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From: Kristin Tahler
Sent: Friday, May 17, 2024 7:51 PM
To: Lavery, Vanna; Cullinane, Mark W
Subject: RE: Follow up documents

Dear Mark and Vanna, just resending the below email and the link again here: https://[redacted].sharefile.com/public/share[redacted]
.

Best regards,
Kristin

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From: Kristin Tahler
Sent: Friday, May 17, 2024 3:21 PM
To: Lavery, Vanna <LaveryVC@state.gov>; Cullinane, Mark W <CullinaneMW@state.gov>
Subject: Follow up documents

Dear Mark and Vanna, thank you very much for taking the time to meet. Please see the documents accessible at the following link for your reference: https://[redacted].sharefile.com/public/share[redacted]

If you have questions, I would be happy to set up a convenient time to discuss. Thank you.

Best regards,
Kristin

Kristin Tahler
Partner
Quinn Emanuel Urquhart & Sullivan, LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017
213-443-3615 Direct
213-443-3000 Main Office Number
213-443-3100 Fax
kristintahler@quinnemanuel.com
www.quinnemanuel.com

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EXHIBIT 1

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RAN Huawei Expert

Korek Telecom · Erbil Governorate, Iraq (On-site) Reposted 4 days ago · 171 applicants

Full-time · Mid-Senior level

1,001-5,000 employees · Telecommunications

See how you compare to 171 applicants. Try Premium for free

Skills: iBwave, 2G

Easy Apply Save

About the job

Summary

Supervise and work on the Huawei Swap project in KRG Region and work on the Huawei network to have a stabile network performance and achive targeted KPIs.

Key Responsibilities

- End to End, Radio Design for 2G/3G/4G/5G.
- Set RF Division action plans and KPI targets for 2G, 3G, 4G ,5G
- Do Passive/Active IBS Design on Planning tools
- Identify and anticipate network performance issues.
- Provide recommendations for improvement and do network resource and license dimension plan.
- Determine the coverage, quality and capacity requirements for every region/area.
- Set recommendations to resolve problems and Adding/Expanding Sites/Licenses
- Perform RF planning (using Atoll), traffic planning, and traffic growth forecasting.
- Interface with vendor support for all related issues of radio planning and pptimization.
- Strategic planning for all required equipment from the radio perspective
- Optimize the capacity of the network to meet traffic increase.
- Ensure that design & optimization guarantees the capability for the network to provide end-user new services.
- Secure the competence transfer to local staff.
- End to End, Radio Optimization for 2G/3G/4G/5G.
- Pre-Optimization Features/Parameters Analysis.
- Perform physical and soft parameter planning.
- Identify and anticipate network performance issues and provide recommendations for improvement.
- Optimize the capacity of the network to meet traffic increase.
- Ensure that design & optimization guarantees the capability for the network to provide end-user new services.

Competencies

- Competence in KPI Counters and Root Cause analysis and Problem solving 3G/4G/5G network.
- Proven ability of optimizing and design UMTS/LTE/5G networks at a single NodeB, cluster and multi-cluster levels for multiple carriers to meet specific KPI targets.
- Good team player & analytical skills
- Experience in UMTS/LTE/5G networks and KPI base system optimization.
- Strong knowledge on RF Optimization tools.
- Good knowledge of RF design method and procedure.
- Ability to Work with Planning Tools (Atoll, IBwave) is preferred.
- Ability to present workshops regarding LTE Radio Network requirements.
- Must have experience in Ericsson and Nokia, and preferably, in Huawei equipment.

Work Experience

5-10 years of work experience in relevant field.

Education

Bachelor in Telecommunication, Electrical or Electronic Engineering.

Language

- Arabic (preferred)
- English (required)
- Kurdish (preferred)

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EXHIBIT 2

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RAN Huawei Expert

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Erbil, Erbil, Iraq | KOREK Telecom Ltd. | Full time

Number of Positions 1 **Experience**5-10 years of work experience in relevant field. **Education**Bachelor in Telecommunication, Electrical or Electronic Engineering. **Location**Erbil

Summary

Supervise and work on the Huawei Swap project in KRG Region and work on the Huawei network to have a stabile network performance and achive targeted KPIs.

Key Responsibilities

End to End, Radio Design for 2G/3G/4G/5G.
Set RF Division action plans and KPI targets for 2G, 3G, 4G ,5G Do Passive/Active IBS Design on Planning tools Identify and anticipate network performance issues.

Provide recommendations for improvement and do network resource and license dimension plan. Determine the coverage, quality and capacity requirements for every region/area. Set recommendations to resolve problems and Adding/Expanding Sites/Licenses Perform RF planning (using Atoll), traffic planning, and traffic growth forecasting. Interface with vendor support for all related issues of radio planning and pptimization.
Strategic planning for all required equipment from the radio perspective Optimize the capacity of the network to meet traffic increase.

Ensure that design & optimization guarantees the capability for the network to provide end-user new services. Secure the competence transfer to local staff. End to End, Radio Optimization for 2G/3G/4G/5G. Pre-Optimization Features/Parameters Analysis. Perform physical and soft parameter planning. Identify and anticipate network performance issues and provide recommendations for improvement. Optimize the capacity of the network to meet traffic increase. Ensure that design & optimization guarantees the capability for the network to provide end-user new services.

Competencies

Competence in KPI Counters and Root Cause analysis and Problem solving 3G/4G/5G network.
Proven ability of optimizing and design UMTS/LTE/5G networks at a single NodeB, cluster and multi-cluster levels for multiple carriers to meet specific KPI targets.

Good team player & analytical skills Experience in UMTS/LTE/5G networks and KPI base system optimization. Strong knowledge on RF Optimization tools. Good knowledge of RF design method and procedure. Ability to Work with Planning Tools (Atoll, IBwave) is preferred. Ability to present workshops regarding LTE Radio Network requirements. Must have experience in Ericsson and Nokia, and preferably, in Huawei equipment.

Language

English (required) Kurdish (required)* Arabic (preferred)

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RAN Huawei Expert

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erbil, Iraq | KOREK Telecom Ltd. | Full time

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Number of Positions 1 Experience5-10 years of work experience in relevant field. EducationBachelor in Telecommunication, Electrical or Electronic Engineering. LocationErbil SummarySupervise and work on the Huawei Swap project in KRG Region and work on the Huawei network to have a stabile network performance and achive targeted KPIs.Key Responsibilities End...

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EXHIBIT 3

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Barzani National Memorial

The Barzani National Memorial project was envisioned and led by Masoud Barzani and began construction as early as 2007 under the supervision of Sirwan Barzani.



(http://bnm.krd/wp-content/uploads/2023/02/11.jpeg)

Timeline

2007 – Project started
2007 – Construction commenced
2017 – Construction completed
2023 – Grand opening

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(https://bnm.krd/wp-content/uploads/2023/02/02.jpg)



(https:/

Barzani National Memorial

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EXHIBIT 4

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EXHIBIT 5A

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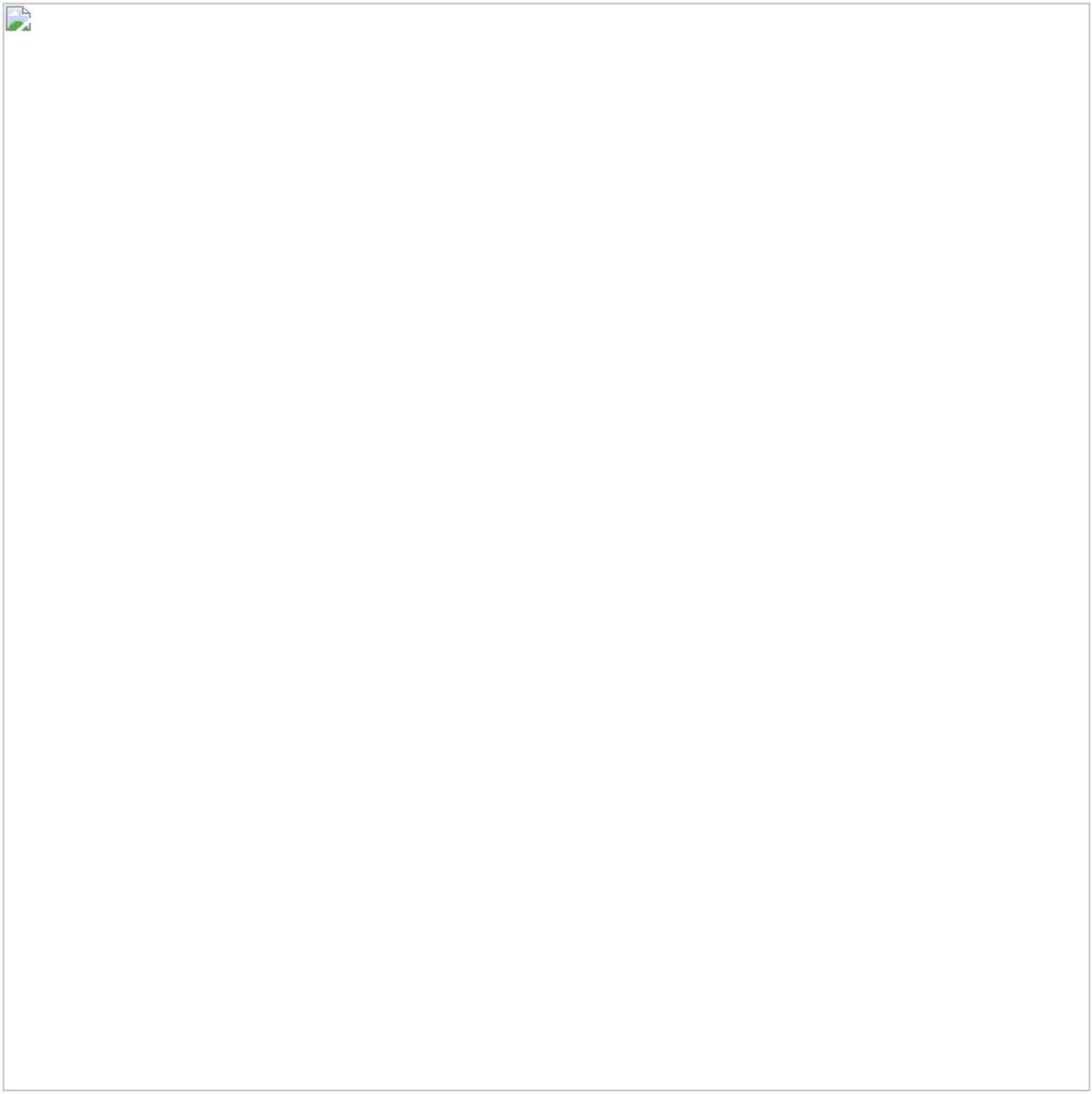
Against the background of corruption cases. Parliament votes to dismiss Safaa al-Din Rabie

dijlah.tv/index.php



The House of Representatives voted to dismiss the head of the Media and Communications Commission, Safaa al-Din Rabie, from his post by 160 deputies out of 216.

The council's vote to dismiss Rabie came against the backdrop of financial corruption cases in which the latter was accused, including receiving kickbacks and bribes from Zain, Korek and Asiacell in 2015.

It is noteworthy that the Board of Trustees of the Media Commission addressed Prime Minister Dr. Haider Al-Abadi on 22/2/2017 the need to dismiss Rabie, but political and economic interference led by a businessman who owns a major telecommunications company delayed

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the implementation of the decision.

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EXHIBIT 5B

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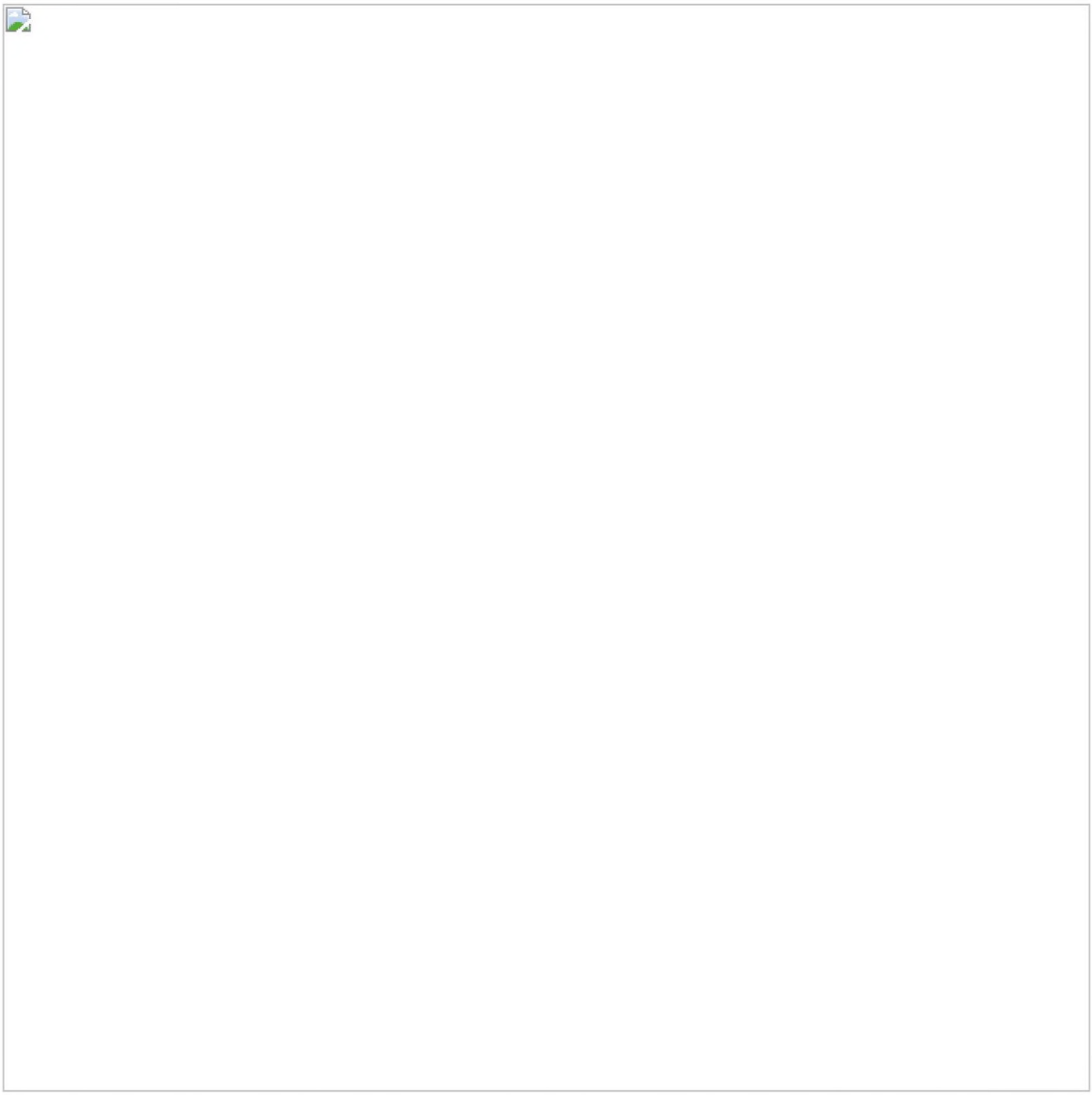
على خلفية قضايا فساد .. البرلمان يصوت بإقالة صفاء الدين ربيع | محليات

dijlah.tv/index.php



صوت مجلس النواب على اقالة رئيس هيئة الاعلام والاتصالات صفاء الدين ربيع من منصبه بواقع 160 نائبا من أصل 216.

تصويت المجلس على اقالة ربيع جاء على خلفية قضايا فساد مالي اتهم بها الأخير من ضمنها تلقي عمولات ورشاوى من شركات " زين وكورك واسيا سيل في العام 2015".

يشار الى ان مجلس امناء هيئة الاعلام خاطب رئيس الوزراء الدكتور حيدر العبادي بتاريخ 22-2-2017 بضرورة اقالة ربيع ، إلا أن تداخلات سياسية واقتصادية قادها رجل أعمل يملك شركة اتصالات كبرى أخرت تنفيذ القرار .

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EXHIBIT 6A

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The House of Representatives votes to withdraw confidence from the head of the executive body of the Media and Communications Commission

shafaq.com/ar/سياسة/مجلس-النواب-يصوت-علة-سحب-الثقة-من-ر-يس-الجهاز-التنفيذي-لهي-ة-الاعلام-و الاتصالات/



Shafaq News / The House of Representatives, on Thursday, voted on Withdrawal of confidence from the head of the Media and Communications Commission, Ali Al-Khuwayldi.

According to the correspondent of the Shafaq News Agency, the Council voted to withdraw Confidence from the Chairman of the Executive Body of the Media and Communications Commission, after he voted during Al-Khuwaildi's interrogation session at the beginning of this month on the lack of conviction in the latter's answers to Questions posed by the Board.

The House of Representatives, held on the third of March Ongoing interrogation session of the head of the Media and Communications Commission Ali Al-Khuwaildi on charges against him related to financial and administrative corruption, while the latter confirmed that the decision to renew or extend the work of companies The mobile phone is not within its jurisdiction, which is the most prominent issue in the interrogation file.

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The House of Representatives voted during the questioning session that it was not convinced by al-Khuwayldi's answers.

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EXHIBIT 6B

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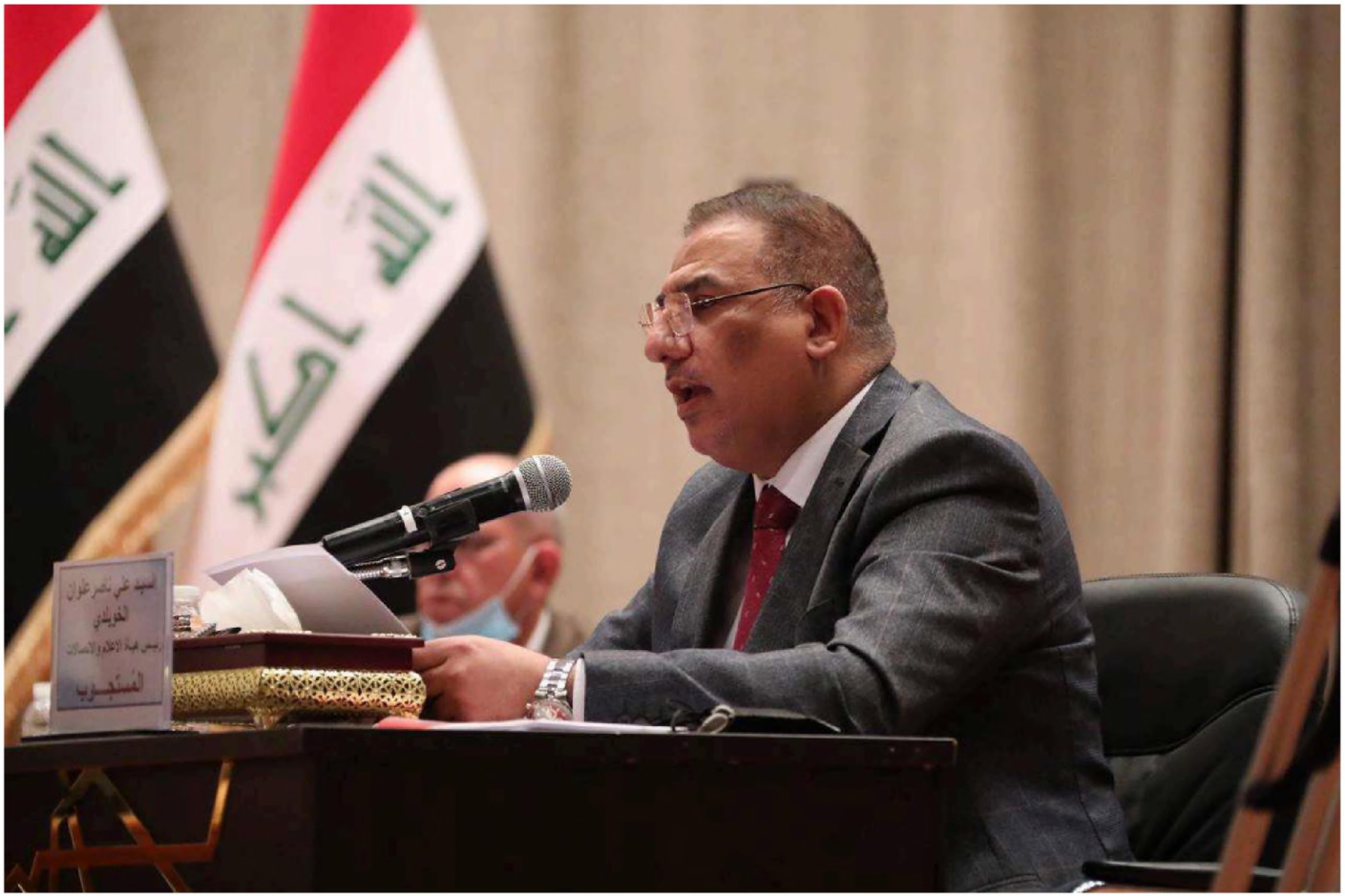
مجلس النواب يصوت على سحب الثقة من رئيس الجهاز التنفيذي لهيئة الاعلام والاتصالات

shafaq.com/ar/سياسة/مجلس-النواب-يصوت-علة-سحب-الثقة-من-ر-يس-الجهاز-التنفيذي-لهي-ة-الاعلام-والاتصالات/

Shafaaq News



شفق نيوز/ صوّت مجلس النواب، يوم الخميس، على سحب الثقة من رئيس هيئة الإعلام والاتصالات علي الخويلدي.

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وذكر مراسل وكالة شفق نيوز، أن المجلس صوت على سحب الثقة من رئيس الجهاز التنفيذي لهيئة الاعلام والاتصالات، وذلك بعد أن صوّت خلال جلسة استجواب الخويلدي مطلع الشهر الجاري على عدم القناعة بأجوبة الأخير على الأسئلة التي طرحها المجلس.

وكان مجلس النواب، عقد في الثالث من شهر آذار الجاري، جلسة استجواب رئيس هيئة الإعلام والاتصالات علي الخويلدي بشأن تهم موجهة ضده تتعلق بالفساد المالي والإداري، فيما أكد الأخير أن قرار تجديد أو تمديد عمل شركات الهاتف النقال، ليست من صلاحيته، وهي القضية الأبرز بملف الاستجواب.

وصوت مجلس النواب خلال جلسة الاستجواب على عدم قناعته بأجوبة الخويلدي.

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EXHIBIT 7A

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Parliamentary Communications: The dismissal of Al-Khuwaildi is the beginning of holding accountable those involved in corruption in the Media Commission

mawazin.net/Details.aspx

Political | 04:53 - 19/03/2021



Baghdad – Mawazine News

, a member of the Parliamentary Communications and Media Committee, Alaa Al-Rubaie, Friday, that the dismissal of the head of the Media and Communications Commission Ali Al-Khuwailidi, the beginning of To hold accountable all those proven to be involved in corruption files in the Commission.

Al-Rubaie said, in a statement received by Mawazine News: "We congratulate For the Iraqi people, what the Council of Representatives has achieved through its oversight role and its vote to dismiss a president The executive body of the Media and Communications Commission after a professional interrogation is considered the first in this The course revealed a lot of facts to the people despite the great pressures that were exerted, but We have put the service of Iraq and the protection of public funds in our sights and we will never tolerate that."

He added: "I would like here to extend my thanks and gratitude to The Presidency of the House of Representatives, all members of the Council, all media and social segments who They supported us and promised them that the reform process will not stop there, but we will continue until the truth is achieved whole."

He confirmed: "And also We announce from here that we will continue to hold

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accountable all those proven to be involved in corruption files in the Media Commission and telecommunications or those who provided cover for major corruption operations and who recently revealed their relations with each other Mobile companies when some of them try to get their support here and there to be an alternative to the article And for several reasons, the most important of which is not exposing the files that we announced and also to cover up the corruption of these companies, so we will be on the lookout for them."

He stressed: "We will have another access to the current Board of Trustees of the Commission, which has many indicators. As he was a partner in all the decisions taken and also to the telecommunications sector in general," he concluded, concluding by saying: "Finally, we promise God, Iraq and its people that we We will continue to work with all care and sincerity and expose the thieves of public money, regardless of their affiliations and orientations."

Related News

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EXHIBIT 7B

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اقالة الخويلدي بداية لمحاسبة المتورطين بالفساد في هيئة الاعلام

mawazin.net/Details.aspx

الاتصالات النيابية: اقالة الخويلدي بداية لمحاسبة المتورطين بالفساد في هيئة الاعلام

سياسية | 19/03/2021 - 04:53



بغداد – موازين نيوز

أكد عضو لجنة الاتصالات والاعلام النيابية، علاء الربيعي، الجمعة، أن اقالة رئيس هيئة الاعلام والاتصالات علي الخويلدي، بداية لمحاسبة جميع من يثبت تورطهم في ملفات فساد في الهيئة.

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وقال الربيعي، في بيان تلقت /موازين نيوز/ نسخة منه: "نبارك للشعب العراقي ماحققه مجلس النواب من خلال دوره الرقابي وتصويته على اقالة رئيس الجهاز التنفيذي لهيئة الاعلام والاتصالات بعد استجواب مهني يعتبر الاول في هذه الدورة كشفنا فيه الكثير من الحقائق امام الشعب رغم الضغوطات الكبيرة التي مورست، ولكن وضعنا خدمة العراق وحماية المال العام نصب اعيننا ولن نتهاون في ذلك ابدا".

وأضاف: "واود هنا ان اتقدم بالشكر والعرفان الى رئاسة مجلس النواب ولكل اعضاء المجلس وكل وسائل الاعلام والشرائح المجتمعية الذين ساندونا ونعدهم ان مسيرة الاصلاح لن تتوقف عند هذا الحد بل سنستمر حتى احقاق الحق كله".

وأكد: "وايضا نعلن من هنا اننا سنستمر بمحاسبة كل من يثبت تورطه بملفات فساد في هيئة الاعلام والاتصالات او ممن وفروا غطاء لعمليات فساد كبرى وممن كشف مؤخرا علاقاتهم ببعض شركات النقال عند محاولات بعضهم بالحصول على دعمها هنا وهناك ليكون بديلا للمقال ولعدة اسباب اهمها عدم فضح الملفات التي اعلنا عنها وايضا للتغطية عن فساد هذه الشركات ولذلك سنكون لهم بالمرصاد".

وشدد بالقول: "وستكون لنا صولة اخرى لمجلس امناء الهيئة الحالي الذي عليه مؤشرات كثيرة باعتباره كان شريكا في كل القرارات التي اتخذت وايضا لقطاع الاتصالات عموما"، خاتماً بالقول: "اخيرا نعاهد الله والعراق وشعبه اننا سنبقى نعمل بكل حرص واخلاص ونكشف سراق المال العام مهما كانت انتماءاتهم وتوجهاتهم".انتهى29/6ن

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EXHIBIT 8

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The Board of Commissioners of the Communications Authority informs Al-Najha of corruption in the authority

almadapaper.net/view.php



like0

01/13/2022 09:03:40 PM

Private/Range

A delegation from the Board of Commissioners of the Media and Communications Commission visited the Integrity Commission, while the Council indicated that the visit came to discuss the need for integrity inspection delegations for all institutions, including the Media and Communications Commission. On the other hand, a source revealed that the visit came as an implicit indication of the existence of corruption in the Integrity Commission and the Board of Commissioners is trying To draw the attention of integrity to him.

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A statement by the Council of Commissioners stated, “Chairman of the Board of Commissioners of the Media and Communications Commission, Bassam Salem Hussein, and Council Member Abdel Azim Muhammad Saleh visited the Federal Integrity Commission and met with the Chairman of the Commission, Judge Alaa Jawad Hameed,” noting that “during the meeting, mechanisms for implementing the Integrity Commission’s work procedures and steps were discussed.” This must be done in order to support national anti-corruption efforts.”

According to the statement, “The Chairman of the Integrity Commission, Judge Alaa Jawad Hameed, welcomed the delegation of the Council of Commissioners of the Media and Communications Commission,” stressing that “the law and its implementation serve as the basic guarantor in preventing and combating corruption wherever it exists.”

The Chairman of the Board of Commissioners of the Media and Communications Authority, Bassam Salem Hussein, gave an explanation about the nature of the Council’s work and Law 65 under which the Authority is now working, noting “the importance of cooperation between the two bodies in preventing any form of corruption.”

A member of the Board of Commissioners of the Media and Communications Commission, Abdul-Azim Muhammad Al-Saleh, praised the efforts of the Integrity Commission in fighting corruption and bringing corrupt people to justice, according to the statement, while stressing “the importance of having periodic inspection teams in Iraqi state institutions, including the Media and Communications Commission, to prevent corruption or raise awareness of its dangers.” "The future of the country, as well as exposing corruption files."

On the other hand, a source revealed what was behind the visit and its scenes, as the source indicated during an interview with (Al-Mada), that “a member of the Board of Commissioners asked the Integrity Commission to open corruption files everywhere, including the Media and Communications Commission,” indicating that “this is an implicit indication of the existence of Corruption files in the Media and Communications Commission, and the Integrity Commission must investigate them.”

He explained that "the head of the Integrity Commission requested a list from the delegation of the Communications and Media Commission, indicating all the files to be discussed," indicating that "he will be provided with this list very soon, and it condemns several matters in the Communications Commission, including the communications sector, comprehensive service, and the debts of illegal mobile phone companies." Obtained.

Regarding the fact that the delegation of the Media and Communications Commission requested the Integrity Commission to investigate the corruption of their body and that it was a precedent of its kind for the institution to request investigation into the corruption existing within it, the source indicated that “the Media and Communications Commission consists of two parts, an administrative executive body, and the Council of Commissioners,” indicating that “the Council of Commissioners It is a supervisory

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authority over job performance and legislates special regulations for the media and communications sector. It is a supervisory authority, not an administrative one. Therefore, it called for following up on the corruption that exists in the administrative authority."

He stressed that it is "a step that occurs for the first time in Iraq, for an Iraqi institution to go to the Integrity Commission to request this matter," noting that "the step also urges the rest of the government institutions and the supervisory bodies present in them to go to the Integrity Commission and urge them to investigate the corruption of their institutions."

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EXHIBIT 9

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Integrity, Media and Communications Commissions sign MoU in the framework of combating corruption

mawazin.net/Details.aspx

Political | 01:45 - 25/07/2023



Baghdad - Mawazine News

The Integrity and Media and Communications Commissions signed on Tuesday, Memorandum of Understanding in the framework of combating corruption.

The head of the Integrity Commission, Haider Hanoun, said during the conference A journalist held today with the President of the Media and Communications Commission Ali Almoayyed, that " Memorandum of Understanding with the Media and Communications Commission on other aspects taken into account by the Integrity Commission It is educational, care, training, awareness and building experiences, not only on the deterrent side and penal," noting that "we are working on the preventive aspect and keeping citizens away from The scourge of corruption in order to build the foundations of the real state."

He stated that "the twinning with the media will serve the Integrity," explaining that "the memorandum relates to the aspect of the national integrity strategy Combating corruption in coordination with ministries and authorities and strengthening the aspect of reporting crimes Corruption as well as activating a project where did you get this for inflation and illicit gain and the receipt of The achievements of the Integrity Commission and the requirements of combating corruption and enhancing the capabilities of both employees or Cadres of the Integrity Commission and entering the courses of the Anti-Corruption Academy with integrity and entering into Media courses at the Media and

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Communications Commission to benefit from investigative media work Corruption cases are diagnosed."

"We are working on the subject of an investigation. A government program and a ministerial curriculum at the forefront of which is the fight against corruption, preventing its spread and recovering money and building real institutions."

While the Chairman of the Media and Communications Commission stressed on Almoayyed during the conference that "in the context of the government's vision and strategy in the field of Cooperation between government institutions in dealing with thorny files, the media plays a role He will play a major role in supporting the Integrity Commission and supervisory institutions in the fight against corruption."

"The work of the Integrity Commission is escalating at a pace Alia reflects the authority of the state and is making great efforts in the fight against corruption," he said, explaining that "The role of the media is supportive and revealing of corruption files, as well as the role of education and awareness about the dangers of corruption and the methods used by the corrupt."

He pointed out that "this twinning will be in front of a path and a new environment to restore confidence in the joints of the state," explaining that "the Prime Minister Mohammed Shia Al-Sudani directly supports the Integrity, Media and Communications Commissions and follows up Work on a daily basis".Finished 29/h

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EXHIBIT 10

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Exhibit A

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IN THE MATTER OF AN ARBITRATION

UNDER THE RULES OF ARBITRATION

OF THE INTERNATIONAL CHAMBER OF COMMERCE

ICC ARBITRATION No: 25194/AYZ/ELU

BETWEEN:

IRAQ TELECOM LIMITED
(United Arab Emirates)

for itself and in the name and on behalf of

INTERNATIONAL HOLDINGS LIMITED
(United Arab Emirates)

Claimant

v.

KOREK TELECOM COMPANY LLC
(Iraq)

and

KOREK INTERNATIONAL (MANAGEMENT) LTD.
(Cayman Islands)

and

SIRWAN SABER MUSTAFA
(Iraq)

Respondents

FINAL AWARD

THE ARBITRAL TRIBUNAL:

NICHOLAS FLETCHER KC, PRESIDING ARBITRATOR

J. WILLIAM ROWLEY KC

DAVID JOSEPH KC





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DRAMATIS PERSONAE

Abousleiman, Camille	Partner at Dechert LLP.
Achkouty, Sandy	Mr. Rahmeh's assistant.
Agility Public Warehousing KSCP ("Agility")	Joint venture partner in IT Ltd. through Alcazar.
Alcazar Capital Partners	53.86% shareholder in IT Ltd.
Ali, Aso	16% shareholder in CS Ltd. and owner of the Halabja Group.
Altusy, Fadhel	individual instructed by Mr. Mustafa to sign the 3G Annex on behalf of Korek.
Al Kwildi, Dr. Ali	Head of the CMC at the time of the 2011 Transaction and the CMC Decision.
AsiaCell	One of Korek's competitors in Iraq.
Atlas Services Netherlands BV ("Atlas")	46.14% shareholder in IT Ltd.
Azar, Maitre Michel	Lebanese lawyer who acted for Mr. Rahmeh and was alleged to be a member of the law firm IC4LC.
Aziz, Ehab	Group Chief Financial Officer of Agility.
Barazany, Jawshin Hassan Jawshin	Associate of Mr. Mustafa and a shareholder in CS Ltd., the Second Respondent.
Beecable	a company in the Darin Group through which Korek is alleged to have structured various transactions.
Barnes, Dr. Ronnie	expert witness for the Respondents.
Bortman, Nicholas	the principal of Raedas and a witness in these proceedings.
Briggs, Simon	a partner at Dechert LLP who acted on the Higher Drive and Barn Hill property transactions.
Burton, Jenna	an employee of Raedas.
Chandler, Scott	expert witness for the Respondents.
Charaf, Abou	formerly a lawyer at Dechert LLP subsequently employed at Korek.
CS Ltd.	see Korek International (Management) Ltd.
Darin Group	a major group of companies operating in Iraq and said to be connected to Mr. Mustafa.
Dawa party	an influential political party in Iraq.
DoubleU	a company registered in Lebanon and said to be indirectly owned by Mr. Rahmeh through the ZR Group.
Ersal FZCO	a reseller of Nokia products, incorporated in Dubai and partly owned by Nathalie Haddad, said to be a nominee shareholder for Mr. Rahmeh.
Froissart, Olivier	a director of IT Ltd. and formerly Senior Vice President in charge of International Participations at Orange.
France Telecom S.A.	see Orange.

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Gebara, Ghada	formerly the Chief Executive Officer of Korek.
Gervais, David	an associate at Dechert LLP who acted on the purchase of the Higher Drive and Barn Hill properties.
Hajras	a ZR Group company.
Halabja Group	a group of companies owned by Mr. Aso Ali which is said to have received substantial purchase orders from Korek between 2012 and 2017.
Hamdani	an employee of Orange.
IC4LC	a fictitious law firm said to have been instructed by Korek and Mr. Mustafa in relation to the CMC Decision.
Intercontinental Bank of Lebanon ("IBL")	a Lebanese bank which provided account holding services for Mr. Mustafa, references for the alleged purchasers of the Higher Drive and Barn Hill properties and provided the IBL Loan to Korek.
International Holdings Limited ("IH Ltd.")	the holder of 100% of the shares in Korek, owned 56% by CS Ltd. and 44% by IT Ltd.
IraqCell	a company incorporated in Iraq in which Mr. Mustafa is reported to hold an 80% interest and which holds a local loop licence to operate in Kirkuk and Mosul and which is alleged to be in competition with Korek.
Iraq Telecom Limited ("IT Ltd.")	the Claimant and the joint venture vehicle for holding Agility and Orange's indirect interests in IH Ltd.
Jain, Deepak	an IT Ltd. representative on the IH Ltd. Board.
Junde, Nawzad	A CS Ltd. representative on the IH Ltd. Board.
Kasim, Zahira	the wife of Dr. Al Khwildi.
Korek International Company LLC	the First Respondent.
Korek International (Management) Ltd. ("CS Ltd.")	the corporate vehicle by which Mr. Mustafa and others held their 56% interest in IH Ltd. and the Second Respondent.
Korek Telecom Company LLC ("Korek")	the First Respondent and the holder of a mobile telephony licence in Iraq.
Lo Gatto, Alban	the General Counsel and Company Secretary of Orange Middle East and Africa.
Matthews, Noel	expert witness for the Claimant.
Mustafa, Sirwan Saber ("Mr. Mustafa")	the Third Respondent.
Mustafa, Jiqsy Hamo	3.6% shareholder in CS Ltd.
Orange S.A. ("Orange")	formerly France Telecom S.A. and a joint venture partner in IT Ltd. through Atlas.
Rabee, Dr. Safa	Deputy General Director of the CMC at the time of the CMC Decision.
Rabee, Riham	Dr. Rabee's daughter.

