras 53–55.

298 NE 021225 at pp 31:2–4 and 32:2–5.

299 NE 021225 at pp 31:24–32:1.

300 NE 021225 at p 26:1–5.

301 NE 021225 at p 32:6–13.

302 NE 021225 at pp 32:14–33:6.

on 17 March 2022. This is evidenced by the messages exchanged on the Telegram Group between Liu, Jiang and Chen Jiayi on 16 and 17 March 2022 leading up to Parastate's entrance into the CMA, where Chen Jiayi refers to Parastate's "attorney" requiring: (a) various documents from BAAMPL for "on-boarding"; and (b) the CMA to be signed before transferring the Management Assets.[303]

129 Parastate's decision to enter into the CMA was therefore a considered commercial decision made with the benefit of legal advice. It did not suffer from an informational asymmetry in relation to BAANMPL's management of the Management Assets, given that BAAMPL had undertaken to make weekly disclosures as to the performance of Parastate's investment at 5pm every Friday.[304] On Parastate's own case, it had received those weekly updates and disclosures pertaining to the performance of the Management Assets in accordance with the terms of the MP at least until 18 June 2022.[305] Armed with the knowledge as to the performance of the Management Assets, Parastate was free to request, and BAAMPL under a contractual obligation to honour, a withdrawal of the Management Assets in accordance with the MP. A failure to comply would have entitled Parastate to enforce the terms of the CMA by way of suit or by termination under clause 3.2 (see [26(f)] above). In such a situation, Parastate would have also been at liberty to enforce clause 5 of the CMA, which provided for a sweeping indemnity against BAAMPL for any breaches of the CMA on the part of BAAMPL (see [26(g)] above). In my judgment, therefore, the argument that Parastate was vulnerable to the abuses of discretionary power *vis-à-vis* the management of the Management Assets did not take its case far.

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303 2ABOD at pp 164–165.

304 2ABOD at p 26.

305 CCS at para 38.

130 In any case, as noted at [114] above, vulnerability is not the touchstone for the existence of a fiduciary relationship. It is the consequence, and not the cause of, the fiduciary relationship, which requires an undertaking on the part of the putative fiduciary to act loyally in the interests of his principal. Parastate's case that BAAMPL was a fiduciary who had a duty to act *bona fide* in the best interests of Parastate and a duty to avoid conflicts of interests was irreconcilable with the terms of the CMA, which the parties agreed governed the four corners of their relationship. While it is true that a person may be "in a fiduciary position *quoad* a part of his activities and not *quoad* other parts" (*Oranje* at 1225, cited with approval in *Clearlab* at [274]), the subject-matter of the fiduciary duty alleged to arise in this case, *viz*, "the management of the Management Assets",[306] was dealt with comprehensively by the CMA. In that light, Parastate's case that BAAMPL owed it fiduciary duties was, in truth, nothing more than a complaint that the contractual remedies which it was entitled to under the CMA are inadequate. A fiduciary relationship, however, "does not arise where one of the parties to a contract has failed to protect himself adequately by accepting terms which are insufficient to safeguard his interests" (*Hospital Products* at 492 (*per* Dawson J)); it arises where an objective assessment of the terms of the contract and the relevant context enables the court to discern a voluntary undertaking to act loyally in the interests of another. In this case, however, neither the terms, nor the relevant context, was sufficient to permit this court to discern such an undertaking on the part of BAAMPL.

131 Lastly, Parastate relies on Wang Li's admissions in cross-examination that: (a) the Babel Group has "a duty… to act in good faith and honestly in relation to the [Management Assets]";[307] (b) it is part of the Babel Group's "duty

306 CCS at para 89(1).

307 NE 041225 at p 53:11–17; CRS at para 40.

to make sure that the [Management Assets] under its control are only used for the [MP]";[308] and (c) if there were to be a situation where the Management Assets were likely to be used for other purposes, then the Babel Group would come under "a duty to make sure that the [Management Assets are] actually protected to the best of its abilities".[309] First, in so far as these admissions relate to what duties the Babel Group, as a group of entities, owed Parastate, I find them to be unhelpful.

132 Second, even if I were to read them as relating to BAAMPL specifically, I do not think that they take Parastate's case any further, as they add nothing to the contractual duties already owed by BAAMPL under the CMA. Given that the MP expressly envisaged the transfer of the Management Assets to BAAMPL for the purpose of investing into the Alpha USDT Fund (as detailed in the MP), BAAMPL would clearly have been under a contractual duty to ensure that the Management Assets were used only for such a purpose (as opposed to some extraneous purpose). Further, Wang Li's admission in relation to a purported duty to act in good faith and honestly in relation to the Management Assets is referable to the first sentence of clause 2.11 of the CMA, under which BAAMPL had an obligation to always endeavour to act in Parastate's best interests. To say that such a duty was of a fiduciary nature is to shut one's eyes to Wang Li's earlier evidence that BAAMPL would "not be able to act in the best interests of the clients at all times" (see [124] above). I do not, therefore, think that Wang Li's admissions in his cross-examinations are as "decisive" as Parastate asserts them to be.[310]

308 NE 041225 at p 63:6–12; CRS at para 42.

309 NE 041225 at p 63:13–18; CRS at para 42.

310 CCS at para 40.

133 In the premises, I find that BAAMPL was not under a fiduciary obligation in relation to its management of the Management Assets.

Issue 3: Whether BAAMPL had breached its duties as trustee and/or fiduciary

134 Given my findings above that neither BAAMPL nor BHL was a trustee of the Management Assets or Parastate's fiduciary, it follows that the dishonest assistance claim must fail. There can be no liability in dishonest assistance against an alleged accessory unless a breach of trust or fiduciary duty has been established (*The Micro Tellers Network Ltd v Cheng Yi Han* [2023] 5 SLR 280 at [245]). For completeness' sake, however, I will address the other elements of the claim briefly. In doing so, I will assume that I erred in my analysis above that BAAMPL was not a trustee or fiduciary, and that it in fact owed Parastate a duty to act honestly and in good faith for its benefit.

My decision: BAAMPL did not breach its fiduciary duty

135 As noted above at [60] and [61], Parastate argues that BAAMPL had breached its fiduciary duty to act honestly and in good faith by: (a) "failing to take steps to stop Deribit from consolidating the sub-accounts with the Main Account and to safeguard the Management Asset" ("Category A Breach");[311] and (b) using the Management Assets to finance, underwrite and/or guarantee its own and/or its other clients' investment positions, as well as using them to obtain additional margin quantum for its own and/or its other clients' investments ("Category B Breach").

[311] CCS at para 104.

Parastate has not proven that BAAMPL permitted the Management Assets to be used as collateral for the PTAs conducted by the Babel Group

136 I start with the Category B Breach, its gravamen being that the Management Assets had been "used as collateral" for the PTAs conducted by the Babel Group. To start, I note that there is no evidence that it was *BAAMPL* specifically that had engaged in, or otherwise conducted, the PTAs. The evidence before me is that it was Wang Li who managed the strategies of the PTAs, while the actual trades were executed by Wang Li, Zhao and Wang Wenliang (see [29] above). While it appears that the PTAs had been undertaken on behalf of the Babel Group, it is uncertain specifically which entity in the corporate group the PTAs had been undertaken for. The PTAs were conducted from the second half of 2019 up until June 2022, while Wang Li was both: (a) a director of BHL from 6 March 2020 to 28 December 2022; and (b) a director of BAAMPL from 29 July 2021 to 18 January 2022 and from 21 June 2022 to 28 December 2022. While it is clear that Zhao (a director of BHL) was not BAAMPL's employee, the position in relation to Wang Wenliang, who is simply said to be the head of the Trading department of the Babel Group, is less certain. In light of these evidential gaps, I find that Parastate has simply not proven that *BAAMPL* was the entity that conducted the PTAs. Given so, Parastate's only viable case on the Category B Breach must be that BAAMPL had *permitted* the Management Assets to be used as collateral for the PTAs conducted by the Babel Group.