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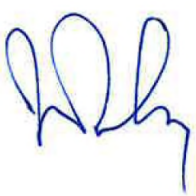
Raedas	a business intelligence and investigations firm retained by IT Ltd.
Rahmeh, Raymond	a Lebanese businessman who was an associate of Mr. Mustafa and served as the so-called independent member of the KSC.
Ratigan, Ellen	Assistant General Counsel of Dechert LLP.
Rayes, Ghassan	Head of the Corporate Banking Division of IBL.
RBT	a ZR Group company said to have charged Korek US$ 2.5 million in fees for purported "value added services.
Rennard, Marc	an Orange executive formerly in charge of the Middle East and Africa regions and a Board member for It Ltd., IH Ltd., and the KSC.
Succar, Mansour	an associate of Mr. Rahmeh who was presented as the purchaser of the Higher Drive property.
Sultan, Tarek	Chief Executive Officer and Vice Chairman of Agility.
Touma, Issa	formerly the Chief Financial Officer of Korek.
Turner, Steven	expert witness for the Claimant.
Youssef, Pierre	an associate of Mr. Rahmeh who was presented as the purchaser of the Barn Hill property.
Zina, Teddy	the brother of Mr. Rahmeh.
ZR Collection	a company in the ZR Group with which Korek had various business dealings.
ZR Group	a group of companies connected to Mr. Rahmeh.





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DEFINITIONS AND ABBREVIATIONS

The following terms and abbreviations are to be found in the Award:

2011 Transaction	the July 2011 transaction by which Orange and Agility established IT Ltd. to hold their interest in a new holding company, IH Ltd. and by which Korek issued all of its existing and newly capitalised shares to IH Ltd., with Mr. Mustafa and his fellow initial investors (Mr. Jamshin Hassan Jamshin Barazany and Mr. Jiqsy Hamo Mustafa) together with Mr. Aso Ali acquiring 56% of IH Ltd.'s shares (held through CS Ltd.), and with IT Ltd. acquiring 44% of IH Ltd.'s shares. IT Ltd. also had the option to acquire a further 7% shareholding in IH Ltd. which would have given it majority control.
3G Annex	the amendment to Korek's licence, signed on behalf of Korek on 10 November 2014, which purported to give Korek the right to offer 3G mobile telephony services on amended terms (including restrictions upon any change in control).
CMC	the Republic of Iraq's Communications and Media Commission.
CMC Decision	the decision of the CMC dated 2 July 2014 which ordered that the partnership between Korek and France Telecom and Agility be revoked.
Call Option Sale Price	the sale price to be paid for the exercise of the IT Call Option.
FPC	Korek's Financing Proposal Committee.
IBL Loan	the "loan" purportedly extended by IBL to Korek in December 2011 to provide funding of up to US$ 150 million for the purpose of paying amounts due from Korek to the CMC.
IBL Loan Agreement	the loan agreement purporting to formalise the IBL Loan, entered into between IBL, Korek and Mr. Mustafa as Guarantor dated as of 21 December 2011.
IH Shareholder Loan	an onward loan by IH Ltd. as lender to Korek as borrower. Of the US$ 285 million IT Shareholder Loan.
IraqCell Agreement	a deed entered into by Mr. Mustafa, IT Ltd. and IH Ltd. whereby Mr. Mustafa undertook certain obligations towards IT Ltd. and IH Ltd. having regard to his shareholding in IraqCell.
Impugned Transactions	certain transactions between Korek and Darin, Halabja, Ersal and IC4LC which IT Ltd. argue were unauthorised and were used to extract significant sums out of Korek and which should be declared null and void.
IT Call Option	a call option contained in Clause 23 of the SHA and exercisable by IT Ltd., giving it the right to call for the transfer of 7% of the fully paid shares in IH Ltd., sufficient to give IT Ltd. 51% of those shares.

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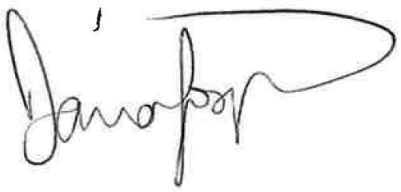
IT Shareholder Loan	a loan in the amount of US$ 285 million provided by IT Ltd. to IH Ltd. pursuant to a loan agreement dated 27 July 2011 as part of the 2011 Transaction.
KCR	the Kurdish Companies Registry.
KCR Decree	decree no. 4961 of the KCR dated 19 March 2019 which purported to unwind the 2011 transaction and to restore the shares in Korek to Mr. Mustafa, Mr. Jawshin Hassan Jawshin Barazany and Mr. Jiqsy Hamo Mustafa.
KSC	the Korek Supervisory Committee.
LAMC	Lebanese Arbitration and Mediation Centre, which administered case no. 175/2018 in which IT Ltd. brought claims against IBL, Korek and IH Ltd.
Non-Compete Payment	a sum of US$ 100 million said to be due to IT Ltd. under the SHA as a result of an alleged breach by Mr. Mustafa of his obligations under clause 17.1 of the SHA.
Option Completion Date	the date pursuant to clause 239 of the SHA on which the IT Call Option shares are to be transferred following the exercise of the IT Call Option.
SHA	a shareholders' agreement entered into on 10 March 2011 between IH Ltd., Korek, Mr. Mustafa, CS Ltd. and IT Ltd. as part of the 2011 Transaction setting out the terms upon which the parties intended the business of the Group to be carried on.
Subordination Agreement	an agreement entered into between IBL, Korek, IH Ltd. and IT Ltd. in December 2014 whereby, in consideration of IBL making a loan available to Korek, IT Ltd. agreed to subordinate its rights against IH Ltd. under the IT Ltd. Shareholder Loan and IH Ltd. agreed to subordinate its rights under the IH Shareholder Loan to Korek's obligations to IBL.
Subscription Agreement	an Amended and Restated Subscription Agreement dated 27 July 2011 and entered into between IH Ltd., Korek, Mr. Mustafa, Mr. Jawshin Hassan Jawshin Barazany, Mr. Jiqsy Hamo Mustafa, CS Ltd., IT Ltd., Alcazar and Atlas as part of the 2011 Transaction under which IT Ltd. agreed to subscribe for a number of shares in IH Ltd. and Mr. Mustafa, Mr. Mr. Jawshin Hassan Jawshin Barazany, and Mr. Jiqsy Hamo Mustafa agreed to have CS Ltd. subscribe for a majority of the shares in IH Ltd.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A. THE PARTIES

1. The Claimant, Iraq Telecom Limited, ("IT Ltd.") is a company incorporated under the laws of the Dubai International Financial Centre. Its registered office is at:

   Unit 11, Level 3
   Gate Village Building 10
   Dubai International Financial Centre
   507043 Dubai
   United Arab Emirates

2. International Holdings Limited ("IH Ltd."), in whose name and on behalf of whom the Claimant asserts claims, is a company incorporated under the laws of the Dubai International Financial Centre. Its registered office is at:

   Unit 11, Level 3
   Gate Village Building 10
   Dubai International Financial Centre
   507043 Dubai
   United Arab Emirates

3. The Claimant is represented in this arbitration by:

   Mr. Cyrus Benson
   Mr. Rahim Moloo
   Ms. Lindsey Schmidt
   Mr. Philip Shapiro
   Mr. E. Jin Lee
   Of Gibson Dunn & Crutcher
   Telephone House
   2-4 Temple Avenue
   London,
   EC4Y 0HB
   United Kingdom
   Tel: +44 20 7071 4000
   Email: cbenson@gibsondunn.com
   rmoloo@gibsondunn.com
   lschmidt@gibsondunn.com
   pshapiro@gibsondunn.com
   elee@gibsondunn.com

   And by:

   Mr. John Willems
   Ms. Noor Davies
   Ms. Mounia Larbaoui
   Ms. Yasmine El Achkar
   Mr. Fernando Labombarda
   Mr. James Hart
   Of White & Case
   19 Place Vendome
   75001 Paris

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France
Tel: +33 1 55 04 15 15
Email: jwillems@whitecase.com
noor.davies@whitecase.com
mounia.larbaoui@whitecase.com
yasmine.el.achkar@whitecase.com
fernando.labombarda@whitecase.com
james.hart@whitecase.com

And also by:

Mr. Jean-Pierre Harb
Ms. Ileana Smeureanu
Of Jones Day
2 Rue Saint-Florentin
75001 Paris
France
Tel: +33 1 56 59 39 39
Fax: +33 1 56 59 39 38
Email: jpharb@jonesday.com
ismeureanu@jonesday.com

4. The First Respondent, Korek Telecom Company LLC ("Korek') is a company incorporated under the laws of Iraq. Its registered office is at:

Kurdistan Street nr. 45
Pirman, Erbil,
Kurdistan
Republic of Iraq

5. The Second Respondent, Korek International (Management) Ltd., ("CS Ltd.") is a company incorporated under the laws of the Cayman Islands. Its registered office is at:

Intertrust Corporate Services (Cayman) Limited
190 Elgin Avenue
George Town
Grand Cayman KY1-9005
Cayman Islands

6. The Third Respondent, Sirwan Saber Mustafa (referred to in this Award as Mr. Mustafa), is an individual.[1] His address is:

Kurdistan Street nr. 45
Pirman, Erbil,
Kurdistan
Republic of Iraq

and:

---

[1] Mr. Mustafa is also referred to by the Claimant as Mr. Barzani. This nomenclature has also been used at earlier stages of this reference by the Arbitral Tribunal.

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Erbil-Massief-Sallahaddin
Dar Althiafa-House Number 3, Erbil
Kurdistan
Republic of Iraq

7. The Respondents are represented by:

Mr. David Hunt
Mr. Michael Smyth
Mr. Jan Kunstyr
Of Boies Schiller Flexner (UK) LLP
5 New Street Square
London EC4A 3BF
United Kingdom
Tel: +44 20 3908 0800
Email: dhunt@bsfllp.com
MSmyth@bsfllp.com
JKunstyr@bsfllp.com

And by:

Mr. William Hooker
Ms. Rosalind Axbey
Ms. Rachel Ong
Mr. James Newton
Of Pallas Partners LLP
1 King William Street
London EC4N 7AF
Tel: +44 (0) 204 574 1060
Email: William.Hooker@pallasllp.com
rosalind.axbey@pallasllp.com
Rachel.Ong@pallasllp
James.Newton@pallasllp.com

8. Korek, CS Ltd. and Mr. Mustafa are jointly referred to as "the Respondents". IT Ltd. and the Respondents are referred to collectively herein as "the Parties".

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B. THE ARBITRATION AGREEMENT AND THE APPOINTMENT OF THE TRIBUNAL

1. The claims are brought pursuant to (i) a Shareholders' Agreement dated 10 March 2011 and entered into between IT Ltd., IH Ltd., and the Respondents (the "Shareholders' Agreement" or "SHA"), (ii) an amended and restated Subscription Agreement relating to the First Respondent dated 27 July 2011 and entered into between IT Ltd., IH Ltd., the Respondents, Mr. Jawshin Hassan Jawshin Barazany, Mr. Jiqsy Hamo Mustafa, Alcazar Capital Partners and Atlas Services Netherlands B.V. (the "Subscription Agreement") and (iii) a letter agreement entered into on or around 27 July 2011 between IT Ltd., IH Ltd. and the Third Respondent (the "IraqCell Agreement").

2. Clause 47 of the SHA provides:

Governing Law

This Agreement, including any non-contractual obligations arising out of or in connection with this Agreement, shall be governed by and construed in accordance with English law.

3. Clause 48 of the SHA provides:

48.1 If any dispute, controversy or claim of whatever nature arises under, out of or in connection with this Agreement, including any question regarding its existence, validity or termination or any non-contractual obligations arising out of or in connection with this Agreement (a Dispute), the parties shall use all reasonable endeavours to resolve the matter amicably. If one party gives notice that a Dispute has arisen and the parties are unable to resolve the Dispute within 30 (thirty) days of service of such notice then the Dispute shall be referred to two (2) IT Ltd Representatives and two (2) CS Ltd Representatives who shall attempt to resolve the Dispute. The parties agree that such IT Ltd Representatives and CS Ltd Representatives shall have full power to resolve such Dispute on behalf of all parties.

48.2 If such IT Ltd Representatives and CS Ltd Representatives are unable to resolve the Dispute within 30 (thirty) days, the parties agree to submit the matter to settlement proceedings under the ICC ADR. Rules. If the Dispute has not been settled pursuant to the ICC ADR. Rules within 45 (forty five) days following the filing of a Request for ADR. (as defined in the ICC ADR. Rules) or within such other period as the parties to the Dispute may agree in writing, the parties to the Dispute shall have no further obligations under this clause 48.2. No party shall resort to arbitration against another under this Agreement until the expiry of this 45 (forty five) day period.

48.3 If the parties fail to resolve the Dispute in accordance with clauses 48.1 and 48.2, such Dispute shall be referred to and finally resolved by arbitration under the Arbitration Rules of the ICC (Rules), which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three (3).

48.4 In the event that CS Ltd and/or Mr. Sirwan Saber Mustafa, on the one hand, and IT Ltd, on the other hand, are the only parties to the Dispute, (i) 1 (one) of the arbitrators shall be appointed by IT Ltd, (ii) one of the arbitrators

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shall be appointed by CS Ltd and/or Mr. Sirwan Saber Mustafa, (iii) the third arbitrator shall be jointly appointed by the 2 (two) arbitrators appointed by IT Ltd and CS Ltd and/or Mr. Sirwan Saber Mustafa; and (iv) in the event that such arbitrators are unable to agree on the identity of the third arbitrator, such arbitrator shall be appointed by the ICC in accordance with the Rules.

48.5 In the event that CS Ltd and/or Mr. Sirwan Saber Mustafa, on the one hand, and IT Ltd, on the other hand, are not the only parties to the Dispute, the three arbitrators shall be appointed by the ICC in accordance with the Rules.

48.6 The parties hereby agree that any restriction in the Rules upon the proposition or appointment of an arbitrator by reason of nationality shall not apply to any arbitration commenced pursuant to this clause. The seat, or legal place, of arbitration shall be Dubai International Financial Centre. The language to be used in the arbitration shall be English. [...]

4. Clause 33 of the Subscription Agreement provides:

Governing Law

This Agreement, including any non-contractual obligations arising out of or in connection with this Agreement, shall be governed by and construed in accordance with English law.

5. Clause 34 of the Subscription Agreement provides:

34.1 If any dispute, controversy or claim of whatever nature arises under, out of or in connection with this Agreement, including any question regarding its existence, validity or termination or any non-contractual obligations arising out of or in connection with this Agreement (a Dispute), the parties shall use all reasonable endeavours to resolve the matter amicably. If one party gives notice that a Dispute has arisen and the parties are unable to resolve the Dispute within 30 (thirty) days of service of such notice then the Dispute shall be referred to two IT Ltd Representatives and two CS Ltd Representatives who shall attempt to resolve the Dispute and the parties agree that such IT Ltd Representatives and CS Ltd Representatives shall have full power to resolve such Dispute on behalf of all parties.

34.2 If such IT Ltd. Representatives and CS Ltd Representatives are unable to resolve the Dispute within 30 (thirty) days, the parties agree to submit the matter to settlement proceedings under the ADR. Rules of the ICC (ADR. Rules). If the Dispute has not been settled pursuant to the ADR. Rules within 45 (forty five) days following the filing of a Request for ADR. (as defined in the ADR. Rules) or within such other period as the parties to the Dispute may agree in writing, the parties to the Dispute shall have no further obligations under this clause 34.2. No party shall resort to arbitration against another under this Agreement until the expiry of this 45 (forty five) day period.

34.3 If the parties fail to resolve a Dispute in accordance with clauses 34.1 and 34.2, such Dispute shall be referred to and finally resolved by arbitration under the Arbitration Rules of the ICC (Rules), which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three (3).

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34.4 In the event that CS Ltd and/or Mr. Sirwan Saber Mustafa, on the one hand, and IT Ltd, on the other hand, are the only parties to the Dispute, (i) 1 (one) of the arbitrators shall be appointed by IT Ltd, (ii) one of the arbitrators shall be appointed by CS Ltd and/or Mr. Sirwan Saber Mustafa, (iii) the third arbitrator shall be jointly appointed by the 2 (two) arbitrators appointed by IT Ltd and CS Ltd and/or Mr. Sirwan Saber Mustafa; and (iv) in the event that such arbitrators are unable to agree on the identity of the third arbitrator, such arbitrator shall be appointed by the ICC in accordance with the Rules.

34.5 In the event that CS Ltd and/or Mr. Sirwan Saber Mustafa, on the one hand, and IT Ltd, on the other hand, are not the only parties to the Dispute, the three arbitrators shall be appointed by the ICC in accordance with the Rules.

34.6 The parties hereby agree that any restriction in the Rules upon the nomination or appointment of an arbitrator by reason of nationality shall not apply to any arbitration commenced pursuant to this clause. The seat, or legal place, of arbitration shall be the Dubai International Financial Centre. The language to be used in the arbitration shall be English. [...]

6. Paragraph 3 of the IraqCell Agreement provides that:

This deed and any non contractual obligations arising out of or in connection with this deed shall be governed by and construed in accordance with English law.

The provisions of clauses 25, 28, 29, 30.1, 32 and 34 of the Subscription Agreement shall apply mutatis mutandis to this deed.

7. Pursuant to an agreement, notified to the Secretariat of the International Court of Arbitration of the International Chamber of Commerce (the "ICC Secretariat" and "ICC Court", respectively) by letter dated 10 July 2020, the Parties agreed to depart from the provisions of clause 48.5 of the SHA and clause 34.5 of the Subscription Agreement and to constitute the Arbitral Tribunal in the following manner:

1. *The Claimant and the Respondents shall each nominate one arbitrator. The Parties shall notify each other and the ICC of these nominations by 24 July 2020.*
2. *The Parties shall then seek to agree on the nomination of the President of the Tribunal within 30 days of the nominations of the party appointed arbitrators (i.e., by 24 August 2020). The Parties shall have the right to consult with their respective nominated arbitrators as to the proposed candidates for the President.*
3. *The Parties request that during the foregoing 30-day period, the ICC compiles a list of six (6) candidates for the President of the Tribunal, which may be used for the appointment of the President by the ICC, pursuant to a list procedure as further described below, in the event the Parties are unable to agree [on] the President.*
4. *The Parties request that each candidate included by the ICC on the list shall have significant experience of sitting as a President of large ICC arbitrations. Three (3) of the candidates on the list shall be English qualified lawyers. Three (3) of the candidates on the list shall not be English qualified lawyers.*
5. *The Parties have agreed that the following individuals may not be appointed (either by the Parties or the ICC) as members of the Tribunal in these proceedings:*

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(a) Professor Gary Born

(b) Professor Lucy Reed

(c) Bernard Hanotiau

(d) Michael Pryles

(e) Sir Bernard Eder

(f) Ali Malek QC

(g) Jeffrey Gruder QC

(h) Dominic Spenser Underhill

(i) Salim Moollan QC

(j) Michael Tselentis QC

6. *In the event the Parties are unable to agree the President of the Tribunal within the 30-day period specified in ¶ 2 above, the ICC shall provide the list of proposed candidates to the Parties on 25 August 2020.*

7. *The Parties shall each have the right to strike one (1) candidate and to rank the remaining candidates by order of preference, such input to be notified to the ICC by 27 August 2020. The ICC shall then appoint the President of the Tribunal from the remaining candidates within 14 days (i.e., by 10 September 2020).*

8. On 24 July 2020, the Claimant nominated Mr. J. William Rowley KC as arbitrator. His address and contact details are as follows:

J. William Rowley KC
Twenty Essex
London WC2R 3AL
Tel: +44 20 7842 1200
Email: wrowley@twentyessex.com

And

Arbitration Place
Bay Adelaide Centre West
333 Bay Street, Suite 900
Toronto ON MFH 2R2
Canada.
Tel: +1 416 848 0203

9. On the same day, the Respondents nominated Mr. David Joseph KC as arbitrator. His address and contact details are as follows:

David Joseph KC,
Essex Court Chambers,
Lincoln's Inn Fields,
London WC2A 3EG,
United Kingdom.

Tel: +44 20 7822 2125
Email: djoseph@essexcourt.com

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10. On 4 August 2020, the Secretary General of the ICC Court, acting in accordance with Article 13.2 of the ICC Rules, (i) confirmed Mr. J. William Rowley KC as co-arbitrator on the nomination of the Claimant and (ii) confirmed Mr. David Joseph KC as co-arbitrator on the joint nomination of the Respondents.

11. On 24 September 2020, the ICC Court, acting in accordance with Article 13.2 of the ICC Rules, appointed Mr. Nicholas Fletcher KC as the President of the Arbitral Tribunal in this arbitration upon the joint nomination of the Parties, according to the procedure they had agreed upon. His address and contact details are as follows:

Mr. Nicholas Fletcher KC,
4 New Square,
Lincoln's Inn,
London WC2A 3RJ
United Kingdom

Tel: +44 (0)20 7822 2125
Email: n.fletcher@4newsquare.com

12. The ICC Secretariat Case Management Team for this arbitration is:

Ms Stella Leptourgou, Deputy Counsel	Tel: +33 1 49 53 28 61
Mr. Lukas Palecek, Deputy Counsel	Tel: +33 1 49 53 28 16
Mr. Karam Farah, Deputy Counsel	Tel +33 1 49 53 30 06
Ms Iveth Lages, Assistant	Tel: +33 1 49 53 29 82
Ms Maelle Moumene, Assistant	Tel: +33 1 49 53 29 35
Ms Serra Remili, Assistant	Tel: +33 1 49 53 28 56
Fax: +33 1 49 53 57 80	
Email: ica5@iccwbo.org	

13. In accordance with clause 48.6 of the SHA and clause 34.6 of the Subscription Agreement, the place of arbitration is the Dubai International Financial Centre.

14. Pursuant to Article 32.3 of the ICC Rules, any award of the Arbitral Tribunal shall be deemed to have been made at the place of arbitration, namely the Dubai International Financial Centre, and on the date stated therein. Nevertheless, pursuant to Article 18.2 of the ICC Rules, after consultation with the Parties, the Arbitral Tribunal may hold any meetings or hearings at a location other than the Dubai International Financial Centre that it considers appropriate.

15. In accordance with clause 48.6 of the Shareholders' Agreement and clause 34.6 of the Subscription Agreement, the language of the arbitration is English.

16. The rules governing these arbitration proceedings are the ICC Rules of Arbitration in force as from 1 March 2017 ("the ICC Rules"), and such other mandatory rules as are applicable to an international arbitration taking place in the Dubai International Financial Centre as the seat of the arbitration, and, where these rules are silent, such other rules as may be agreed in writing by the Parties or, in the absence of such agreement, as may be determined by the Arbitral Tribunal.

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C. PROCEDURAL HISTORY

1. On 16 March 2020, IT Ltd. filed a Request for Arbitration against the Respondents.

2. On 14 April 2020, IT Ltd. filed an Amended Request for Arbitration, including a claim in the name and on behalf of International Holdings Limited.

3. On 30 May 2020, the Respondents served their Answer to the IT Ltd.'s Amended Request for Arbitration.

4. On 29 July 2020, the ICC Secretariat wrote to the Parties advising them that Mr. J. William Rowley KC and Mr. David Joseph KC had returned their Statements of Acceptance, Availability, Impartiality and Independence.

5. On 4 August 2020, the Secretariat gave notice to the Parties that the Secretary General of the ICC Court had that day confirmed Mr. Rowley KC and Mr. Joseph KC as members of the Tribunal. The Secretariat invited the Parties to nominate a presiding arbitrator by 24 August 2020 or such other date as might be agreed between the Parties.

6. On 25 August 2020, IT Ltd. served its Re-Amended Request for Arbitration, which was said to amend and replace the Amended Request for Arbitration dated 14 April 2020.

7. On 29 August 2020, IT Ltd.'s counsel advised the Secretariat that the Parties continued to confer on candidates for the role of presiding arbitrator.

8. On 31 August 2020, the Secretariat acknowledged receipt of the Re-Amended Request for Arbitration.

9. On 4 September 2020, the Respondents indicated to the Secretariat that they intended to file an Amended Answer to the Request for Arbitration served on 25 August 2020 and requested that they be afforded the usual period of 30 days within which to do so.

10. On 8 September 2020, the Parties informed the Secretariat that they had reached agreement upon a method for selecting the presiding arbitrator,

11. On 10 September 2020, the Secretariat confirmed that the Respondents should serve their Amended Answer by 24 September 2020 and that one of the two proposed candidates for presiding arbitrator had indicated that he was unavailable.

12. On 11 September 2020, the Parties requested that the Secretariat make contact with the remaining candidate for presiding arbitrator.

13. On 24 September 2020, the Respondents served their Amended Answer to the Re-Amended Request for Arbitration. On the same day, the ICC Court appointed Mr. Nicholas Fletcher as the President of the Arbitral Tribunal.

14. On 30 September 2020, the Arbitral Tribunal wrote to the Parties concerning the drawing up of the Terms of Reference and proposing the holding of a case management conference.

15. A case management conference took place by videoconference on 27 October 2020, during which the Terms of Reference were agreed. The Terms of Reference were signed on behalf of the Parties and by the members of the Arbitral Tribunal on 29 October 2020 and were remitted by the Arbitral Tribunal to the ICC Secretariat.

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16. On 9 November 2020, the Arbitral Tribunal issued Procedural Order No. 1 which, among other things, established a procedural timetable for the reference and made provision for the Parties' respective cases to be presented in full together with evidence relied upon through the service of memorials. The timetable provided an opportunity for IT Ltd. to make an application for permission to pursue derivative claims on behalf of IH Ltd. and a timetable for the determination of such an application, if made.

17. On 1 December 2020, at the request of the Parties and by consent, the Arbitral Tribunal issued its Procedural Order No. 2, addressing issues of confidentiality and access to documents and its Procedural Order No. 3 enjoining the Respondents, until final award of the Arbitral Tribunal, from taking certain actions.

18. On 8 December 2020, IT Ltd. served its application for permission to pursue derivative claims (the Derivative Claims Application).

19. On 26 January 2021, the Respondents served a response to IT Ltd.'s application.

20. On 18 February 2021, the Arbitral Tribunal heard argument, by videoconference, on IT Ltd.'s application.

21. On 16 March 2021, the Arbitral Tribunal issued Procedural Order No. 4, giving IT Ltd. leave to bring certain derivative claims against CS Ltd. and Mr. Mustafa in the name of and on behalf of IH Ltd., denying IT Ltd. leave to bring derivative claims against Korek and giving IT Ltd. leave to pursue direct claims for unlawful means tortious conspiracy.

22. On 23 April 2021, IT Ltd. served its Statement of Claim, together with supporting materials including the expert report of Mr. Noel Matthews and witness statements from Mr. Ehab Aziz and Mr. Nicholas Bortman.

23. On 30 July 2021, the Respondents served their Statement of Defence, together with supporting materials, the first witness statement of Mr. Mustafa and an expert report of Dr. Ronnie Barnes and Mr. Scott Chandler.

24. On 16 August 2021, the Respondents made an application for (i) the disclosure of all documents underlying the investigation by Raedas Limited ("Raedas'), (ii) for amendment of the confidentiality restrictions agreed by the Parties and embodied in Procedural Order No. 2 and (iii) leave to bring an application before the Commercial Court in London under s.43 of the English Arbitration Act 1996 to compel Raedas to provide documents and to require the attendance at the hearing of the arbitration of its sub-contractors (the "Disclosure Application").

25. On 10 September 2021, the Respondents served an Annex to their Statement of Defence, addressing the judgment of the United Kingdom's Privy Council in *Primeo Fund (in Official Liquidation) v Bank of Bermuda (Cayman) Ltd & Anr*. [2021] UKPC 22 which was said to have a direct effect on certain of IT Ltd.'s claims in these proceedings.

26. On 10 September 2021 the Parties provided their completed Redfern Schedules to the Arbitral Tribunal.

27. On 11 September 2021, IT Ltd. served its response to the Respondents' Disclosure Application.

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28. On 17 September 2021, the Arbitral Tribunal (sitting together in person) heard argument from counsel (attending remotely) on the Disclosure Application.

29. On 28 September 2021, the Arbitral Tribunal issued Procedural Order No. 5 and an Amended Procedural Order No. 2 addressing both the issues arising in the Respondents' Disclosure Application and the document production disputes arising from the Parties' respective Redfern Schedules.

30. On 1 October 2021, the Respondents raised certain issues arising out of Procedural Order No. 5 as a result of which the Arbitral Tribunal issued, on 9 October 2021, Procedural Order No. 6 which both amended Procedural Order No. 5 and ordered the Respondents to produce certain further documents to IT Ltd.

31. On 29 October 2021, IT Ltd. made an application for interim measures relating to a Subject Access Request made of Raedas by Mr. Mustafa (the "SAR Application").

32. On 6 November 2021, IT Ltd. made a further application for the following interim measures ("IT Ltd.'s Security Application"):

    (a) CS Ltd., Mr. Mustafa, and Korek to post financial security for an eventual award of damages in the amount of USD 100 million;

    (b) Korek to refrain from entering into any transaction worth in excess of USD 1 million without the IT Ltd.'s prior written consent or the Arbitral Tribunal's approval, and Mr. Mustafa to refrain from causing Korek to enter into such transactions without the Claimant's prior written consent or the Arbitral Tribunal's approval; and

    (c) Mr. Mustafa to: (i) refrain from disposing of the cash collateral provided as security for the IBL Loan without IT Ltd.'s prior consent, and (ii) provide IT Ltd. and the Arbitral Tribunal on the first working day of each month bank statements or other evidence confirming his compliance with the order.

33. On 8 November 2021, the Respondents served their response to IT Ltd.'s SAR Application, together with an expert report of Mr. Hugh Tomlinson KC.

34. On 22 November 2021, the Respondents served their response to IT Ltd.'s Security Application and sought permission for Korek to enter into a certain contract with Beecable (the "Beecable Application"). This submission was accompanied by a witness statement from Mr. Muhsin Akrawi.

35. On 2 December 2021, the Arbitral Tribunal (sitting together in person) heard argument from counsel (attending remotely) on the SAR Application, the Interim Measures Application and the Beecable Application.

36. On 16 December 2021, the Arbitral Tribunal issued Procedural Order No. 7 (in both redacted and unredacted form to observe the requirements of Procedural Order No. 2) addressing the Security Application, the SAR Application and the Beecable Application. The Arbitral Tribunal's orders on the Security Application were conditioned in part on the provision of certain undertakings as to damages from IT Ltd.'s ultimate shareholders, which were provided within the time stipulated by the Arbitral Tribunal.

37. On 21 December 2021, IT Ltd. made a further application, for certification and disclosure of the Respondents' Document Production Methodology (the "Certification Application").

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38. On 7 January 2022, the Respondents served their response to IT Ltd.'s Certification Application.

39. On the same date, IT Ltd. served its Statement of Reply, together with supporting materials including a further expert report of Mr. Noel Matthews and an expert report of Mr. Steven Turner, witness statements from Mr. Olivier Froissart and Mr. Tarek Sultan and second witness statements from Mr. Aziz and Mr. Bortman.

40. On 18 January 2022, upon an application by IT Ltd. and after receiving written submissions from the Parties, the Arbitral Tribunal issued a ruling permitting certain exceptional redactions to the transcript of a WhatsApp conversation between Raedas and one of its sources. This ruling was subsequently amended in part on 23 January 2022.

41. On 21 January 2022, the Arbitral Tribunal, following further exchanges with the Parties concerning Mr. Mustafa's failure to comply with all of the requirements of Procedural Order No. 7, issued Procedural Order No. 9, requiring that Mr. Mustafa provide IT Ltd. and the Arbitral Tribunal forthwith with bank statements or other evidence sufficient to confirm his compliance with the Order contained in paragraph 126(a) of Procedural Order No. 7 and that he thereafter provide both IT Ltd and the Arbitral Tribunal with such material on the first working day of each month with bank statements or other evidence sufficient to confirm his compliance with the Arbitral Tribunal's Order.

42. On 25 January 2022, IT Ltd. made an application for security to be provided by the Respondents due to Mr. Mustafa's alleged continuing failure to comply with certain requirements of Procedural Orders No. 7 and No. 9 (the "Further Security Application").

43. On 26 January 2022, the Arbitral Tribunal issued Procedural Order No. 10 in response to IT Ltd.'s Certification Application, requiring all Parties to provide certain information concerning the conduct of their disclosure processes to the Arbitral Tribunal and each other.

44. On 31 January 2022, the Respondents served their response to the Security Application, together with a second witness statement from Mr. Mustafa.

45. On 1 February 2022, IT Ltd sought leave to introduce the transcript of the deposition of Ms. Ratigan of Dechert LLP, taken pursuant to an order of the United States District Court for the Eastern District of Pennsylvania under 28 USC §1782, into the record of these proceedings (the "Deposition Transcript Application").

46. On the same date, the Arbitral Tribunal and IT Ltd. were formally advised by letter that the Respondents had instructed Pallas Partners LLP to act, together with Boies Schiller, as co-counsel in this reference. Pallas Partners confirmed that they were aware of the Restricted Access regime in place and would comply with their obligations under that regime in full.

47. On 7 February 2022, the Respondents made an application for an order to protect arbitral confidentiality (the "Confidentiality Application").

48. On the same date IT Ltd. served its reply to the Further Security Application.

49. On 8 February 2022, the Respondents served their response to the Deposition Transcript Application.

50. On 11 February 2022, IT Ltd. served its response to the Confidentiality Application.

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51. On 14 February 2022, the Parties provided their certifications pursuant to Procedural Order No. 10.

52. On the same date, IT Ltd. served its reply to the Deposition Transcript Application.

53. On 18 February 2022, the Arbitral Tribunal issued Procedural Order No. 11, addressing IT Ltd.'s Further Security Application. Later that same day the Respondents served their reply to the Confidentiality Application.

54. On 21 February 2022, the Respondents made a further application for amendments to Procedural Order No. 2 (the Further Amendment Application).

55. On 22 February 2022, the Arbitral Tribunal issued Procedural Order No. 12, addressing IT Ltd.'s Deposition Transcript Application and the Respondents' Confidentiality Application.

56. On 25 February 2022, IT Ltd. served its response to the Further Amendment Application.

57. On 2 March 2022, the Respondents made by letter to the Arbitral Tribunal a further application in respect of what it said were ongoing breaches of arbitral confidentiality (the "Further Confidentiality Application").

58. On 3 March 2022, the Respondents served their reply in respect of the Further Amendment Application and made an application seeking an extension of time for service of the Rejoinder (the "Extension of Time Application").

59. On 7 March 2022, IT Ltd. served its response to the Further Confidentiality Application.

60. On 8 March 2022, the Arbitral Tribunal issued Procedural Order No. 13, addressing the Respondents' Further Amendment Application. On the same date, IT Ltd. served its response to the Extension of Time Application.

61. On 9 March 2022, the Respondents served their reply in respect of the Further Confidentiality Arbitration.

62. On 11 March 2022, the Respondents served their reply in respect of the Extension of Time Application.

63. On 13 March 2022, the Arbitral Tribunal, in the interests of time, informed the Parties that the Extension of Time Application was refused and that a formal note of the Arbitral Tribunal's reasons would follow in due course.

64. On 21 March 2022, the Arbitral Tribunal issued Procedural Order No. 14, addressing the Respondents' Extension of Time Application and Further Confidentiality Application.

65. On 1 April 2022, the Respondents served their Statement of Rejoinder together with the third witness statement of Mr. Mustafa in which he indicated that he had decided he would not be attending the merits hearing to give evidence or answer questions on his statements.

66. On 14 April 2022, IT Ltd. sought leave to submit into the record in the arbitration two documents said to have been recently disclosed to it by Dechert LLP pursuant to the §1782 proceedings in the United States. The Respondents objected to the application.

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67. On 27 April 2022, the Arbitral Tribunal issued Procedural Order No. 15 giving leave to the Claimant, subject to certain conditions, to introduce the two documents identified in its application of 14 April 2022.

68. On the same date the Parties provided to the Arbitral Tribunal an agreed List of Issues.

69. On 2 May 2022, the Parties provided to the Arbitral Tribunal their written skeleton arguments, together with their proposed reading lists.

70. The evidential hearing began on 8 May 2022. It took place at the International Dispute Resolution Centre in London. Counsel for all of the Parties attended in person, with their back-up teams attending remotely pursuant to a sanitary protocol. Mr. Rowley KC and the President, Mr. Fletcher KC, attended in person. Mr. Joseph KC, who had tested positive for COVID-19, attended throughout remotely, with the agreement of the Parties.

71. On Day 1 of the evidential hearing the Arbitral Tribunal received opening oral submissions IT Ltd. These submissions were accompanied by a slide deck entitled "Claimant's Opening Statement".

72. On Day 2 of the evidential hearing the Arbitral Tribunal received opening oral submissions from the Respondents. These submissions were accompanied by two slide decks entitled "Respondents' Openings & Demonstratives" and "Respondents' Opening Presentation: Quantum"

73. On Day 3 of the evidential hearing the Arbitral Tribunal heard evidence from Mr. Tarek Sultan and from Mr. Olivier Froissart, on behalf of IT Ltd.

74. On Day 4 of the evidential hearing the Arbitral Tribunal heard evidence from Mr. Aziz and from Mr. Bortman, on behalf of IT Ltd.

75. At the request of the Arbitral Tribunal the Parties' quantum experts, Mr. Matthews and Dr. Barnes, each served a further, third, expert report (a) providing a valuation of IH's shareholding in Korek as at 2 July 2014 (being the date of the CMC Decision) and (b) valuing the Call Option as at 10 November 2014 (being the date upon which the 3G Annex was entered into). Mr. Matthews' Third Report was served on 11 May 2022. Dr. Barnes' Third Report was served on 12 May 2022.

76. On Day 5 of the evidential hearing the Arbitral Tribunal heard further evidence from Mr. Bortman and expert evidence from Mr. Turner.

77. During the course of Day 5, the Arbitral Tribunal invited the Respondents to consider whether there were (a) any other specific documents that had been identified to them as a result of Mr. Bortman's cross-examination or (b) specific documents arising out of the §1782 process by which IT Ltd. obtained documents from Dechert LLP which counsel for the Respondents would like to make an application to see. The following morning, Day 6 of the hearing, the Respondents made an application in writing for:

    (a) Production of all documents produced by Dechert LLP to the Claimant during the Dechert §1782 proceedings;

    (b) Transcripts or recordings of interviews conducted with [redacted]

    (c) All documents obtained by or exchanged with Raedas through third party subcontractors;

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(d) Documents recording conversations between Raedas and third parties regarding the investigation; and

(e) Documents created in connection with the surveillance of a property at Higher Drive in London between 28 August 2019 and 4 September 2019.

A point was also made about the non-attendance at the hearing of Ms. Jenna Burton of Raedas.

78. On Day 6 of the evidential hearing the Arbitral Tribunal began by receiving oral submissions from the Parties in connection with the Respondents' written application of that morning. The Arbitral Tribunal gave its ruling on that application during the course of the morning. The Arbitral Tribunal declined to order the production of the further corpus of documents provided by Dechert pursuant to the §1782 proceedings. It did order the production by the Claimant of the written transcript of the recordings of certain meetings held by Ms. Jenna Burton of Raedas in Turkey with source [redacted] It declined to order the production of the materials identified at (c) and (d) in the paragraph immediately above. It did order the production of photographs and certain additional material related to the surveillance of the property at Higher Drive. The Arbitral Tribunal declined to order the attendance at the hearing of Ms. Burton. Written reasons for the Arbitral Tribunal's decision followed on 26 May 2022 by way of Procedural Order No. 16.

79. The hearing continued with the Arbitral Tribunal hearing expert evidence from Mr. Matthews and from Dr. Barnes. Mr. Chandler also appeared to give evidence but was not asked any questions on cross-examination.

80. On Day 7 of the evidential hearing, the Arbitral Tribunal dealt with further submissions regarding the production of the transcript of Ms. Burton's meetings in Turkey. The hearing then continued with the further evidence of Dr. Barnes. Mr. Bortman was then recalled for further cross-examination by Mr. Hooker. The evidential hearing then concluded.

81. On 7 June 2022, Mr. Matthews provided, in response to a request from the Arbitral Tribunal made during the course of his oral testimony, a sensitivity analysis of his DCF valuation of Korek as at 2 July 2014.

82. On 30 June 2022, the ICC Court extended the time limit for rendering the Final Award in this matter until 28 February 2023.

83. On 11 July 2022, the Parties provided to the Arbitral Tribunal their written closing submissions. On the same date, Dr. Barnes provided his comments upon Mr. Matthews' sensitivity analysis.

84. On 1 August 2022, the Arbitral Tribunal held a further oral hearing to receive oral closing submissions from the Parties. This hearing was held in New York and, by agreement, at the offices of Gibson Dunn & Crutcher at 200 Park Avenue. The Parties' representatives and the members of the Arbitral Tribunal all attended in person. The hearing began with oral closing submissions on behalf of IT Ltd. These were accompanied by a slide deck entitled "Claimant's Closing Statement". The hearing continued with oral closing submission on behalf of the Respondents. On 2 August 2022, the hearing continued with further submissions on behalf of the Respondents. It concluded that same day with brief reply submissions on behalf of IT Ltd.

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85. The Parties agreed between themselves a timetable for the service of Costs Submissions. The Arbitral Tribunal received these on 9 September 2022. Reply Costs Submissions were served on 30 September 2022.

86. On 2 December 2022, the Arbitral Tribunal closed the proceedings.

87. On 23 February 2023, the ICC Court extended the time limit for rendering the Final Award in this matter until 31 March 2023.

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D. THE BACKGROUND TO THE DISPUTES

The Background

1. Korek was established by Mr. Mustafa and two partners in 2000 in the Erbil province of Iraq to provide mobile telephone services initially in that region and subsequently across Iraq. The national license was issued to Korek in 2007 by the CMC, the body responsible for the regulation of the media and telecommunications industries in Iraq [D1/11].

2. The license required Korek to pay the CMC a license fee of US$ 1.25 billion. The first instalment of US$ 375 million was paid in or around August 2007 with debt finance. This was subsequently refinanced by Mr. Mustafa with the result that Korek owed Mr. Mustafa US$ 307 million.

3. A further instalment of the license fee, in the amount of US$ 250 million fell due on 11 September 2007. Korek approached Agility Public Warehousing K.S.C.P. of Kuwait ("Agility") for financing to make this payment. On 11 September 2007, Agility's subsidiary, Alcazar Capital Partners ("Alcazar") advanced the funds to Korek under a Convertible Loan Agreement and a Convertible Senior Promissory Note, guaranteed by the Kurdistan Regional Government. Agility paid the required funds directly to the CMC.

4. In 2010, Korek required further financial and technical support. Agility partnered with Orange S.A. ("Orange" - then known as France Telecom S. A.) to provide the funds and expertise required. The license issued to Korek required the CMC's approval for any direct or indirect change in the control of 10% or more of the issued shares of Korek or the total voting rights in Korek. The CMC was approached by Korek for its consent to a proposed transaction with Agility and Orange. This consent was granted, subject to a number of conditions, on 29 May 2011 [D1/13].

5. Orange and Agility established the Claimant, Iraq Telecom Limited ("IT Ltd.") to hold their interest. A new holding company was established, International Holdings Ltd. ("IH Ltd."). In July 2011, Korek issued all of its existing and newly capitalised shares to IH Ltd. Mr. Mustafa and his fellow initial investors (Mr. Jamshin Hassan Jamshin Barazany and Mr. Jiqsy Hamo Mustafa) together with Mr. Aso Ali acquired 56% of IH Ltd.'s shares which were held through CS Ltd., whilst IT Ltd. acquired 44% of IH Ltd.'s shares. IT Ltd. also had the option to acquire a further 7% shareholding in IH Ltd. which would have given it majority control. The Parties refer to this as the "2011 Transaction". The screenshot below, taken from the Claimant's Statement of Claim, shows the shareholding structure:

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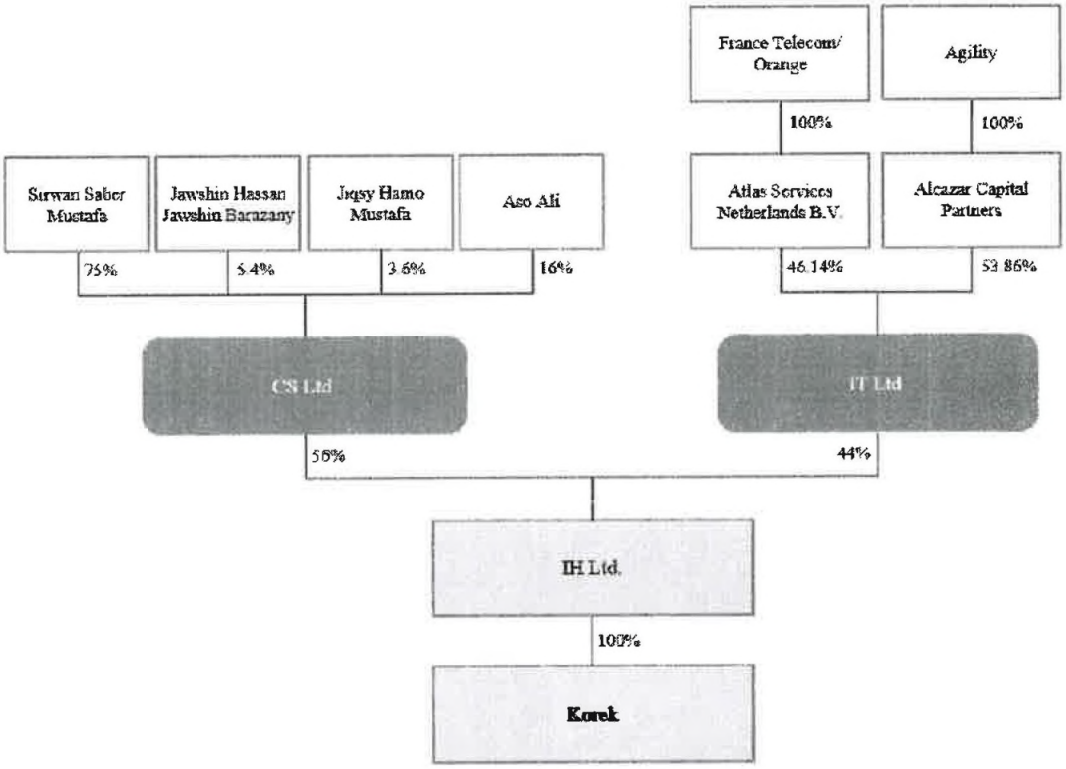

6. Orange and Agility's total investment is said to have amounted to US$ 810 million. Orange invested US$ 430 million in cash for an indirect equity interest of 20.3% together with a debt interest of US$ 185 million, whilst Agility invested the value of its US$ 250 million Convertible Note (together with US$ 80 million in accrued but unpaid interest) and an additional US$ 50 million in cash for an indirect equity interest of 23.7% and a debt interest of a further US$ 100 million. The investment was governed by two principal agreements: a Shareholders' Agreement dated 10 March 2011 (the "SHA") [D1/1] and an Amended and Restated Subscription Agreement dated 27 July 2011 (the "Subscription Agreement") [D1/2]. The SHA was entered into between Korek, Mr. Mustafa, CS Ltd. (known at the time as Korek International (Management) Limited) and IT Ltd. The Subscription Agreement was entered into by IH Ltd., Korek, Mr. Mustafa and his two partners, Mr. Jawshin Hassan Jawshin Barazany and Mr. Jiqsy Hamo Mustafa (jointly described as the "Current Shareholders"), CS Ltd., IT Ltd., Alcazar and Atlas Services Netherlands B.V. IT Ltd. At the same time, IT Ltd. entered into a Shareholder Loan Agreement with IH Ltd. pursuant to which it advanced to IH Ltd. the sum of US$ 285 million (the "IT Ltd. Shareholder Loan") [D1/59].

7. Korek is said to have used the vast majority of the cash contributed by IT Ltd. to pay Korek's debts. US$ 307 million is said to have been used to repay Mr. Mustafa's loan to Korek whilst US$ 162.5 million was paid to the CMC in respect of a further license fee instalment.

8. Clause 23 of the SHA granted a Call Option to IT Ltd. which could be exercised at any time from (i) 1 January 2014 until 31 June 2014 or (ii) 1 July 2014 until 31 December 2014 (the "IT Call Option") [D1/1/41]. The transaction is said by IT Ltd. to have been structured such that the IT Call Option could be exercised without the need for further approval from the CMC.

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9. Korek was managed by a statutory manager, Mr. Mustafa, rather than by a board of directors. As a result, the Korek Supervisory Committee (the "KSC") was established to provide, in the words of clause 7.1 of the SHA, "*the overall direction and management of Korek*". The KSC mirrored the composition of the IH Ltd. Board of Directors, comprising 3 directors nominated by CS Ltd., 3 directors nominated by IT Ltd. and an independent director also nominated by CS Ltd.

10. On 31 October 2011, within months of the conclusion of the 2011 Transaction, the KSC was advised by Mr. Nawzad Junde, one of CS Ltd.'s appointees to the KSC, that the Federal Supreme Court of Iraq had accelerated the payment of the fourth instalment of Korek's license fee, in the amount of US$ 110 million so that it was due on 18 November 2011 and not in April 2012, as earlier advised [D1/55]. Mr. Junde said that Korek had only US$ 15 million at its disposal and would need to raise US$ 150 million through loans or capital injections.

11. On 17 November 2011, Mr. Junde, who also served as Chairman of Korek's Financing Proposal Committee ("FPC") informed the FPC that Korek had obtained a proposal from IBL Bank in Lebanon for an external unsecured loan of US$ 150 million. Four days later, on 21 November 2011, the FPC members were sent a letter from Mr. Mustafa setting out the key terms of the IBL Loan as proposed by IBL. In that draft letter, Mr. Mustafa indicated that he had obtained a commitment from IBL to cover Korek's payment obligations to the CMC. He explained that (i) part of the loan would be repayable within 2 to 4 years (the "Long Term Loan") and the remaining portion within 6 months (the "Short term Loan"), (ii) that the loan would have seniority over existing Korek loans, (iii) that it would have an interest rate of 13.25% per annum and (iv) that IBL had agreed to make the loan on an unsecured basis if Korek's revenues were paid into an account held by Korek with IBL Bank and shareholders agreed to provide guarantees. Mr. Mustafa indicated that he would be willing to provide a personal guarantee if IT Ltd. provided him with a counter-indemnity in proportion to its shareholding in IH Ltd. [D1/57/1].

12. IT Ltd.'s representatives pushed back on the duration of the loan, the reimbursement terms, the interest rate and the proposed arrangement fee and financing costs. They were told by Mr. Junde that the duration, reimbursement terms and interest rate were non-negotiable and that he could not go into negotiations on the remaining issue unless various documents were signed by IT Ltd. IT Ltd.'s representatives agreed to sign a resolution of the FPC approving the terms of the loan but insisting that the cost was very high and would need to be negotiated.

13. On 9 December 2011, Mr. Junde forwarded to the FPC an email from the head of the Corporate Bank Division at IBL, Mr. Ghassan Rayes to Mr. Raymond Rahmeh, who served as the so-called independent member of the KSC. This email attached a "final draft" of the proposed loan agreement which, in addition to the terms previously advised by Mr. Barzani in his letter, required that the IT Shareholder Loan should be subordinated to the IBL Loan pursuant to a separate agreement and that all Korek's operating revenues should be deposited in Korek's IBL account and payments made out of that account. These conditions were said to be non-negotiable that: "*the obligations of the Borrower in respect of the Loan and otherwise under this Agreement constitute, and at all times will constitute, the direct, general, unconditional, unsubordinated unsecured obligations of the Borrower*". [D1/62/2]. The draft loan

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agreement also purported to confirm the unsecured nature of the loan, stating that: "*the obligations of the Borrower in respect of the Loan and otherwise under this Agreement constitute, and at all times will constitute, the direct, general, unconditional, unsubordinated unsecured obligations of the Borrower*" [D1/64/6].

14. The terms of the loan were approved and IBL, IH Ltd. and IT Ltd. executed a Subordination Agreement, subordinating (a) IH Ltd.'s liability to IT Ltd. under the IT Ltd. Shareholder Loan, and (b) Korek's liability (i) to IH Ltd. under the IH Ltd. Shareholder Loan and (ii) to IT Ltd. under the Korek Guarantee to Korek's liabilities to IBL under the IBL Loan. On 21 December 2011 IBL, Korek and Mr. Mustafa as guarantor signed the IBL Loan Agreement [D1/14].

15. The IBL Loan was originally repayable by 21 July 2012 and 21 June 2014. Three times the parties agreed to an extension of the repayment dates. On each occasion, the Subordination Agreement was similarly extended. A mooted fourth extension did not materialise and the time for repayment of the Short Term Loan and the Long Term Loan expired on 31 January 2015 and 21 June 2105, respectively.

16. Neither Korek nor IH Ltd. had paid back the principal of the IT Shareholder Loan by its due date of 14 June 2015, nor any of the interest accrued under the IT Shareholder Laon and the IH Shareholder Loan since September 2014. On 18 June 2015, IT Ltd. issued a notice of default under the IT Ltd. Shareholder Loan [D1/69/1].

17. On 9 July 2015, IBL issued a notice of default under the IBL Loan, demanding full repayment of the IBL Loan and calling on Korek and IH Ltd. to refrain from making any payments under the IT Ltd. Shareholder Loan, the IH Ltd. Shareholder Loan or the Korek Guarantee [D1/70]. Although a further notice of default followed from IBL on 15 September 2015 [D1/71] no repayment was made. IBL took no further action until 30 August 2017. At that time it sent a letter to Korek demanding payment and requesting that Korek "*provide within 30 days from the date hereof, additional collateral to IBL Bank SAL to secure the Loan, in the form of a pledge of the Borrower's shares*" [D1/72].

18. The reference to "*additional collateral*" caused IT Ltd. to investigate with IBL whether and if so what existing collateral had been provided for the IBL Loan. It transpired that IBL's annual accounts from 2012 until 2017 contained a disclosure that appeared to indicate that cash collateral had been provided in relation to a loan to a "non-resident customer" [see e.g. D1/76/63]. Inquiries of both IBL and the Respondents apparently yielded nothing. In due course IT Ltd. commenced arbitration proceedings against IBL. IBL admitted in those proceedings that it had requested that the loan be secured with collateral and that such collateral had been provided in the form of cash. Section 1782 discovery proceedings in the United States produced bank records showing that, on the eve of execution of the IBL Loan, Mr. Mustafa transferred US$ 155 million from an account held by him in HSBC in Dubai to an account with IBL in Beirut [D1/89].

19. In a final award issued on 21 September 2021, a tribunal sitting in LAMC Case No. 175/2018 concluded at paragraph 970 of the Award that Korek had committed *dol* or fraud in concealing the existence of the cash collateral from IT Ltd. [D1/319/231]. The tribunal also found that Mr. Mustafa had entered into an interest-splitting arrangement with IBL under which he received a deposit rate of 12.75% per annum, or more than 96% of the total interest paid by Korek to IBL. The tribunal concluded that, had IT Ltd. known of the existence of the cash collateral and of the interest-splitting arrangement,

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"*it would never have agreed to the IBL Loan and it would never have agreed to enter into the Subordination Agreement (to subordinate its USD 285 million shareholder loan) nor approved [Korek's] entry into the IBL Loan under any circumstances*" [D1/319/227].

20. On 10 December 2013, the CMC wrote to Korek alleging that Korek, Agility and Orange had failed to fulfil the conditions on which the CMC had approved the 2011 Transaction [D1/17]. The conditions said to have been imposed were set out in that letter and were said specifically to comprise:

- Providing better telecommunications services throughout Iraq.
- Benefiting from the technologies of the French company, France Telecom, in order to develop investment, technical, financial and commercial plans, as well as recruiting the expertise necessary to develop the telecommunications sector in Iraq.
- Having France Telecom provide the intensive technical assistance necessary to improve the quality and range of services, as well as ensure they encompass all parts of Iraq.
- Securing the financing necessary to enable Korek to pay its debts, expanding and developing its services and network, increasing the number of its subscribers, and fulfilling its investment obligations.
- Complying with the clauses of the licensing contract, and particularly listing the company's shares on the Iraqi stock exchange.

21. The letter gave Korek one week to "*provide [the CMC] with the reasons that prevented fulfilment of the … conditions*" and warned that "*in light thereof, the actions necessary to protect the telecommunications sector in Iraq shall be taken*". It is IT Ltd.'s case that a number of these conditions formed no part of the basis upon which the CMC had approved the transaction and that, in the case of the requirement to list the company's shares, it had been advised that the CMC had agreed that Korek could delay this requirement upon payment of a fine.

22. The letter from the CMC was signed by Dr. Safa Rabee, who was at that time the Deputy General Director of the CMC.

23. There was no response from Korek to the letter from the CMC within the one week deadline imposed. Mr. Rennard of Orange told Mr. Mustafa that he believed that Korek should "*prepare swiftly a draft answer*". On what appears to have been 22 December 2013, Mr. Abou Charaf of Korek reported to the KSC that he had been "*advised by Management that it 'is not in a position to reply to the CMC Letter as it is not privy to the negotiations that led to the conditional acceptance by the CMC of the Korek transaction (including the partnership with FT-Orange)', nor is Management 'aware of the contents of the [SHA], which regulates the relationship between the Korek ultimate shareholders'*" [D1/18].

24. Orange replied to Mr. Abou Charaf the next day, 23 December 2023 pointing out that the CMC letter was addressed to Korek and it was Korek's "*duty to prepare an answer to it*" [D1/95]. Korek does not appear to have sent any response.

25. On 16 January 2014, the CMC sent a "*Final Notice*" to Korek noting that the one week grace period had expired, repeating the conditions said to have been imposed on the "partnership" and providing notice that a response was required within, again, one week of the letter [D1/19].

26. Korek responded to the CMC by letter dated 22 January 2014 [D1/20]. It is said by IT Ltd. from the date stamp on the original, that the response was not in fact submitted

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until after the fresh deadline imposed by the CMC had expired, on 26 January 2014 [D1/172].

27. On 7 May 2014, Mr. Mustafa informed the KSC that the Council of Ministers of the Republic of Iraq had decided to grant Iraq's three mobile operators licences to provide 3G services for a licence fee of US$ 307 million [D2/11].

28. On 29 May 2014, Orange issued a statement from its chairman and CEO indicating that Orange was anticipating obtaining majority control of Korek [D1/97]. On 10 June 2014, the CMC sent a further letter to Korek. This stated, erroneously, that "*final benefit from your company does not belong to Iraqi partners who own a stake of over 51% of your company's capital …, your company's management has been assigned to the foreign partner, which cannot ... be considered anything other than a controlling or major shareholder*" [D1/21]. The letter went on to say that Korek must pay a regulatory fee of 18% of the company's revenues as well as a "*differential in the regulatory fee*". As with the previous letters, this letter was signed by Dr. Rabee in the new capacity of "*Chairman of the Executive Body*".

29. On what seems to have been 16 June 2014, Mr. Abou Charaf forwarded the CMC's letter to the members of the KSC. Mr. Rennard of Orange pointed out that the arguments of the CMC were hard to understand given that (i) Korek was an Iraqi company, (ii) the General Manager (Mr. Mustafa) was an Iraqi citizen and (iii) the majority shareholder of Korek was Iraqi [D1/22/2]. Mr. Abou Charaf replied that he had been "*advised by Management that it is not in a position to reply to the CMC as, among other things, (i) it does not have access to the Shareholders' Agreement or to any other relevant document pertaining to the Korek transaction and (ii) it does not have the relevant Iraqi law expertise, hence the reason why Management forwarded the CMC Letter to the KSC*" [D1/22/1].

30. On 2 July 2014, the CMC issued a "Decision to revoke partnership between Korek Ltd. and France Telecom/Agility" [D1/23]. That document stated:

> *"We inform you that, after long and deep study of the subject of partnership between your company and the foreign French company France Telecom/Agility, studying its different legal and realistic aspects, and in application of the authorities granted to our company by virtue of the terms of the meeting which was held on 21/4/2011 between our company and yours, and based upon the controlling role exercised by our company within the framework of verifying that the suspension conditions have been met, upon which the partnership was based to incur the appropriate legal results thereto, including the revocation of the mentioned partnership in light of the fact that the suspension conditions have not been collectively met, the Council of Trustees decided, in its session held on 24/6/2014, in report No. 19/2014, to consider the approval of our company based upon the principle of partnership dated 29/5/2011 as void and null as the suspension conditions, for which you were committed to fully carry out, have not been met by virtue of the report of the meeting dated 21/4/2011 and by virtue of your repetitive letters.*
>
> *Thus, we inform you by virtue of this letter the final decision of our company by considering the partnership, desired between you and the foreign French company France Telecom/Agility, as void, null and invalid as the related*

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suspension conditions have not been met, and for lack of evidence thereto without any legal or material effects of any type whatsoever. And we warn you in this respect to immediately proceed, within a period of no later than 15 days from the date of this letter, to reinstate the status as it was on 13/3/2011, take the procedures to revoke and terminate any contracts assigning shares in your company's capital that were concluded after 13/3/2011, prove this revocation in the legal entries with the companies registrar and provide our company with a new statement proving return of shares to their main owners. Otherwise, your company shall bear all the legal consequences and necessary procedures will be taken against your company to compel you to obey and execute the content of the decision mentioned above".

Once again this document, which has been referred to by the Parties throughout this reference as the "CMC Decision" was signed by Dr. Rabee. The "Council of Trustees" whose decision it was to revoke the approval for the 2011 Transaction was headed at that time by Dr. Ali Al Khwildi.

31. An appeal was filed with the CMC Appeals Board on 17 July 2014. The draft of this document was circulated by Mr. Abou Charaf for comment at 8.27pm on 16 July 2014, late in the evening of the day before it was due to be filed [D1/101].

32. The CMC Appeals Board issued its decision on 18 August 2014, affirming the CMC Decision and rejecting the appeal [D1/102]. Dr. Al Rabee wrote on behalf of the CMC to Korek on 4 September 2014 advising it that within 15 days it "*must return the situation to the way it was on (13/3/2011); take all actions necessary to annul and invalidate the contracts transferring the shares in your company's capital, which were concluded after (13/3/2011); record this invalidation in the legal entries with the Companies Registrar; and provide our Commission with a new statement proving that the shares have been returned to their original owners*" [D1/103].

33. A few days later, on 9 September 2014, Mr. Abou Charaf of Korek sent through to the KSC a draft Annex to Korek's License Agreement. Mr. Abou Charaf noted that he "*was advised*" that the draft "*amends certain terms of the License Agreement*" [D1/24]. Clause 24 of the draft Annex sought to amend the change-of-control provision in Korek's license requiring the pre-approval of the CMC for any direct or indirect change in the control of the issued shares of Korek. This contrasted with the existing License which required the CMC's pre-approval for only a change in the control of 10% or more of Korek's shares. Article 24 read:

"24. Assignment of Licence Agreement, Transfer of Ownership thereof and Transfer of Shares Title: A paragraph shall be added and the related paragraphs shall be amended.

The Licensee may not dispose of shares title (company's assets) within the untraded percentage in Iraq Stock Exchange by means of sale, purchase, assignment or conclusion of agreements with any local or foreign authority, or any procedure that may affect such shares, directly or indirectly, regardless of the percentage of those shares without referring to the Licensor and obtaining a written approval from the latter, and shall be regulated by instructions issued by the Licensor later on" [D1/200/10].

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IT Ltd. expressed concern over the nature of the amendments and sought to have a discussion at board level.

34. Attempts by IT Ltd., recorded in emails on 8, 11 and 21 September 2014 to obtain full documentation, to convene an emergency meeting of the Board of IH Ltd. and the KSC to discuss the CMC Decision were largely unanswered and proved unsuccessful. Agility and Orange therefore wrote directly to the CMC, on 22 September 2014, requesting a meeting [D1/175]. The CMC did not respond but wrote instead to Korek on 2 November 2014 to explain that it had no relationship with Orange or Agility and that, because the CMC's decision was that the partnership should be invalidated there was "*no need or basis to involve the foreign partner in the contractual obligations between [the CMC] and [Korek]*" [D1/107].

35. On 11 October 2014, a meeting took place in Beirut between lawyers purporting to act for both IT Ltd. and Korek. Korek's counsel introduced themselves as being members or employees of a Lebanese-based law firm known as the International Company for Legal Consultancy ("IC4LC"). It was agreed that Korek would challenge the CMC Decision in the Iraqi Administrative Court. A draft application was prepared by IT Ltd.'s counsel and filed on 16 October 2014 [D1/110].

36. Mr. Aziz, of Agility, wrote to the KSC on behalf of IT Ltd. on 29 October 2014 regarding the draft 3G Annex. He stated that the proposed amendments were material and included matters "*having no relation whatsoever to operational or technical matters*". He noted that in accordance with clause 11.4(1) of the SHA, any such amendments required the written consent of IT Ltd. and informed the members of the KSC that "*such consent is not granted at this time*" [D1/25]. On 30 October 2014, Korek wrote to Dr. Rabee at the CMC advising him that Korek had transferred the first instalment of the 3G license fee and asking for time to discuss Korek's comments on the draft Annex and an appointment "*for the purpose of reaching the securing of the legal structure*" [D1/202]

37. On 5 November 2014, IT Ltd. exercised the IT Call Option [D1/26].

38. On 9 November 2014, Mr. Jain of IT Ltd. wrote to the Board of IH Ltd. and to the members of the KSC. He stated that the 3G Annex was not agreed in principle and reiterated that consent from IT Ltd. was required before the Annex could be signed. He went on to set out the basis upon which IT Ltd. would be prepared to consent to the signing of the 3G Annex. These conditions were said to be the following:

> *"(1) Following signing of the 3G Annex, Korek will use its best endeavours to seek amendments to the terms of the 3G Annex (as set out in the reservation letter that was sent to you on 5 November - a copy of which is attached) by exhausting all legal and political avenues.*
>
> *(2) Korek should communicate to the CMC in writing (in the form of the attached letter) that it is signing the 3G Annex under duress. In addition, the Korek signatory will seek to state clearly on the 3G Annex itself at the time of signature that the 3G Annex is being signed under duress.*
>
> *(3) CS Ltd will need to confirm in writing, by 10pm Erbil time today (9 November 2014), that it will not object to the completion of the call option, pursuant to IT's call option notice of 5 November 2014, and the requisite share transfer, on any*

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ground (irrespective of any 3G Annex that may be signed in the future and irrespective of the CMC' s position). Furthermore, Korek will need to send, by 7 am Erbil time tomorrow (10 November 2014), a letter (in the form attached) to the CMC informing it that IT has exercised the call option in accordance with the existing terms of the License, which does not require the CMC's consent" [D1/27].

Mr. Jain said that IT Ltd. required a response to its proposal by no later than 10pm Erbil time that day.

39. At what appears to have been 9.32pm local time that evening, Mr. Abou Charaf responded to Mr. Jain [D1/27]. He reported Mr. Mustafa as asking him to advise the IT Ltd. representatives on the KSC and IH Board that:

"As no answer has been received by 8 PM Erbil time (i.e., more than 6 hours after the deadline set by the Chairman), the Chairman considered that (i) IT Representatives of the KSC/IH Board did not grant their consent to the signature of the 3G Spectrum Annex, and, accordingly (ii) they will be held fully responsible for all the consequences (including the financial ones) as stated in an earlier email.

Based on the above, faced with this obstruction, Korek will neither attend tomorrow's meeting in Baghdad nor will it sign the 3G Spectrum Annex".

40. In the event, Mr. Mustafa instructed Mr. Fadhel Altusy to attend the official meeting in Baghdad the next day and to sign the 3G Annex on behalf of Korek. Mr. Mustafa confirmed this himself in a message sent to the KSC and the IH Board on or about 17 November 2014.

41. In the meantime, on 12 November 2014, the CMC wrote again to Korek reminding it of the decision to invalidate the partnership with Orange and Agility and requiring it to submit evidence within 15 days proving that "*the shares have been returned to their original owners*" [D1/112].

42. On 21 November 2014, IT Ltd. sent a proposed draft response for Korek to send to the CMC. The Second Respondent, CS Ltd., requested Korek not to send the draft letter to the CMC as it was "*unnecessarily inflammatory*" and did not reflect the position of CS Ltd. as majority shareholder [D1/178]. IT Ltd. therefore replied to the CMC's letter in its own name [D1/114]. The CMC forwarded this letter to Korek and repeated its observations regarding the lack of any contractual link or obligation between the CMC and IT Ltd. [D1/115].

43. IT Ltd. filed an application to join the Administrative Court proceedings in its own name. This was unsuccessful, as was Korek's challenge of the CMC Decision [D1/116; D1/118]. An appeal was filed by Korek with the Iraqi Supreme Administrative Court on 21 February 2016. This was dismissed in January 2018 [D118; D1/120], although IT Ltd. did not become aware of that fact until late May 2018. Mr. Abou Charaf informed IT Ltd. that Mr. Mustafa was not aware of the decision until informed of it by Mr. Jain of Agility.

44. IT Ltd. and CS Ltd. continued to discuss the implementation of the IT Call Option, without any progress. Mr. Mustafa's position was that any transfer of shares pursuant

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to the Call option required consents under the SHA, including the consent of the CMC, "*which IT has not and will not receive*" [D1/238].

45. In March 2019, the Kurdistan Companies Register ("KCR") issued an "Administrative Decision" – No. 4961 (the "KCR Decree"). This purported to "*return the shares to its first status before 13/03/2011*" and to divide the shareholders' shares between the original Iraqi shareholders with Mr. Mustafa receiving 75%, Mr. Jamshin Hassan Jamshin Barazany receiving 20% and Mr. Jiqsy Hamo Mustafa receiving 5% [D1/33].

The Disputes

46. IT Ltd. advances a number of claims, both direct claims in its own name and derivative claims pursued in the name of and on behalf of IH Ltd. The derivative claims were the subject of an application by IT Ltd., which resulted in Procedural Order No. 4. By that Procedural Order the Arbitral Tribunal gave leave to IT Ltd. to pursue certain derivative claims, whilst refusing leave to pursue others.

47. As the Arbitral Tribunal recorded in Procedural Order No. 4, it was common ground between the Parties that IT Ltd.'s right to bring the derivative claims in the name and on behalf of IH Ltd. is governed by the law of the place of incorporation of IH Ltd.; namely the DIFC. It was also common ground that the 2018 Company Law of the DIFC is silent about a shareholder's right to bring derivative claims and on the procedure applicable to derivative actions. IT Ltd argued that, in the absence of applicable statutory provisions under DIFC law, the right to bring a derivative claim under DIFC law fell to be considered under English common law. The reason for this is that Article 8(2)(e) of DIFC Law No. 3 is that the laws of England & Wales will apply to supplement the provisions of the DIFC Statues. The Respondents contended that the DIFC Rules required a claimant to obtain permission for a derivative action from the DIFC Court and not from the Arbitral Tribunal and that therefore the common law test was not a matter for this Arbitral Tribunal to consider or apply.

48. The Arbitral Tribunal was and is in no doubt that it had the power and authority to determine whether or not to grant leave to IT Ltd. to bring the derivative claims. The Respondents' argument relied upon Rule 20.65 of the DIFC Court Rules. That Rule provides that:

"[a]fter the claim form has been issued the claimant must apply to the Court for permission to continue the claim and may not take any other step in the proceedings […]".

49. As the Arbitral Tribunal explained in Procedural Order No. 4, a similar provision of the Cayman Islands Grand Court Rules was considered by the Cayman Islands Grand Court, Financial Services Division Court of First Instance in *Top Jet Enterprises Ltd. v Sino Jet Holding Ltd. & Jet Midwest Incorporated* [2018] (1) CILR 18 and by the New York Court of Appeals in *Davis v Scottish Re Group Ltd.* 30 N.Y. 3d 247. Those decisions indicated that such provisions serve a gatekeeping function as to derivative actions brought in the courts of the Cayman Islands. They did not apply to derivative actions, wherever brought, against Cayman companies. That was the position in the present case. Although the DIFC is the seat of the present arbitration, the wording of Rule 20.65 is only applicable to derivative claims commenced in the DIFC courts and is wholly inapposite to arbitration proceedings. Had the drafters of the DIFC Court

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Rules intended parties to arbitration to seek the permission of the DIFC Courts before proceeding with derivative actions, they would have used clearer words and avoided terminology, such as the words "*claim form*", that refers explicitly to documents used in DIFC Court proceedings.