137 However, this runs into a further difficulty, which is Wang Li's evidence that the PTAs had always been "separate and distinct" from the trading activities conducted in relation to the Babel Group's customers' investments.[312] Wang Li

[312] WL–S at para 16.

has asserted the following in relation to the PTAs conducted by the Babel Group. First, the Babel Group did not use its customers' investments or assets to engage in or otherwise conduct the PTAs, which were funded solely by its profits and capital.[313] This was accepted by Chen Jiayi.[314] Second, the Babel Group at all times used not more than five of the sub-accounts that Moonalpha held with Deribit for purposes of conducting the PTAs.[315] These sub-accounts were entirely "separate and distinct" from the sub-account designated for the Babel Quant Alpha Fund, or for that matter, any sub-account designated for the purpose of managing the Babel Group's customers' investments.[316] Third, the Management Assets had in fact been transferred into the Alpha Sub-Account. This has also not been disputed by Chen Jiayi.[317] Fourth, the losses in the three sub-accounts on which margin calls had been triggered on 14 June 2022 were "not all because of [the] PTAs".[318]

138 The only evidence which Parastate has adduced in response to these assertions is the contents of the ES and the SES, where the following, amongst other things, states:[319]

(a) The PTAs were "outside the [Babel] Group's routine business operation protocols, and outside the trading mandate of the [Babel] Group's Trading [d]epartment".[320]

313 WL–S at paras 16 and 20.

314 NE 021225 at p 19:4–6.

315 WL–S at para 20.

316 WL–S at para 20; WL at para 76.

317 NE 021225 at p 23:20–24.

318 NE 051225 at p 15:19–21.

319 CJY at paras 63(1), 63(3) and 63(4).

320 CJY at para 63(1) and p 324.

(b) The trading positions in relation to various BTC futures contracts were "loss-making overall during the period before June 2022".[321]

(c) Sometime in June 2022, when the market price of BTC dropped from US$30,000 to US$20,000, the positions taken under the PTAs "chalked up significant losses of over 8,200 BTC and 56,500 ETH". These caused two sub-accounts "to fail to meet their Maintenance Margins" and led to the eventual consolidation and cross-liquidation of Moonalpha's accounts with Deribit.[322]

139 Wang Li, in contrast, strenuously objected to the admissibility of the ES and the SES on the grounds that they constituted inadmissible hearsay evidence.[323] I agree. The hearsay rule provides that an out-of-court statement cannot be admitted for the purposes of proving the truth of its contents, unless the statement-maker has been produced in court. The rationale for the rule is that the witness cannot verify the truth of the facts of which he has no personal knowledge; such evidence is therefore unreliable and should be excluded from consideration (see *Soon Peck Wah v Woon Che Chye* [1997] 3 SLR(R) 430 at [26], cited with approval in *Orion-One Development Pte Ltd v Management Corporation Strata Title Plan No 3556* [2019] 2 SLR 793 at [9]; see also *Subramaniam v Public Prosecutor* [1956] 1 WLR 965 at 970). It is undisputed that Parastate did not call the individuals who had prepared the ES and the SES – who in any case have not been identified – to give evidence on their contents. It is also undisputed that Chen Jiayi has "no firsthand knowledge" of the

321 CJY at para 63(3) and p 899.

322 CJY at para 63(4) and p 324.

323 DCS at paras 69–74.

contents of the ES and the SES.[324] Parastate has also not made any arguments as to the admissibility of the ES and the SES under the statutory exceptions to the hearsay rule in s 32 of the Evidence Act 1893 (2020 Rev Ed).

140 I therefore find that the ES and SES are inadmissible hearsay evidence which should not be relied on in finding that the Management Assets had been used as collateral for the PTAs. In any case, even if they were to be admitted, the specific portions of the ES and the SES which Parastate has pointed me to do not prove that the Management Assets had been used as collateral for the PTAs. At their highest, they are only probative as to the PTAs having been unauthorised and the PTAs having been loss-making in general. It follows that the explanations provided by Wang Li in his AEIC in response to the allegation of the Category B Breach stand unrebutted.

141 Parastate also relies on two separate strands of evidence to prove its case that the Management Assets had been used as collateral for the PTAs. I do not think that any of them is probative for the following reasons:

> (a) First, Parastate relies on the conversation between Wang Li and Chen Jiayi in the Second Call on 20 June 2022, where Wang Li had appeared to agree that what had happened (*ie*, Deribit's cross-liquidation) was "equivalent" to the Babel Group using the Management Assets "as guarantee money for [their] other positions" (see [42] above).[325] However, Wang Li's evidence was that he had only agreed with Chen Jiayi's statement that the latter could "only comment on the situation between" him and Wang Li, and not Chen Jiayi's statement

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324 NE 021225 at p 91:20–23; DCS at para 71.

325 CCS at para 99.

that the events were "equivalent to [Wang Li] using [Parastate's] investment money as guarantee money for [the Babel Group's] other positions".[326] In any case, even if the *outcome* of Deribit's cross-liquidation was "equivalent" to the Management Assets having been used as "guarantee money" for the Babel Group's positions, that does not prove that the Management Assets had *in fact* been used as collateral to back the trading positions taken by the Babel Group during its PTAs.

(b) Second, Parastate also relies on the contents of the First Call on 20 June 2022, where Wang Li had explained to Parastate that the "maintenance margin of only three of our 30 accounts reached 100%", and that in "normal circumstances", the Babel Group's accounts with Deribit "would not be automatically liquidated as we have rights of non-automatic liquidation".[327] In a similar vein, Parastate also relies on Wang Li's evidence under cross-examination that, prior to Deribit's cross-liquidation, "there should not [have been] any deficit" across all of Moonalpha's sub-accounts and its Main Account as the total equity was greater than its total liabilities.[328] However, these statements were all being made in the context of Wang Li's attempts to explain why Deribit *should* not have effected a consolidation and cross-liquidation of all its trading positions across Moonalpha's Main Account and its sub-accounts. Wang Li's position was that there was no basis for Deribit to have effected a consolidation and cross-liquidation of Moonalpha's trading positions when the net equity across its accounts was positive. He explained that Moonalpha was left with a net negative balance after

326 NE 051225 at p 21:7–13.

327 2ABOD at p 245.

328 CCS at para 101; NE 041225 at pp 101:14–102:3 and pp 107:5–108:6.

the liquidation not because it had suffered substantial losses from the PTAs, but because substantial haircuts had been applied to the assets that had been sold pursuant to Deribit's cross-liquidation.[329] Contrary to Parastate's arguments, I did not see how Wang Li's explanations or the calculation of Moonalpha's net equity position with Deribit *after* the cross-liquidation had occurred proved that the Management Assets had been collateralised for the PTAs conducted by the Babel Group.

142 Given the above, Parastate has failed to show, on a balance of probabilities, that BAAMPL had permitted the Management Assets to be used as collateral for the PTAs conducted by the Babel Group. Accordingly, this head of breach of fiduciary duty is dismissed.

Parastate has not shown that BAAMPL's failure to speak up in the Telegram Group amounted to a breach of its fiduciary duty to act in good faith

143 I turn to the Category A Breach. To explain, Parastate's grievance here is that when Deribit had proposed in the Telegram Group to consolidate all the sub-accounts with the Main Account and asked Wang Li whether it would cause him any problems if they were to do so, BAAMPL, BHL and Wang Li would have known that the Management Assets "were now directly placed at risk".[330] BAAMPL and BHL's fiduciary duty to act in good faith and honestly in the best interests of Parastate "required" them (and Wang Li) to "speak up and to tell Deribit that the assets in the Alpha Sub-Account belonged to the investors of the Alpha USDT Fund and are not assets of Babel Finance" [emphasis in original removed].[331]

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329 NE 041225 at pp 101:18–102:3.

330 CCS at para 104.

331 CCS at para 104(4).

144 Parastate, in this regard, relies on the CA's decision in *Credit Suisse Trust Limited v Ivanishvili, Bidzina* [2024] 2 SLR 164 ("*Credit Suisse*"), where it was held that a trustee's fiduciary duty to perform the trust honestly and in good faith in the interests of the beneficiaries has a positive dimension in at least two ways:

> (a) First, the duty can be *adjectival*, in the sense that "it attaches to or regulates the performance of non-fiduciary duties or exercise of powers". In performing these duties or exercising these powers, a trustee must act honestly and in good faith in the interests of his beneficiaries. The focus is, however, *not* on obliging the trustee to "act as a guarantor and to insure a particular *outcome*, but to ensure that [he] sets his mind towards that goal and *conducts* himself in a manner befitting his obligation of loyalty and his undertaking to act in the beneficiaries' interests" [emphasis in original] (*Credit Suisse* at [47]).
>
> (b) Second, the duty can be *actuating*, in the sense that it will "positively require a trustee *to act* in circumstances where he knows that the interests of the beneficiaries are at risk of harm". The focus is whether the trustee "should have *acted* in the circumstances, not on whether the trustee achieved a particular *outcome*" [emphasis in original]. The decision to act (or not act) must be made honestly in good faith in the interests of the beneficiaries (*Credit Suisse* at [48]).