50. Further, as the Arbitral Tribunal explained in Procedural Order No. 4, arbitral tribunals have wide powers to determine the appropriate procedure and to rule on procedural issues, subject to an overarching respect for due process and natural justice. The determination of whether a party should be permitted to pursue a derivative claim on behalf of a defrauded company has long been recognised to be a procedural device and falls squarely within an arbitral tribunal's jurisdiction, notwithstanding that it may give rise to the exercise of a substantive right. Notwithstanding the fact that the parties in *ZCCM Investments Holding PLC v Kansanshi Holdings PLC & Anor* [2019] EWHC 1285 (Comm) agreed that the question of leave should be referred to the tribunal in that case, the view of the judge was that the decision there to refuse leave was "*a decision on a procedural issue (a derivative claim being itself a procedural device, and this being a decision on leave to bring that form of claim)…*". The question of the procedural nature of the decision was central to the decision in that case.

51. During the course of oral argument on the grant of permission, the Respondents sought to argue that as the grant of permission fell within the jurisdiction of the DIFC Courts it would not fall within the scope of the relevant arbitration agreements. The Arbitral Tribunal did not accept this contention. First each arbitration agreement was clearly widely expressed and refers to any dispute, controversy or claim of whatever nature arises under out of or in connection with this Agreement. This wording was wide enough to embrace the question of whether or not derivative claims can be brought on behalf of IH Ltd., equally party to the SHA and the Subscription Agreement, and the Respondents did not really argue to the contrary. Secondly, the Respondents' argument was to a large extent on this point circular. It assumed that the question of permission was one for the DIFC Court and not the Arbitral Tribunal. The Arbitral Tribunal had reached the opposite conclusion for the reasons expressed. Thirdly, the Arbitral Tribunal did not in any event regard this as a question of jurisdiction at all but rather one of the exercise of a power granting permission for claims to be advanced. The Arbitral Tribunal is accorded the widest power in such procedural matters under the ICC Rules and approached the exercise of that power in accordance with certain common law principles as developed through the parties' submissions.

52. The Parties were in agreement as to the nature of the common law test to be applied, although the Respondents distilled from the test a number of specific elements. The Arbitral Tribunal did not consider that anything turned on these minor differences between the Parties, a point that was conceded by Mr. Hooker for the Respondents.

53. The Arbitral Tribunal declined to grant permission for any derivative claims to be brought against Korek. Although an alleged wrongdoer, the Arbitral Tribunal did not consider that Korek could be said to be in control of IH Ltd. such as to prevent IH Ltd. from bringing a claim against it. It was not a director or majority shareholder acting in breach of duty to IH Ltd. so as to perpetrate a fraud on IH Ltd. or on the minority shareholders of IH Ltd. and it was not alleged by IT Ltd. that Korek had personally gained from any breach of duty alleged against it [G/5/24].

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54. The Arbitral Tribunal did, however, give leave for certain derivative claims to be brought against CS Ltd. and Mr. Mustafa. The Arbitral Tribunal was satisfied that they were "in control" of IH Ltd. at the material times and was satisfied that the breaches as framed would, if proved, constitute a fraud on IH Ltd. and on the minority shareholder on the part of both CS Ltd. and Mr. Mustafa. The claims in respect of the IBL Loan, the CMC Decision and in respect of the self-dealing all undoubtedly satisfied the *prima facie* test required by the common law. The Arbitral Tribunal was also in no doubt that a reasonable board of directors could take the decision that claims should be brought against CS Ltd. and Mr. Mustafa [G/5/25-29].

The IBL Loan Claims

Unlawful Means Conspiracy

55. First, IT Ltd. asserts that the execution of the Subordination Agreement on 14 December 2011 and of the IBL Loan Agreement on 21 December 2011 were preceded by and based upon fraudulent misrepresentations by Mr. Mustafa and Korek as to the true nature of the IBL Loan. Contrary to the explicit contemporaneous assurances given, the IBL Loan was, in fact, fully secured with cash collateral provided by Mr. Mustafa; it was, in substance, a shareholder loan disguised as third party financing to enable Mr. Mustafa (i) to circumvent the SHA's requirements for shareholder loans to rank pari passu, and (ii) to enrich himself to the tune of hundreds of millions of dollars through an interest splitting arrangement [A/5/108-296].

56. These events are said to give rise to two claims in the tort of unlawful means conspiracy:

(a) a direct claim against the Respondents for the loss IT Ltd. suffered as a result of the subordination of the IT Shareholder Loan to the IBL Loan; and

(b) a derivative claim, brought on behalf of IH Ltd., against Mr. Mustafa and CS Ltd. for the reduction in value of its shareholding in Korek as a result of Korek's payment of exorbitant interest rates under the IBL Loan Agreement.

Breach of Contractual and Statutory Obligations

57. It is further claimed that the Respondents breached their contractual and statutory obligations to IT Ltd. and to IH Ltd. in respect of the IBL Loan [A/5/121-129]:

(a) Mr. Mustafa is said to have failed to promote IH Ltd's and Korek's best interests in breach of his obligations under (i) the SHA and Subscription Agreement, (ii) Iraqi law applicable to him in his capacity as Korek's Managing Director and Chairman of the KSC, and (iii) DIFC law, applicable to him as Chairman of the IH Board. Specifically, it is claimed that Mr. Mustafa breached:

(i) Clauses 3, 4, 6.1 and 7.1 of the SHA;

(ii) Articles 120 and 124 of the Iraqi Company Law; and

(iii) Article 53 of the DIFC Companies Law.

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(b) Mr. Mustafa is said to have exercised his voting rights as Chairman of the IH Board and the KSC and as Korek's Managing Director in breach of the following contractual obligations and statutory duties:

(i) Clauses 6.8, 7.8 and 31 of the SHA;

(ii) Clause 23.1 of the Subscription Agreement

(iii) Articles 119 and 124 of the Iraqi Company Law; and

(iv) Article 54 of the DIFC Companies Law.

(c) CS Ltd. is said to have breached its contractual obligations to take action in Korek's best interests in breach of its obligations under clauses 3, 4, 9.4, 28 and 31 of the SHA and clause 23 of the Subscription Agreement.

(d) Korek is said to have breached its contractual obligations under Clauses 3, 4, 9.4 and 31 of the SHA and Clause 23 of the Subscription Agreement.

Loss

58. These breaches are alleged to have caused losses to IH Ltd. and to IT Ltd.:

(a) With respect to IT Ltd, as a result of the Subordination Agreement, IT Ltd. has been unable to recover its loan whether under the IT Shareholder Loan or the Korek Guarantee. Absent the Subordination Agreement, IT Ltd. would have taken the necessary steps to recover the IT Shareholder Loan from Korek under the Korek Guarantee as at 18 July 2015, one month after IT Ltd. issued the Notice of Default on 18 June 2015. IT Ltd. should be compensated for the sums due under the IT Shareholder Loan as at this date.

(b) With respect to IH Ltd., Korek paid an unnecessarily high interest rate under the IBL Loan, which caused a diminution in the value of IH Ltd.'s shareholding in Korek as at December 2013. Had the Respondents disclosed the true nature of the IBL Loan, IT Ltd. would have requested from IBL an interest rate that a reasonable bank would have charged for a USD-denominated fully cash-collateralised loan in December 2011. Had that been the case, Korek would have been in a better financial position since it would have paid out lower interest costs and IH Ltd.'s shareholding in Korek would have been worth commensurately more (i.e., the difference between the 13.25% annual interest rate actually paid and the rate of 3.81%).

59. Alternatively, IT Ltd. says that, but for the Respondents' breaches of the SHA, IT Ltd. would have insisted that Mr. Mustafa provide funds by way of a shareholder loan (via CS Ltd.) ranking pari passu with the IT Ltd. Shareholder Loan and on substantially the same terms as the terms of the IT Ltd. Shareholder Loan in accordance with Clauses 5.2(d) of the SHA. Both IT Ltd. and IH Ltd. suffered loss as a result:

(a) With respect to IT Ltd., in the exact same manner as above, had the IT Ltd. Shareholder Loan and the Korek Guarantee not been subordinated to the IBL Loan (as would have been the case had Mr. Mustafa extended a pari passu shareholder loan to Korek), IT Ltd. would have recovered the entirety of the sums due under the IT Ltd. Shareholder Loan from Korek under the Korek Guarantee as at 18 July 2015 (i.e., a month following IT Ltd.'s first Notice of

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Default under the IT Shareholder Loan). IT Ltd. should be compensated for the entirety of the sums due under the IT Ltd. Shareholder Loan as at this date.

(b) With respect to IH Ltd., had the interest rate on the IBL Loan been equal to the 11% plus USD LIBOR interest rate applicable under the IT Shareholder Loan, Korek would have been in a better financial position as at December 2013. Korek would have paid out lower interest costs and IH Ltd.'s shareholding in Korek would have been worth commensurately more (i.e., the difference between the 13.25% annual interest rate actually paid to IBL and the 11% plus USD LIBOR rate applicable under the IT Shareholder Loan).

60. IT Ltd. therefore pursues:

(a) a direct claim against each of the Respondents for the losses flowing from the subordination of the IT Ltd. Shareholder Loan and the Korek Guarantee; and

(b) a derivative claim, on behalf of IH Ltd., against Mr. Mustafa and CS Ltd., for the diminution in value of its shareholding in Korek.

The CMC Decision Claims – Primary Claims

Unlawful Means Conspiracy

61. IT Ltd. claim that there was a corrupt scheme to procure the CMC Decision requiring IH Ltd./ IT Ltd.'s forced exit from Korek and preventing the valid or effective exercise of the IT Call Option, and that Mr. Mustafa and his associates procured the CMC Decision through cash payments, gift bribes, and real estate transactions for the benefit of high-ranking CMC officials. These activities were carried out for the ultimate benefit of Mr. Mustafa with the complicity of Korek and CS Ltd., who knowingly concealed this fraud and corruption from IT Ltd. and IH Ltd. The activities were successful and led to the letter from the CMC of 10 December 2013 and the CMC Decision of 2 July 2014 declaring that the CMC's approval of the 2011 Transaction was "*void, null and invalid*" [A/5/113-119].

62. These events are said to give rise to two claims in the tort of unlawful means conspiracy:

(a) a derivative claim, brought on behalf of IH Ltd., against Mr. Mustafa and CS Ltd. for the destruction of the value of its shareholding in Korek; and

(b) a direct claim by IT Ltd. against each of the Respondents for the destruction in value of the Call Option.

Breach of Contractual and Statutory Obligations

63. IT Ltd. further asserts that the Respondents procured the CMC Decision through bribery and corruption in breach of their contractual obligations and statutory duties [A/5/129-134]:

(a) Mr. Mustafa is alleged to have breached his contractual and statutory obligations under:

(i) Clauses 3, 4, 7.1, 9.4, 15.8 and 31 of the SHA;

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(ii) Clause 23.1 of the Subscription Agreement;

(iii) Articles 120 and 124 of the Iraq Companies Law;

(iv) Article 53 of the DIFC Companies Law 2009; and

(v) Article 1 of the DIFC Law of Obligations 2005.

(b) CS Ltd. is alleged to be in breach of:

(i) Clauses 3, 4, 6 and 7 of the SHA by allowing its appointed directors to the IH Board and the KSC to engage in bribery and corruption;

(ii) Clauses 31.3 of the SHA and 23.2 of the Subscription Agreement by failing to ensure that Mr. Mustafa complied with all obligations under those agreements; and

(iii) Clause 15.8 of the SHA by allowing Korek's accounts to be used to make corrupt payments to CMC officials.

(c) Korek is alleged to be in breach of Clauses 3, 4, 9.4 and 31.3 of the SHA and 23.2 and 23.2 of the Subscription Agreement in facilitating the bribery and corruption of CMC officials and in failing properly to contest the CMC Decision.

Loss

64. These breaches are said to have caused each of IT Ltd. and IH Ltd. separate and distinct losses:

(a) With respect to IH Ltd., it is claimed that from the CMC's letter of 10 December 2013 onwards, it would have become impossible to sell the imperilled shareholding in Korek to a willing buyer, acting prudently, without compulsion, and with full knowledge of the Respondents' conduct and of the CMC's December 2013 letter. The shareholding in Korek was therefore rendered valueless.

(b) With respect to IT Ltd., it is claimed that the breaches rendered the IT Call Option valueless.

65. IT Ltd. therefore pursues:

(a) a derivative claim, on behalf of IH Ltd., against Mr. Mustafa and CS Ltd., for the diminution in value of its shareholding in Korek; and

(b) a direct claim against each of the Respondents for the destruction in value of its Call Option.

The CMC Decision Claims – Alternative "Unwinding" Claims

66. IT Ltd. advances an alternative claim in relation to the CMC Decision which is that the Respondents' failure to unwind the 2011 Transaction following the decision of the Iraqi Supreme Administrative Court confirming the CMC Decision amounts to a breach of both their express and implied obligations to IT Ltd. under the Subscription Agreement [A/5/134-140].

67. IT Ltd.'s claim for a breach of the express terms of the Subscription Agreement is based upon clause 3.6 of that Agreement, read together with the "Transfer

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Agreements" providing for the transfer and release of the Promissory Note and Convertible Loan Agreement.

68. IT Ltd. further suggests that the Parties "*must be deemed to have agreed*" that where the CMC revoked its approval for the 2011 Transaction, the Parties would proceed as if the CMC had never approved the 2011 Transaction and the conditions precedent in clause 3 of the Subscription Agreement had never been fulfilled. The Subscription Agreement would automatically terminate and the Parties would be restored to the position they were in prior to the 2011 Transaction. IT Ltd. relies, variously, upon a term to be implied pursuant to the test set down in *Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Limited* [2015] UKSC 72 and upon the 2011 Transaction being recognised as a relational contract giving rise to implied duties of good faith and fair dealing.

69. IT Ltd. argues that in breach of their obligations to IT Ltd. and their duty of good faith, the Respondents have refused to take any of the steps necessary to unwind the 2011 Transaction and have stripped IT Ltd. of its indirect shareholding interest in Korek as well as its debt and equity investment.

The CMC Decision Claims – Unjust Enrichment

70. IT Ltd. pleads in the further alternative that Korek was unjustly enriched at the expense of IT Ltd. because it retained the investments made by IT Ltd. to acquire a 44% shareholding in Korek even though the CMC Decision and the KCR Decree resulted in a total failure of the very basis of IT Ltd.'s investment in Korek [A/5/141-145].

71. Additionally or alternatively, IT Ltd. argues that Mr. Mustafa was unjustly enriched at the expense of IH Ltd. because he personally benefitted from the transfer of IH Ltd.'s shareholding in Korek to the original Iraqi shareholders for no consideration [A5/145-146].

Breaches with respect to the 3G Annex

72. IT Ltd. claims that the Respondents caused Korek to enter into the 3G Annex over IT Ltd.'s veto. In doing so, the Respondents are said to have breached clauses 11.3 and 11.4 of the SHA. IT Ltd. seeks declaratory relief [A/5/146-148].

Breaches in respect of Corporate Governance

73. IT Ltd. advances several distinct and separate claims for breaches by CS Ltd. and Mr. Mustafa of IT Ltd.'s corporate governance rights [A/5/148-152]. Briefly put, these claims are that:

(a) In rejecting on spurious grounds any candidate put forward by IT Ltd. to replace Ms. Gebara upon his resignation as CEO of Korek, Mr. Mustafa breached clauses 3 and 8.4 of the SHA and clause 23.1 of the Subscription Agreement;

(b) By allowing Mr. Mustafa to commit the breaches outlined in (a), CS Ltd. and Korek failed to procure that Mr. Mustafa act in accordance with clause 8.4 of the SHA, to give full effect to the Transaction Documents and act in the best interests of Korek in breach of clauses 9.4 and 31 of the SHA as well as clauses

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14.11 and 23.2 of the Subscription Agreement. In respect of these breaches IT Ltd. seeks declaratory relief;

(c) In unjustifiably refusing to appoint Mr. Froissart to replace Mr. Rennard as IT Ltd.'s representative on the IH Board and KSC, Mr. Mustafa and CS Ltd. have breached clauses 6.1, 6.6, 7.1, 7.7 and 31 of the SHA and clause 23 of the Subscription Agreement, whilst Mr. Mustafa has breached clause 14.11 of the Subscription Agreement. In respect of these breaches, IT Ltd. seeks specific performance;

(d) In failing to provide any or adequate information to IT Ltd. in respect of Korek's litigation on the CMC Decision, the legal advice Korek had received, the KRC Decree, Korek's various expenses and liabilities and Korek's monthly financials, Mr. Mustafa and CS Ltd. have acted in breach of clauses 15 and 31 of the SHA and clause 23 of the Subscription Agreement. IT Ltd. seeks declaratory relief in respect of these breaches; and

(e) In failing since March 2017 to convene any meetings of either the IH Board or the KSC or to provide any explanation for not convening these meetings, Mr. Mustafa has acted in breach of clauses 6.11 and 7.12 of the SHA. Mr. Mustafa and CS Ltd. have also breached clause 32 of the SHA and clause 23 of the Subscription Agreement. IT Ltd. seeks declaratory relief in respect of these breaches.

The Self-Dealing Claims

74. IT Ltd. alleges that CS Ltd. and Mr. Mustafa abused their managerial control of Korek and breached contractual and statutory obligations by causing Korek to conclude self-interested transactions with entities owned and controlled by the Iraqi Shareholders without making any of the required disclosures and by Mr. Raymond Rahmeh [A/5/152-159].

75. By causing Korek to conclude contracts with, and to issue sizeable purchase orders to, suppliers and service providers owned, directly or indirectly, by the Iraqi Shareholders without making any of the required disclosures. Mr. Mustafa is alleged to have breached his obligations (i) pursuant to clauses 3, 4, 6.8, 7.8, 9.4 and 31 of the SHA, (ii) pursuant to clauses 1 and 2 of the 2011 Resolution, (iii) under the Management Agreement as well as his statutory duties under (iv) Articles 4(3), 119(1), 120 and 124 of the Iraqi Company Law No. 21 of 1997 and (v) under Articles 53 and 54 of the DIFC Companies Law 2009. CS Ltd. is alleged to have breached clauses 3, 4, 9.4, 28 and 31 of the SHA as well as its obligations as an indirect shareholder in Korek under Article 4(3) of the Iraqi Company Law.

76. By causing Korek to enter into unauthorized transactions with entities owned or controlled by Mr. Rahmeh or his associates, CS Ltd. and Mr. Mustafa are alleged to have breached their obligation under the SHA to act in accordance with the best interests of Korek, the By-Laws, resolutions passed by the shareholders of Korek, and the instructions of the KSC. Mr. Mustafa is also alleged to have breached his obligations (i) pursuant to clauses 1 and 2 of the 2011 Resolution, (ii) under the Management Agreement, (iii) pursuant to clauses 3, 4, 9.4 and 31 of the SHA as well as his statutory duty under (iv) the Iraqi Company Law No. 21 of 1997 to refrain from

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causing Korek to consent to acts that harm or disadvantage the company to benefit itself or those associated with them at the expense of other shareholders. CS Ltd. is alleged to have breached clauses 3, 4, 9.4, 28 and 31 of the SHA as well as its obligations as an indirect shareholder in Korek under Article 4(3) of the Iraqi Company Law.

77. IT Ltd. identifies a number of specific "Impugned Transactions":

(a) from 2011 to 2013, purchase orders issued by Darin to Korek totalling US$ 110 million;

(b) from 2011 to 2013, purchase orders issued by the Halabja Group to Korek totalling US$ 24.5 million;

(c) in May 2012, purchase orders issued by Ersal to Korek totalling US$ 300,000; and

(d) from 2013 to 2015, IC4LC charges by IC4LC to Korek of US$ 20 million in legal and consulting fees, one third of which is presumed to have been paid in 2013.

These transactions are said to be either null and void or voidable at the instance of the company. IT Ltd. advances a derivative claim in the name and on behalf of IH Ltd. for the diminution of its shareholding in Korek.

The Claim for Breach of the Non-Compete Obligations

78. IT Ltd. claims that both Mr. Mustafa and CS Ltd. undertook, under clause 17.1 of the SHA, that neither CS Ltd. nor any of its "*Affiliates*" would compete with IH Ltd., Korek or their subsidiaries. Consistent with this obligation, it is alleged that Mr. Mustafa entered into the so-called IraqCell Agreement under which he represented that he held an 80% equity interest in IraqCell and undertook that he would "*not take any action or decision in respect of [his] shareholding in IraqCell and [would] procure that IraqCell shall continue not to trade and shall not compete in any way with Korek without the prior written consent of IT Ltd*". It is also alleged that Mr. Mustafa further undertook and agreed to "*use all reasonable endeavours to liquidate or dissolve IraqCell as soon as reasonably practicable following the date of [the agreement]*".

79. It is said that Mr. Mustafa has not honoured his undertakings. IraqCell has neither been liquidated nor dissolved and has traded actively in Iraq, with Mr. Mustafa as its Managing Director. IT Ltd. argues that both Mr. Mustafa and CS Ltd. have competed against Korek in breach of clause 17 of the SHA and are liable for the US$ 100 million non-compete payment said to be required under the SHA. IT Ltd. seeks to have Mr. Mustafa removed from the IH Board and the KSC pursuant to clause 17.3 of the SHA [A/5/159-161].

80. There is an issue between the Parties as to whether any loss in respect of the breach of the Non-Compete obligations gives rise to a freestanding damages claim or falls to be assessed under one of IT Ltd.'s alternative quantum assessments.

The Broader Conspiracy

81. At paragraphs 308-310 of its Statement of Claim [A/5/119-120], IT Ltd. asserts that the existence of the unlawful means conspiracy in relation to the IBL Loan and the unlawful

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means conspiracy in connection with the CMC Decision "*strongly indicates a broader agreement or combination on the part of the Respondents to appropriate all or, at a minimum, a substantial portion of IT Ltd.'s investment as part of the 2011 Transaction*". IT Ltd.'s Statement of Reply repeats this allegation at paragraphs 580-586 [A/21/278-282]. There is a specific claim for loss in the amount of US$ 11 million which is said to arise from the failure to make payments under the IT Ltd. Shareholder Loan from September 2014 to July 2015 as a result of this broader conspiracy.

IT Ltd.'s Prayer for Relief

82. At paragraph 733 of its Statement of Reply [A/21/359-360], IT Ltd. seeks the following relief:

(a) with respect to the unlawful means conspiracy claims (including the so-called broader conspiracy) and the contractual, and statutory claims advanced in respect of the IBL Loan, the CMC Decision and the Self-Dealing claims:

(i) an order that CS Ltd. and Mr. Mustafa, on a joint and several basis, pay IH Ltd. damages in the amount of US$ 1,079,900,000 (or, in the alternative, should damages be calculated as at the current date on a reliance basis, damages in the amount of USD 480,000,000); and

(ii) an order that CS Ltd., Mr. Mustafa and Korek, on a joint and several basis, pay IT Ltd. damages in the amount of US$ 239,800,000;

(b) alternatively:

(i) with respect to the breaches of contract pleaded in respect of the Alternative Unwinding Claims, an order that CS Ltd., Mr. Mustafa and Korek, on a joint and several basis, pay IT Ltd. damages in the amount of US$ 480,000,000; and

(ii) with respect to the breaches of contract pleaded in respect of the Non-Compete Obligation, an order that CS Ltd. and Mr. Mustafa, on a joint and several basis, pay IT Ltd. damages in the amount of US$ 480,000,000;

(c) in the further alternative:

(i) with respect to the claim for Unjust Enrichment, an order that Korek pay IT Ltd. the amount of USD 480,000,000; and

(ii) with respect to the breaches of contract pleaded in respect of the Non-Compete Obligation, an order that CS Ltd. and Mr. Mustafa, on a joint and several basis, pay IT Ltd. damages in the amount of US$ 480,000,000;

(d) the declarations set forth in paragraphs 496 to 498 of IT Ltd.'s Statement of Claim;[2]

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[2] These paragraphs seek declarations of specific breaches in connection with the 3G Annex, the alleged failure to appoint a CEO, the alleged withholding of information, the alleged failure to convene meetings of the KSC

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(e) an order requiring CS Ltd. and Mr. Mustafa to confirm the appointment of Mr. Froissart as a member of the IH Board;

(f) an order that the Respondents pay all costs in connection with these arbitral proceedings pursuant to Article 38(5) of the DIFC Arbitration Law, including (but not limited to) the costs and fees of the Arbitral Tribunal, the institutional costs of the ICC, as well as any legal and other fees, costs and/or expenses incurred by IT Ltd. including (but not limited to) legal fees, expert fees and costs in respect of the time spent by IT Ltd.'s representatives;

(g) an order that the Respondents pay IT Ltd. and/or IH Ltd. pre- and post-award interest on all sums awarded until payment in full; and

(h) such other relief as the Arbitral Tribunal may deem appropriate.

83. For their part, the Respondents reject all of the claims advanced by IT Ltd., both those put forward in its own name and the derivative claims advanced on behalf of IH Ltd. The detail of the defences advanced by the Respondents in relation to the individual claims is, where necessary and appropriate, set out in the body of this Award. The Respondents also take the position that the SHA has been terminated by frustration on 12 March 2019 (being the date upon which the Respondents say the CMC Decision was implemented by the KCR Decree).

84. In both their Statement of Defence and their Rejoinder, the Respondents request that the Arbitral Tribunal:

(a) dismiss all of IT Limited's claims, both in its own name and in the name of IH Limited, in their entirety;

(b) declare that the Shareholders' Agreement has been terminated by frustration on 12 March 2019;

(c) declare that, unless otherwise discharged, the injunction issued in ICC Case No. 23685/AYZ (the "First Shareholder Arbitration") and agreed by the Parties to be adopted by consent in this reference is discharged upon the issue of the Arbitral Tribunal's Final Award;

(d) order that IT Limited must pay the Arbitral Tribunal and the Respondents' costs in connection with these arbitral proceedings and all DIFC Court proceedings brought in support of these arbitral proceedings, including (but not limited to) the costs of the ICC, as well as any legal and other fees, costs and/or expenses incurred by the Respondents; and

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and the IH Ltd. Board and the Self-Dealing Transactions. It also seeks declarations that, if the Arbitral Tribunal awards damages on the basis that the Alternative Unwinding Claims or the claim for Unjust Enrichment:

a) the Convertible Note, and all rights and benefits thereunder, shall be deemed immediately transferred back to Alcazar;

b) no conversion of the Convertible Note shall be deemed to have occurred; and

c) Alcazar's rights and Korek's obligations under the Convertible Note shall remain in full force and effect as if the transfer did not occur and Alcazar shall not be deemed to have waived any rights thereunder.

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(e) grant any other relief that the Arbitral Tribunal deems appropriate.

[A/6/262: A/34/301].

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E. THE STANDARD AND BURDEN OF PROOF

The Parties' Submissions

1. In its Statement of Claim, IT Ltd. states that although this Arbitral Tribunal "*is not bound by any specific rules of evidence, in exercising its broad discretion over evidentiary matters, it may have regard to the relevant rules of evidence under the lex causae (in this case, English law) and the lex arbitri (in this case, DIFC law), as well as general principles of law as applied by international tribunals*". It accepts that to discharge its burden of proof, it must establish its allegations of fact on the preponderance of the evidence on the balance of probabilities and that this is so irrespective of the seriousness or gravity of the allegations and the related claims [A/5/87-92].

2. IT Ltd. further asserts that where direct evidence of a fact is not available, a party may discharge its burden of proof through circumstantial evidence as well as by inferences and presumptions and that this is particularly true with respect to allegations of fraud and corruption where the parties involved seek to conceal evidence of their wrongdoing. IT Ltd. says that it is appropriate for arbitral tribunals to look at lists of indicators of corruption or "red flags".

3. The Respondents accept that in "*any dispute between the parties that for civil claims, which are subject to English law, in a DIFC-seated arbitration, the party advancing an allegation of fact has the burden of proving it on the "balance of probabilities*" [A/6/118]. However, the Respondents contend that the difference between the Parties rests on what standard of evidence is required in order to satisfy the balance of probabilities test in circumstances where fraud, corruption or bribery has been alleged. The Respondents say that IT Ltd. is wrong in its exposition of the relevant legal standards for evidence and the use of inference to support a factual allegation.

4. In particular, the Respondents say that IT Ltd. overstates the ability of a party to discharge its burden of proof through circumstantial evidence, inferences and presumptions. They say that IT Ltd. has ignored the line of authorities making clear that it will only be appropriate to make findings of fact on circumstantial evidence in limited circumstances. The Respondents rely, in particular, upon the authorities of *JSC BM Bank v Kekhman* [2018] EWHC 791 (Comm), *JSC BTA Bank v Ablyazov* [2013] EWHC 510 (Comm) and the House of Lords decision in *Secretary of State for the Home Department v Rehman* [2001] UKHL 47. The Respondents place particular emphasis upon the statement of Lord Hoffman in the latter case that "*cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some reprehensible manner. But the question is always whether the tribunal thinks it more probable than not.*"

5. The Respondents also criticise IT Ltd.'s reliance on inferences and presumptions. This approach should, they say, only be used when the requesting party has produced prima facie evidence which reasonably supports the drawing of the requested inference. The Respondents accept that the Arbitral Tribunal may draw specific inferences on the basis of the evidence but argue that it is not sufficient for IT Limited to advance an entirely inferential case and claim it is not required to produce any actual evidence [A/6/119-120].

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6. The Respondents further take issue with IT Ltd.'s red flag approach. This is, the Respondents argue, an attempt to reverse the burden of proof and require them to disprove the allegations made against them [A/6/123].

7. In its written Closing Statement, IT Ltd. rejects the suggestion that relying upon inferences drawn from circumstantial evidence or red flags amounts to a reversal of the burden of proof. IT Ltd. says that it is seeking (i) inferences on the basis of cogent, credible and comprehensive circumstantial evidence and (ii) adverse inferences from the Respondents' failure to produce documents [A/37/10].

8. In their written Closing Submissions, the Respondents continue to argue that IT Ltd. seeks to apply a lower standard of proof and to effectively reverse the burden of proof by claiming that it is for the Respondents to justify the various transactions. The Respondents do not dispute that circumstantial evidence may be relied upon by a party in support of allegations of bribery but "*it is still necessary for that party to demonstrate that the body of evidence, when viewed as a whole, amounts to cogent evidence of bribery… [T]hat exercise will always require the Court or Tribunal to assess the body of evidence in its entirety and in the context of the particular factual matrix*" A/45/23]

9. The Respondents continue to take issue with IT Ltd.'s red flag methodology which they say wrongly requires them to provide a counter-narrative and involves an acceptance of the proposition that allegations of corruption and bribery require a lower standard of proof. In fact, they require a higher standard, with cogent evidence provided in support of those allegations [A/45/24].

The Arbitral Tribunal's Analysis

10. The Parties approached the standard of proof required on the basis of English law. Indeed, there was no dispute between the Parties on this issue. The Respondents' pleaded case on the standard of proof referred to the principles of English law and relied upon a number of English authorities, including *JSC BM Bank v Kekhman* [[2018] EWHC 791 (Comm), *JSC BTA Bank v Ablyazov* [2013] EWHC 510 (Comm) and *Secretary of State for the Home Department v Rehman* [2001] UKHL 47. The Arbitral Tribunal considers that that is the correct approach.

11. The standard of proof required in the present case is therefore that the allegations must be proven by the Party asserting them on the balance of probabilities. The Arbitral Tribunal does take into account the nature of the allegations being made when assessing those probabilities, but the standard remains what is more likely or probable than not. The extract from the judgment of Lord Hoffman in the *Rehman* matter, quoted by the Respondents, makes the position clear: "*cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some reprehensible manner. But the question is always whether the tribunal thinks it more probable than not*" (emphasis added). The DIFC Court has similarly made clear that allegations of bribery and fraud are subject to the same standard of proof as less serious allegations and require a showing that the conduct is more likely than not to have occurred (although the seriousness of the allegations are a factor in deciding whether proof to that standard has been achieved) – see *GFH Capital Limited v Haigh* [2014] DIFC CFI 020.

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12. To be clear, an assessment that something has been proven on the balance of probabilities does not require the Arbitral Tribunal to have concluded that all other possible explanations have been excluded – see the *Kekhman* decision at paragraph 79 [E1/60/59]. That would be to impose an altogether higher standard and not one that is required or appropriate to civil proceedings.

13. The burden of proof rests with IT Ltd. in respect of each of the allegations that it makes. It is however open to the Arbitral Tribunal to draw adverse inferences in appropriate circumstances and such inferences may influence an assessment of whether that burden has been discharged. Equally, it is relevant to consider that once a claimant has adduced prima facie evidence that requires some proper or credible explanation and response, the absence of any such evidence from the responding party may be of some significance. Further, the Arbitral Tribunal is not persuaded that the use of circumstantial evidence is of itself objectionable provided that, as indeed the Respondents themselves accept, the body of evidence as a whole amounts to cogent evidence of an unlawful means conspiracy and bribery. As Bryan, J. observed at paragraph 78 of his judgment in the *Kekhman* decision, "*[t]he nature of circumstantial evidence is that its effect is cumulative, and the essence of a successful case based on circumstantial evidence is that the whole is stronger than individual parts*" [E1/60/58].

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F. THE ACT OF STATE DOCTRINE

The Parties' Submissions

1. In its Amended Answer to IT Ltd.'s Re-Amended Request for Arbitration, the Respondents assert that the Arbitral Tribunal has no jurisdiction to hear the claim that the CMC Decision was improperly procured through bribery and corruption because it would require the Arbitral Tribunal to find that the CMC had been complicit in, and issued the CMC Decision as a result of, bribery and corruption. That would require the Arbitral Tribunal to question the lawfulness of the CMC Decision and would offend against the foreign act of state doctrine. This English common law doctrine is, the Respondents say, applicable in this case and precludes any arbitral tribunal from adjudicating upon the lawfulness or validity of any sovereign acts of a foreign state or from hearing claims that a foreign state has acted unlawfully [A/2/27-28].

2. In its Statement of Claim, IT Ltd. rejects this argument [A/5/101-105]. It says that the Respondents have not demonstrated that the foreign act of state doctrine should be applied by a DIFC-seated tribunal and have not cited any DIFC authority relating to the doctrine.

3. Further, IT Ltd. says, the doctrine is not engaged by its claims. In *Belhaj v Straw* [2017] AC 964 ("*Belhaj*") the Supreme Court identified and discussed three rules within the foreign act of state doctrine. The first two rules address the validity or effect of foreign legislation and foreign governmental acts in respect of property within the state in question. The third addresses matters that are said to be non-justiciable by the courts. IT Ltd. says that its claims do not fall within the scope of any of those rules. IT Ltd. contends that none of its causes of action requires the Arbitral Tribunal to rule upon the validity or legal effectiveness of the CMC Decision:

   (a) Its primary claim requires the Arbitral Tribunal to determine whether the Respondents procured the CMC Decision through bribery and corruption. It does not require the Arbitral Tribunal to determine whether such acts impaired the effectiveness or validity of the decision as a matter of Iraqi law or to otherwise rule on the executive acts of the CMC. All that is required is that the Arbitral Tribunal (i) recognise that the alleged bribery and corruption occurred, (ii) that the CMC Decision was issued and (iii) that there was a causal link between the two. Identifying acts which occurred is permissible and outside the scope of the doctrine;

   (b) Its alternative claim requires the Arbitral Tribunal to find that the Respondents' failure to unwind the 2011 Transaction amounts to a breach of the Subscription Agreement. That does not engage the legal effectiveness or validity of the CMC Decision;

   (c) The further alternative claim in unjust enrichment assumes the validity of the CMC Decision and asks the Arbitral Tribunal to acknowledge that Mr. Mustafa and Korek were unjustly enriched.

4. IT Ltd. asks how the act of accepting a bribe could constitute a sovereign act. In any event, the wrong upon which Arbitral Tribunal is being asked to rule is the giving of a

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bribe by the Respondents, not the taking of them by CMC officials. The Respondents are not part of the Iraqi government or state.

5. Finally, IT Ltd. argues that it would be contrary to public policy (whether in the UK or in the DIFC) as well as to international public policy to shield the acts in question from adjudication.

6. The Respondents reply to these arguments in their Statement of Defence [A/6/125-136]. To resolve the claim, the Respondents say, the Arbitral Tribunal would have to consider whether Iraqi public officials and the Iraqi courts acted corruptly and whether the enactments of Iraqi public authorities (as upheld in the Iraqi courts) would not have been lawfully implemented in the absence of the alleged corruption. Such an investigation, they say, is precluded and the Arbitral Tribunal is bound to recognise and not question the CMC's lawful determination (as a matter of Iraqi law) that IT Limited was required to be removed from the shareholding of Korek.

7. The Respondents say that the CMC Decision satisfies the test laid down by the Supreme Court in *Belhaj v Straw* for the second rule of the foreign act of state doctrine which they say is that that "*the courts of this country will recognise, and will not question, the effect of an act of a foreign state's executive in relation to any acts which take place or take effect within the territory of that state*." The CMC is a public authority, acting as a state regulator and is an arm of the Iraqi executive. The CMC Decision relates to acts taking effect within Iraq and has been upheld by the Iraqi courts and implemented by other public bodies in Iraq.

8. The Respondents maintain that the foreign act of state doctrine is imported into and forms part of DIFC law by application of the DIFC choice of law rules (contained in Article 8(2) of DIFC Law No. 3 which provides for the application of the laws of England and Wales (unless any of the preceding provisions of that Article apply))[3]. The Arbitral

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[3] Article 8 of the DIFC Law on the Application of Civil and Commercial Laws in the DIFC states:

(1) Since by virtue of Article 3 of Federal Law No.8 of 2004, DIFC Law is able to apply in the DIFC notwithstanding any Federal Law on civil or commercial matters, the rights and liabilities between persons in any civil or commercial matter are to be determined according to the laws for the time being in force in the Jurisdiction chosen in accordance with paragraph (2).

(2) The relevant jurisdiction is to be the one first ascertained under the following paragraphs:

(a) so far as there is a regulatory content, the DIFC Law or any other law in force in the DIFC; failing which,

(b) the law of any Jurisdiction other than that of the DIFC expressly chosen by any DIFC Law; failing which,

(c the laws of a Jurisdiction as agreed between all the relevant persons concerned in the matter; failing which,

(d) the laws of any Jurisdiction which appears to the Court or Arbitrator to be the one most closely related to the facts of and the persons concerned in the matter; failing which,

(e) the laws of England and Wales.

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Tribunal is to apply current English law, with other common law decisions on the same doctrine having persuasive effect.

9. The Respondents challenge IT Ltd.'s argument that the doctrine has no application because its claim does not require the Arbitral Tribunal to question the validity or legal effectiveness of the CMC Decision. IT Ltd.'s claim, they say, requires the Arbitral Tribunal to make findings that trespass on the foreign act of state doctrine "*including conclusions as to why the CMC took the actions it took and whether ... those actions were unlawful or improper.*"

10. The Respondents further say that IT Ltd. has quoted selectively from the decision in *Yukos Capital Sarl v OJSC Rosneft Oli Co. (No. 2)* [2012] EWCA Civ 855 and that the judgment in that case demonstrates that IT Ltd.'s claim falls into the category of an inquiry into the legal effectiveness of an act of state and is not merely seeking to establish the existence of the CMC Decision. IT Ltd.'s case is that the CMC Decision was procured by corruption and would not have been enacted or implemented in the absence of corruption. That, the Respondents say, is "*almost a paradigmatic example*" of a claim that engages the foreign act of state doctrine.

11. The Respondents also challenge the argument that the public policy exception to the foreign act of state doctrine applies. That exception is not concerned with how or why the act of a foreign state came about or was procured. It is concerned only with the question of whether the thing being done by the foreign state is, in its nature, so egregious that English law cannot be seen to be deferential to that foreign state in the breach of a peremptory moral norm. The English authorities make clear that "*very narrow limits must be placed on any exception to the …doctrine*" and that where there is room for doubt, judicial restraint must be exercised – *Kuwait Airways Corp. v Iraq Airways Co*. [2002] UKHL 19. The authorities show that the focus is on the act and its effect, not on antecedent circumstances of the act or whether it could be impugned as a matter of the relevant local law. The CMC Decision is a direction of the Iraqi telecom regulator that reverses consent to the involvement of IT Ltd. in the regulated telecoms sector and directs reversal of Korek's shareholding structure. That is not a species of act that can trigger the public policy exception as a matter of English law. On the contrary, it is an entirely ordinary species of act that a foreign regulator could be expected to effect in the context of a heavily regulated industry.

12. In its Statement of Reply, IT Ltd. responds to these arguments [A/21/207-219]. It rejects the argument that Article 8(2) of DIFC Law No. 3 imports the foreign act of state doctrine into DIFC law. The absence of any recognition of the doctrine by the DIFC Court shows that the Arbitral Tribunal should be slow to recognise that DIFC law would automatically subscribe to the policy-driven considerations underpinning the English-law development of the doctrine. IT Ltd. says that the DIFC Court has been sceptical of the wholesale importation of similar doctrines.

13. IT Ltd. says that the Respondents' reliance on the second rule in *Belhaj* is misplaced. IT Ltd. is not asking the Arbitral Tribunal to determine whether the CMC Decision was effective. Nothing in either IT Ltd.'s primary claim or its contractual and statutory claims requires the Arbitral Tribunal to determine that the CMC Decision was ineffective.

14. Rather, IT Ltd. says, the Respondents focus on a series of findings about factual issues which they say trespass on the act of state doctrine. However, none of these issues

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either requires or results in the Arbitral Tribunal making a determination about the effectiveness of the CMC's actions. It is simply asked to determine whether certain actions occurred as a matter of fact. It is wrong to conflate identifying whether acts occurred with determining whether or not those acts were effective. It is immaterial to IT Ltd.'s case whether the CMC Decision was invalid or unlawful and the Arbitral Tribunal is not required to make any findings in this regard. Further, the actions of the CMC Appeals Board and of the Iraqi courts are irrelevant.

15. IT Ltd. further rejects the suggestion that the decision of Rix, LJ. in *Yukos* assists the Respondents. In that case, IT Ltd. says, the claimant was seeking to establish that certain annulment decisions should not be recognised by the English courts. That is not the case in the present reference where the Arbitral Tribunal is not required to determine that the CMC Decision should not be recognised.

16. Lastly, IT Ltd. maintains its public policy argument and insists that a regulatory decision tainted by bribery and corruption through which shares in a regulated business have been expropriated for no value is a violation of fundamental principles of English, DIFC and international law, justice and public policy.

17. The Respondents maintain their reliance on the foreign act of state doctrine in their Statement of Rejoinder [A/34/176-185]. They say that the DIFC Courts may not have been called upon to consider the doctrine, but that it is inconceivable that they would not give effect to it. The sovereign equality of states and the principle of international comity are recognised throughout the world and are founding principles of the UAE constitution and Article 8(2) requires the application of the doctrine in the DIFC Court.

18. The Respondents say that it is an essential element of IT Ltd.'s conspiracy claim that the CMC must have acted wrongfully in issuing the CMC Decision. If that claim succeeds, it must necessarily include the CMC officials as joint tortfeasors as they would have had to let their decision-making be directed by the alleged bribe. The Respondents say that IT Ltd. must prove that (i) there was bribery of CMC officials, (ii) but for that bribery the CMC Decision would not have been issued and (iii) but for that bribery, the CMC Decision would not have been upheld by the CMC Appeals Board. If the Arbitral Tribunal determines that there was corruption, but that the CMC Decision would still have been issued, then the Respondents say that the Arbitral Tribunal must reject the claim. This must, the Respondents say, entail an assessment of the validity of the CMC's decision-making process. The Arbitral Tribunal cannot find for IT Ltd. without finding that the CMC acted unlawfully.

19. The Respondents reject the argument that IT Ltd. is only referring to the CMC Decision to demonstrate its existence. The decision in *Yukos* cautioned against seeking to escape the application of the foreign act of state doctrine by "*ever more tortured formulations of its case*". The effect of the CMC Decision is that IT Ltd. is owed nothing and its primary claim is designed to circumvent the Decision's proper effect.

20. The Respondents argue that IT Ltd. attempts to give the concept of legal effectiveness a narrow construction and that this is contrary to the decisions in *Yukos, Berezovsky v Abramovich* [2011] EWCA Civ 153 and *Belhaj* and that it also ignores the decision in *Buttes Gas v Hammer* [1982] AC 888 which is said to make clear that if a claim for conspiracy involves an examination of the motives behind a particular act of state, then the doctrine is engaged.

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21. Finally, the Respondents continue to reject the submission that the public policy exception is engaged. Allegations of corruption are not equivalent to any of the egregious circumstances in which the exception has previously been invoked.

The Arbitral Tribunal's Analysis

22. The Arbitral Tribunal was not provided with sufficient material on which it could make a finding that the foreign act of state doctrine would be applied in the courts of the DIFC as it has been applied in the English courts. The same applies to questions of public policy. This alone is sufficient to dismiss the Respondent's objection.

23. Nevertheless, the Arbitral Tribunal did hear full argument on the applicability of the act of state doctrine to the present claims under English law and for the reasons set out below finds that the foreign act of state doctrine, whether or not it is recognised by the DIFC Court in the same manner as in the English courts, has no application to IT Ltd.'s claims in this case.

24. The Respondents rely upon the second rule as expounded in the Supreme Court in *Belhaj*.

25. The first and second rules are frequently approached together as they address two aspects of the same issue. Under the first rule, a foreign state's legislation will be recognised and normally accepted as valid, insofar as it affects property, whether movable or immovable, situated within that state when the legislation takes effect (see Lord Mance in *Belhaj* at paragraph 35). Under the second rule, an English court will not question a foreign governmental act in respect of property situated within the jurisdiction of the foreign government in question (see Lord Mance in *Belhaj* at paragraph 38). The distinction between the first and second rules largely focusses on the difference between foreign legislation or decrees and foreign governmental acts. Further, as Lord Mance explained, each of these rules is itself subject to the control of public policy on a case by case basis, thus in *Oppenheimer v Cattermole*, the English courts would not give recognition or effect to Nazi decrees which expropriated the property of Jews in the German Reich.

26. Before applying questions of public policy, the first and second rules are directed at acts in respect of property situated in a foreign state and causes of action either to recover such property or to assert rights in respect thereof. Thus, in *Luther v Sagor* the English courts were faced with the effect of a seizure of the plaintiff's wood mill and stock in the Soviet Union following the decrees of Russian revolutionaries who were later recognised by the United Kingdom as constituting government of the territory. The seized wood was sold by the Russians to the defendant. The claimant sought recovery of the wood, some of which arrived in England, or its value. The defendant contended it had obtained title from the Russian authorities who themselves derived title from the decrees. The English court dismissed the claims and would not go behind and impugn the validity of the decrees.

27. The first question in each case is whether in respect of a claim over property, the particular cause of action requires the English court to find invalid or ineffective a foreign decree or legislative or governmental act. As Lord Neuberger stated in his judgment in *Belhaj*, the principle identified above had received considerable support but only in relation to property. Thus, in *Belhaj* the Supreme Court held that the claims

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advanced with respect to the unlawful rendition and subsequent alleged torture of two individuals fell outside of the scope of the rules as generally applied, but in any event that public policy would not permit the application of the doctrine of act of state to allegations of torture.

28. Lord Neuberger at paragraph 122 further described the second rule in relation to claims over property in the following terms:

"The second rule is that the courts of this country will recognise, and will not question, the effect of an act of a foreign state's executive in relation to any acts which take place or take effect within the territory of that state."

29. Lord Sumption explained at paragraph 240 of his judgment in the same case that the doctrine applies "*only where the invalidity or unlawfulness of the state's sovereign acts is part of the very subject matter of the action in the sense that the issue cannot be resolved without determining it. There is no real difference between the parties on this point, but it is worth emphasising none the less, for it is of some importance. Some such distinction is essential if the act of state doctrine is not to degenerate into a mere immunity against international embarrassment.*"

30. Lord Sumption expanded on this in paragraph 266 of his judgment stating, "*The purpose of the foreign act of state doctrine is to preclude challenges to the legality or validity of the sovereign act of foreign states. It is not to protect English parties from liability for their role in it.*"

31. In this arbitration IT Ltd. does not ask the Arbitral Tribunal to strike down or challenge the legality or validity of the CMC Decision or the decision of CMC Appeals Board. IT Ltd. proceeds on the basis that the CMC Decision stands and that as a result of the conduct of the Respondents for their role and part in it IT Ltd. has suffered the loss of the value of their shareholding in Korek Telecom. The present case is quite different to either *Luther v Sagor* or *Oppenheimer v Cattermole*. IT Ltd. is not seeking to recover its shares from the Respondents who have asserted title derived from foreign legislation or governmental act.

32. Here IT Ltd. in its causes of action alleges (i) a tortious conspiracy between the Respondents and (ii) breaches of contract and statute on the part of the Respondents. IT Ltd. is right to say that it is not asking the Arbitral Tribunal to determine whether the CMC Decision was effective, or to question the effect of the CMC Decision. Indeed, as IT Ltd. says, rather than seeking to question the effectiveness of the CMC Decision, it in fact relies upon the validity and effect of that Decision. The loss which it has sustained follows from the Respondents' collusive conduct and their procurement of the CMC Decision and the decision of the CMC Appeals Board.

33. The Respondents attempt to parse out the elements of the decision which the Arbitral Tribunal has to make on these claims so as to imply that the Arbitral Tribunal must opine on the validity or effectiveness of the acts of the Iraqi state.

34. The Arbitral Tribunal does not accept this. As Lord Sumption stated, the Arbitral Tribunal is only concerned to ensure that the subject of the action does not require a determination that the CMC Decision is invalid under Iraqi law. The act of state doctrine does not prevent inquiry as to the involvement of the Respondents in procuring a decree in breach of contract or as part of an unlawful act conspiracy. Equally, if bribery

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was a central part of that conduct, it does not prevent examination of the same. In each such case the subject of the inquiry is the conduct of the Respondents and not the invalidity of the decree under Iraqi law.

35. In the Arbitral Tribunal's view IT Ltd. is correct to state that, to resolve the conspiracy claim, the relevant issues are:

(i) Whether the Respondents conspired amongst themselves to procure the CMC Decision and related actions;

(ii) Whether the Respondents had the requisite intention to injure IT Ltd. and IH Ltd.;

(iii) Whether the Respondents acted on this conspiracy by unlawful means; and

(iv) Whether, as a result, IT Ltd. and IH Ltd. suffered loss.

In order to resolve the contractual and statutory claims against the Respondents, the Arbitral Tribunal must determine:

(i) Whether the Respondents engaged in conduct to procure the CMC decision to further their own private interests;

(ii) Whether the Respondents engaged in bribery and corruption;

(iii) Whether these actions breached the Respondents' contractual and statutory duties; and

(iv) Whether, as a result, IT Ltd. and IH Ltd. suffered loss.

36. The resolution of those questions, does not engage the second rule identified in *Belhaj*. The nature of the conspiracy, involving as it does examination of the role played by the Respondents in procuring the CMC Decision, does of course raise questions of the conduct of the Respondents, their involvement in the CMC Decision and those they are alleged to have suborned, bribed and corrupted. However, the cause of action does not require a finding of the invalidity or illegality of a governmental act, let alone one in respect of immovable property.

37. Yet further, even if it did, the Arbitral Tribunal is not satisfied that the doctrine of act of state could be invoked under DIFC law to prevent examination of questions of bribery. Bribery of officials is a very serious matter and contrary to the statutory provision and public policy of countries right around the world. To suggest that the second rule would prevent examination of such issues runs precisely the risk warned against by Lord Sumption of seeking to confer immunity against international embarrassment.

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G. FRUSTRATION OF THE SHA

The Parties' Submissions

1. The Respondents argue that the SHA was terminated by frustration following the implementation of the CMC Decision in March 2019 (through the KCR Decree). At this point, the Respondents say, the rights and obligations under the SHA were rendered "radically different" and it became logically absurd and in large respects unworkable for the Parties to conduct themselves as if bound by the SHA.

2. The Respondents reject the argument that they procured the CMC Decision and therefore cannot rely upon self-induced frustration, as well as the argument that their actions and omissions contributed to the issuance of the KCR Decree and preclude them from invoking that Decree as a frustrating event. That position, the Respondents say, is simply not supported by the evidence.

3. In support of their argument that implementation of the CMC Decision renders the performance of the SHA radically different from that originally contemplated by the Parties, the Respondents say:

   (a) The purpose of the SHA was to govern the operation of the Parties' joint venture investment. The only economic asset was Korek and the joint venture's sole purpose was to manage Korek's operations and business;

   (b) The joint venture no longer holds Korek or derives any benefit from it;

   (c) CS Ltd. and IT Ltd. no longer have any functioning working relationship. The Respondents continue to own and manage Korek, whilst IT Ltd. seeks damages and has no interest in continued investment; and

   (d) The Parties' rights and obligations under the SHA are undeniably radically different:

      (i) The detailed veto rights in the SHA were agreed to on the basis that IT Ltd. was an indirect shareholder in Korek. It no longer has any interest in Korek and should not be allowed to exercise control by way of veto rights;

      (ii) The SHA requires the Respondents to seek consent from IT Ltd. before entering into certain transactions, dealing with its regulator or obtaining financing. In the current circumstances this is both highly intrusive and unworkable; and

      (iii) The SHA contains mutual rights and obligations in respect of the Parties' ongoing relationship. Since the implementation of the CMC Decision, the joint venture has in reality terminated with the Parties no longer having any ongoing business relationship or any prospect of undertaking future investments through IH Ltd. The joint venture no longer owns or manages any assets.

4. The Respondents also take issue with IT Ltd.'s claim that the SHA is a multi-purpose contract setting out obligations which can and must be performed even where IH Ltd. no longer has a shareholding in Korek. They say this argument is misconceived:

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(a) This claim rests solely on clause 6 of the SHA containing provisions concerning the governance of IH Ltd. The fact that one clause out of 48 has not been rendered otiose is irrelevant to the question of whether the primary rights and obligations are radically different;

(b) IT Ltd. does not claim any long-term interest in the management of Korek and IH Ltd. The fact that the governance of IH Ltd. remains of significance for the purpose of making claims in a manner hostile to both IH Ltd. and the other parties to the SHA is not sufficient;

(c) IH Ltd. exists solely as a litigation vehicle for IT Ltd., a radically different situation from that envisaged in 2011;

(d) The provisions of clause 6 of the SHA were recreated in the Articles of Association of IH Ltd. the SHA does no need to remain in force in order to manage the ongoing governance of IH Ltd.; and

(e) IT Ltd.'s submission that the SHA has not been frustrated is logically inconsistent with its claim that the Subscription Agreement requires the 2011 Transaction to be unwound.

5. The Respondents further plead that IT Ltd.'s refusal to accept that the SHA has been frustrated is strategic and designed to further a litigation campaign against the Respondents:

(a) IT Ltd. has acknowledged that the only value of IH Ltd. is as a vehicle to bring claims;

(b) IT Ltd. has no interest in the management of Korek;

(c) IT Ltd. relies on clause 28 of the SHA to pursue claims in the name of IH Ltd. which the Arbitral Tribunal did not give IT Ltd. permission to pursue as derivative claims;

(d) Clause 28 cannot survive termination by frustration. The SHA specifies those clauses which survive termination and clause 28 is not one of them;

(e) IT Ltd. has obtained injunctive relief on the grounds that the SHA remains in force; and

(f) Given that IT Ltd. has no interest in Korek other than as an asset for enforcement purposes, the injunctive relief appears designed to impose burdensome limits on Korek's ability to trade in order to maintain the status quo for enforcement purposes.

6. In its Rejoinder [A/21/282-287], IT Ltd. suggests that, following the Arbitral Tribunal's decision, memorialised in Procedural Order No. 4, to allow IT Ltd. to bring common law derivative claims against CS Ltd. and Mr. Mustafa, the question of frustration is largely academic. It remains of importance, IT Ltd. says, primarily because of the fact that the Secondary Unjust Enrichment claim against Mr. Mustafa did not form part of the permission application in respect of the derivative claims.

7. As to the merits of the frustration argument, IT Ltd. submits that the Respondents do not dispute that, if the Arbitral Tribunal finds that the Respondents did procure the CMC

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Decision through bribery and corruption, there can be no frustration, as a party cannot rely on self-induced frustration.

8. Further, it is not necessary for the Arbitral Tribunal to find that the Respondents actively procured the CMC Decision through bribery for the principle of self-induced frustration to be engaged. The failure of a contracting party to take actions which may have lessened the impact of a frustrating event, or otherwise ameliorated it, is sufficient to prevent a party from relying on that same event as a basis for frustration defence. Whether that omission was deliberate or not is irrelevant.

9. As for the second line of defence advanced by the Respondents, IT Ltd. explains that the governance of Korek remains a matter of considerable significance since IH Ltd. continues to hold valuable causes of action against the Respondents and their directors. By seeking to argue that IT Ltd. does not claim any long-term interest in the management of Korek and IH Ltd. and that it continues to have an interest in IH Ltd. only for the purpose of making claims, the Respondents seek artificially to distinguish between two issues that are inextricably linked. The "*immense value*" of the claims currently being litigated in IH Ltd.'s name means that the rules of governance remain both relevant and of critical importance.

10. The SHA remains, IT Ltd. says, an important multi-purpose contract with obligations which must be performed even where IH Ltd. no longer holds a shareholding in Korek.

11. IT Ltd. denies that its argument that the SHA has not been frustrated is inconsistent with its claim that the Subscription Agreement requires the 2011 Transaction to be unwound.

12. Finally, IT Ltd. says, even if the Arbitral Tribunal were to find that the SHA was frustrated, it would still be open to IT Ltd. to pursue its Secondary Unjust Enrichment claim as clause 28.5 forms an integral part of the Parties' ability to resolve disputes. Given that the Parties undoubtedly intended that clause 48, the dispute resolution clause, was to survive frustration, clause 28.5 would survive too.

13. In their Rejoinder [A/34/257-263], the Respondents argue that IT Ltd. has missed the significance of the frustration of the SHA. They say that the self-dealing claims brought on behalf of IH Ltd. must fail because the Arbitral Tribunal did not give permission for those to be pursued as derivative claims, the block on the Beecable contract procured by the exercise of IT Ltd.'s veto right would have to be lifted, and the corporate governance claims including the demand for specific performance must fail.

14. The Respondents further say that, if the Arbitral Tribunal does not find the SHA to be frustrated, Korek and Mr. Mustafa will be placed in the absurd position of having to manage Korek in perpetuity in accordance with the terms of the SHA and despite the fact that IT Ltd. has no economic interest in Korek.

15. At paragraph 8.7 of the Rejoinder, the Respondents accept that "*it is common ground that if the Respondents procured the issue of the CMC Decision by corruption of the CMC then their claim of frustration should be rejected*". The Respondents reiterate their argument that the CMC Decision and its implementation was not so procured.

16. The Respondents further argue that IT Ltd. cannot make good its contention that, in the absence of unlawful procurement, the Respondents would be prevented from

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arguing frustration because the Respondents took insufficient steps to reverse or lessen the impact of the frustrating event.

17. The Respondents also take issue with IT Ltd.'s argument that the SHA is a "*multiple-purpose contract*". They say that the loss of any interest in Korek rendered the performance of the SHA radically different from that contemplated by the Parties because the purpose of the SHA was to regulate the Parties' joint interest in Korek. In the absence of any economic interest in Korek, the performance of the SHA became "*radically different*".

18. It makes no difference, the Respondents say, that IT Ltd. continues to rely upon its continued interest in IH Ltd. IH Ltd. was a holding company whose sole purpose was to hold the Parties' investments in Korek. By the Respondents' own admission, it has not held a Board Meeting or a Shareholders' Meeting since 2016. Its role as a litigation vehicle is another creature entirely from that intended.

19. The Respondents repeat their argument in relation to the duplication between the SHA and IH Ltd.'s Articles of Association.

20. Finally, the Respondents reiterate that clause 28.5 of the SHA does not survive termination. They reject the argument that it is somehow related to clause 48. The Respondents say that the SHA provides a list of the clause surviving termination and clause 28.5 is not amongst them.

The Arbitral Tribunal's Analysis

21. The Arbitral Tribunal considers that, as the Respondents argue, the question of frustration is of relevance to more issues in this reference than just the Secondary Unjust Enrichment claim. In light of the Arbitral Tribunal's findings on the primary claims (see Chapter H, below), it is not necessary for the Arbitral Tribunal to address the Secondary Unjust Enrichment claim. However, it appears to the Arbitral Tribunal that the question of frustration remains relevant to the corporate governance claims.

22. It is however common ground between the Parties that if the Respondents through their wrongful conduct procured the issue of the CMC Decision then their claim of frustration should be rejected. The Arbitral Tribunal has found that the Respondents did indeed procure the issue of the CMC Decision and did bribe and corrupt CMC officials (see Chapter H, below). In the circumstances, there is no live dispute on the issue covered by this Chapter and the Arbitral Tribunal finds that the SHA was not frustrated.

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H. UNLAWFUL MEANS CONSPIRACY – CMC DECISION

The Parties' Submissions

1. It is convenient to begin the assessment of the merits of IT Ltd.'s claims with the claim that there was a corrupt scheme to procure the CMC Decision and that Mr. Mustafa and his associates procured the CMC Decision through cash payments, gifts, bribes, and real estate transactions for the benefit of high-ranking CMC officials. These activities are said to have been carried out with the complicity of Korek and CS Ltd., who knowingly concealed this fraud and corruption from IT Ltd. and IH Ltd. The activities are said to have been successful and led to the letter from the CMC of 10 December 2013 and the CMC Decision of 2 July 2014 declaring that the CMC's approval of the 2011 Transaction was "*void, null and invalid*" [A/5/113-119]. These events are said to give rise to two claims in the tort of unlawful means conspiracy:

   (a) a derivative claim, brought on behalf of IH Ltd., against Mr. Mustafa and CS Ltd. for the destruction of the value of its shareholding in Korek; and

   (b) a direct claim by IT Ltd. against each of the Respondents for the destruction in value of the IT Call Option.

2. IT Ltd. accepts that it has the burden of proving its case in respect of these claims. IT Ltd. sets out the 4 elements of the tort of conspiracy by unlawful means at paragraphs 277 et seq. of its Statement of Claim [A/5/106]:

   (i) an agreement or combination between the conspirators;

   (ii) with the intention to injure the claimant;

   (iii) which was acted upon unlawfully; and

   (iv) which caused loss to the claimant.

3. IT Ltd. relies upon a range of evidence as proving that the Respondents bribed the CMC in order to procure the CMC Decision. It is alleged that:

   (a) The Respondents' conduct prior to and following the CMC Decision is of such a remarkable quality that the only credible conclusion is that the Respondents by latest December 2013 had conspired to procure the CMC Decision with a view to preventing the exercise of the IT Call Option and forcing IT Ltd. out of the ownership of Korek. The reasons given by the CMC do not stack up or make sense and were a thinly veiled pretext. Moreover, the Respondents failed to respond to the CMC's correspondence, refused to co-operate or liaise with IT Ltd. in dealing with the issue, refused to hold board meetings and both failed to prevent the CMC Decision and effectively to challenge it. Instead, it appears that the Respondents said they had engaged IC4LC to address the CMC Decision, which IT Ltd. contends was a fictional law firm and a channel for illicit payments. If the CMC Decision was not pretextual, the Respondents should have taken a number of additional steps to challenge the Decision but failed to do so [A/37/13]. Korek then stopped making payments under the Korek-IH Shareholder Loan in the aftermath of the CMC Decision equally for pretextual and unjustifiable reasons. The Respondents colluded with the CMC to introduce more stringent change-of-control provisions in the 3G Annex in order

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to prevent IT Ltd. from gaining majority control of Korek. Prior to the entry into the 3G Annex, CMC's consent was not required to complete the IT Call Option. The 3G Annex scheme was designed to frustrate IT Call Option pending implementation of the CMC Decision and confirms the Respondents' scheme to deprive IT Ltd. of its shareholding [A37/14].

(b) The Respondents bribed the CMC through the purchase of properties at Barn Hill and at Higher Drive in London. The Barn Hill property was purchased for Dr. Al Khwildi and the Higher Drive property for Dr. Rabee. Furthermore, the timing of these property purchases and the conduct disclosed in the transaction and their discovery is such as to allow only one conclusion; namely that these properties were purchased at the behest of the Respondents, by associates of Mr. Rahmeh who served as nominee purchasers to bribe Dr. Al Khwildi and Dr. Rabee to procure and/or as recompense for the CMC Decision and other actions of the CMC adverse to IT Ltd. [A/37/10];

(c) The Respondents further bribed the CMC by making payments to the CMC which were disguised as legal and consulting fees. These payments were made, IT Ltd. says, through a fictional law firm called "IC4LC" which was created by Mr. Rahmeh. Korek paid IC4LC a US$ 6 million so-called success fee for obtaining a decision from the CMC to postpone license fee payments for a year – which was never achieved and so not rightfully earned even on the terms put forward by the Respondents. IC4LC continued to receive tens of millions of dollars in legal and consulting fees until at least April 2016. The Respondents failed to produce any documents relating to IC4LC in breach of their document production obligations. The evidence on the record, combined with the Respondents' failure to produce documents, warrant an inference that a substantial portion of the amounts recorded as legal and consulting fees were in fact payments to Dr. Al Khwildi and Dr. Rabee. Those supposed payments to IC4LC were exorbitant and not commensurate with any services IC4LC purportedly provided and the Respondents' failure to produce documents relating to the services provided by IC4LC supports an inference that IC4LC did not provide legitimate services commensurate with the payments made and that IC4LC acted as an intermediary through which the Respondents made unlawful payments to the CMC and to Mr. Rahmeh for his role [A/37/11];

(d) Korek's expenditures on gifts and donations surged in 2013 and the Respondents have failed to substantiate these expenditures. This surge corresponded with the start of the Respondents' corrupt scheme which had been formed at the latest by December 2013 and this, combined with the Respondents' failure to provide documents substantiating this expenditure, warrants an inference that payments recorded as gifts and donations were in reality bribes paid to CMC officials [A/37/12];

(e) Korek entered into numerous transactions with, and made significant payments to, various companies owned or controlled by Mr. Rahmeh that were not commensurate with any services that these companies purportedly provided to Korek. The Respondents did not disclose those transactions or Mr. Rahmeh's interest in them and did not obtain the necessary corporate approvals for them. The Respondents failed to produce responsive documents substantiating the

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services purportedly provided by those companies in breach of their document production obligations. The evidence on the record, combined with the Respondents'' failure to produce documents, warrant an inference that Korek did not obtain legitimate services and that the payments were not commensurate with the services purportedly provided. The entities served as intermediaries to extract money intended to be used as a bribe [A/37/12];

4. IT Ltd. further contends that the Respondents' argument that the CMC Decision was consistent with IT Ltd.'s alleged failures is without merit. It is not required, it says, to establish that the CMC's reasons for issuing the CMC Decision were a sham. Rather, it must show on a balance of probabilities that the Respondents bribed CMC officials to procure the CMC Decision.

5. IT Ltd. argues that it is not required to establish that the CMC Appeals Board upheld the CMC Decision as a result of bribes. It is sufficient for it to show that the Respondents procured the CMC Decision by bribery and that the CMC Appeals Board upheld it. It notes, however, that the presiding and only judge on the CMC Appeals Board was jailed for corruption [A/37/15].

6. IT Ltd. says that it is not required to demonstrate that the CMC would not have issued the CMC Decision if the Respondents had not bribed the CMC, but that it has in any event shown that the grounds invoked by the CMC for the Decision were not justified and that the Respondents themselves took the position in 2014 that the CMC Decision was contrived and unreasonable [A/37/16].

7. The Respondents' defence to this particular claim has a number of strands. Some are specific to this claim, whilst others apply also to claims advanced by IT Ltd. It is convenient to deal with them all here.

8. The Respondents assert that IT Ltd. has served no admissible evidence that shows that the Respondents corruptly procured the CMC Decision. They say that there is not a single document that evidences such corruption and not a single witness of fact who has knowledge of the alleged corruption and gives evidence to that effect. None of the "indirect witnesses" identified by Mr. Bortman (as to whom see further below) appears to have direct knowledge of corrupt acts [A/34/164].

9. Indeed, the Respondents go further and argue that IT Ltd. has failed to provide any cogent evidence that the Respondents procured the CMC Decision at all. They say that IT Ltd.'s primary evidence was the "*deeply compromised evidence of Mr. Bortman*" [A/34/164]. The Respondents submitted that Mr. Bortman lied repeatedly under cross-examination, which in turn led to a continued retreat from reliance upon his evidence by IT Ltd. in the course of the arbitration and then in closing. They say that IT Ltd. shifted its ground in its Reply to rely upon "*a selection*" of the documents produced by Dechert LLP in the §1782 proceedings in the United States (the "Dechert Documents"). The evidence of those documents is said to be nothing more than a series of transactions which IT Ltd. claims inferentially shows that the Respondents bribed the CMC. This, the Respondents say, is wrong and that IT Ltd. has not established:

   (a) That the Respondents have any link to the property transactions.

   (b) That the property transactions conferred any benefit on CMC Officials.

   (c) That the property transactions had any link to the CMC Decision.

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(d) That the Respondents ever paid any bribes of any kind to the CMC.

(e) That any payments were made to the CMC on behalf of the Respondents by IC4LC, as disguised "donations and gifts" or through any other entities.

(f) That the Respondents procured the CMC Decision.

[A/34/165].

10. The Respondents then analyse the evidence of Mr. Bortman which purports to address the issue of bribery. The Respondents say that, taken at its highest, that evidence suggests that the CMC regularly sought to extort money from Korek. Even if correct, the Respondents say, this does not prove that the Respondents procured the CMC Decision.

11. In relation to the allegations of disguised payments and the property transactions, the Respondents say that IT Ltd. seeks to build its factual case by asserting that the Arbitral Tribunal can infer that these transactions prove that the Respondents bribed the CMC because that is consistent with Mr. Bortman's evidence. That, the Respondents say, is a circular argument and Mr. Bortman has not established that the Respondents bribed the CMC [A/34/168].

12. The Respondents also challenge what they say is the "circumstantial evidence" of the property transactions which they suggest have other innocent explanations [A/34/168-169].

13. In Section 3 of their Rejoinder, the Respondents address the evidence of Mr. Bortman. Mr. Bortman is the principal of Raedas, a company based in London and specialising in investigations. Mr. Bortman and his colleagues interviewed a number of individuals, said to be employed, or to have been employed, at Korek and at the CMC. None of those witnesses have produced a witness statement in these proceedings and none has appeared to testify before this Arbitral Tribunal. Rather their evidence is given indirectly by way of witness statements from Mr. Bortman. None of the sources is identified by name and their identities have been protected pursuant to a confidentiality regime. The Arbitral Tribunal was advised that each of the sources feared for their security if their identities were revealed.

14. The Respondents argue that Mr. Bortman's evidence is central to IT Ltd.'s case. Various propositions advanced by IT Ltd. are said to "rest entirely" on the evidence of Mr. Bortman:

(a) Mr. Mustafa organised cash payments and gifts of expensive watches to CMC officials;

(b) Korek made illicit payments to the CMC which were recorded as legal or consulting fees;

(c) Korek made illicit payments to the CMC which were recorded as charitable donations or gifts;

(d) Korek and Mr. Mustafa made illicit payments to the CMC through companies owned by Mr. Rahmeh;

(e) The Respondents instructed Mr. Rahmeh to arrange the purchase of properties in London;

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(f) CMC officials were the ultimate beneficiaries of those property purchases;

(g) Those property purchases were disguised bribes for CMC officials;

(h) The CMC Decision is issued as a direct result of (a) – (g); and

(i) Mr. Mustafa is the indirect owner of Darin.

In closing, the Respondents argued that it became clear during the evidential hearing that there is no record that any of the sources relied upon by Mr. Bortman in fact made any of the serious central allegations that IT Ltd. advances in this case.

15. Further allegations are said to be substantiated with fragmentary documentary evidence obtained by Mr. Bortman.

16. The Respondents argue that Mr. Bortman's evidence and the product of the Raedas evidence is inadmissible and that, to the extent that it is admissible, the manner in which Raedas has gathered, collected and reported information means that very little, if any, weight can be given to that evidence.

17. The argument that Mr. Bortman's evidence and the product of the Raedas investigation is inadmissible is based on 3 grounds:

(a) First, Raedas engaged in widespread and pervasive unlawful and criminal conduct in obtaining the evidence on which the Claimant now seeks to rely. This includes the commission of offences in several jurisdictions, including the seat of this reference. DIFC law does not permit a party to arbitration to adduce and rely on evidence that has been obtained by unlawful means. Offences are alleged to have been committed by Raedas in the UAE, in Iraq and in Turkey.

(b) Second, Mr. Bortman's witness testimony is a tendentious reportage of things said to have been told to his employees by unknown interlocutors. None of the individuals asserted to have direct knowledge of these matters are giving evidence. None of them have been subjected to any witness proofing or confirmation of their testimony (even by Raedas, let alone by a lawyer). Much of the evidence is multiple hearsay. Evidence of this kind is not admissible in a DIFC seated arbitration (or in any fair evidentiary forum).

(c) Third, as regards documents procured by Raedas via its sources, the Respondents are prohibited, under the Restricted Access regime, from being told what those documents are or what they contain. They cannot address the authenticity of those documents, their context and the circumstances in which those documents (if genuine) were created.

These submissions are developed at length in the Respondents' Statement of Rejoinder.

18. In so far as the argument as to weight is concerned, this is addressed in Section 4 of the Respondents' Rejoinder. Firstly it is said that no weight can be given to the purported allegations given that none of the sources have provided witness evidence in support of their allegations. Secondly, IT Ltd.'s refusal to disclose the identity of the sources has prevented the Respondents from making any submissions regarding the credibility and reliability of those sources. Thirdly, it is said that Raedas has made large cash payments and other inducements to its sources in return for information. This will have had an impact on the reliability and credibility of the allegations.