145 Though it is unclear, I understand Parastate's allegation of the Category A Breach to be an allegation that BAAMPL had breached its fiduciary duty to act in good faith in *both* the adjectival and actuating senses.[332] In relation to the

[332] CCS at para 104.

former, Parastate argues that BAAMPL ought to have acted in good faith and honestly in performing its duty to safeguard the Management Assets. In relation to the latter, Parastate argues that BAAMPL ought to have acted once it knew that the Management Assets were placed at risk of liquidation. The nub of Parastate's case, however, is the same – which is that BAAMPL ought to have spoken up and informed Deribit that the assets in the Alpha Sub-Account belonged to the subscribers of the Alpha USDT Fund.

146 In attempting to show that *BAAMPL* had breached its fiduciary duty, Parastate relies on the knowledge and actions of *Wang Li* during the events leading up to Deribit's cross-liquidation of Moonalpha's accounts. A problem with such an approach is that Wang Li was not then an employee or a director of BAAMPL. Indeed, the entire pith and marrow of Parastate's case in these proceedings is that Wang Li was an *accessory* who had dishonestly assisted BAAMPL's breach of fiduciary duties. In the absence of any arguments to the contrary, Wang Li's actions or knowledge during that period has, strictly speaking, little bearing on what BAAMPL – a separate legal entity – ought to have done as a fiduciary or the trustee of the Management Assets. I note that the only employee of BAAMPL which appears to have been a member of the Telegram Group is Liu (see [36], S/Ns 17 and 18). BAAMPL's CEO (Yu Shan Shan) and its directors in the relevant period (Guan Bowen and Wu Ruihong) do not appear to have been involved in the communications between Deribit and the Babel Group in the Telegram Group (see [9] above).

147 Nonetheless, even if I were to adopt a similar approach as that taken by Parastate and consider that Wang Li had been acting on behalf of BAAMPL (and the entire Babel Group) for the purposes of assessing whether the latter had breached its fiduciary duties to Parastate (the permissibility of which I remain doubtful), I do not think that Parastate has shown that BAAMPL had breached

its fiduciary duty to act in good faith. To begin with, it is not the case that Wang Li had sat back and done nothing in the events leading up to Deribit's cross-liquidation of Moonalpha's accounts:

(a) First, Wang Li had requested, on at least three separate occasions between the period of 13 and 14 June 2022, for more time to cover the deficits in Moonalpha's sub-accounts (see [36] above, at S/Ns 3, 4 and 8).

(b) Second, on 14 June 2022, Wang Wenliang, ostensibly working with Wang Li, had caused 200 BTC to be deposited in the Main Account in response to Maarten's warning that Deribit would start liquidating Moonalpha's trading positions if it failed to deposit a minimum of 200 BTC and 2,000 ETH per hour (see [36] above, at S/Ns 6 and 7).

(c) Third, Wang Li had spoken to Luuk, the CEO of Deribit at the relevant time, for more time to fill the deficits in its sub-accounts (see [36] above, S/N 4). It is Wang Li's (unchallenged) evidence that this call had taken place at around midnight on 14 June 2022, during which Wang Li had informed Luuk that: (a) Deribit could not close Moonalpha's positions "considering the interests of Babel as well as Babel's clients"; and (b) if Moonalpha's positions were closed, the Babel Group "would not be able to control the losses" or "be able to account for the losses".[333]

(d) Fourth, in the face of Deribit's repeated requests to top up the Maintenance Margins of Moonalpha's sub-accounts to the required levels, Wang Li had proposed that Deribit (a) liquidate only the Babel OTC sub-account; and (b) return the rest of the accounts to the Babel

333 NE 041225 at p 85:5–12.

Group, following which it would make sufficient top-ups in 48 hours to return the total equity across its accounts back to positive levels (see [36], S/N 11).

(e) Fifth, Wang Li had a credible explanation as to why he had hesitated in making the top-ups requested by Deribit. According to Wang Li, Luuk had informed him during their call on 14 June 2022 that one of Deribit's shareholders, Three Arrows Capital, to which Deribit had extended a credit line of more than $100m, was in financial difficulties. As Deribit was facing its own financial difficulties at the material time, Wang Li explained that he was hesitant to make the requisite top-ups despite the Babel Group having more than US$20m in cash across its books.[334] This aspect of Wang Li's evidence has not been challenged by Parastate.[335]

(f) Sixth, Wang Li explained that, quite apart from making the top-ups requested by Deribit, the Babel Group also had the option of reducing its trading positions or increasing its hedging positions in order to reduce the Maintenance Margin of the three sub-accounts on which the margin calls had been made.[336] He also explained that he was dealing with "a lot of problems" caused by the turmoil in the cryptocurrency markets on both the lending and asset management aspects of the Babel Group's business.[337] He therefore required more time before arriving at a decision which would best serve the interests of the Babel Group and

334 NE 041225 at p 86:1–8.

335 CRS at para 67.

336 NE 041225 at pp 87:13–88:4.

337 NE 041225 at p 87:7–13.

its customers.[338] This aspect of Wang Li's evidence has also not been challenged by Parastate.

148 Wang Li also asserts that Moonalpha was entitled to rely on the Sub-Account Policy and the 2nd NLAA, and that Deribit's cross-liquidation of its accounts amounted to a breach of the same. Turning first to the Sub-Account Policy, I note that the only evidence adduced by Wang Li to prove its existence is an undated printout of Deribit's webpage which states:[339]

> By default, all positions in a given currency in a Deribit account will use all of that currency in the account as margin if needed. However, sub-accounts are margined separately to each other, and are considered as a separate account for margining purposes. Therefore, sub-accounts can be used to isolate margin for a particular trade, thus separating it from the rest of the account and protecting the margin held in other sub-accounts or the main account.

149 Counsel for Wang Li, Mr Remy Choo Zheng Xi ("Mr Choo"), candidly admitted that this printout was "a later version" of Deribit's policies which had been obtained after the relevant events giving rise to this dispute had occurred.[340] Parastate, in this regard, urged me to find that the Sub-Account Policy did not exist given that there was "no contemporaneous evidence" supporting its existence.[341] If such a policy in fact existed, Parastate argued, it would have been raised by Wang Li in the Telegram Group in response to Shaun's proposal to consolidate Moonalpha's sub-accounts with its Main Account (see [36], S/N 13).[342] I agree. Though Chen Jiayi admitted in cross-examination that the

338 NE 041225 at pp 86:19–88:4.

339 WL at para 161 and p 561.

340 NE 021225 at pp 77:20–78:8; NE 041225 at p 114:18–24.

341 CCS at para 117(4).

342 CCS at para 117(5).

purpose of having different sub-accounts would ordinarily be for the purpose of margin isolation,[343] an answer to what was obviously a general question about the purpose of maintaining separate accounts with an exchange to a witness who had no knowledge about Deribit's policies and operations was insufficient to establish the existence of the Sub-Account Policy. As such, I find that Wang Li has not proven the existence of the Sub-Account Policy.

150 On the other hand, the existence of the 2nd NLAA is undisputed. It will be recalled that under clause 2.5 of the 2nd NLAA, Moonalpha could request Deribit for Non-Liquidation as opposed to liquidating its sub-accounts pursuant to its auto-liquidation policy. It my judgment, the 2nd NLAA does not assist Wang Li for the simple reason that Deribit reserved the "sole and absolute discretion" to accept or decline Moonalpha's request for Non-Liquidation (see [31] above). Further, Moonalpha (or the Babel Group) did not, as required under the 2nd NLAA, submit a formal request by way of email specifying the particular account or sub-account it was requesting the Non-Liquidation of. I therefore find that there was no breach of the 2nd NLAA by Deribit in consolidating and cross-liquidating Moonalpha's sub-accounts.

151 Notwithstanding the fact that Wang Li is not entitled to rely on the 2nd NLAA and the Sub-Account Policy, I do not think that Wang Li's actions – in so far as they are relied on by Parastate to prove the commission of the Category A Breach – show that BAAMPL had acted in a manner that "can be regarded as *nothing short of* ***disloyal***" [emphasis in original] (*Credit Suisse* at [49] and [53]). Wang Li's or BAAMPL's actions in the circumstances might have been unsatisfactory and inadequate to Parastate, but I do not think that the evidence before me indicates that they had not acted honestly and in good faith in the

343 NE 021225 at p 84:13–24.

circumstances. It follows that Parastate's case on the Category A Breach is also dismissed.

Issue 4: Whether Wang Li had dishonestly assisted BAAMPL's breach(es) of fiduciary duty

152 Based on my findings above that BAAMPL had not breached its fiduciary duties to Parastate, it follows that there could have been no assistance dishonestly rendered by Wang Li. I will nevertheless deal with these two elements of Parastate's elements for completeness.