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19. The Respondents then say that no weight can be given to Mr. Bortman's own evidence purporting to summarise information given to him and his team by the sources that they interviewed. It is said that Mr. Bortman has been dishonest and misleading in prior testimony regarding the payment of sources. In their Closing Submissions, the Respondents argued that this behaviour continued at the evidential hearing. Secondly, it is said that for various reasons no weight can be given to Mr. Bortman's assurance that his evidence represents a fair summary of what was said by the sources. Thirdly, Raedas' records are said to be "*obviously inadequate*". Fourthly, it is argued that the Respondents' counsel has only received a snapshot of the documents created in connection with Raedas' investigation and the Arbitral tribunal should infer that the additional material would contain information relevant to the credibility of Mr. Bortman and the integrity of his investigation.

20. In terms of a positive case, the Respondents deny that they procured the CMC Decision. They rely on the evidence of Mr. Mustafa in his first witness statement in which he says that "*any allegation that I obtained the CMC Decision by bribing CMC officials is wholly and categorically untrue and deeply offensive*" [B3/1/10].

21. The Respondents then challenge the evidence of the property transactions. Firstly, they say that the Dechert Documents are meaningless without the overlay of Mr. Bortman's evidence that the Respondents bribed the CMC [A/34/67]. That evidence is baseless [A/34/87-88]. Secondly, they argue that IT Ltd. has relied upon "*an extremely limited*" subset of the Dechert Documents and has "*vigorously refused*" to provide the balance of those Documents [A/34/68-70]. Thirdly, they submit that the Dechert Documents do not show that the Respondents procured the CMC Decision [A/34/70-82]. The Respondents argue instead that IT Ltd. relies upon a purely inferential case based upon a number of propositions which are said to suffer from evidentiary flaws. Fourthly, the Respondents say that IT Ltd. has established no link between the property transactions and the Respondents [A/34//82-85]. Fifthly, the Respondents reject what they say is an argument that Dechert's involvement in the property transactions is inherently suspicious [A/34/85-87].

22. The Respondents then challenge the evidence relied upon by IT Ltd. in relation to IC4LC and the payments said to have been disguised as donations or gifts. In relation to the former the Respondents argue:

    (a) There is no evidence tying payments to IC4LC to the CMC;

    (b) IC4LC was appointed by Mr. Mustafa pursuant to the KSC Resolution of 5 October 2012 which approved the US$ 6 million success fee;

    (c) IT Ltd. approved the arrangement and did not raise any questions;

    (d) The appointment of IC4LC was reasonable;

    (e) IT Ltd.'s own lawyers at the time did not consider IC4LC to be a "front"; and

    (f) IT Ltd. has failed to identify any steps that the Respondents or IC4LC should have taken to challenge the CMC Decision.

    [A/3490-92].

23. The Respondents deny that there is any evidence that the increased spending on gifts and donations was suspicious or indicative of corruption. The criticisms of the

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Respondents' production is, they say, misplaced and no adverse inference can properly be drawn [A/34/92-94].

24. The Respondents also challenge the assertion that funds were channelled to the CMC through transactions with related parties. That allegation derives, the Respondents say, from an assertion from one of Mr. Bortman's sources which is inadmissible or should be given little weight. Further, there is no evidence that any of those transactions were suspicious [A/34/94-95].

25. The Respondents then submit that there is overwhelming evidence that the CMC issued its Decision for the reasons it provided at the time:

(a) The CMC's approval of the 2011 Transaction was conditional, as set out in its letter of 29 May 2011. It was entirely consistent in its reasoning for withdrawing its consent, exemplified by its explanation to the Iraqi Parliament;

(b) Whilst it is not for the Respondents to show that the CMC was right or justified, the evidence shows that the CMC's reasons for issuing its Decision were well-founded. It was an aggressive and interventionist regulator that had lost patience with Korek's persistent default. Its consent for the 2011 Transaction was conditional on Korek remedying its deficiencies and meeting the conditions of its license.

[A/34/96-116].

26. Finally, it is said that the Respondents' actions following the CMC Decision were entirely reasonable [A/34/116]:

(a) They were operating in a difficult environment which was deteriorating and Mr. Mustafa was obliged to combine his role as Korek's managing director with his role in the Peshmerga forces combating ISIL;

(b) Korek complied with all of IT Ltd.'s requests to challenge the CMC Decision;

(c) IT Ltd. has no legitimate complaint regarding Korek's entry into the 3G Annex. There was no scheme to frustrate the exercise of IT Ltd.'s Call Option;

(d) IT Ltd.'s suggestion that the timing of Korek's default under the Korek-IH Shareholder Loan and the CMC Decision were linked ignores the external factors which caused Korek's default;

(e) IT Ltd.'s criticisms of the Respondents' failure to take account of its corporate governance demands are misplaced. In circumstances where IT Ltd. had no further interest in Korek following the implementation of the CMC Decision, continued performance of IH Ltd.'s corporate functions on a business-as-usual basis would have been inappropriate and redundant.

[A//34/116-132].

27. In its closing argument, Respondents' counsel argued that IT Ltd. could not responsibly maintain its claim in respect of the CMC Decision given the position it had taken as to the evidence and was duty bound to retract the central allegation. In particular, IT Ltd.'s confirmation that it did not rely on any statements from Mr. Bortman or his sources regarding the CMC Decision claim impacts upon its ability to demonstrate that Mr. Mustafa or any other Respondent instructed Korek or Mr. Rahmeh or any third party

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to procure the CMC Decision. Indeed, it is said that IT Ltd. has no evidence at all of that matter. It is also said to undermine the allegations regarding the property purchases, the payments to IC4LC, the payments through companies connected to Mr. Rahmeh and the payments said to have been disguised as donations and gifts. Furthermore, the Respondents were highly critical of the manner in which reference was made by Mr. Bortman to the hearsay evidence of KE1 who as it turned out was interviewed by Ms. Burton and whose file note of the interview did not contain any allegations of bribery or corruption.

28. It was further argued by the Respondents in closing that IT Ltd. is seeking to have the Arbitral Tribunal draw adverse inferences without engaging with the principles which govern the making of such inferences {A/45/16-17].

29. The Respondents also submitted that the evidential hearing revealed issues with IT Ltd.'s disclosure. They said that the Claimant's case is critically dependent upon demonstrating that:

(a) The purported IC4LC invoice dated 25 April 2016 is a genuine invoice which was issued to Korek;

(b) The document containing purported accounting data is genuine and shows payments made by ZR Collection on behalf of Korek; and

(c) The lease agreement for the Barn Hill property is a sham.

These documents were obtained by Mr. Bortman from a subcontractor whose identity was improperly withheld, the Respondents say, on spurious grounds. The Arbitral Tribunal has no evidence on the record regarding the origin, context or veracity of these documents [A/45/17-20].

30. A number of points were made in closing regarding the London property purchases [A/45/25-33]. These will be addressed in the Arbitral Tribunal's analysis below.

The Arbitral Tribunal's Analysis

31. There was no dispute between the Parties that the Arbitral Tribunal should apply the principles of English common law to the determination of this claim.

32. IT Ltd. pleaded that English law governs "*all matters relating to the interpretation and application of the SHA, the Subscription Agreement, and the IraqCell Agreement. English law likewise governs any non-contractual obligations arising out of or in connection with the SHA, the Subscription Agreement, and the IraqCell Agreement, including obligations in tort*" (emphasis added) [A/5/86]. At no stage did the Respondents seek to take issue with this assertion. Indeed, the Respondents' defence to the unlawful means conspiracy claim in relation to the CMC Decision relied upon the English common law act of state doctrine on the basis that "*unless any of the other provisions apply (which they do not in this case), the default position is that the laws of England and Wales apply in the DIFC. Case law has confirmed that Article 8(2)(e) extends to common law doctrines under English law*" [A/6/128]. The Arbitral Tribunal is bound to respect what is in effect the Parties' agreed position on these issues.

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33. A preliminary issue which arises is whether IT Ltd.'s claim of unlawful means conspiracy is excluded by means of either clause 41.1(b) of the SHA or clause 27.1(b) of the Subscription Agreement. Clause 41 of the SHA provides:

> *"This Agreement sets out the whole agreement between the parties in respect of the matters addressed herein and supersedes any prior agreement (whether oral or written) relating to such matters. It is agreed that:*
>
> *(a) no party shall have any claim or remedy in respect of any statement, representation, warranty or undertaking made by or on behalf of any other party which is not expressly set out or referred to in this Agreement: and*
>
> *(b) except for any liability in respect of breach of this Agreement, no party shall owe any duty of care or have any liability in tort or otherwise to any other party.*
>
> *This clause shall not exclude any liability for, or any remedy in respect of, fraudulent misrepresentation."*

Clause 27 of the Subscription Agreement is in effectively the same terms.

34. The Arbitral Tribunal does not consider that either provision operates in the circumstances to exclude IT Ltd.'s direct or derivative claims in relation to unlawful means conspiracy. IT Ltd. relies upon the principle of English law that on grounds of public policy a party may not exempt itself from liability for its own fraud: *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2003] 2 Lloyd's Rep. 61; *Frans Maas (UK) Ltd v Samsung Electronics (UK) Ltd* [2004] 2 Lloyd's Rep. 251. The Respondents accept that an exclusion of liability cannot apply to fraud [A/34/185]. They contend, however, that IT Ltd. is wrong to assert that the unlawful means conspiracy claim is grounded in the Respondents' fraud and assert instead that it relies primarily upon an allegation that the Respondents acted in breach of contractual or tortious duty and that "*there can be no suggestion that they deliberately deceived IT Ltd. in relation to the CMC Decision in a manner that caused IT Ltd. to take some action*" [A/34/185]. The Arbitral Tribunal does not agree. A claim in unlawful means conspiracy where the unlawful means involves the concealed bribery and corruption of public officials in order to procure a decision the effect of which is to deprive a party of its shareholding in a joint venture company is to all intents and purposes a claim in fraud. There is no meaningful difference between such acts and those which would constitute the tort of deceit. The Respondents argue that there has been no fraudulent misrepresentation. However, the public policy concerns are at least as great where bribery and corruption of public officials are involved. Neither clause 41.1 of the SHA nor clause 27 of the Subscription Agreement affords any protection to the Respondents in this regard.

35. Having considered all of the evidence before it and the submissions of the Parties, the Arbitral Tribunal finds on the balance of probabilities that there was an unlawful means conspiracy pursuant to which Mr. Mustafa and his associates procured the CMC Decision with a view to using that decision to force the Claimant out of Korek, to interfere with IT Ltd.'s Call Option rights and so cause harm to IT Ltd. and to IH Ltd. This conspiracy was in place at the latest in December 2013 and was advanced through cash payments and real estate transactions for the benefit of high-ranking CMC officials. These activities were carried out with the complicity of Korek and CS Ltd., who knowingly concealed this fraud and corruption from IT Ltd. and IH Ltd. These findings of fact are of a very serious nature, nevertheless the evidence when taken

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together overwhelmingly points to this conclusion. The Arbitral Tribunal also makes it clear that it reaches this conclusion without reference to or reliance in any way upon the anonymous hearsay statements made to Mr. Bortman.

36. In reaching this decision, the Arbitral Tribunal has had regard to a number of factors. The effect of the evidence was cumulative such that taken together it had even greater force. Having said that some parts of the evidence were sufficiently striking by themselves as to point forcefully in one direction and one direction only. The absence of Mr. Mustafa at the hearing itself to answer questions and give oral evidence or indeed any witness from the Respondents was of further significance. The Respondents throughout their submissions tried to suggest that none of this evidence permitted any adverse conclusion regarding the CMC Decision or its procurement. The Arbitral Tribunal states clearly that it does not agree. Singly and collectively the evidence was both striking and damning.

The Respondents' Conduct

37. The starting point for the Arbitral Tribunal's analysis is the striking and extraordinary behaviour of the Respondents and those who acted on their behalf in the period both leading up to and following the CMC Decision and the failure of Mr. Mustafa to appear to give evidence and answer the many questions raised on the documents before the Arbitral Tribunal and indeed on the absence of certain key documents that would have been expected to exist if the CMC Decision was not procured by the Respondents.

38. The CMC approved the 2011 Transaction by its letter of 29 May 2011. That approval was expressly stipulated to be subject to certain conditions. These were stated to be:

"1- Payments of the first instalment in the amount of ($125 000 000) only one hundred twenty five million US Dollars with the legal interest in the amount of ($37 500 000) only thirty seven million five hundred thousand US Dollars due upon signing the partnership contract. In addition, the Authority shall enforce the provision of the ninth division (T) of decree (65) of the 2004 year (The applicable code of the Authority) without any warning or judicial ruling.

2- Commitment in satisfying the remaining instalments on the outlined dates as per the resolution of the Ministers' Council no. (89 of the 2010 year).

3- Satisfy all conditions and all legal, financial and technical obligations as stated per the licensing contract including the contents of items (24) in regard to including the shares in the Iraqi Securities Market.

4- Abide by all the laws of the republic of Iraq including the provisions of decree (65) of the 2004 year or any other law that might replace it.

5- Supply the Authority with the technical, financial and business plans upon signing of the partnership contract.

Our approval shall be considered effective as of the receipt date of your correspondent agreeing to the above conditions" [D1/13].

39. The CMC's letter of 10 December 2013 informed Korek that

"1- The Communications and Media Commission's approval of the principle of partnership between your company (the licensee) and the French company

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France Telecom, was conditional and dependant on the fulfilment of a number of conditions and obligations, specifically:

- *Providing better telecommunications services throughout Iraq.*
- *Benefiting from the technologies of the French company, France Telecom, in order to develop investment, technical, financial and commercial plans, as well as recruiting the expertise necessary to develop the telecommunications sector in Iraq.*
- *Having France Telecom provide the intensive technical assistance necessary to improve the quality and range of services, as well as ensure they encompass all parts of Iraq.*
- *Securing the financing necessary to enable Korek to pay its debts, expanding and developing its services and network, increasing the number of its subscribers, and fulfilling its investment obligations.*
- *Complying with the clauses of the licensing contract, and particularly listing the company's shares on the Iraqi stock exchange.*

2. Our commission has determined that the aforementioned conditions have not been fulfilled to date. Therefore, the aforementioned partnership has missed its basic purpose and is enabling a foreign company to benefit from the telecommunications sector's resources in Iraq without any positive contribution by the foreign company to the aforementioned sector.

For this reason, and based upon our commission's role in fostering, supervising and protecting the telecommunications sector, in its capacity as a key element of national wealth, as well as based upon the authorities granted to us by Order no. (65 of 2004), we are asking your company to provide us with the reasons that prevented fulfilment of the aforementioned conditions upon whose fulfilment the partnership was conditioned. You shall have one week from the date of this letter to do so, and in light thereof, the actions necessary to protect the telecommunications sector in Iraq shall be taken" [D1/17].

40. This letter was a highly disturbing development and set a very short deadline for a response. The Arbitral Tribunal would have expected Mr. Mustafa and Korek to have advised their joint venture partner of this development immediately, by email if not by telephone and to have taken urgent steps to discuss the letter and an appropriate response. Instead, nothing is done for 3 days. On 13 December 2013 – a Wednesday – Mr. Abou Charaf passes the letter on to the board members of IH Ltd. and to the members of the KSC. This is apparently done at the behest of "*the Chairman*" (i.e Mr. Mustafa). There is no communication from Mr. Mustafa himself, no expression of concern and the tenor of Mr. Abou Charaf's email is untroubled [D1/18/2].

41. Mr. Rennard of Orange responds stating that he believes that Korek "*should prepare swiftly a draft answer to clarify the points as requested*" and looks forward to receiving it to allow the response "*to reach the CMC before the end of next week*" [D1/18/2]. This email is sent to Mr. Mustafa. A further 6 days is allowed to elapse without any apparent response to Mr. Rennard. Mr. Pujol of Orange follows up on 20 December 2013 expressing the view that the issue should be "*addressed urgently*" [D1/18/1]. Mr. Abou Charaf responds the same afternoon, saying that he has no further update, although

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he has passed Mr. Rennard's message on to both the KSC and to "management". This message too is copied to Mr. Mustafa [D1/18/1].

42. Two days later, on Sunday 22 December 2013, Mr. Abou Charaf sends an email to the members of the KSC which states:

> *"Further to the correspondence below, I was advised by Management that it "is not in a position to reply to the CMC Letter as it is not privy to the negotiations that led to the conditional acceptance by the CMC of the Korek transaction (including the partnership with FT-Orange)", nor is Management "aware of the contents of the Shareholders Agreement, which regulates the relationship between the Korek ultimate shareholders" [D1/18/1].*

43. The contents of this email are extraordinary. Mr. Mustafa was involved in the negotiations with the CMC regarding the 2011 Transaction and must have been aware of the discussions. Further, both Mr. Mustafa and Korek itself were parties to the SHA. It was therefore disingenuous, to say the least, to state that "management" were not aware of the contents of that document. The email appears to the Arbitral Tribunal to have been drafted deliberately to provide an excuse for inaction. As Mr. Aziz of Agility says in his witness statement:

> *"Korek was perfectly capable of providing a response to the CMC. Korek and its Managing Director (Mr. Mustafa) were fully aware of the negotiations conducted with the CMC in 2011 when Korek sought the CMC's approval of the 2011 Transaction. In fact, those negotiations were led by Korek and Mr. Barzani. Similarly, Korek—as a party to the Shareholders' Agreement—was (or should have been) perfectly aware of its contents. Furthermore, to the extent Korek was unclear about any issues concerning its shareholders, Mr. Barzani would have been aware of them (being party to the agreement himself and the majority owner of CS Ltd., Korek's controlling shareholder). As such, Korek's response was simply not credible" [B1/2/12].*

44. The Arbitral Tribunal notes in passing the use of quotation marks within the email from Mr. Abou Charaf. This implies that Mr. Abou Charaf was quoting from a message which he had himself received – presumably from Mr. Mustafa. No such email has been placed before the Arbitral Tribunal.

45. The reasons put forward in the CMC's letter for their concern made no real sense in light of both the conditions for the original approval and the fact that the CEO of Korek, Ms. Ghada Gebara, had reported to the KSC on 11 November 2012 that Mr. Rahmeh and Mr. Mustafa (both of whom were present at the meeting) had obtained a decision from "the relevant authority" allowing it to defer the IPO in return for payment of a fine. The relevant Board Minutes were produced to the Arbitral Tribunal as D2/97. In light of this, if indeed Mr. Mustafa had already not been engaged in procuring the CMC's intervention, the Arbitral Tribunal would have expected Mr. Mustafa and the other Respondents to have shown immediate serious concern, a desire to correct the CMC and for there to have been extensive correspondence and documents passing backwards and forwards in order to resolve this. Instead, practically no documents were produced, there was evidence of stonewalling from the Respondents, a lack of any credible evidential explanation from Mr. Mustafa and his refusal to appear to give evidence and answer questions in cross-examination.

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46. The testimony of Mr. Sultan of Agility was that it was Mr. Mustafa and his "Kurdish partners" who in fact refused to allow Orange and Agility to list the company [Day 3/58:17]. This view was confirmed by the Iraqi Parliament's Investigative Committee [D1/177 at paragraph 9].

47. The Respondents claim that the funding shortfall put IT Ltd. in breach of its assurances to the CMC and to the Iraqi government. Mr. Mustafa suggests in his third witness statement that Orange told the authorities that they would be investing US$ 800 million without explaining that this included the conversion of the Convertible Loan and the US$285 million shareholder loan. The Arbitral Tribunal has seen no credible evidence that approval of the 2011 Transaction depended upon a pure equity investment of US$ 800 million. The evidence of the Orange/Agility witnesses was, further, that they were willing to put in more funds, but only on a pro rata basis with the Iraqi shareholders.

48. On 16 January 2014 the CMC wrote again to Korek. The letter noted the passing of the one week deadline set by the letter of 10 December 2013 without any response and reiterates the alleged failures set out in the earlier letter. A further deadline was set for a response within one week [D1/19].

49. Mr. Aziz of Agility sent an email to Korek on 17 January 2014 setting out some points to assist with drafting a response [D1/96]. These were incorporated into a letter sent to the CMC apparently dated 22 January 2014 [D1/20]. In fact it appears that the CMC received this letter on 26 January 2014, well after the deadline set by the CMC had passed [D1/172]. A copy of this letter was produced by Mr. Bortman which appeared to have Dr. Rabee's handwriting and signature on it suggesting that an appointment should be scheduled with "*senior management of the company*" [B2/1].

50. On 7 May 2014, Mr. Mustafa emailed the KSC to inform it that Iraq's Council of Ministers had decided on 4 May 2014 to grant 3G licenses to each of Asiacell, Zain and Korek. He noted that this would require a license fee of US$ 307 million and stated that he wanted *"to give you the heads-up to allow the Company to be ready to secure the funds and proceed with the implementation as soon as possible"* [D2/11].

51. On 10 June 2014, the CMC wrote again to Korek [D1/21]. This stated that:

> *"Upon auditing your company's legal form, we determined that the company's structure, in terms of the ownership of shares in its capital, does not satisfy the applicable legal requirements because your company is considered one of the Iraqi companies that must pay our Commission the regulatory fee constituting 15% of your revenues.*
>
> *Final benefit from your company does not belong to Iraqi partners who own a stake of over 51% of your company's capital. Moreover, your company's management has been assigned to the foreign partner, which cannot, in this case, be considered anything other than a controlling or major shareholder."*
>
> As noted in Chapter [D], the CMC notified Korek that certain retrospective and prospective regulatory fees were therefore due.

52. The Arbitral Tribunal notes that this letter was sent just 12 days after Orange's CEO intimated in an interview in Les Echos that he expected IT Ltd. To exercise its Call Option. Mr. Aziz suggested in his evidence that the CMC's letter was sent in an attempt to dissuade IT Ltd. From exercising the Call Option. The Arbitral Tribunal agrees.

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53. Once again, it took Korek an inexplicably long time – 6 days – to pass this letter on to the IH Board and to the KSC [D1/22]. Mr. Rennard wanted to know how Korek management intended to respond and was told, again, that "*Management … is not in a position to reply to the CMC as, among other things, (i) it does not have access to the Shareholders' Agreement or to any other relevant document pertaining to the Korek transaction and (ii) it does not have the relevant Iraqi law expertise, hence the reason why Management forwarded the CMC Letter to the KSC*" [D1/22]. These excuses were as unconvincing as those advanced in December 2013.

54. On 2 July 2014, the CMC Decision itself was issued to Korek, declaring "*the final decision of [the CMC] by considering the partnership, desired between you and the foreign French company France Telecom/Agility, as void, null and invalid as the related suspension conditions have not been met, and for lack of evidence thereto without any legal or material effects of any type whatsoever*" [D1/23]. Korek was warned to proceed within a period of 15 days "*to reinstate the status as it was on 13/3/2011, take the procedures to revoke and terminate any contracts assigning shares in your company's capital that were concluded after 13/3/2011, prove this revocation in the legal entries with the companies registrar and provide [the CMC] with a new statement proving return of shares to their main owners*".

55. It took Korek 10 days to forward this critical and dramatic decision to the KSC and to IH Ltd. Again, there is no credible explanation for this. The email from Mr. Abou Charaf is entirely matter-of-fact and purports to summarise the contents of the CMC Decision [D1/98]. As Mr. Aziz notes, the statutory period for lodging an appeal with the CMC Appeals Board was 15 days. By delaying until 12 July 2014 to forward the decision, Korek had allowed two-thirds of the appeal period to elapse. Mr. Mustafa's comment in his third witness statement that *"[t]he CMC Decision was obviously a massive shock*" is impossible to reconcile with this behaviour [B3/4/11].

56. A telephone board meeting of the KSC took place on 14 July 2014 to discuss what should be done. Mr. Mustafa and Mr. Rahmeh participated. According to Mr. Aziz, whose evidence on this the Arbitral Tribunal accepts, Mr. Rahmeh proposed that Mr. Mustafa be personally authorised to handle the dispute [B1/2/15]. IT Ltd. Rejected this proposal and the KSC ultimately agreed that a draft appeal should be prepared for submission to the CMC Appeals Board and that it should be sent to the KSC for review before it was filed. The evidence of Mr. Aziz is that the KSC also agreed that "*Korek and its shareholders will continue to assess and explore possible legal actions against CMC for contract interference and other legal matters*" [D1/99]. The draft appeal document was eventually circulated by Mr. Abou Charaf at 8.27pm on the evening before the last date for filing [D1/101].

57. The appeal was filed on 17 July 2014 [D1/100]. An email from Mr. Abou Charaf of 7 September 2014 reports that he was "advised" that Korek received a letter from the CMC advising that the CMC Decision had been confirmed {D1/1-4}. The decision of the Appeals Board was dated 18 August 2014 and was not attached. Once more, unless this was all engineered there is no credible explanation for this cavalier approach and attitude.

58. Mr. Hamdani of Orange followed up the next day, asking Mr. Abou Charaf for a copy of the Appeal Board's decision and asking for an update on the decision of the KSC on 14 July 2014 "*to explore all possible legal actions … to contest the [CMC] Decision*"

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[D1/104]. This email, as with all of the emails relating to the CMC Decision, was copied to Mr. Mustafa.

59. On the same day, 18 July 2014, Mr. Sultan of Agility wrote directly to Mr. Mustafa to express his concern about a number of matters [D1/424]. As Mr. Sultan explained in his first witness statement, he had "*heard from my contacts in Baghdad that the CMC Decision was, in fact, procured by Korek and that Mr. Rahmeh in particular may have had something to do with it. I therefore wrote to Mr. [Mustafa] on 18 July 2014 to inform him what I had been told and invited him to deal with it properly*" [B1/5/11].

60. On this occasion, Mr. Mustafa responded just two days later, on 20 July 2014 [D1/425]. In a lengthy letter he took issue with what Mr. Sultan had said and rejected the accusation against Mr. Rahmeh. He asked for Mr. Sultan's sources to be identified and stated that he was "*greatly and deeply irritated by your hidden channels in exchanging private information on matters of this importance and sensitivity and that you are in contact with people in Baghdad who are close to the Communications and Media Commission*". Without any good reason or credible rationale he demanded that Agility:

> *"cease all communications of any type with any party related to the Communications and Media Commission, and Agility cannot enter into any similar relationships until after they have been disclosed in advance to Korek and after having received the approval of the latter to enter into them explicitly and in advance or has mandated it to do so.*
>
> *We also require Agility to start immediately to disclose to Korek all the relationships and communications with any party related to the Communications and Media Commission."*

The Arbitral Tribunal concludes that Mr. Mustafa was extremely keen that he be the only interface with the CMC for the reason that, behind the scenes and undisclosed to IT Ltd., he had been engineering this adverse outcome.

61. In early September 2014, Mr. Abou Charaf shared with the KSC a draft Annex to the existing License Agreement (the "3G Annex"). He added, in parentheses, that he was advised that the Annex "*amends certain terms of the License Agreement, including in connection with the 3G spectrum*" [D1/24].

62. Korek's original license from the CMC had required, at Article XXIV© that approval be obtained from the CMC for a change in control of 10% or more of Korek's shares [D1/11/26]. The draft 3G Annex contained a provision, on page 10 of 15, purporting to alter this requirement. It stated:

> *"24. Assignment of Licence Agreement, Transfer of Ownership thereof and Transfer of Shares Title: A paragraph shall be added and the related paragraphs shall be amended.*
>
> *The Licensee may not dispose of shares title (company's assets) within the untraded percentage in Iraq Stock Exchange by means of sale, purchase, assignment or conclusion of agreements with any local or foreign authority, or any procedure that may affect such shares, directly or indirectly, regardless of the percentage of those shares without referring to the Licensor and obtaining a written approval from the latter, and shall be regulated by instructions issued by the Licensor later on" [D1/200/10].*

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63. The new provision therefore imposed a requirement for CMC approval for any direct or indirect change in control of the issued shares of Korek. This directly impacted the Call Option that IT Ltd. held which permitted it to acquire an additional 7% of the shares in IH Ltd. This would have given IT Ltd. a 51% controlling interest in IH Ltd. and thereby control of Korek.

64. The view of Agility and Orange was that this proposed amendment was deliberately designed to frustrate the exercise of the Call Option pending the implementation of the CMC Decision. As Mr. Aziz says in his witness statement, the Parties structured the 2011 Transaction to give IT Ltd. a path to control of Korek and had done so in such a way that the right to acquire a controlling interest was not subject "*in any way*" to the CMC's consent [B1/2/24]. As he explains:

> *"As Korek's two competitors, Asiacell and Zain Iraq, were majority controlled by strategic investors … the likelihood that the shareholdings of either of these two companies would change was relatively low. It was therefore clear to us that the proposed amendment in the 3G Annex was specifically targeted at Korek in order to prevent IT Ltd. from exercising its Call Option right to acquire majority control"*
>
> [B1/2/24]

The Arbitral Tribunal agrees with that analysis. As Mr. Aziz further notes, it is important to bear in mind the timing of the 3G Annex. The CMC had just issued the CMC Decision requiring IT Ltd. to relinquish all of its shares in Korek. The prospect of CMC consent therefore being granted for the transfer of further shares in IH Ltd. to IT Ltd. was non-existent.

65. Mr. Hamdani of Orange had still received no response from Korek to his email of 18 July 2014. He chased again on 11 September 2014, noting that the deadline for action set by the CMC was expiring soon and requesting both a copy of the Board of Appeals decision and "*a document from Korek detailing all the possible legal actions against the CMC (or any other relevant authority) to contest the Decision*" [D1/104].

66. Yet again, there was no response. Mr. Aziz wrote to Korek on 21 September 2022 noting the urgency and seriousness of the matter and requesting a board meeting of IH Ltd. and a KSC meeting on 23 September 2014 to discuss:

> *"1. The CMC letter dated Sept. 4, 2014 …*
>
> *2. Discussing the necessary steps and actions that the Company needs to take in response to the CMC letter*
>
> *3. Instructing the KSC and Korek to also take all necessary steps and actions in response to the CMC letter*
>
> *4. Hiring acceptable Iraqi counsel for the Company to do everything to protect the Company*
>
> *5. Instructing the KSC and Korek to also hire acceptable Iraqi counsel to do everything to protect the wider group"*
>
> [D1/104].

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67. Mr. Abou Charaf responded the same day and said that he would check with Mr. Mustafa and the KSC members and revert. He did not do so and Mr. Aziz and the other IT Ltd. representatives on the KSC and IH Ltd. Board were left waiting on the telephone line [D1/105]. As Mr. Aziz says, the meeting could not proceed due to the absence of a quorum.

68. On 26 September 2014, Mr. Mustafa wrote another lengthy letter, this time to IT Ltd.'s representatives. He was critical of their attempt to organise an emergency meeting of the KSC and the IH Ltd. Board and the use of "*dial-in details in foreign states for the conduct of [the Board meeting]*". The letter rejects criticism of Korek's lawyers. It also criticises IT Ltd. for having *"neglected in the first stage to write letters in reply to the queries by the Commission on the matters which had been achieved within the context of the undertakings you made within the context of the partnership*" [D1/443].

69. The evidence of Mr. Aziz is that Agility and Orange concluded that the Respondents were not engaging in best efforts to address the CMC Decision. They jointly wrote to the CMC taking issue with the CMC Decision, the absence of any notice of the proceedings and asking for a meeting with "*high level representatives of the CMC…*" [D1/175]. The CMC responded, not to Agility or Orange, but to Korek on the disingenuous basis that there was "*no relationship between our commission and [Orange]/Agility"* and that *"there is no need or basis to involve the foreign partner in the contractual obligations between our commission and your company*" [D1/107]. IT Ltd. was therefore caught in a "Catch-22" between Korek, which refused to communicate with the CMC on IT Ltd.'s behalf and the CMC, which refused to recognise any correspondent but Korek. The Arbitral Tribunal does not consider this to have been a coincidence.

70. Mr. Rennard of Orange urged Mr. Rahmeh to organise a meeting between Korek's lawyers and lawyers acting for IT Ltd. Mr. Mustafa agreed to organise the meeting. This took place in Beirut on 11 October 2014. The lawyers attending on behalf of Korek all presented business cards purporting to show that they worked for IC4LC.

71. A board meeting of IH Ltd. and the KSC finally took place on 14 October 2014, chaired by Mr. Rahmeh. It was agreed that Korek should challenge the CMC Decision before the Iraqi Administrative Court [D1/109]. A draft application was prepared by IT Ltd.'s lawyers and a final version was filed by Korek on 16 October 2014 [D1/110].

72. On 26 October 2014, Mr. Abou Charaf shared a "slightly revised draft" of the 3G Annex. He states that the "*key controversial points still remain*" but makes no reference at all to the amended Assignment and Transfer provision. He then states that "*Management has, a priori, 48 hours to accept the terms of the 3G Spectrum Annex*" [D1/199].

73. IT Ltd. therefore understandably in that letter exercised its veto rights in respect of the 3G Annex under clauses 11.3 and 11.4 of the SHA and advised the IH Ltd. Board that it objected to the proposed terms of the Annex. Mr. Aziz made clear IT Ltd.'s concern in an email dated 29 October 2014:

> *"We were stunned to see proposed terms of the 3G Spectrum Annex, which seek – at the last minute – material amendments to the terms of the National Mobile License, none of which amendments were previously disclosed to either the KSC or the Board. These terms are certainly not "in line with" the National Mobile License as contemplated by the KSC.*

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The amendments proposed by the CMC in their 3G Spectrum Annex are material and differ significantly from the terms of the National Mobile License. Such amendments include matters having no relation whatsoever to operational or technical matters (such as, without limitation, changes to the governing law, or restrictions on share transfers).

As such, in accordance with Article 11.4(l) of the Shareholders Agreement of International Holdings Limited, any such amendments require the written consent of Iraq Telecom Limited.

Such consent is not granted at this time, and, therefore, Korek is not authorized to enter into the 3G Spectrum Annex, or to take any actions in furtherance of such 3G Spectrum Annex, until such time as IT grants its prior written consent as required by the Shareholders Agreement" [D1/25].

74. On 30 October 2014, Mr. Jain wrote to the members of the KSC following a KSC meeting at which it had been agreed that the terms of the proposed 3G Annex were not acceptable [D1/203]. He agreed on behalf of IT Ltd. that a "*reservation letter*" should be sent to the CMC by Korek in a form which had been agreed. He accepted that an initial payment of the new license fee could be made, but only on the basis that the agreed letter was sent immediately. Mr. Aziz's evidence is that he thought that, if the 3G License did not proceed, the sums could be applied to outstanding existing License fee obligations. Ms. Gebara wrote to the CMC the same day asking for an appointment in order to discuss "*our comments on the Addendum*". She did not specifically raise in that letter the new restrictions on the transfer of shares [D1/202].

75. The next day, Mr. Abou Charaf forwarded a letter from the CMC dated 27 October 2014 indicating that "*signature of the last version*" of the Annex was expected to occur on 10 November 2014 [D1/204].

76. On 2 November 2014, Mr. Jain provided his comments on a draft KSC resolution which had been circulated by Mr. Abou Charaf in connection with the 3G Annex. His amendments required Korek management further to negotiate the terms of the Annex "(*including but not limited to the CMC's most recent proposal regarding amendments to Clauses 24 (Transfer and Share Ownership) and 29 (Disputes Resolution/ Governing Law) of the License Agreement, which are not acceptable*)". He further added an amendment to the paragraph of the resolution addressing execution of the 3G Annex, saying that "*3G Spectrum Annex may not be agreed and executed without (i) prior written approval of Iraq Telecom Limited pursuant to Clause 11.4(l) of the Shareholders' Agreement; and (ii) a further formal KSC resolution approving the final form 3G Spectrum Annex and authorising its execution*" [D1/206/9].

77. The following day, Mr. Abou Charaf explained by email that he had discussed the resolution with Mr. Rahmeh. He suggested the removal of any reference to IT Ltd. but was content to link any future KSC approval of the 3G Annex to the SHA "(*including the Veto Matters under it*)" [D1/206].

78. On 4 November 2014, IT Ltd. issued a Call Option Notice for the purchase of 83,523 shares at a price of US$ 89,750,000 [D1/26/1].

79. On 5 November 2014, Mr. Jain wrote to the IH Ltd. Board and to the KSC. He attached a letter from IT Ltd. in which he made clear that the terms of the then-current draft of

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the 3G Annex were "*not acceptable and will not be signed in its current version and our reservations about the Draft Annex need to be made clear to the CMC*" (emphasis in original) [D1/207]. The letter reminded the IH Ltd. Board and the KSC of the existence of IT Ltd.'s veto rights under clauses 11.3 and 11.4 of the SHA, of the requirement under Article 15B (1) of the IH Ltd. Articles of Association that any material amendment to the License required IT Ltd.'s prior approval or written consent and of the terms of the shareholder resolutions of 24 July 2011. The letter emphasised that IT Ltd. had not given its approval for the signature of the draft Annex in its current form. It also noted that IT Ltd. had become aware that morning that a meeting between Korek and the CMC was scheduled for the following day. No attempt appears to have been made by Mr. Mustafa to let IT Ltd. know of the meeting or to invite their participation. The IH Ltd. Board and the KSC were invited to take certain steps to protect Korek's position:

"to meet with the CMC on 6 November to negotiate the terms of the Draft Annex based upon the requirements set out in the letter in the form attached; and to follow up on the meeting with the CMC by sending a letter to the CMC in the form attached which clearly indicates each and every provision that Korek will not accept as part of the Draft Annex".