Parastate's case on dishonest assistance has been sufficiently pleaded

153 It is convenient to start with Wang Li's procedural objection that Parastate is attempting to run a different case from that which it had pleaded in its SOC. The argument, as I have noted at [64]–[65] above, proceeds as follows. Parastate's Pleaded Case is allegedly limited to Wang Li causing, procuring, and/or directing BAAMPL to enter into the PTAs using the Management Assets as collateral. The Unpleaded Case which Parastate is allegedly running now is that Wang Li had failed to prevent, object and/or take any remedial steps to stop Deribit's cross-liquidation of Moonalpha's accounts. The Unpleaded Case is said to relate exclusively to BAAMPL's and Wang Li's inaction in failing to stop the cross-liquidation of Moonalpha's accounts, while the Pleaded Case is said to relate to the positive acts by BAAMPL and Wang Li in their use of the Management Assets.[344]

154 In my judgment, Wang Li's objection must fail. The relevant sections of Parastate's SOC state:[345]

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[344] DCS at para 6.

[345] SOC at paras 6E and 6L.

> 6E. In breach of [its fiduciary duties], Babel Finance did not utilize the Management Assets solely for the purposes of the Alpha USDT Fund. Instead, *Babel Finance had used the Management Assets to* (1) *finance and/or to underwrite and/or guarantee its own investment positions in other investments and/or the investment positions of its other clients;* and/or (2) *to obtain additional margin quantum for its own and/or its other client's investments, without obtaining the consent of and/or informing the Claimant.*
>
> 6F. ***Further****, Babel Finance had* ***failed*** *to properly segregate, insulate and/or* ***safeguard the Management Assets*** *associated with the risks of its own investments and/or the investments of its other clients that are not related to the investment objectives, Goals and Objectives of the Alpha USDT Fund.* …
>
> 6K. The Claimant avers that Babel Finance's breach of trust and/or its fiduciary duties were *procured, directed and/or instructed by the 1st Defendant* and the 2nd Defendant, who were the directors, ultimate beneficial owners and/or directing mind and will of Babel Finance at the material times. …
>
> 6L. By reason of the aforementioned, the Claimant avers that the 1st Defendant and/or the 2nd Defendant had *dishonestly assisted* Babel Finance and/or [BAAMPL] in their breach of trust and/or fiduciary duties.
>
> [emphasis added in italics and bold italics]

155 I accept Parastate's argument that its case on dishonest assistance had, from the outset, included Wang Li's role in *failing* to safeguard the Management Assets from the risks of the Babel Group's own investments (or those of its other clients).[346] As is evident from the extracts of its SOC which I have set out above, Parastate had pleaded that BAAMPL had breached its fiduciary duty by failing to safeguard the Management Assets, and that the said breach had been procured, directed and/or instructed by Wang Li. Wang Li's role in allegedly procuring BAAMPL to fail in safeguarding the Management Assets (which is said to constitute the requisite assistance) is capable of encompassing his

346 CRS at para 6.

omission to take "protective steps to protect the Management Asset[s]".[347] I therefore reject Wang Li's argument that the case which Parastate wishes to advance in relation to his alleged inaction has not been adequately pleaded.

Wang Li did not assist BAAMPL's breaches of fiduciary duty

156 Parastate's case on the element of assistance is that Wang Li had "a duty to speak" when Deribit had asked in the Telegram Group whether the consolidation of Moonalpha's accounts would cause "any issues" on the Babel Group's end. In failing to do so, Parastate argues, Wang Li had assisted BAAMPL's breach of fiduciary duty.[348]

157 As a matter of law, the assistance alleged to have been rendered by the accessory may take the form of acts or *omissions* which have a causative effect on the breach of fiduciary obligation (*OUE Lippo Healthcare Ltd v Crest Capital Asia Pte Ltd* [2020] SGHC 142 ("*OUE Lippo*") at [152], citing *Brown v Bennett* [1999] 1 BCLC 649 at 659). It generally suffices to show that there has been "some form of facilitative involvement" in the breach concerned (*OUE Lippo* at [152]). As explained by the EWCA in *Group Seven Ltd v Nasir* [2019] 3 WLR 1011 ("*Group Seven*") at [110(1)] (citing *Underhill and Hayton: Law of Trusts and Trustees* (LexisNexis, 19th Ed, 2016) at para 98.56):

> [A] claimant must at least show that the defendant's actions have made the fiduciary's breach of duty easier than it would otherwise have been. But the causation requirement for dishonest assistance is no stronger than this, and *it is no answer to a claim, for example, that the claimant's loss would have occurred anyway, because the wrongdoing fiduciary would have committed the breach even if the defendant had not assisted him.*
>
> [emphasis added]

347 CRS at para 12.

348 CCS at para 109; CRS at para 59.

I agree with the EWCA's statement of principle in *Group Seven*, specifically the proposition that it is no answer to a claim in dishonest assistance that the wrongdoing fiduciary would have committed the breach – and thereby occasioned the claimant's loss – even if the accessory had not assisted him. It would appear strange, and perhaps even unjust, that the law would countenance leaving a claimant without a remedy by allowing the accessory to rely on, and indeed benefit from, the fiduciary's wrongdoing by reference to a counterfactual scenario where no assistance had been rendered (see Benjamin Teng, "Loss Counterfactuals" (2026) 46(2) OJLS 280 at 302–304). Wang Li's argument that Deribit would have liquidated the Alpha Sub-Account regardless of whether he had spoken up or not – and that it is "plainly speculative" for Parastate to allege otherwise – does not therefore persuade me that Parastate had failed to satisfy the element of assistance in the present case.[349]

158 A more fundamental issue with Parastate's case on this element was that the assistance alleged to have been rendered by Wang Li – *viz*, the "conscious failure" to discharge his "duty to speak" – was precisely the same as its case on BAAMPL's alleged breach of fiduciary duty.[350] As noted above, Parastate's case on the Category A Breach was that BAAMPL's fiduciary duty to act in good faith and honestly in the best interests of Parastate "required Babel Finance and Wang Li (especially Wang Li because the message was for his attention) to speak up and to tell Deribit that the assets in the Alpha Sub-Account belonged to the investors of the Alpha USDT Fund and are not assets of Babel Finance" [emphasis in original removed].[351] Parastate's case on the assistance alleged to have been rendered by Wang Li was that his "omission or inaction to respond

349 DCS at para 80.

350 CCS at para 109; CRS at paras 59–60.

351 CCS at para 104(4).

to Deribit procured, facilitated, caused and/or led to Babel Finance's breach of trust and/or fiduciary duties".[352] There was therefore an inherent overlap in Parastate's case, whereby Wang Li's omission to inform Deribit that the assets in the Alpha Sub-Account belonged to the investors of the Alpha USDT Fund was said to constitute both BAAMPL's breach of fiduciary duty and the assistance rendered by Wang Li towards that breach.

159 Given such an overlap, as well as the fact that I have already dismissed Parastate's case on the Category A Breach above, it must follow that the element of assistance has not been satisfied. As noted at [147] above, Wang Li had taken various steps to avoid the consolidation and cross-liquidation of Moonalpha's accounts. He had in fact attempted – albeit unsuccessfully – to protect the Babel Group's customers' interests (including Parastate's). In my judgment, therefore, Parastate's case on the element of assistance must fail.

Wang Li did not act dishonestly in the circumstances

160 In any case, I also find that Parastate has failed to show that the assistance alleged to have been rendered by Wang Li – namely, his failure to speak up in the Telegram Group in response to Deribit's messages – was dishonest. The law on this aspect of the cause of action in dishonest assistance is clear. Dishonesty is established if the defendant has such knowledge of the irregular shortcomings of the transaction that ordinary honest people would consider it to be a breach of standards of honest conduct if he failed to query them (*Miao Weiguo* at [45], citing *George Raymond* at [22]). Put another way, the test is largely objective, and requires the court to inquire as to whether the accessory, armed with the facts that he had subjectively known at the time, had

352 CCS at para 109.

acted as an honest person would in the circumstances (*Royal Brunei Airlines Sdn Bhd v Philip Tan Kok Ming* [1995] 2 AC 378 ("*Brunei Airlines*") at 389C, 390F–G and 391B; see also *Miao Weiguo* at [46], citing with approval *M+W Singapore Pte Ltd v Leow Tet Sin* [2015] 2 SLR 271 at [42]). The principle requiring heightened cogency of evidence in cases where allegations of fraud are advanced is applicable in this context (*Madoff Securities International Ltd v Raven* [2013] All ER (D) 216 ("*Madoff Securities*") at [352]; see also *Chua Kwee Chen v Koh Choon Chin* [2006] 3 SLR(R) 469 at [39]).

161 It is convenient to first deal with Wang Li's submission that Parastate "must *minimally* show that [he] had some degree of subjective knowledge regarding the identity of Parastate, the terms of Parastate's Investment into the Alpha USDT Fund, and Parastate's relationship with BAAMPL" [emphasis in original].[353] In this regard, Wang Li asserts that, prior to 20 June 2022, he had not been aware that Parastate was a customer of BAAMPL and an investor in the Alpha USDT Fund.[354] Wang Li explained that he managed relations with "only key customers who had invested significant amounts of assets" with the Babel Group, and that the amount of Parastate's investments "was not particularly large" relative to its other customers to justify him personally managing the relationship between Parastate and the Babel Group.[355]

162 I accept this, which is consistent with the position taken by Wang Li in the transcript of the First Call that took place on 20 June 2022, where he stated that prior to the call, he had not known that Parastate (or Chen Jiayi) was "our

353 DCS at para 88; DRS at para 46(a).

354 WL at paras 82 and 86.

355 WL at paras 94 and 51.

client and what you have purchased from us".[356] However, this does nothing to advance Wang Li's defence. As Parastate points out,[357] it is unnecessary for the defendant to have known about the full details of the fiduciary duty or trust, the precise nature of the fraud and the accessory's involvement therein, or even the identity of his victim (*Agip (Africa) Ltd v Jackson* [1990] Ch 265 at 295, cited with approval in *Malaysian International Trading Corp Sdn Bhd v Interamerica Asia Pte Ltd* [2002] 2 SLR(R) 896 at [60] and *Banque Nationale de Paris v Hew Keong Chan Gary* [2000] 3 SLR(R) 686 at [147]; see also *Barlow Clowes International Ltd v Eurotrust International Ltd* [2006] 1 WLR 1476 ("*Barlow Clowes*") at [28], citing *Twinsectra Ltd v Yardley* [2002] 2 WLR 802 at [135]). It is sufficient if he knows, or suspects, that the transaction is such as to render his participation dishonest – for it is dishonest for a person deliberately to shut his eyes to facts which he would prefer not to know and proceed regardless (*Brunei Airlines* at 389G; *Barlow Clowes* at [28]).

163 That, of course, did not mean that Parastate has succeeded in proving that Wang Li had acted dishonestly. The evidence which Parastate has marshalled to show that Wang Li was acting dishonestly when he allegedly assisted BAAMPL in its breach of fiduciary duties by omitting to speak up has been set out at [63] above. I will deal with each in turn.

164 First, Parastate asserts that Wang Li had known that BAAMPL and/or BHL would benefit from the consolidation of the sub-accounts with the Main Account and their subsequent liquidation "through a reduction of [BAAMPL's and/or BHL's] debts owed to Deribit".[358] There is, however, no proof that the

356 1ABOD at p 253.

357 CRS at paras 64(1) and 65.

358 CCS at para 109.

Babel Group (or BAAMPL or BHL specifically) had been indebted to Deribit prior to its liquidation of Moonalpha's sub-accounts and the Main Account. It is, of course, a fact that the Maintenance Margins of three of its sub-accounts had fallen below the required levels on 14 June 2022. Yet, that did not show that Moonalpha's net position across all its sub-accounts and its Main Account was in the negative – there was, in fact, no evidence to show that this had in fact been the case. While it is true that, following Deribit's cross-liquidation, Moonalpha was left with a deficit of US$12,533,733 across all its accounts (see [37] above), Wang Li provided a credible explanation as to why this had been the case. That explanation was that Deribit, in liquidating what must have been a substantial amount of cryptocurrencies (and derivative positions) in the context of a market downturn, had applied a substantial discount to the face value of Moonalpha's assets.[359] He therefore took the position that the Babel Group had not in fact "owe[d] any debt to Deribit".[360]

165 Apart from its bare assertions to the contrary, Parastate has not adduced any evidence in response to Wang Li's explanations above. In any case, I find the premise of Parastate's assertion – which is that BAAMPL, BHL, the Babel Group or Wang Li had (or would have) benefitted from Deribit's cross-liquidation – inherently implausible. It is not disputed that the cross-liquidation of Moonalpha's accounts had caused "great loss[es]" to the Babel Group.[361] The cross-liquidation of Moonalpha's accounts also had no legal effect on the contractual obligations of the entities in the Babel Group *vis-à-vis* the customers of its asset management business, which remained to be performed. As far as those assets had been held by Moonalpha on Deribit's exchange platform,

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359 NE 041225 at pp 101:18–102:3.

360 NE 051225 at p 26:3–10.

361 NE 041225 at p 119:2.

Deribit's cross-liquidation of Moonalpha's positions across its accounts would have made it impossible for the Babel Group to fulfil those obligations to its customers. The cross-liquidation by Deribit therefore objectively had catastrophic effects on the Babel Group's asset management business, and I do not see how it would have "benefitted" the Babel Group. In relation to Wang Li, the insolvency of the Babel Group – which was precipitated by Deribit's cross-liquidation – had caused the value of his equity interests in the Babel entities to become virtually worthless.[362] I therefore reject Parastate's argument that Wang Li, BAAMPL, BHL or the Babel Group had (or would have) benefitted from Wang Li or BAAMPL omitting to speak up in the Telegram Group on 14 and 15 June 2022.

166 Second, Parastate asserts that Liu's requests (on 16 June 2022) to Deribit for it to "strictly contain" the information in the Telegram Group allegedly showed Wang Li's "desire to keep the truth under cover as long as possible" (see [36], S/N 18).[363] I note that a similar request had been made directly to Chen Jiayi in the Second Call that took place on 20 June 2022 (see [42] above), which has not been relied on by Parastate to make its case. Be that as it may, I do not think that Liu's requests in the Telegram Group proves dishonesty on Wang Li's part. First, Wang Li's unchallenged evidence is that he had not instructed Liu to make such requests, and that Liu had done "that [on] his own accord".[364] Second, in the Telegram Group itself, Liu had explained that his requests stemmed from the fact that there were rumours that "inaccurate info" had been shared by Deribit, which would "obviously increase the difficulty for us to land a

362 WL at para 197.

363 CCS at para 110.

364 NE 051225 at p 28:10–11.

solution".[365] Consistent with this, Wang Li explained at trial that Liu must have made such a request as the leakage of information as to what had occurred on 14 and 15 June 2022 would make it more difficult for the Babel Group to work on solutions to alleviate or otherwise resolve its present financial crisis.[366] I accept this to be a credible explanation; I do not think that Liu's requests to Deribit on 16 June 2022 proves any dishonesty on Wang Li's part.

167 Third, Parastate asserts that Wang Li had failed to inform Chen Jiayi, during the First Call and the Second Call on 20 June 2022, that: (a) the reason why BAAMPL and/or BHL had to top up the Maintenance Margins on its sub-accounts was because it had suffered massive losses in the PTAs; (b) it was untrue that Deribit had "suddenly contacted" BAAMPL and/or BHL and then started liquidating its accounts; (c) Deribit had in fact asked Wang Li if it would cause "any issues" if it were to effect a consolidation of all the sub-accounts with the Main Account; (d) Deribit had been chasing the Babel Group to top up its Maintenance Margin since 13 June 2022; and (e) the Babel Group not topped up 200 BTC and 2,000 ETH per hour as requested by Deribit.[367] Parastate asserts that, in failing to apprise Chen Jiayi of these facts, Wang Li was "pushing [a] false narrative to suit his agenda that it was Deribit's irrational behaviour that had caused Babel Finance to suffer massive losses".[368] I do not accept this argument:

(a) First, as a matter of law, the element of dishonesty requires the court to assess what the alleged accessory knew or believed at the time

365 2ABOD at p 217.

366 NE 051225 at p 28:14–22; DRS at para 46(c).

367 CCS at para 112.

368 CCS at para 114.

of his conduct (*Madoff Securities* at [353]). Given that the element of dishonesty in a claim for dishonest assistance does not refer to dishonesty generally, but rather dishonesty in reference to the assistance that is alleged to have been rendered, the principal inquiry must be on whether the accessory had been dishonest *when* he had rendered that alleged assistance. It must follow that evidence of dishonesty *ex post* is probative only in so far as it shines light as to the probity of the accessory's conduct at the time he is alleged to have rendered the relevant assistance. As such, Parastate's reliance on what Wang Li had omitted to inform Chen Jiayi on 20 June 2022 – almost a week after the alleged assistance had been rendered – is of limited utility.

(b) Second, as I have found at [140] above, there is no evidence to show that the reason as to why the Maintenance Margins of the three sub-accounts had fallen below their required levels was due to the "massive losses" suffered on the PTAs. The fact that Wang Li had not informed Chen Jiayi of this alleged fact is therefore neither here nor there.

(c) Third, Wang Li's evidence was that he had been under immense pressure at that time, with calls coming in from various creditors and customers who "were chasing for updates" following the Babel Group's suspension of withdrawals on 17 June 2022.[369] I accept this to be true, as it is consistent with Wang Li's message to the Telegram group chat with Yang Zhou, Liu, Lionel and Chen Jiayi on 20 June 2022 that he was in "back to back meetings" that day.[370] At trial, Wang Li testified that he

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369 WL at para 182; NE 051225 at pp 11:25–12:6.