80. IT Ltd. gave notice that it might send representatives to the meeting with the CMC in accordance with its rights under clause 15.4(b) of the SHA. It concluded:

"Time is short and we need to get the CMC to understand that certain of the terms of the Draft Annex are simply unacceptable and will need to be re-negotiated.

Please keep us promptly informed of all developments, including the proposed time and date of the meeting with the CMC so we can send our representatives".

81. The draft of the letter to the CMC attached to IT Ltd.'s letter set out in detail IT Ltd.'s objections to the draft Annex (although it was drafted as a letter from Korek) [D1/207]. It stated that "*there are a number of provisions in the 3G Spectrum Annex that amend the License Agreement in a way that goes far beyond what may be necessary to add a new license spectrum*". At numbered paragraph 9, entitled "*Assignment and Transfer*", the letter stated:

"The 3G Spectrum Annex seeks to amend Section 24 of the License Agreement by requiring all direct and indirect transfers of shares to be subject to the prior approval of the Licensor. At present, Section 24 of the License Agreement requires the prior approval of the Licensor only with respect to a transfer of a "significant interest" in the Licensee, which is defined as 10% or more of the Qualifying Shares then in issue, or 10% or more of the voting rights then outstanding in the Licensee. The proposed amendment removes entirely the concept of permitted transfers of less than 10%, and is, therefore, not consistent with the License Agreement".

82. Mr. Abou Charaf emailed the KSC the following day, 6 November 2014 [D1/208-209]. This email informed the KSC that:

"Further to the below email, Management would like to advise you as follows:

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Korek had received the attached email late last night, pursuant to which the CMC informed Korek that the purpose of today's meeting would not be to discuss the terms of the 3G Spectrum Annex but rather the proposed signature process on Monday the 10th of November.

Despite this email, Korek's CEO attended the meeting in Baghdad with the Head of the CMC earlier today.

During the meeting, Korek's CEO stressed on the need to amend the 3G Spectrum Annex, especially the provisions relating to share ownership/ transfer, governing law (CPA Order 65) and jurisdiction.

Despite Korek's CEO insistence on amending the terms of the 3G Spectrum Annex, the Head of the CMC advised her that (i) the current version of the 3G Spectrum Annex (as sent to the KSC on the 27th of October) was non-negotiable (a revised version including the correction of typos would be circulated in the coming days), (ii) the signature process would take place on Monday the 10th of November at the Al Rasheed Hotel in Baghdad in presence of many officials, including the Iraqi Prime Minister and the Minister of Telecommunications and (iii) should any of the three mobile operators not take part in the signature process on Monday, it will definitively be prohibited from launching 3G services and the 3G spectrum would be granted to another licensee."

83. This was followed by another email from Mr. Abou Charaf sent at 9.28pm the same day. It purported to quote an email from Mr. Mustafa:

"Dear Members of the Korek Supervisory Committee,

Faced with the current situation, the KSC having already approved the investment, management having already (i) paid the first instalment of the 3G license fee (i.e., U.S.$77 Million), (ii) paid approximately U.S.$300 Million in capex and (iii) tried to negotiate very hard (and continuing to do so until the last minute) the current terms of the proposed 3G spectrum annex but without success, and the company having invested considerable time and efforts to be treated like its two competitors and, accordingly, to be in a position to get 3G spectrum (despite the outstanding disputes with the CMC (e.g., license fee), the tax authorities, the Iraqi Stock Exchange, the MoT and the ITPC), we believe that Korek has no other option than to attend the meeting on Monday and sign the annex.

If you have any other suggestion that is realistic, achievable within the timeframe before Monday morning and in the best interest of the company, please let us know; otherwise, relying on the existing authorities, we will proceed with the signature process. As KSC Members, your duty is to act in the best interest of the company, not of the shareholders" [D1/208].

84. IT Ltd. responded late the following afternoon, 7 November 2014 [D1/209]. In an email sent on behalf of the IT Ltd. designated KSC Members and IH Ltd. Board members it said:

"As KSC members and directors of IH, we cannot act in a way that would put Korek or IH in breach of its existing obligations.

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In this respect, we refer you to IT's letter to the KSC and the IH board dated 5 November, which makes clear that Korek (including, for the avoidance of doubt its Chairman and its CEO) is not authorized to sign the draft 3G Annex in its current form.

We would also remind you that neither the KSC nor IT has approved the terms of the draft 3G Annex.

We propose that the KSC requests Korek's CEO to organize as soon as possible a meeting with the other operators in order to:

- *agree not to sign the draft 3G Annex if the CMC maintains its position that it will make no further changes.*
- *try to agree on the key items that should be modified in the draft 3G Annex.*
- *agree to inform CMC that further discussions are needed and that no one will attend November 10 meeting.*

Such a meeting could be proposed for Saturday to give us sufficient time in advance of the 10 November deadline".

85. No response appears to have been received to the suggestion that a meeting take place with the other operators. Instead, in the early morning of Sunday 9 November 2014, Mr. Abou Charaf forwarded a further email from Mr. Mustafa [D1/210]. This stated:

"I note that you still have not provided us with a realistic alternative achievable within the timeframe set by the CMC (forcing the competitors (i.e., a third party) to agree with us on not signing the annex is unrealistic and unachievable). As time is running out, there is no room for manoeuvring anymore: the CMC made it very clear that we only have two options, signing and going 3G, or not signing and being definitively deprived from our right to launch 3G services in the future.

Faced with the current situation, the KSC having already approved the principle along with the investment, management having already paid the first instalment of the 3G license fee (U.S.$77 Million), as well as U.S.$300 Million in capex and the company having invested considerable time and efforts to be treated like its two competitors (despite the outstanding numerous disputes with the CMC), I believe that Korek has no other option than attending the meeting on Monday, signing the annex and providing 3G services, as strongly recommended by the CEO.

In addition, and as the Council of Ministers gave Korek the opportunity to be granted 3G spectrum along with the two other operators, any decision depriving the company from this right and, accordingly, limiting its growth and expansion, cannot be taken by a minority of the shareholders as it would definitely lead to its collapse in the near future, which is not and cannot be acceptable.

That being said, and should you still insist on not going 3G, which is contrary to the best interest of the company, please be aware that we will hold you fully responsible for all the consequences of such obstruction, including, without

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limitation, the reimbursement of U.S.$300 Million disbursed by the company in terms of capex, the U.S.$77 Million spent as first instalment of the 3G license fee, as well as the loss of profits, loss of business and the potential collapse of the company.

Please provide me with your final position no later than 2 PM Erbil time on Sunday, bearing in mind that your insistence on not going 3G will clearly mean that you accept being held responsible as stated above and that you will bear all the consequences of such position (including, without limitation, the financial consequences)."

86. IT Ltd. replied at 17.25 the same day [D1/210]. In pertinent part the email said:

"We reiterate that we are always acting in the best interests of IH. We also reiterate that we do not believe the 3G Annex, as currently drafted, is in the best interests of IH/Korek. It would be irresponsible for the KSC or the IH Board to urge signing the 3G Annex, without also considering the follow-on implications on both Korek, as well as IH, for which we serve as Board members.

However, in these difficult circumstances we are prepared to consent to the signing of the 3G Annex if all of the following conditions are fulfilled:

(1) Following signing of the 3G Annex, Korek will use its best endeavours to seek amendments to the terms of the 3G Annex (as set out in the reservation letter that was sent to you on 5 November - a copy of which is attached) by exhausting all legal and political avenues.

(2) Korek should communicate to the CMC in writing (in the form of the attached letter) that it is signing the 3G Annex under duress. In addition, the Korek signatory will seek to state clearly on the 3G Annex itself at the time of signature that the 3G Annex is being signed under duress.

Please note that this proposal does not reflect any approval or acceptance on behalf of IT whose consent is separately required pursuant to Sections 11.3 and 11.4(l) of the IH SHA."

87. A further email from Mr. Jain was sent to Mr. Abou Charaf for the IH Ltd. Board and the KSC at what is said to be 6.39pm [D1/271-2]. Whether this preceded or succeeded the email above is unclear. The time stamp suggests it was later but the format in which the time is shown differs between the two messages. The email requires quoting at some length:

"IT's position was set out clearly in our letter of 5 November. It is not correct to state that the 3G Annex has been agreed in principle - you require our consent to enter into the 3G Annex in accordance with clauses 11.3 and 11.4(l) of the IH SHA. There are no shareholders resolutions in place that would allow Korek's Chairman or CEO to sign the 3G Annex.

From IT's perspective, it is worth taking a step back and bearing in mind the background.

The CMC issued a decision on 2 July 2014 which ruled that the partnership was null and void and that the shareholding structure should be re-instated as

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it was on 13 March 2011 and this decision was affirmed on 18 August (the "CMC Decision"). Despite the issuance of a Parliamentary Order suspending the CMC Decision, the CMC has not reacted to this. However, the CMC has recently sent a letter to Korek in which it reaffirmed its position that Orange/Agility did not have any standing and that the CMC does not recognize them as shareholders of Korek and refused to extend the courtesy of a simple meeting. Furthermore, the CMC threatened to revoke the License at a meeting with the CEO of Korek as recently as 16 October 2014. It is in this context that IT needs to consider whether to provide its consent to the signature of the 3G Annex. As you will appreciate this is a very difficult position to be put in.

However, in these difficult circumstances we are prepared to consent to the signing of the 3G Annex if all of the following conditions are fulfilled:

(1) Following signing of the 3G Annex, Korek will use its best endeavours to seek amendments to the terms of the 3G Annex (as set out in the reservation letter that was sent to you on 5 November - a copy of which is attached) by exhausting all legal and political avenues.

(2) Korek should communicate to the CMC in writing (in the form of the attached letter) that it is signing the 3G Annex under duress. In addition, the Korek signatory will seek to state clearly on the 3G Annex itself at the time of signature that the 3G Annex is being signed under duress.

(3) CS Ltd will need to confirm in writing, by 10pm Erbil time today (9 November 2014), that it will not object to the completion of the call option, pursuant to IT's call option notice of 5 November 2014, and the requisite share transfer, on any ground (irrespective of any 3G Annex that may be signed in the future and irrespective of the CMC' s position). Furthermore, Korek will need to send, by 7 am Erbil time tomorrow (10 November 2014), a letter (in the form attached) to the CMC informing it that IT has exercised the call option in accordance with the existing terms of the License, which does not require the CMC's consent.

For the avoidance of doubt, neither this consent, nor any actions on IT's part, constitutes any waiver under the terms of the IH Shareholders Agreement, the terms of which will continue to apply in full force and effect.

We should be grateful if you would please forward this correspondence to the IH Board and KSC members.

We will require a response to our proposal by no later than 10 pm Erbil Time today (9 November 2014)" (emphasis in the original).

88. At 9.32 pm Mr. Abou Charaf reported that the last time he was able to "*touch base*" with Mr. Mustafa was before 8pm Erbil time and that he had advised that:

"As no answer has been received by 8 PM Erbil time (i.e., more than 6 hours after the deadline set by the Chairman), the Chairman considered that (i) IT Representatives of the KSC/IH Board did not grant their consent to the signature of the 3G Spectrum Annex, and, accordingly (ii) they will be held fully responsible for all the consequences (including the financial ones) as stated in an earlier email.

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Based on the above, faced with this obstruction, Korek will neither attend tomorrow's meeting in Baghdad nor will it sign the 3G Spectrum Annex."

[D1/27].

89. However, in direct contradiction of the message sent by Mr. Abou Charaf, the 3G Annex was signed on behalf of Korek at a meeting on 10 November 2014. A request for an update on 11 November 2014 was met with a message from Mr. Abou Charaf that he would "*continue trying to touch base with [Mr. Mustafa]*". Nothing further followed. By the afternoon of 13 November 2014, IT Ltd. had learned from media reports that, despite Mr. Mustafa's clear statement the previous evening that Korek would not sign the 3G Annex, Korek had indeed done so. Mr. Jain expressed IT Ltd.'s displeasure:

"In the last communication from the Chairman he made it clear that Korek would not be signing the 3G Annex. However, we have since become aware of press reports suggesting that Korek did in fact sign the Annex. It is utterly unacceptable and beggars belief that we have to follow press reports in order to second-guess what our own company may or may not have done".

[D1/28]

90. The Arbitral Tribunal would have expected Mr. Mustafa immediately to address these concerns. In fact, it was another 4 days before IT Ltd. heard from Mr. Mustafa. In an email forwarded by Mr. Abou Charaf to the KSC and the IH Ltd. Board, he said:

"IT Representatives Members of the KSC/IH Board are issuing empty threats and are seeking to instruct Korek how to manage its affairs without any regards to the realities on the ground and with a track record of being wrong in terms of what the two other operators would do or accept.

In light of the last emails sent by IT Representatives Members of the KSC/IH Board, which consented to the signing of the 3G Spectrum Annex but with certain reservations, and having received last-minute information confirming that the two other mobile operators would attend the meeting on the 30th of October, acting in the best interest of Korek, I instructed Mr. Fadhel Altusy to attend the official meeting in Baghdad and to sign the 3G Spectrum Annex (attached) on behalf of the company within the deadline set by the CMC".

[D1/212]

91. On the same day, 17 November 2014, CS Ltd. sent an Objection Notice to IT Ltd. as to the amount of the Call Option Sale Price. The Notice went on to say that the transfer would require consent from the CMC [D1/213]. IT Ltd. responded with an offer to negotiate the price pursuant to the terms of the SHA. It also emphasised that the Parties' rights and obligations in connection with the IT Call Option were independent of any rights or obligations that Korek might have under the License [D1/214]. No response was received to this letter. IT Ltd. continued to attempt to implement the dispute mechanisms of the IT Call Option over the next few months, but Korek and CS Ltd. failed to engage.

92. In the meantime, on 12 November 2014, a further letter was sent by the CMC to Korek requiring them to prove that the shares had been returned to the Iraqi shareholders

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within 15 days [D1/112]. According to Mr. Aziz, Korek once again took no action. The IT Ltd. representatives prepared a draft response, which they sent to Korek and to Mr. Mustafa emphasising the importance of it being reviewed and sent in advance of the expiry of the CMC's latest deadline [D1/176]. The day before the deadline expired, one of the Iraqi investors, Mr. Hamo, wrote to Korek "*on behalf of CS Ltd.*". He reported that:

> *"CS Ltd requests that Korek not send either of IT Ltd.'s proposed draft letters to the CMC. CS Ltd considers that the proposed positions in both drafts are unnecessarily inflammatory and would not effectively advance the best interests of Korek. Further, IT Ltd.'s proposed letters do not reflect the position of CS Ltd as majority shareholder. As such, it would be inappropriate for Korek to send such letters to the CMC."*
>
> [D1/178].

93. IT Ltd. therefore wrote to the CMC in its own name [D1/114]. The CMC, as it had done previously, expressed the view that it had no contractual link or obligation to IT Ltd. [D1/115].

94. On 12 March 2015, CS Ltd. wrote to IT Ltd. referring to its unanswered correspondence over the previous 4 months concerning the IT Call Option and confirming that Mr. Rahmeh and Mr. Junde were authorised to represent CS Ltd. in negotiations over the IT Call Option. IT Ltd. had issued a formal Notice of Dispute and CS Ltd. asked that it be withdrawn [D1/223].

95. IT Ltd. declined to withdraw its Notice of Dispute but indicated that it was prepared to give CS Ltd. additional time to designate a Qualified Appraiser to determine the Call Option Sale Price in accordance with the provisions of the SHA. IT Ltd. required confirmation that CS Ltd. would comply with its contractual obligations in respect of the IT Call Option subject to resolution of the price and "*irrespective of whether such transfer may require the CMC's consent*" [D1/224].

96. CS Ltd. appointed a Qualified Appraiser but declined to provide the confirmation sought by IT Ltd. [D1/225]. IT Ltd. sought contact details for CS Ltd.'s Qualified Appraiser so that PwC, which had been appointed by IT Ltd., could discuss the Call Option Sale Price with them. These details seem never to have been provided. On 26 July 2015, which was the extended deadline agreed by IT Ltd. and CS Ltd. for the Qualified Appraisers to determine their final view, IT Ltd. wrote to CS Ltd. indicating that PwC had given a range of US$ 79.6 million to US$ 82.5 million and that it was prepared to use the higher figure as the Call Option Sale Price [D1/230].

97. Once again there was no response from CS Ltd. On 29 July 2015, IT Ltd. wrote explaining that, in the absence of any final view from CS Ltd.'s Qualified Appraiser, the Call Option Sale Price was determined to be US$82.5 million. Pursuant to clause 23.9 of the SHA, the Option Completion Date was to be 19 August 2015 [D1/231].

98. CS Ltd. responded by arguing that IT Ltd. had not properly followed the process required by the SHA, in part because the Qualified Appraisers had not consulted with one another. CS Ltd. also stated that IT Ltd. had not addressed how the necessary consents would be obtained from the CMC [D1/232].

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99. IT Ltd. took issue with these complaints and pointed out that CS Ltd. had failed to provide any contact details for its Qualified Appraiser or to make them available to consult with PwC. It identified what it said were 8 breaches by CS Ltd. in relation to the operation of the IT Call Option. It further argued that the CMC's consent to the transfer was not a relevant consent for the purposes of the SHA as it was not required by DIFC Law for the transfer [D1/233].

100. Further correspondence was exchanged between IT Ltd. and CS Ltd., including in relation to the question of consents. On 27 August 2015, IT Ltd. wrote rejecting CS Ltd.'s suggestion that any transfer of shares required a consideration of Iraqi mandatory law. It also pointed out that as at the date of the exercise of the IT Call Option, the License only required the CMC's consent for a change of 10% or more in the ownership of Qualifying Shares [D1/235]. CS Ltd. continued to take issue with this [D1/236].

101. IT Ltd. wrote on 30 October 2015 proposing that discussions be held to try and resolve the dispute in accordance with clause 48 of the SHA [D1/237].

102. On 4 January 2016, Mr. Mustafa wrote to IT Ltd. in response to a letter sent to him on 29 November 2015 in respect of his alleged obligation to procure CS Ltd.'s compliance with its obligation to complete the IT Call Option [D1/238]. In that letter he repeated the view expressed by CS Ltd. that IT Ltd. had failed to comply with the contractual mechanism for determination of the Call Option Sale price and further stated:

> *"Any transfer of the Call Option Shares is conditional upon receipt of the Relevant Consents under the IH SHA, including the consent of the CMC, which IT has not received and will not receive."*

It was clear that neither Mr. Mustafa nor the other Respondents intended to permit the exercise of the IT Call Option to proceed.

103. IT Ltd. filed an application to join Korek's Administrative Court proceedings against the CMC on 16 February 2015. This was dismissed in January 2016 as was, on jurisdictional grounds, Korek's own application [D1/117]. Mr. Jain of IT Ltd. wrote to Korek on 19 January 2016 asking for a "*comprehensive update*" on the Administrative Court proceedings which had apparently been attended by Korek's lawyer the previous day. He had to chase and a report was eventually provided on 23 January 2016. This did not address the decision itself and Mr. Jain had to chase [D1/118]. On 2 February 2016, Mr. Jain noted the "*serious threat to the business assets and operations of both Korek and IH [Ltd.]*". He stated that:

> *"we need to urgently consider the steps that IH [Ltd.] needs to take to seek to prevent implementation of the CMC Decision in order to protect the company's interests and its primary asset…we also again reiterate the urgent need for IH [Ltd.] to appoint legal counsel. We note that despite our repeated formal and informal requests, IH [Ltd.] is still without legal representation.*
>
> *This constitutes an Emergency Situation, and we therefore urgently request the [Mr. Mustafa] to convene meetings of both the IH Board and KSC as soon as possible, and in any event within 7 days from the date of this email, in order to approve the next steps of challenging the decision of the Administrative Court and the CMC Decision."* [D1/118].

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104. A meeting of the KSC and of the IH Ltd. Board was held by telephone on 9 February 2016, at which it was agreed that Korek should file an appeal with the Supreme Administrative Court. Mr. Rahmeh chaired this meeting [D1/181]. This appeal was filed on 21 February 2016 [D1/119].

105. The Supreme Administrative Court dismissed the case on 18 January 2018. IT Ltd. learned of the dismissal through Raedas in May 2018. Mr. Jain wrote to Mr. Mustafa himself on 25 May 2018. His email read:

> *"We have just learnt that Korek's case before the Supreme Administrative Court was supposedly heard – and dismissed – on 18 January 2018.*
>
> *It is unacceptable that we have not been informed of this material development.*
>
> *Please provide us, as a matter of absolute urgency (and in any event within 7 days of this email), with a copy of the court's decision, as well as any correspondence, submissions, applications, notices and any other documents in relation thereto that have not been shared with us previously.*
>
> *Please also provide us with copies of any advice received by Korek in light of the court's decision, in particular with respect to any actions that should be taken to protect Korek's and International Holdings' position."*
>
> [D1/120]

106. No response was forthcoming from Mr. Mustafa to Mr. Jain. Instead, Mr. Abou Charaf replied on 1 June 2018, addressing his email to the Board of IH Ltd. and to the KSC. He advised "*on behalf of [Mr. Mustafa] that, after being informed by [Mr. Jain], Korek was able to get the attached copy of the Decision (dated 18 January 2018) issued by the Supreme Administrative Court and dismissing Korek' s appeal; [Mr. Mustafa] was not aware of it*" [D1/121].

107. Mr. Aziz explained that Agility then took the view that it had no choice but to work with Korek and the Iraqi Shareholders to unwind the investment. Agility wrote to Mr. Barzani in both his personal capacity and as Chairman of the KSC, to CS Ltd. and to the other Iraqi Shareholders setting out its views [D1/182]. Despite not being an addressee of Agility's letter, Korek responded, saying that, at least initially, it was a matter for Korek's shareholders rather than the company itself. Neither Mr. Mustafa, CS Ltd. or any of the other Iraqi Shareholders responded to Agility [B1/2/21].

108. Some 22 months later, on 15 April 2019, Mr. Hamo emailed Messrs Aziz, Jain, Rennard and Froissart advising them that "*Sirwan [Mustafa] has learned that the Companies Registrar in Erbil has decided unilaterally to give effect to the CMC Decision*" [D1//34]. He attached a copy of the KCR Decree, which stated that the KCR had decided to:

> *"1- Dissolve the administrative decision No. 2959 on 20/07/2011*
>
> *2- Return the shares to its first status before 13/03/2011*
>
> *3- Keeping Serwan Saber Moustafa as Chief Executive Office of company*
>
> *4- Keeping Handren Othman Khalid as legal advisor of company*
>
> *5- Keeping Jasqaski Hamou Moustafa as accountant of company*

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6- Change the head office of company from (Heier Johaina Center) to (Heier Media City) located on Al-Masaif Road.

7- Divide the shareholders' share as follows:

Serwan Saber Moustafa 75% *Jawshen Hassan Jawshen 20%*
Jasqaski Hamou Moustafa 5%"

[D1/33].

109. A number of things are clear from these events which when taken as a whole is sufficient of and by itself, especially without any oral evidence adduced to point in another direction, to lead to the conclusion that the Respondents conspired as alleged to procure the CMC Decision.

110. Firstly, it is notable that the communications from the CMC began shortly before the IT Call Option became exercisable by IT Ltd.

111. Secondly, neither Korek nor Mr. Mustafa showed any urgency in forwarding these communications to their partners, either through the KSC or the IH Ltd. Board. There were repeated delays in forwarding time-critical communications, with the result that deadlines for responses or action are almost always missed. This was not the behaviour of a fellow shareholder acting in good faith or showing any genuine concern over the critical development. Instead, there seemed to be a real reluctance to allow IT Ltd. any means of approaching the CMC. Given that the Respondents were also saying that they were unable themselves to answer the CMC's questions and that it was for IT Ltd. to do so this was itself very suspicious.

112. Thirdly, none of the Respondents demonstrated any concern or indeed surprise at the communications from the CMC. This is so notwithstanding the fact that a number of the matters complained of by the CMC were clearly outside the ambit of the original consent granted to the 2011 Transaction and should have been a matter of grave concern to all parties. The suggestion that Orange and Agility had breached some earlier assurances given to the Iraqi authorities is simply not substantiated. Not only that, but the criticism of Agility and Orange for not arranging the IPO was entirely at odds with Mr. Mustafa and Mr. Rahmeh's apparent success in deferring the obligation to list in exchange for a fine. One would have expected Mr. Mustafa to have been incensed by the CMC's apparent disregard of this particular arrangement. More generally, the Arbitral Tribunal would have expected Mr. Mustafa, as the Chairman of Korek and of the KSC, to have taken immediate action in relation to this challenge to the structure of the partnership. He did nothing of the sort. The job of informing the KSC and the IH Ltd. Board was delegated to Mr. Abou Charaf and effectively nothing was done.

113. Fourthly, wholly spurious and false reasons were advanced by Korek and its "management" for not taking action. Both in relation to the letter from the CMC dated 10 December 2013 and the letter dated 10 June 2014, the response from Korek to IT Ltd.'s request that it respond to the CMC's criticism is that it was not privy to the negotiations that led to the conditional acceptance by the CMC of the 2011 Transaction nor was Korek's management aware of the contents of the SHA. Neither of those statements was true. Korek, CS Ltd. and Mr. Mustafa were all parties to the SHA and were familiar with its contents. The Arbitral Tribunal accepts the evidence of Mr. Aziz

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that Mr. Mustafa and Mr. Rahmeh were involved in negotiating the CMC's approvals. It would have been a simple matter for Korek to provide a response with the input of its indirect shareholders. The Respondents knew that the CMC insisted in corresponding only with Korek. By refusing to assist in providing a response they thereby ensured that the CMC's letters went unchallenged. This was a nonsensical position which leads the Arbitral Tribunal to the firm conclusion that the Respondents and the CMC were engaged in collusive behaviour. Mr. Mustafa's subsequent criticism of IT Ltd. for not responding in writing to the CMC rings entirely hollow. He knew perfectly well that the CMC would not accept any communications from any entity other than Korek.

114. Fifthly, the lack of urgency and responsiveness of the Respondents contrasts markedly with both the speed and detail of Mr. Mustafa's reply to Mr. Sultan's letter in July 2014. Mr. Mustafa rejected outright the suggestion that Mr. Rahmeh had influenced the CMC and showed no inclination to investigate (despite what was said in closing by the Respondents' counsel concerning Mr. Rahmeh's wider interests in Iraq). It is no answer to that to say, as Mr. Mustafa does in his third statement, that he did not need to investigate as he knew he did not instruct Mr. Rahmeh to procure the CMC Decision on Korek's behalf. That was not what Mr. Sultan was saying. Mr. Mustafa's demand in his letter that Agility cease any communications with the CMC is indicative of a desire to control the channels of communication.

115. Sixthly, the refusal of Mr. Mustafa and the other Iraqi Shareholders to participate in or respond to the requests for the urgent meetings of the KSC and of the IH Ltd. Board in September 2014 is, in the context of the CMC Decisions, extraordinary and without any credible or genuine explanation. It was entirely reasonable for IT Ltd. to seek to hold an urgent meeting. Instead, the IT Ltd. representatives were left hanging on the telephone without any notification from the other members of the KSC/directors of IH Ltd. that they will not be attending. Mr. Mustafa's subsequent complaint about the use of "*dial-in details in foreign states*" was entirely contrived.

116. Seventhly, Mr. Mustafa's own explanation for the CMC Decision lacks coherence. It is confined, in his first witness statement, to saying that:

> *"To my knowledge, the reasons for the CMC Decision are those that the CMC has explained itself. In particular, that Agility and Orange had failed to provide sufficient financial and technical support to Korek as required under the terms of the License and as I understand, as Orange and Agility had promised the CMC during their meetings ahead of the 2011 Transaction"*

[B3/1/9 at paragraph 6.4]. As explained above, at least two of the criticisms made by the CMC were known to Mr. Mustafa to be untrue, at least on his own evidence. He had apparently agreed with the CMC that the IPO could be delayed and he said that IC4LC had been paid a success fee of US$ 6 million for deferring the payment of the next instalment of the license fee. In his oral closing submissions, Mr. Hooker drew the Arbitral Tribunal's attention to three documents which he said contained assurances given by Orange to the Prime Minister and Communications Minister of the Government of Iraq and to the CMC [D1/484; D1/485; D1/486]. The Arbitral Tribunal has seen no evidence that Orange and Agility made any promises to the CMC in those letters or during their meetings which resulted or could be said to have resulted in the imposition of any conditions in addition to those set out in the approval letter for the

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2011 Transaction [D1/13]. The fact that KPMG may have conducted an audit for the CMC identifying the fact that Korek was highly leveraged, as alleged by Mr. Mustafa at paragraph 6.5 of his first statement, is unsubstantiated and apparently unrelated to the specific criticisms contained in the CMC's letters.

117. Nor does Mr. Mustafa provide any further explanation of the CMC's Decision in his subsequent witness statements. In his third witness statement he criticises what he says was Orange's failure to offer adequate technical support. He suggests that there may be politically appointed officials in the CMC "*who bear a grudge towards me or who seek to do harm to me, to Korek or to the Kurdistan region*" [B3/4/9]. He further says, at paragraph 2.10(d) of this statement that the CMC Decision "*has been a disaster for me and Korek*" and has left Korek in dire financial straits. Not only does this explanation make no sense in circumstances where the shares of IT Ltd. have been reallocated to Mr. Mustafa and his colleagues by the KRC Decree, but it is contradicted by the complete disinterest with which Mr. Mustafa and the other Respondents greeted the various letters from the CMC.

118. Mr. Mustafa considers that Korek's management were not the best people to prepare a response to the CMC setting out what IT Ltd. had promised to the CMC and what it had (or had not) delivered to Korek. The evidence of Mr. Aziz is that Mr. Mustafa was well aware of the negotiations. Korek was of course perfectly positioned to describe what IT Ltd. had provided to it. In any event, it is clear to the Arbitral Tribunal that what IT Ltd. wished for in asking Korek to prepare a response was a dialogue as to what any reply should say. Mr. Mustafa's witness statement ignores the patently inaccurate suggestion made by Korek at that time that it had no knowledge of the contents of the SHA.

119. The Respondents argue that the political and military situation at the time the CMC Decision was issued was very difficult with parts of Iraq under attack by ISIL and that the Respondents had "*bigger problems to deal with*". The Arbitral Tribunal does not regard this as a credible excuse. No doubt the war against ISIL made matters difficult, but it remained the Respondents' obligation to deal with this very serious threat to Korek. The Arbitral Tribunal has seen no evidence in the documents that Mr. Mustafa's military commitments were ever put forward at the time as a reason for his and Korek's lack of response to the CMC's letters and, as IT Ltd. has demonstrated, Mr. Mustafa was present and active at KSC meetings in March and June 201, was being put forward by Mr. Rahmeh in July 2014 as the individual who should take charge of negotiations with the CMC and was communicating directly with IT Ltd. when it suited him, in July and September 2014 [A/46/110].

120. The Respondents sought in argument to suggest that the CMC was an aggressive regulator that was undertaking an assertive campaign of its own against both IT Ltd. and Korek. The Arbitral Tribunal does not regard this as a credible explanation. The CMC was clearly doing the Respondents' bidding.

121. Eighthly, the amendment to the Assignment and Transfer provisions introduced by way of the 3G Annex was clearly designed to frustrate the exercise of the Call Option and to render it valueless. It was completely unheralded and no other explanation has been offered as to why it was introduced in that form. As Mr. Aziz states, it had no impact on either Asiacell or Zain Iraq and the overwhelming inference is that it was introduced by the CMC at the request of the Respondents as part of a belt and braces approach

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to prevent IT Ltd. taking indirect control of Korek. Mr. Mustafa's instruction to Mr. Altusy to attend the meeting and sign the Annex when he had explicitly said the previous evening that no-one from Korek would do so indicates his determination to ensure that the amendment took effect. Similarly, his emphatic response on 4 January 2016 that IT Ltd. "*has not and will not*" receive consent from the CMC to any transfer is a further indication of his confidence that the CMC would do his bidding.[4]

122. Ninthly, the absence of internal documents from within Korek and/or from Mr. Mustafa addressing the CMC's actions is deeply troubling. The Arbitral Tribunal would have expected the CMC's letters to have led to significant internal messaging, both by email and other forms of communications regarding the threat to the investment and to the business more generally. This is particularly so given Mr. Mustafa's subsequent evidence that the CMC Decision was said to be a "*disaster*" and the suggestion that the CMC was on an aggressive frolic of its own. IT Ltd.'s document requests numbers 10, 12, 13 and 14 each addressed relevant and material issues in this regard. The Respondents agreed to provide documents responsive to request 10. The Arbitral Tribunal ordered that the Respondents produce any documents responsive to requests 12, 13 and 14. The virtual absence of any responsive internal materials is simply not credible. By its Procedural Order No. 10 dated 26 January 2022 the Arbitral Tribunal ordered all Parties to provide certain information regarding the document production process. By their response dated 14 February 2022 [A/27] the Respondents confirmed that the searches for documents were carried out by Mr. Mustafa himself, "*with the assistance of Mr. Ramadan Salim, Korek's IT director, acting on instructions from Mr. Sirwan Mustafa and lawyers advising the Respondents.*" Apparently, searches were also undertaken by Mr. Issa Touma, Korek's Chief Financial Officer at the time, Ms. Sayran Pedawi (Korek's Sourcing Director) and Mr. Ako Merza (Korek's Deputy Chief Commercial Officer). It does not therefore appear that the Respondents' legal team was directly involved in conducting a search for documents. The only searches were conducted on Mr. Mustafa's personal computer and the email boxes on Korek's servers of Mr. Mustafa, Mr. Touma, Ms Pedawi and Mr. Merza. The Arbitral Tribunal is not persuaded that the search was sufficiently broadly drawn (the email boxes of Mr. Abou Charaf and the CEO of Korek were apparently not subject to a search and no mobile phone messaging systems appear to have been interrogated) or carried out with sufficient rigour. There are a number of emails from Mr. Abou Charaf on the record which purport to quote emails received by him from Mr. Mustafa or from "management". Those emails, together with any instructions given separately to Mr. Abou Charaf by Mr. Mustafa do not appear to have been disclosed.

123. Tenthly there is the failure of Mr. Mustafa to come to give oral evidence which is addressed further below. It had been clear that his oral evidence would be critical to the arbitration and likewise it was clear from Procedural Order No. 1 paragraph 8.11 that witnesses filing statements were expected to give oral evidence, unless there was a valid reason. The Arbitral Tribunal is quite satisfied that no valid reason or explanation was given by or on behalf of Mr. Mustafa. The Arbitral Tribunal further notes that it was suggested by counsel for IT Ltd. on the first day of the evidential

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4 See also Chapter L of this Award, which addresses the breach of contract claim advanced by IT Ltd. in respect of the 3G Annex

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hearing that they understood that Mr. Mustafa was reading the transcripts of the hearing. Respondents' counsel did not seek to contradict this [Day 1/218:2-4].

124. Eleventhly, there is the compelling evidence of the real nature of the so-called law firm IC4LC which is examined in detail below. At this stage it is sufficient to say that the Respondents' case is that they appointed IC4LC inter alia to address the ongoing disputes with the CMC and to represent Korek in respect of Korek's appeal of the CMC Decision. The Arbitral Tribunal accepts that IC4LC did indeed have dealings with the CMC, but it was not as a law firm. The Arbitral Tribunal is quite satisfied that to the knowledge of the Respondents, IC4LC was not a real law firm. It had no regular features of a law firm, but instead was a sham vehicle for passing millions of dollars by way of illicit payments to members of the CMC who were engaged in the issuance of the CMC Decision. The Arbitral Tribunal further notes that in document request 17 the Respondents in part agreed to produce and in part were ordered to produce documents passing to and from IC4LC with regard to their engagement of IC4LC, the work they carried out and proof of payments made for legal and consulting [Procedural Order No. 5 Annex A at G/6/17]. If indeed IC4LC was acting in the genuine manner suggested by the Respondents there would of course be documents by way of the engagement of IC4LC, documents to evidence their legal work and payment for legal services. None was produced and in closing submissions Respondents' counsel accepted that presumptively if IC4LC were a regular law firm there would be documents recording the engagement and correspondence passing between lawyers and clients [Day 9/78:14-80:9]. The Arbitral Tribunal concludes that the absence of any such documents is a further pointer to the conclusion that IC4LC was not a genuine law firm at all.