370 WL at para 182 and p 650.

had "already given a lot of detailed information" to Chen Jiayi over the First and Second Calls on 20 June 2022, and that telling Chen Jiayi more details would only have unnecessarily prolonged the duration of the calls.[371] His evidence was that the "main purpose" of the calls on 20 June 2022 was to request "more time" from Parastate to resolve the Babel Group's issues,[372] and that if he had in fact wished to "hide the truth" from Chen Jiayi, he "would not have picked up his call" at all.[373]

168 I accept Parastate's argument that Wang Li must have known about the Alpha USDT Fund, that its subscribers had deposited their cryptocurrencies with the Babel Group, and that those assets were not to be used for unauthorised purposes.[374] I also accept that Wang Li had known that Deribit was going to cross-liquidate all of Moonalpha's positions across its accounts and that Deribit had given him multiple notices of its intention to do so.[375] However, in my judgment, these facts do not suffice to show that what Wang Li had omitted to do in the face of Deribit's demands on 14 and 15 June 2022 was objectively dishonest and "offended the normally accepted standards of honest conduct" (*Brunei Airlines* at 391B). If Wang Li had truly been dishonest, he would not have asked Deribit for more time to cover the deficits in Moonalpha's sub-accounts (see [147(a)]) above); he would not have informed Luuk that Deribit should not close Moonalpha's positions in view of the interests of the Babel Group and its customers (see [147(c)] above); he would not have taken the trouble to call Chen Jiayi to request for more time while he attempted to resolve

371 NE 051225 at pp 15:4–7 and 16:5–8.

372 NE 0512225 at p 20:3–5.

373 NE 0512225 at p 17:16–18.

374 CCS at para 111.

375 CCS at paras 107(8)–(11).

the liquidity crisis faced by the Babel Group (see [42] above). However, I have either found – or it has been undisputed – that he did. Being a *bona fide* investor of the Alpha USDT Fund, Parastate had every right to expect more from Wang Li, or to take the position that his actions (or lack thereof) were inadequate. But these high expectations do not show or go towards proving that Wang Li had been acting dishonestly during the events of 14 and 15 June 2022.

Issue 5: Whether Wang Li should be liable for the fraudulent misrepresentations of BAAMPL

169 Apart from its claim in dishonest assistance, Parastate has pleaded a claim in fraudulent misrepresentation against BAAMPL and BHL, for which it seeks to hold Wang Li personally liable through piercing the corporate veil of BAAMPL and BHL. Additionally, Parastate has also pleaded a claim in unlawful means conspiracy against Wang Li, Yang Zhou, BAAMPL and BHL. As I have noted at [56] above, however, Parastate appears to have completely abandoned its case in fraudulent misrepresentation and unlawful means conspiracy, having made no legal submissions on those fronts. For completeness, however, I will set out briefly my reasons as to why those claims must fail. I will start with Parastate's claim for fraudulent misrepresentation.

170 To succeed in a claim for fraudulent misrepresentation, it must be shown that: (a) there was a false statement of fact made by words or conduct; (b) the statement was made with the intention that it should be acted on by the claimant; (c) the claimant had acted upon the statement; (d) the claimant suffered damage by so doing; and (e) the statement was made with the knowledge that it was false, or at least made without any genuine belief that it was true (*Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 at [14]).

Parastate's pleaded case

171 Parastate has pleaded that BHL and BAAMPL had made the following ten representations in the Presentation Deck:[376]

(a) First, "Babel Finance" was "the clear regional leader of US$7 billion crypto balance sheet with fast growth record" ("Balance Sheet Representation"). Parastate understood this to mean that "Babel Finance" had "a healthy balance sheet".

(b) Second, "Babel Finance" was "a prudent financial innovator led by a professional team with successful entrepreneurship experiences" ("Innovation Representation").

(c) Third, "Babel Finance" has "its investors' best interest in mind" ("Best Interest Representation").

(d) Fourth, the Babel Quant Alpha Fund would provide (or had provided) "resilient performance throughout volatility cycles" ("Resilient Performance Representation").

(e) Fifth, the Babel Quant Alpha Fund is "Babel Finance's" "flagship quant strategy boasting stable return and minimal drawdown" ("Stable Return Representation").

(f) Sixth, the Babel Quant Alpha Fund has "an excellent Sharpe Ratio of 5.08%", indicating that the Babel Quant Alpha Fund is "efficient in terms of return and risk" ("Sharpe Ratio Representation").

[376] SOC at para 6O.

(g) Seventh, the Babel Quant Alpha Fund utilises an investment strategy that primarily uses machine learning to conduct quantitative analysis and identify any arbitrage or mispricing opportunities in crypto spot, futures and options markets ("Strategy Representation").

(h) Eighth, the Alpha USDT Fund would provide "8% Annual Percentage Rate (APR) guaranteed returns" ("APR Representation"). Parastate has also pleaded a representation that the Babel Quant Alpha Fund would provide "a guaranteed return of 8% hurdle rate annualized". I will treat that representation as being synonymous with the APR Representation.

(i) Nineth, the Alpha USDT Fund would, "by reason of its investment strategy, be capital-guaranteed" ("Capital Guarantee Representation"). This was said to be based on the statement "100% principal protection" in the Presentation Deck.

(j) Tenth, the investments made into the Alpha USDT Fund could be withdrawn without penalty after 90 days ("Withdrawal Representation").

172 Additionally, Parastate has pleaded that BAAMPL and BHL made two further representations in the CMA ("Further Representations") that:[377]

(a) The information provided by "Babel Finance" in writing or in electronic format are "true, accurate and not misleading in any material aspects and no information that would cause the information in such documents to be untrue, inaccurate or misleading in any material respect

[377] SOC at para 6P.

has been omitted" (pursuant to clause 2.1.4 of the CMA) ("Clause 2.1.4 Representation").

(b) "Babel Finance" shall always endeavour to act in Parastate's best interests and would avoid conflicts of interests and/or would act fairly in the event of such conflict arising (pursuant to clause 2.11 of the CMA) ("Clause 2.11 Representation").

173 Parastate claims that it was induced by these Representations and Further Representations to enter into the CMA and the MP with BAAMPL for the purposes of subscribing to the Alpha USDT Fund.[378]

My decision: Parastate's claim for fraudulent misrepresentation is dismissed

174 Before I turn to the analysis proper, it is apt to specify the party who is alleged to have made the Representations and the Further Representations to Parastate. That party must have been BAAMPL, and not BHL, owing to similar reasons which I have set out at [90] and [119] above. BHL had no factual interactions or any legal relationship with Parastate – the individuals who had sent Chen Jiayi the Presentation Deck and the CMA were Liu and Jiang, who were both BAAMPL's employees. Any representation made in the Presentation Deck and the CMA must therefore have emanated from BAAMPL, and not BHL.

The Capital Guarantee Representation was not made

175 I turn first to the Capital Guarantee Representation. In my judgment, there was no such representation made by BAAMPL. In determining whether

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[378] SOC at para 7.

there has been an express representation, and to what effect, the court has to consider what a reasonable person would have understood from the words used in the context in which they were used (*Webster v Liddington* [2015] 1 All ER (Comm) 427 at [39]–[41], citing *IFE Fund SA v Goldman Sachs International* [2006] EWHC 2887 (Comm) at [50]; see also *Koh Chong Chiah v Treasure Resort Pte Ltd* [2013] 4 SLR 1204 at [118]). The words relied upon by Parastate to advance its case that the Capital Guarantee Representation had been made – "100% principal protection: a nominal return equivalent to open duration savings deposit" – is found at slide nine of the Presentation Deck.[379] Those words, however, had been used in relation to the Structured products (a wholly different investment product offered by the Babel Group) and not the Alpha USDT Fund (or the Babel Quant Alpha Fund).[380]

176 When confronted with this at trial by counsel for Wang Li, Mr Choo, Chen Jiayi explained that the basis for his understanding that investments into the Alpha USDT Fund would be capital guaranteed (or principal protected) was based on the fact that the Alpha USDT Fund had a "guaranteed return of 8 per cent hurdle rate" as well as "the algorithm [*sic*] principles behind these products".[381] I agree with Wang Li that these explanations, which were raised only at trial, are afterthoughts and do not provide a coherent explanation as to how BAAMPL had represented that investments into the Alpha USDT Fund would be capital guaranteed.[382] On an objective interpretation of the words "100% principal protection" in the context in which they had been used, I find

379 CJY at para 27(6).

380 1ABOD at p 568; NE 021225 at pp 54:23–56:9.

381 NE 031225 at pp 57:14–19 and 59:23–60:4; NE 021225 at pp 55:21–23, 57:1–5 and 67:23–68:5.

382 DCS at para 121.

that the Capital Guarantee Representation had simply not been made by BAAMPL in the Presentation Deck.

The Balance Sheet and Sharpe Ratio Representations were made

177 I turn next to the Balance Sheet and Share Ratio Representations. Wang Li has argued – by way of a bare assertion – that BAAMPL had made no such representations.[383] Dealing first with the Balance Sheet Representation, Parastate has pleaded that it understood such a representation to mean that "Babel Finance" had "a healthy balance sheet".[384] In my judgment, such a representation had in fact been made. Indeed, when asked by Mr Chu (counsel for Parastate) whether the purpose of making such a statement was to inform prospective investors that the Babel Group is "financially strong and financially sound", Wang Li did not disagree; he responded that the objective of such a statement was to "attract new users".[385] Wang Li also agreed that the Balance Sheet Representation must have been referring to the balance sheet of the Babel Group.[386] I am, of course, cognisant that the meaning of a representation is to be tested from the perspective of a reasonable person in the position of the *representee* (see *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) ("*The Law of Contract*") at para 11.013). However, Wang Li's evidence only serves to confirm the obvious – which was that the Balance Sheet Representation could objectively have been understood by Chen Jiayi as meaning that the Babel Group had a healthy balance sheet.

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383 DCS at para 122.

384 SOC at para 6O(1).

385 NE 051225 at p 63:18–23.

386 NE 051225 at pp 62:23–63:3 and 63:14–17.

178 Nonetheless, I should add that in so far as Parastate argues that it objectively understood the Balance Sheet Representation as the Babel Group literally having US$7b worth of cryptocurrencies across its balance sheet, such an argument must fail. As Chao Hick Tin J (as he then was) noted in *Bestland Development Pte Ltd v Thasin Development Pte Ltd* [1991] SGHC 27, "mere praise by a man of his own goods or *undertaking* is a matter of *puffing* and pushing and does not amount to representation" [emphasis added]. Whether a statement amounts to an actionable misrepresentation or a sales puff depends on: (a) the degree or obviousness of its untruth; (b) the circumstances of its making; and (c) the expertise and knowledge attributable to the person to whom it is made (*Deutsche Bank AG v Chang Tse Wen* [2013] 4 SLR 886 at [87]). As I have found at [128(a)] and [128(b)] above, both Parastate and Chen Jiayi were seasoned and sophisticated players in the cryptocurrency industry. They were subjectively aware that the Babel Group had only a valuation of US$2b based on its Series B fundraising round which had taken place in May 2022.[387] To say that they had objectively understood the Babel Group as having US$7b of cryptocurrencies across its balance sheet therefore cuts no ice in the face of what was obviously a hyperbolic sales puff.

179 Turning to the Sharpe Ratio Representation, Parastate has pleaded that it understood the representation as meaning that "Babel Finance" had an "excellent" Sharpe Ratio, which it in turn understood as meaning that the Babel Quant Alpha Fund was "efficient in terms of return and risk".[388] Although the words in quotation marks in the preceding sentence are not found in the Presentation Deck itself, I find that that is what BAAMPL must have meant when it included the term "Sharpe Ratio" in bold in the Presentation Deck. It

387 CJY at para 5.

388 SOC at para 6O(4)(c).

should also be noted that the specific numerical figure representing the Sharpe Ratio for each sub-fund in the Babel Quant Alpha Fund was set out next to the term "Sharpe Ratio" in the Presentation Deck.[389] Chen Jiayi's evidence was that he understood the term "Sharpe Ratio" as being an "overall indicator" of the "risk" and the "profitability" of the particular investment strategy.[390] I do not find Wang Li's bare assertion to the contrary persuasive, especially when it is his own evidence that the term "Sharpe Ratio" referred to "a measure which compares the return of an investment with its risk".[391] I therefore find that the Sharpe Ratio Representation objectively meant that the Babel Quant Alpha Fund was efficient in terms of its risks and returns.

The APR and Withdrawal Representations are statements as to the future

180 An actionable misrepresentation must generally take the form of a false statement of *present* or *past* fact, and not a statement as to a future state of affairs (*Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA* [2018] 1 SLR 894 ("*Ernest Ferdinand*") at [172]; *Tan Chin Seng v Raffles Town Club* [2003] 3 SLR(R) 307 ("*Raffles Town Club*") at [20]–[21]). As Sir Mellish LJ pithily explained in *Beattie v Lord Ebury* (1872) LR 7 Ch App 777 at 804, "a representation that something will be done in the future cannot either be true or false at the moment it is made". In my judgment, the APR Representation and the Withdrawal Representation are clearly representations as to the future. In relation to the APR Representation, BAAMPL was promising to prospective subscribers that the Alpha USDT Fund would provide 8% returns on invested sums at the end of each year. In relation to the Withdrawal Representation,

389 1ABOD at pp 576–578.

390 NE 021225 at pp 48:23–49:7.

391 WL at para 126.

BAAMPL was promising to prospective subscribers that they would be able to withdraw their investments without any penalties after the requisite 90-day period had elapsed. There was no representation as to an existing or past fact, nor had any arguments to the contrary been made or pleaded by Parastate. Its case on the APR Representation and the Withdrawal Representation must therefore fail as well.

181 Apart from the APR and the Withdrawal Representations, Wang Li has also argued that the Resilient Performance Representation and the Clause 2.11 Representation are statements as to the future and are therefore not actionable representations.[392] It was not entirely apparent to me if that was an accurate characterisation of those representations:

(a) First, in relation to the Resilient Performance Representation, it was clear that BAAMPL was representing that all the three sub-funds in the Babel Quant Alpha Fund (including the Alpha USDT Fund) *had* provided "resilient performance throughout multiple market volatility cycles". This was evident from the fact that those words in the Presentation Deck were accompanied by graphs illustrating the performance of the Babel Quant Alpha Fund in 2021.[393] The Resilient Performance Representation was therefore a representation as to a *past* fact – namely, that the Babel Quant Alpha Fund had provided resilient performance to its subscribers hitherto.

(b) Second, in relation to the Clause 2.11 Representation, it is trite law that a statement as to a person's intention or state of mind is "as

392 DCS at para 124.

393 1ABOD at pp 576–578.

much a fact as the state of his digestion", and that a misrepresentation as to one's state of mind may constitute an actionable misrepresentation (*Edgington v Fitzmaurice* (1885) 29 Ch D 459 at 483, cited with approval in *Raffles Town Club* at [12]). A person who states an intention as to the future therefore may be taken to have implicitly represented that "he in fact has that intention at the time of making the statement" (*Ernest Ferdinand* at [172(b)]). By stating that BAAMPL "shall always endeavour" to act in Parastate's interests and to manage conflicts of interests fairly, BAAMPL may be taken as representing that it in fact had the intention to do so at the time it made such a representation. I appreciate, however, that such an interpretation of clause 2.11 of the CMA had not been pleaded by Parastate. It is a general rule that where a representation is ambiguous and can be interpreted in a number of ways, a claimant is required to establish and plead the sense in which he understood the representation at the time it was made (*Ernest Ferdinand* at [174], citing *Goldrich Venture Pte Ltd v Halcyon Offshore Pte Ltd* [2015] 3 SLR 990 at [119]). Given that the interpretation above has not been pleaded by Parastate, it is not allowed to rely on it at this juncture.

Parastate has not proven that the representations were false

182 Regardless of my findings on the above, I find that Parastate has failed to prove that any of the ten Representations or the two Further Representations was false. The only form of documentary evidence relied on by Parastate to show that they were false is what it considers to be Wang Li's "admissions" during the First and Second Calls which took place between Chen Jiayi and Wang Li on 20 June 2022. Parastate's arguments may be summarised as such:[394]

[394] CJY at para 40.

(a) First, the Balance Sheet Representation was false as "Babel Finance" did not have a healthy balance sheet of US$7b worth of cryptocurrencies. In fact, "Babel Finance" had taken risky investment and speculative positions in cryptocurrency derivative contracts. If it in fact had US$7b worth of cryptocurrencies on its balance sheet, it would not have been possible for such a large quantity of cryptocurrencies to have been lost in a matter of days.

(b) Second, the Innovation Representation was false. If "Babel Finance" had prudently invested its clients' money in accordance with its clients' risk appetites and instructions, Deribit would not have consolidated and cross-liquidated all of Moonalpha's accounts simply because three sub-accounts had exceeded their Maintenance Margins.

(c) Third, the Strategy Representation was false. If the Babel Quant Alpha Fund had in fact utilised a strategy of spotting arbitrage or mispricing opportunities in cryptocurrency spot, futures and options trading, the Management Assets would not have been wiped out.

183 Apart from this, Parastate has not pointed to any evidence to show that the rest of the alleged misrepresentations were false.[395]

184 Dealing first with the alleged falsity of the Balance Sheet Representation, I have explained above (at [178]) that the portion of the statement alluding to the Babel Group having US$7b of cryptocurrencies on its balance sheet was mere sales puff and not an actionable misrepresentation. In any case, Wang Li explained at trial that there had in fact been times in the past where the value of the cryptocurrencies that the Babel Group held had exceeded

[395] DCS at para 129.

a value of US$7b. Specifically, sometime back in 2021 when the value of Bitcoin exceeded US$65,000, the Babel Group's balance sheet had allegedly ballooned to a size of US$11–12b. He explained that approximately 95% of the Babel Group's assets were in the form of cryptocurrency assets, resulting in the net asset value of the group being beholden to fluctuations in the cryptocurrency markets.[396] Further, as Wang Li further explained, the relatively large size of the Babel Group's balance sheet did not mean that it had always maintained a liquidity pool to meet margin calls as and when they arose. Therefore, the fact that the Babel Group was unable to meet its margin calls in June 2022 did not necessarily mean that the Balance Sheet Representation was false.[397] Wang Li's evidence on this point stands unrebutted. It follows that Parastate has failed to prove that the Balance Sheet Representation was *substantially* false (see *Ernest Ferdinand* at [173]).

185 Next, turning to the alleged falsity of the Innovation and the Strategy Representations, the mere fact that Deribit had consolidated and effected a cross-liquidation of Moonalpha's accounts does not show that those statements were substantially false. For one, it is difficult to see how the cross-liquidation – which took place some three months after the Representations and the Further Representations had been made – goes towards showing that they were false at the time they were made. As a matter of law, a representation "must be shown to be false at the time it was acted upon" (*The Law of Contract* at para 11.059, citing *Foodco UK LLP v Henry Boot Developments Ltd* [2010] EWHC 358 (Ch) at [186]). Second, in relation to the Strategy Representation, the fact that the Maintenance Margins of separate three sub-accounts had been exceeded, resulting in Deribit's cross-liquidation of Moonalpha's accounts, does not show

396 NE 051225 at p 63:1–15.

397 NE 051225 at pp 64:22–65:3.

that BAAMPL had employed a strategy other than that which it had advertised to its customers in its Presentation Deck. A similar point can be made in relation to the Innovation Representation. The fact that the Maintenance Margins of Moonalpha's three sub-accounts had subsequently exceeded the required levels on 14 June does not go towards proving that "Babel Finance" (*ie*, BAAMPL or the Babel Group) was not generally a "prudent financial innovator lead by a professional team with successful entrepreneurship experiences".

Parastate has not proven that the representations were made fraudulently

186 Given that Parastate has failed to prove the falsity of any of its pleaded representations, it must follow that its claim in fraudulent misrepresentation must fail. Quite apart from that, however, I also find that Parastate has failed to prove that the Representations and the Further Representations had been made by BAAMPL fraudulently. It is well-established that the touchstone for fraud is dishonesty (*Raiffeisen Zentralbank Osterreich AG v Archer Daniels Midland Co* [2007] 1 SLR(R) 196 at [35]). The classic formulation of fraud for the purposes of a claim in fraudulent misrepresentation was set out more than a hundred years ago in *Derry v Peek* (1889) 14 App Cas 337 at 374 (cited with approval in *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 at [16] and *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801 ("*Anna Wee*") at [32]), where Lord Herschell observed that:

> [F]raud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false… To prevent a false statement [from] being fraudulent, there must, I think, always be an honest belief in its truth.

187 The law requires a heightened cogency of evidence whenever an allegation of fraud is advanced (*Anna Wee* at [30]). Parastate's SOC and Chen Jiayi's AEIC, which contained bare allegations to the effect that BAAMPL had

made the Representations and the Further Representations fraudulently, clearly did not suffice to meet this heightened evidential threshold. Instead, the evidence before me indicated that BAAMPL had not acted fraudulently in making those representations. Specifically, the last slide of the Presentation Deck alleged to contain ten out of the twelve alleged misrepresentations contained a sweeping disclaimer to prospective subscribers, the relevant portions of which I set out below:[398]

> This document has been prepared by Babel Finance based solely upon information that is publicly available. *Portions of the information herein may be based upon certain statements, estimates and forecasts with respect to anticipated future performance*. Babel Finance has relied upon the accuracy and completeness of the foregoing information, and ***has not assumed any responsibility for any independent verification of such information or any independent valuation or appraisal of any of the assets or liabilities (contingent or otherwise) of any entity, or concerning solvency or fair value of any entity.***
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398 1ABOD at p 583.

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>
> [emphasis added in italics and bold italics]

188 The existence of a disclaimer, of course, does not preclude the existence of a fraudulent intention on the part of the representor. But, as Wang Li points out,[399] the fact that the disclaimer expressly qualifies the accuracy of the information militates against the likelihood that BAAMPL had made the Representations knowing that they were false, without believing in their truth, or even without caring that they were true or false. Additionally, in his cross-examination by Mr Choo (counsel for Wang Li), Chen Jiayi made the following concessions:[400]

> Choo: I'm just trying to clarify, at the point of the [P]resentation [D]eck, okay, *you are not saying that when they say that Alpha Babel Quant Fund is supposed to do these things, you're not saying they are lying to you, right, at that point?*
>
> Chen: I agree. …
>
> Choo: Again, I just want to clarify, *knowing everything that we know now, you're not saying at the point they made this representation they were lying to you?*
>
> Chen: I agree.
>
> [emphasis added]

189 At a different point during the trial, Chen Jiayi accepted that the Babel Group had not raised funds from Parastate on "a false pretext to use" those assets

[399] DCS at para 136.

[400] NE 031225 at p 40:9–21.

"for other purposes except for the Alpha USDT Fun[d]… at the point of fundraising".[401] These concessions were clearly fatal to Parastate's case that the Representations and the Further Representations had been made fraudulently. In the premises, Parastate's case in fraudulent misrepresentation should be dismissed. It follows that the question as to whether BAAMPL's corporate veil should be lifted for the purposes of ascribing personal liability to Wang Li for its fraudulent misrepresentation does not arise.

Issue 6: Whether Wang Li is liable for unlawful means conspiracy

190 To succeed in a claim for unlawful means conspiracy, it must be shown that: (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 (*EFT Holdings, Inc v Marinteknik Shipbuilders (S) Pte Ltd* [2014] 1 SLR 860 at [112]).

My decision: Parastate's claim for unlawful means conspiracy is dismissed

191 Parastate's pleaded case for its claim in unlawful means conspiracy is that the defendants ("or any two of them") had combined together to make fraudulent misrepresentations to Parastate with the intention of causing it to invest the Management Assets into the Alpha USDT Fund.[402] The unlawful means relied on by Parastate for the purposes of its conspiracy claim are the fraudulent misrepresentations alleged to have been made by BAAMPL, which

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401 NE 031225 at pp 31:1–9 and 29:22–30:2.

402 SOC at para 17.

I have dealt with and dismissed above. It follows that its case on unlawful means conspiracy must fail.

192 A claimant who commences a suit takes on the burden of pleading, particularising and proving every essential element of each cause of action which he chooses to pursue against the defendant in that suit (*Chandra Winata Lie v Citibank NA* [2015] 1 SLR 875 at [34]). Apart from its bare assertions as to the legal elements of its claim in unlawful means conspiracy, Parastate has not explained or shown how those elements have been satisfied on the facts of the present case. No evidence has been adduced as to the existence of a combination, agreement or an understanding between the defendants, or as to their intention to cause damage or injury to Parastate (or to the investors of the Alpha USDT Fund).[403] This came nowhere near to establishing the high evidential threshold required for establishing a claim in conspiracy (*ACE Spring Investments Ltd v Balbeer Singh Mangat* [2024] SGHC 277 at [112]). Parastate's case on this front, as reflected by its pleadings and submissions, is legally and factually unsustainable. The claim is therefore dismissed.

403 DCS at para 138.

Conclusion

193 For all the foregoing reasons, I dismiss OC 130 in its entirety. The parties are to file their submissions on costs (limited to ten pages) within 14 working days from the date of the release of this judgment.

Sushil Nair
Justice of the Court of Appeal

Chu Hua Yi and Goh Jia Jie (FC Legal Asia LLC) for the claimant;
Choo Zheng Xi, Stella Ng Yu Xin, Shann Liew Zi Xuan and Donaven Foo (RCLT Law Corporation) for the first defendant;
The second, third and fourth defendants absent and unrepresented.