125. Twelfthly, there is independent corroboration from the facts surrounding the IBL Loan Agreement that Mr. Mustafa had engaged in deceitful conduct to harm IT Ltd. as long as ago as 2011. Although this relates to a time frame two years prior to the events in question, it is relevant as it relates to the same overall relationship and is relevant as to the credibility of the Respondents' over-arching story that they were acting in good faith to support the venture and not against IT Ltd. to advance their own financial interest. This is dealt with in Chapter K, below.

126. Finally, as Ms. Schmidt of Gibson Dunn submitted in closing, there is overwhelming evidence that the CMC Decision was simply a pretext. She identified 16 points:

(i) As noted above, the CMC in its Decision invoked conditions for approval that had never been agreed;

(ii) The CMC's Decision comprised a skeletal, two paragraph decision purporting to unwind an $810 million complex transaction. Mr. Hooker suggested this may not have been unusual as a matter of Iraqi law or practice. However he conceded that there was no evidence on this point;

(iii) The CMC addressed all of its threatening letters (and the CMC Decision itself) to Korek only, without copying Agility or Orange. Mr. Hooker suggested that this was entirely appropriate. The Arbitral Tribunal disagrees. Whilst directed at Korek, the ultimate effect was the expropriation of IT Ltd.'s interests. It is simply not credible that a

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governmental entity exercising such draconian powers would not copy the foreign investor concerned (particularly when, as Mr. Hooker pointed out, there had been direct correspondence at the time of the 2011 Transaction between Orange (then France Telecom) and the CMC);

(iv) The CMC repeatedly refused to speak to Agility or Orange when asked for a meeting [D1/107; D1/115];

(v) The CMC hid Korek's 22 January 2014 letter (a copy of which had Dr. Rabee's handwriting on it confirming receipt) and then later used its absence as a purported justification for the CMC Decision [B2/1];[5]

(vi) The CMC sent its first threatening letter to Korek on 10 December 2013, just 3 weeks before IT Ltd.'s Call Option became exercisable and more than two and a half years after the CMC approved the 2011 Transaction. Mr. Hooker argued that "*nobody needed the CMC Decision to frustrate the exercise of the Call Option [as] the CMC Decision was about ejecting them from the joint venture altogether*" [Day 9/112:4-18]. Clearly, however, IT Ltd.'s ejection from the joint venture would solve the problem of the Call Option, as the Respondents saw it, for good;

(vii) After months of inactivity, the CMC issued its Decision on 10 June 2014, just 12 days after Orange's CEO publicly declared Orange's intent to obtain majority control over Korek [D1/21];

(viii) The CMC concocted post-hoc reasons for the CMC Decision, including the suggestion, in a meeting between Dr. Rabee and Korek on 16 October 2014, that fraud allegations against Agility had informed the CMC Decision [D2/14]. This was obviously untrue. No such allegation was made in any of the letters preceding the CMC Decision, nor did it feature in the CMC Decision itself. The fraud allegations against Agility had been public since 2009, well before the CMC gave its consent to the 2011 Transaction, as Mr. Aziz explained. Mr. Hooker argued that there was no evidence that the CMC had been aware of those allegations at the time. The fact remains, however, that the allegations formed no part of the CMC's reasoning at the time that it issued the Decision.

(ix) As noted above, the CMC invoked the absence of an IPO as a basis for its draconian CMC Decision when Korek was already paying a "low fine" as had been agreed by the CMC;

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5 This allegation is said by Mr. Hooker to be mere hearsay on the part of Mr. Bortman. What is clear, however, is that the letter from Korek does have manuscript writing on it which would appear to have been placed there by someone within the CMC, suggesting that the later statement that the letter had not been received was untrue. The Arbitral Tribunal does not understand the Respondents to have challenged the authenticity of either B2/1 or the marginal note, by whomever it was made.

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(x) Zain did not conduct an IPO until June 2015 – a year after the CMC Decision – and yet no draconian decisions or actions were taken against that company. Mr. Hooker argued that Zain was in a different position, as it was not hundreds of millions of dollars in debt to the CMC. That was not, however, a point of distinction relied upon by the CMC;

(xi) The CMC change-of-control provision in the 3G Annex was entirely irrelevant to the issue of 3G Licenses. The provision affected only Korek and not Zain or Asiacell – the other companies presented with the Annex [D1/200]. These provisions were clearly targeted at Korek and its foreign investors;[6]

(xii) The CMC Appeals Board issued its decision on 18 August 2014 without conducting a hearing or taking any evidence [D1/102]. Mr. Hooker drew the Arbitral Tribunal's attention to the fact that Agility had failed in a denial of justice claim before ICSID against the Republic of Iraq;

(xiii) The only judge on the CMC Appeals Board, Mr. Al-Khazraji, was removed from his position for corruption and sentenced to jail [B2/130; D1/517];

(xiv) Dr. Rabee was removed from his position as a member of the CMC Council by Cabinet Order of the Prime Minister's Office on 25 June 2020 for corruption [D1/196; D1/197];

(xv) Dr. Al-Khwildi was removed from his position as Chairman of the CMC by the Iraqi Parliament on 18 March 2021 for corruption [D1/190; D1/192]. Mr. Hooker sought to argue in closing that the evidence in relation to these last three points was "*pretty threadbare*" and that Mr. Mustafa had given evidence on the political context. It was not, however, denied that all three individuals were removed from post ostensibly for corruption. Nor is Mr. Mustafa's evidence on the political context anything other than speculation [B3/4/8-9];

(xvi) The CMC punished the foreign shareholders only. Despite the stated rationale for the CMC Decision:

- Korek continues to have outstanding license fee payments;
- Korek has still not completed an IPO;
- No actions have been taken against Korek and its license has not been withdrawn;
- The CMC granted Korek a 3G license following the CMC Decision and, according to an interview with Mr. Barzani published on 8

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[6] Mr. Hooker argued that this point was "highly misleading" as the change of control provisions were not targeted at Korek but were imposed on all of the operators [Day 9/149:1]. This criticism entirely misses the point. IT Ltd.'s point is that whilst they accept that the provisions were included in the 3G Annex presented to all operators, they were clearly designed to prevent IT Ltd. from exercising its Call Option as AsiaCell and Zain had shareholding structures which would be unaffected.

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April 2019, it was at that time "the fastest growing company in Iraq" [D1/198]; and

- The CMC has rewarded the Iraqi Shareholders with 100% of the Claimant's shares in Korek, 75% of which went to Mr. Barzani personally.

Mr. Hooker argued that the CMC in fact punished Korek "repeatedly", by fines, enforcement actions, license suspension and freezing of bank accounts. With the exceptions of some actions having been taken against Korek, he was not, however, able to challenge the remaining detail of these bullet points and he confirmed that its license had not been withdrawn [Day 9 116:6-8].

127. Significantly, as already noted and despite the very serious allegations made against the Respondents, Mr. Mustafa declined to attend to give evidence to the Arbitral Tribunal or to submit himself for cross-examination. Mr. Mustafa was the Respondents' only witness of fact on the main issues in the case.[7] Mr. Mustafa gave three witness statements. The first, dated 27 July 2021, broadly addressed the issues. His second witness statement, dated 31 January 2022, was a short statement addressing the steps that he had allegedly taken to comply with the Arbitral Tribunal's Procedural Order No. 7 (which ordered that he (i) refrain from disposing of the cash collateral provided as security for the IBL Loan without IT Ltd.'s prior consent, and (ii) provide IT Ltd. and the Arbitral Tribunal on the first working day of each month with bank statements or other evidence sufficient to confirm his compliance with the order). In a third witness statement dated 5 April 2022, Mr. Mustafa responded at some length to the allegations advanced by IT Ltd. He also set out what he described as his "*deep disappointment with the way these proceedings have been conducted and my lack of faith that these proceedings are conducted fairly towards me*" [B3/4/15].

128. Mr. Mustafa's criticisms were as follows:

(a) He was offended and disappointed that the Arbitral Tribunal allowed IT Ltd. to advance evidence from Mr. Bortman without requiring him to disclose his sources and the implication that neither he nor his lawyers could be trusted with that information;

(b) He was frustrated by the Arbitral Tribunal's refusal to allow him to provide IBL Bank Statements to the Arbitral Tribunal and not to IT Ltd.; and

(c) He was shocked that the Arbitral Tribunal decided in Procedural Order No. 11 that he had lied in his second witness statement.[8]

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[7] Mr. Akrawi, the Deputy Chief Technology Officer of Korek provided a very short witness statement dated 22 November 2021, but this was in response to IT Ltd.'s application for interim relief dated 6 November 2021 rather than in relation to the wider issues in the reference.

[8] Mr. Mustafa also notes the fact that, in its Procedural Orders, the Arbitral Tribunal referred to him as Mr. Barzani. Nothing should be read into the use of that nomenclature. IT Ltd. has consistently referred to Mr. Mustafa in that way and the Arbitral Tribunal did so for reasons of consistency. The Arbitral Tribunal notes that Mr. Mustafa's email address is ssb70@korektel.com. The Arbitral Tribunal understands "ssb" to refer to Sirwan Saber Barzani.

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Mr. Mustafa concluded, at paragraph 3.14, that:

> *"I mean no disrespect to the Tribunal, but I am obviously disappointed that it seems to have already decided that I am a dishonest and violent person who cannot be trusted. It has allowed IT Limited to breach its obligations and to hide the identity of its sources without considering how unfair the outcome is for me. I do not see how I can obtain a fair outcome as it has clearly already been prejudiced by the offensive submissions from IT Limited. On that basis, I have decided that I will not be attending the hearing in May. I do not see why I should be required to attend a hearing to defend myself against allegations which have been made by anonymous people who have not been required to identify themselves and to testify to these allegations. I still hope the Tribunal will reach the right conclusion and dismiss these offensive allegations. However, I have no wish to be involved in proceedings where my old business partners have been allowed to make false allegations with impunity, ignore my rights to confidentiality and smear my reputation in public" [B3/4/18-19].*

129. The Arbitral Tribunal does not consider that there is any merit in Mr. Mustafa's criticisms. The refusal to order Mr. Bortman to name his sources had its origin in the Restricted Access regime established by Procedural Order No. 2. That was essentially a consent order which the Parties had agreed in order to allow counsel for the Respondents to retain and use in these proceedings certain restricted access documents which had been disclosed to them in an earlier ICC Arbitration, Case No. 23685. The Parties requested that the Arbitral Tribunal issue Procedural Order No. 2 in terms agreed between them.

130. The Respondents subsequently sought to have the agreed regime amended. After inviting the Parties to liaise, the Respondents made two proposals. One assumed that IT Ltd. should not be entitled to make any redactions pertaining to Raedas' sources. The second was designed to protect the identity of those sources by permitting the redaction of certain information. The Arbitral Tribunal agreed that there should be redactions but that the approach to dealing with those redactions should be that proposed by the Respondents. It also ordered that Respondents' counsel not discuss with the Respondents any views they might form about the identities of Raedas' sources arising from the documents to be disclosed or otherwise [G/6].

131. The Respondents subsequently sought clarification from the Arbitral Tribunal concerning their proposal that there should be no redactions. In its Procedural Order No. 6, the Arbitral Tribunal explained that it accepted that the use of anonymity should be rare but it was not unprecedented. Mr. Bortman has said that all of his sources wished to remain anonymous on the basis of a direct threat to their security. This was contested by Mr. Hooker but the Arbitral Tribunal had no way of knowing whether the concern was shared by one of Mr. Bortman's sources or all of them. It therefore took Mr. Bortman at his word. As for making the identity of the sources available to the Respondents' lawyers, the Arbitral Tribunal entirely accepted the *bona fides* of the Respondents' legal team but in a complex case such as this, there remained the risk of an inadvertent disclosure of Restricted Access Documentation to the Respondents which might have the effect of imperilling the safety of one of the sources or their families. The Arbitral Tribunal was very careful to recognise the difficulties posed by the use of anonymised sources and emphasised that IT Ltd. faced the burden of

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persuading the Arbitral Tribunal to give it any material weight notwithstanding its hearsay nature, the extent of the redaction and withholding of the identity of the sources. Although the Arbitral Tribunal reiterated that it did not consider that it was appropriate for Respondents' counsel to discuss with the Respondents themselves any views that counsel may form as to the identity of Raedas' sources from the Restricted Access Documents or from any Restricted Access material contained in Mr. Bortman's witness statement, as that would pose a potential risk to the safety of those sources and their families, it did not prevent Respondents' counsel from making submissions and/or adducing evidence in due course as to the credibility of those whom they believed from their own analysis may comprise those sources. The Arbitral Tribunal also accepted that Respondents' counsel must be free to discuss with their clients any views which they might form about the identities of Raedas' sources independently from the Restricted Access Documents [G/8].

132. Mr. Mustafa had made a Subject Access Request to Raedas under the United Kingdom's Data Protection Legislation. This lead to a number of applications. The Arbitral Tribunal made clear that it was determined to draw an appropriate balance between permitting Mr. Mustafa to exercise his statutory right to issue a Subject Access Request and affording protection to Raedas' sources. In the event, the Parties were in agreement as to the extent to which redactions should be allowed to any material responsive to the Subject Access Request [G/10].

133. The Arbitral Tribunal deals further below with the evidence of Mr. Bortman. It suffices to say at this point that the Arbitral Tribunal considers that, whilst Mr. Mustafa may not have shared its view as to the risk posed to Raedas' sources by allowing disclosure of their identities, it dealt with the matter in a careful and proportionate manner. It certainly did not, as Mr. Mustafa suggests at paragraph 3.3 of his third statement, "completely ignore" the evidence given by Mr. Mustafa. It was dealing with matters at an interlocutory stage and it carefully balanced Mr. Mustafa's and the other Respondents' rights with those of the alleged sources and gave due warning to IT Ltd. of the burden that it would bear in persuading the Arbitral Tribunal to give weight to anonymised evidence. At no point did the Arbitral Tribunal suggest that it did not trust the Respondents' lawyers. It merely recognised the difficulty in a complex case of adhering to a restricted access regime.

134. Mr. Mustafa's remaining two criticisms relate to the Arbitral Tribunal's order at paragraph 126(a) of Procedural Order No. 7. Mr. Mustafa did not comply with that part of the order which required him to provide IT Ltd. and the Arbitral Tribunal, on the first working day of each month, with bank statements or other evidence sufficient to confirm his compliance with its order. The first such statement was due to be provided on 3 January 2022. On 31 January 2022 the Respondents' lawyers wrote to the Arbitral Tribunal advising that Mr. Mustafa would "*not be in a position to provide any bank statements or other evidence concerning any collateral held by IBL by 3 January 2022*". They said that they were continuing to seek instructions and advised the Arbitral Tribunal that they would write further as soon as possible and, in any event, no later than 14 January 2022.

135. The Arbitral Tribunal noted that the Respondents' lawyers had given no indication whether there was simply a delay in obtaining the evidence required or whether Mr. Mustafa was unable to provide evidence at all confirming his compliance with the

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Arbitral Tribunal's Order. It therefore directed him to provide the disclosure required by paragraph 126(a) of Procedural Order No. 7 by 5.00pm London time on 5 January 2022. Mr. Mustafa's lawyers responded within the deadline stating that "*it has been challenging … for Respondent's counsel to confirm full information in respect of paragraph 126(a)*". This was said to be due, variously, to the closure of Lebanese. Banks "*for many days*" over the festive period "*and with further closures this week for 6th of January holidays*" and to Mr. Mustafa's "*substantial commitments*". Boies Schiller also said that they had received "*preliminary instructions*" that concerns had arisen "*in respect of Mustafa's obligations to third parties, matters of confidentiality under Lebanese law and potential pending litigation in Lebanon in respect of the award in the LAMC arbitration*".

136. The Arbitral Tribunal heard nothing for a further week. It requested an update from Mr. Mustafa's lawyers by close of business the following day. Boies Schiller explained in response that they were continuing to seek instructions and would provide an update as soon as they were able to do so. On 14 January 2022, Boies Schiller explained that "*following extended discussions with IBL Bank, Mr. Mustafa expects to receive by Monday a statement in respect of this account which would satisfy PO7. We further understand that the process of obtaining such bank statement from IBL has been complicated and slowed due to the ongoing disputes with IT Limited, including a recent arbitration claim brought by IT Limited against only IBL Bank and seeking damages. Additionally:*

(a) Mr. Mustafa does not receive regular or interim statements or have internet banking in respect of this account.

(b) As such, Mr. Mustafa is reliant on IBL providing any statements or information in respect of this account or funds held therein.

(c) The funds in this account are blocked by IBL Bank, and Mr. Mustafa accordingly cannot dispose of them

We are instructed that Mr. Mustafa is willing to provide the bank statement to the Tribunal in strictest confidence for the Tribunal's in camera review. We are informed by Mr. Mustafa that the statement would contain sufficient information to allow the Tribunal to satisfy itself of Mr. Mustafa's compliance with PO7."

137. IT Ltd. challenged the various explanations put forward by Mr. Mustafa for the delay. The Arbitral Tribunal gave Mr. Mustafa an opportunity to respond which, through his lawyers, he did. The Arbitral Tribunal then proceeded to issue Procedural Order No. 9. It made clear that although various explanations had been advanced for the delay in Mr. Mustafa's compliance, all of which were disputed by IT Ltd., they were no longer relevant. The position was that Mr. Mustafa had by then accepted that he had access to a statement of his account or accounts at IBL. The issue at that time was therefore whether the Arbitral Tribunal should amend its earlier Order so that Mr. Mustafa need only provide a copy of his statement or other evidence to the Arbitral Tribunal, and not also to IT Ltd. The Arbitral Tribunal concluded that Mr. Mustafa's proposal was unacceptable. No issue of confidentiality had been raised by Mr. Mustafa when that element of the interim measures was discussed at the oral hearing on 2 December 2021. The fact that there had been an aggressive campaign of litigation against him

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did not, in the Arbitral Tribunal's view, justify making a change to Procedural Order No. 7. The proceedings were in any event confidential. The Arbitral Tribunal continued:

> *"The principal point, however, is that this element of the Arbitral Tribunal's Order was intended to provide [IT Ltd.] with documentary evidence that Mr. [Mustafa] was complying with the first part of the Arbitral Tribunal's Order, namely that "Mr. [Mustafa] … refrain from disposing of the cash collateral provided as security for the IBL Loan without IT Ltd.'s prior consent", and to enable [IT Ltd.] if necessary to take steps to police and/or enforce the Order. Such provisions are a common ancillary element to freezing orders and the Arbitral Tribunal sees no reason to amend its order to remove this protection for [IT Ltd.] or to impose upon itself the monthly burden of policing its own Order."*
>
> [G/12].

138. The Arbitral Tribunal noted that Mr. Mustafa no longer appeared to pursue any argument that Lebanese banking secrecy rules prevented him from producing his bank statements. The Arbitral Tribunal noted the proceedings commenced against IBL by IT Ltd. but did not accept that those could interfere with Mr. Mustafa's ability to obtain a statement of his account.

139. Mr. Mustafa continued to refuse to comply with the Arbitral Tribunal's order. On 25 January 2022, IT Ltd. sought an order for the immediate provision of security in the amount of US$ 155 million. This was resisted by the Respondents. The Arbitral Tribunal declined to order the provision of security sought by IT Ltd. It did however reiterate its order that Mr. Mustafa provide IT Ltd. and the Arbitral Tribunal "forthwith" with bank statements or other evidence sufficient to confirm his compliance with the Order contained in paragraph 126(a) of Procedural Order No. 7 [G/15]. As part of its analysis in Procedural Order No. 11, the Arbitral Tribunal said this:

> *"The Arbitral Tribunal is not persuaded that there is any merit in the various justifications advanced by Mr. [Mustafa] for his non-compliance with this part of the Arbitral Tribunal's orders. The Arbitral Tribunal notes the contents of Mr. [Mustafa's] second witness statement. However, it is striking that there is a complete lack of documentary evidence for the assertions that (i) Mr. [Mustafa] was not in a position to provide the evidence required by Procedural Order No. 7 on 3 January 2022 due to bank holidays and work force strikes in Lebanon; (ii) that Mr. [Mustafa] does not receive regular or interim statements from IBL or have internet banking in relation to the relevant account and (iii) that IBL is reluctant to provide Mr. [Mustafa] with bank statements in light of what is said to be an increasingly difficult relationship between Mr. [Mustafa] and IBL in light of IT Ltd.'s new claim against IBL.*
>
> *As IT Ltd. notes, if IBL were shut for an extended period, either as a result of bank holidays or strikes, there would surely be documentary evidence of this in the form of statements on IBL's website or press reports of the industrial action. The reluctance of IBL to provide a bank statement to Mr. [Mustafa] would appear to be contrary to his rights as a matter of Lebanese law and at odds with IBL's publicised approach to internet banking. In any event, the alleged reluctance would almost certainly have been recorded in some fashion.*

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It is also inconsistent with the indication in Boies Schiller's letter of 14 January 2022 that Mr. [Mustafa] expected to receive the statement on the following Monday.

Further, if there were an ongoing debate between Mr. [Mustafa] and IBL concerning the provision of his bank statements to IT Ltd., the Arbitral Tribunal would have expected to have been provided with an exchange of letters or emails between IBL and Mr. [Mustafa] to that effect. Nothing of this sort has been produced.

The Arbitral Tribunal makes no comment at this stage to upon Mr. [Mustafa's] military commitments. It does however note that these were not previously suggested to provide any impediment to his compliance with the Arbitral Tribunal's orders and it is not suggested that they do so at this particular stage.

It therefore appears to the Arbitral Tribunal that Mr. [Mustafa] remains wilfully in breach of Procedural Orders No. 7 and No. 9. As the Arbitral Tribunal has noted, there are remedies available to IT Ltd. as a matter of DIFC law. It is not for the Arbitral Tribunal to comment further on that aspect of this matter."

[G/15/8].

140. The Arbitral Tribunal made clear in Procedural Order No. 9 that it was not persuaded that there was any justification in amending its earlier order to allow Mr. Mustafa to produce his bank statements to the Arbitral Tribunal alone. His confidentiality concerns were a late construct and he was in any event protected by the confidentiality of the arbitration.

141. Mr. Mustafa purports to have been offended by the Arbitral Tribunal's comments in Procedural Order No. 11 on his various earlier justifications for not fully complying with its order. The Arbitral Tribunal considers that its analysis at that time was accurate and justified. No documentary evidence was offered in support of the various excuses that Mr. Mustafa had earlier offered. The suggestion that his military service played a part was entirely new. Mr. Mustafa has continued to the date of this Award to refuse to comply with the Arbitral Tribunal's direction that he provide monthly evidence of his compliance with the restrictions imposed on the collateral deposited with IBL.

142. The Arbitral Tribunal has, in reaching its conclusion as to the balance of probability, considered the totality of the evidence referred to above and looked at it both objectively and with an open mind in relation to the allegations made against the Respondents. It rejects the suggestion that it has been prejudiced in any way by the submissions advanced by IT Ltd. or by the witness statements of Mr. Bortman. The Arbitral Tribunal would have expected that an individual claiming that he has himself been wronged by "offensive allegations" would welcome the opportunity to appear before the Arbitral Tribunal to answer questions. Instead, Mr. Mustafa has not come to give oral evidence and has been unwilling to expose himself to questioning. None of the reasons advanced by Mr. Mustafa in his third statement appears to the Arbitral Tribunal to justify his refusal to attend the evidential hearing in this matter to give evidence. The Arbitral Tribunal has not been able to accept the veracity of the evidence of Mr. Mustafa unless it has been independently corroborated. The Respondents have produced very little by way of documentation, and no other oral evidence to support the central account given by Mr. Mustafa.

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143. Based on these events, as well as the evidence of illicit payments/conferral of benefits on members of the CMC dealt with below, the Arbitral Tribunal finds on the balance of probabilities that the Respondents did conspire as alleged from the latest in December 2013 to procure the CMC Decision itself and the subsequent implementation of that Decision.

Evidence of illicit payments/conferral of benefits

144. The next question for the Arbitral Tribunal is whether there is evidence of illicit payments and/or the improper conferral of benefits upon members of the CMC. The Arbitral Tribunal finds that payments were made by the Respondents to members of the CMC through the conduit of the IC4LC and that benefits were also conferred upon Dr. Al Khwildi and Dr. Rabee through the purchase for their use of residential properties in London. The Arbitral Tribunal further finds that the evidence of the illicit payments and conferral of benefits is strongly supportive of the conclusion as regards unlawful means conspiracy carried out by the Respondents from at the latest December 2013 to procure the CMC Decision and undermine the IT Ltd. Call Option. As will be apparent from the detailed analysis set out below, the timing of the transactions referred to, the manner of their being carried out, the identity of the beneficiaries, the identity of those who assisted in effecting them, and the steps taken by those involved to hide the truth of the underlying transactions all heavily support the conclusion reached.

145. Once more, the Arbitral Tribunal's approach has been to consider the relevant admissible evidence as a whole, but for the avoidance of any doubt, as is dealt with in more detail below, the Arbitral Tribunal has disregarded and cast to one side the alleged anonymous hearsay and sometimes double hearsay statements of allegations of illicit payments and gifts which in one way or other were said to have been communicated to Mr. Bortman. They form no part of the conclusions reached.

The London Properties

146. On 5 November 2019, IT Ltd. commenced proceedings under 28 USC §1782 in the United States District Court ("USDC") for the Eastern District of Pennsylvania against the international law firm, Dechert LLP. The purpose of those proceedings was to obtain non-party discovery of documents and other evidence for use in pending and contemplated foreign proceedings. Pursuant to orders issued by the USDC, Dechert produced to IT Ltd. a tranche of documents relating to the acquisition of two properties in London. They also made available for deposition the Assistant General Counsel of Dechert, Ms. Ellen Ratigan.

147. The Respondents challenge the use of the material produced by Dechert. The Arbitral Tribunal addresses this issue further below. The following paragraphs set out what the evidence produced by Dechert shows.

148. On 12 August 2014, Mr. Camille Abousleiman, at that time a partner in Dechert's London office, contacted Mr. David Gervais, an associate in Dechert's Finance and Real Estate Group, informing Mr. Gervais that his "*friend and client, Ray Rahme, has a friend who wants to buy a residential property in London*" [D1/382/6]. The email to Mr. Gervais was copied to Mr. Rahmeh. On the same day, Ms. Sandy Achkouty of Mr.

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Rahmeh's ZR Group also contacted Mr. Gervais and told him that Mr. Rahmeh's "*friend*", Mr. Pierre Youssef, "*intends to purchase an apartment/house in London*" [D1/382/6]. Mr. Gervais asked whether Mr. Youssef had found a property that he wished to buy. Ms Achkouty's reply, the next day, was that:

"the first approach with the [realtor/estate agent] was through Dr. Ali Al Khwildi, who selected the property for Mr. Youssef. Accordingly, you may refer to Dr. Ali when contacting the [realtor/estate agent]" [D1/382/5].

149. On 13 August 2014, Mr. Gervais informed Ms. Achkouty that he had tried to get in touch with the seller's agent and requested that she provide him with "*an address for the property that Dr. Ali Al Khiwildi enquired about previously*". On 14 August 2014, Ms. Achkouty sent Mr. Gervais the brochure for Barn Hill, noting that she "*was waiting to receive the information from Dr. Ali.*" On the same day, Mr. Gervais asked Ms. Achkouty whether "*Dr. Ali [had] agreed a price for the purchase*" and whether the purchase would be in cash or against a mortgage. Ms. Achkouty confirmed that the agreed price was GBP 785,000 to be paid in cash. Mr. Gervais then informed Ms. Achkouty that the seller was asking for GBP 790,000 in cash, with a 10% deposit to be paid before the exchange of contracts, and asked Ms. Achkouty to confirm "*whether Dr. Ali / Mr. Youssef is prepared to proceed with the purchase*". Ms. Achkouty confirmed that Mr. Youssef was prepared to pay GBP 790,000 and would be purchasing the house through a company [D1/382].

150. Mr. Gervais then raised the issue of Know Your Client or "KYC" materials, pointing out to Mr. Abousleiman that Dechert could not accept monies into its client account until KYC checks had been completed. Mr. Abousleiman directed him to correspond directly with Mr. Rahmeh, or his designee, "*so as not to slow down the process*" [D1/385/1]. He further directed Mr. Gervais to ask Mr. Rahmeh to have the KYC documents certified by his "*sister's [law] firm, Abousleiman & Partners*" [D1/382].

151. On 19 August 2014, Mr. Gervais informed Ms. Achkouty that the seller had not accepted the offer at GBP 790,000, and that the seller's agent "*has spoken with Dr. Ali and advised him of the situation.*" The following day, Ms. Achkouty confirmed that Mr. Youssef was prepared to pay a maximum of GBP 810,000, stressing "*the need to complete the deal ASAP*". Mr. Gervais indicated in response that the seller's agent was "*speaking with Dr. Ali right now*" and that he would call back "*once he has spoken with Dr. Ali*" [D1/386].

152. Agreement on the price was ultimately reached on 22 August 2014. It was agreed that Mr. Youssef would pay £830,000 in cash. Dechert chased Ms. Achkouty for the remaining KYC information. Mr. Youssef's documents were certified by Mr. Abousleiman's sister [D1/388]. The holding deposit of £2,000 was paid by Mr. Youssef on 26 August 2014 from an account at IBL [D1/390].

153. Only on 3 September 2014 did Mr. Gervais turn his attention to the question of fees and an engagement letter [D1/389].

154. On 28 August 2014, Ms. Achkouty reminded Dechert of the need to set up a company to complete the purchase and subsequently sent through the corporate documents of PGB Group S.a.l. Offshore. These documents listed Mr. Michel Azar as the officer of record and minority shareholder. Mr. Azar presented himself at the meeting in Beirut on 11 October 2014 as a member of IC4LC.

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155. On 30 August 2014, IBL issued a certificate of good standing for Mr. Youssef, signed by Mr. Ghassan Rayes, the Head of Corporate Banking, who was involved with the IBL Loan. Mr. Rayes reported that *"[t]he average balance on his group accounts for the last year has been in the five figure range"* [D1/393]. The Arbitral Tribunal notes that this is a low figure for an individual making a high six figure cash purchase.

156. On 2 September 2014, after a number of exchanges concerning the tax position, Ms. Achkouty advised Dechert that "*we will no longer proceed with the acquisition under a company name but to the name of Mr. Youssef alone*" [D1/394].

157. Dechert confirmed that the transaction was complete on 24 September 2014. Just two days later, Ms. Achkouty inquired about the requirements and taxes to be paid "*in case Mr. Youssef needs to rent the house to his friend*" [D1/397]. Dechert replied that they would look into it. On 9 October 2014, Ms. Achkouty asked Mr. Gervais whether it would "*be possible to retrieve the house keys from the previous owner?? [sic] Mr. Youssef's good friend, Dr. Ali is currently in London, accordingly he may retrieve the keys*" [D1/397]. Mr. Gervais confirmed that he had spoken with the agent who was happy for "*Dr. Ali [to] collect the keys from [them] directly*". Alternatively he offered to have the keys sent to Dechert's office for "*Dr. Ali to collect here*". After initially advising that "Dr. Ali" would collect them from the agents directly, Ms. Achkouty then said that she had been "*discussing the keys with Mr. Youssef*" and had *"agreed if possible to request the keys from [the agent] and Dr. Ali will be visiting your office tomorrow to collect them*" [D1/397]. Mr. Gervais explained that Dechert did not have the keys and although he could have them sent to his office, he did not think they would arrive until a few days later. He explained it would be quicker for "Dr. Ali" to collect them from the agent. Ms. Achkouty responded on 10 October 2014 that Mr. Youssef "*doesn't want that Dr. Ali visits the agent for the collection of the keys*" [D1/397].

158. The keys to Barn Hill were in fact picked up by a Mr. Adnan Al Silami [D1/397]. Ms. Achkouty asked Dechert to send the deeds, not to Mr. Youssef directly, but to her at ZR Group Holding's office in Lebanon.

159. The documents disclosed by Dechert reveal that, approximately two years later, on 24 August 2016, Ms. Achkouty emailed Mr. Simon Briggs, at that time a Dechert partner in London, referring to a telephone call with Mr. Rahmeh that afternoon and forwarding an email from a Mr. Hapgood of Hamptons International estate agents entitled "*Purchase of 25 Higher Drive, Banstead, Surrey SM7 1PL – Mrs R. Rabee*". Mrs. Rabee was copied on that email at an email address reading "rihamrabee@gmail.com". Mr. Hapgood said that he needed "*a confirmed offer from Mrs Rabee detailing the amount they are offering and details of who is actually purchasing and how the property will be financed*" [D1/400]. Ms. Achkouty asked Mr. Briggs to contact the seller's agent, indicating that she had contacted the agent herself and informed him that Dechert would be handling the purchase. Mrs. Rabee's name had been deleted from the title of the email as forwarded to Mr. Briggs, although it remained in the original email [D1/400]. The Arbitral Tribunal understands it to be uncontested that Mrs. Riham Rabee is Dr. Rabee's daughter.

160. On 30 August 2016, Mr. Briggs and Mr. Rahmeh appear to have spoken. Mr. Briggs informed Mr. Gervais that "*ZR Group are okay to go ahead and want to move today*" [D1/400]. Ms. Achkouty sent an email to Mr. Briggs the same day indicating that *"[a]s advised by Mr. Raymond, we are considering to complete the acquisition through a*

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corporate entity and accordingly lease it at a commercial rent to an unconnected third party." Mr. Gervais separately advised Ms. Endall of Dechert that *"the client"* is *"buying the property for an employee to whom he will rent it for 5 years after which the employee will have bought out the house and title will be transferred"* [D1/401].

161. The next day, Ms. Achkouty advised that on the instructions of Mr. Rahmeh, the offer for the property at Higher Drive should be GBP1,417,500 and that the property would be purchased by a Cayman Islands company [D1/402]. Mr. Gervais then raised some questions which had been asked by Dechert's tax department as there were "*some potentially complex employee tax issues*". The questions raised included the employer's role, the identity of the employer, whether the employee would be paying a market rent and the arrangements for the employee buying the property [D1/402]. Ms. Achkouty responded the same day, instructing Mr. Gervais to disregard "*the below scenario*". She said that the property would be purchased by a Cayman Islands company "*owned by Mr. Youssef*" [D1/402].

162. On 2 September 2016, Ms. Endall sent to Ms. Achkouty a note from Dechert's tax department advising that the UK government was considering plans to require overseas companies to provide beneficial ownership information before registering title to any property and explaining that "*if these proposals are approved and put in place they will effectively mean that ownership of property through an overseas company will no longer ensure the privacy of the beneficial owner of the company*" [D1/403].

163. The same day, and as a result of an email from the seller's agent, Ms. Endall asked Ms. Achkouty for an update on the identity of the purchaser and details of how the property would be financed. Ms. Achkouty apologised for the delay but said that she was discussing the issue with Mr. Rahmeh and was waiting for his instructions. That evening, Ms. Achkouty advised that, rather than Mr. Youssef buying the property through a Cayman Islands company, it would in fact be purchased, in cash, "*under the name of Mr. Mansour Succar*" [D1/404]. A copy of Mr. Succar's passport and his address followed.

164. The introduction of Mr. Succar seems to have raised some concern on the part of Hamptons International. Ms. Endall reported that the agent had noted that "*Mrs Rabee viewed the property but it will be purchased in the name of Mr. Succar*". Hamptons International asked for "*more information regarding the connection between Mrs Rabee and Mr. Succar*" and for confirmation whether "*the property would be occupied by Mr. Succar following the completion or if he will not be in occupation, what his intention for the property is*" [D1/404]. Ms. Achkouty responded that she had told the agent that:

> *"Mrs Rabee is a personal friend to Mr. Mansour Succar. Mr. Succar requested from her to check some properties and accordingly, she recommended this one. Now Mrs Rabee is no longer involved in the acquisition.*
>
> *Indeed, the property will be occupied by Mr. Succar."*
>
> [D1/404]

165. Ms. Achkouty reported to Mr. Gervais on 15 September 2016 that the seller's agent was seeking a higher offer. After discussion with Mr. Rahmeh, not apparently Mr.

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Succar, she advised Mr. Gervais to submit an increased offer of GBP1.5 million [D1/405].

166. Mr. Succar's KYC documents were certified by Mr. Michel Azar [B2/97]. A certificate of good standing was again furnished by Mr. Rayes of IBL [D1/407].

167. On 25 October 2016, Ms. Endall reported to Ms. Achkouty that the sellers had sent her a copy of the sale contract in which they had inserted Mr. Succar's address as 50 The Quadrangle, London W2 2RW. Ms Endall asked whether this was the correct address of whether it should be amended to Mr. Succar's address in Lebanon. Ms. Achkouty confirmed that she should indeed correct the address [D1/408]. In fact, documents obtained by Mr. Bortman, apparently from the UK Land Registry, indicate that the property at The Quadrangle was owned by Mr. Muhammad Najim. The Mortgage Deed for the property, signed by Mr. Najim, was witnessed by Mrs Riham Rabee [B2/70; B2/71; B2/72]. The authenticity of these documents has not been contested by the Respondents. Mr. Najim is said by IT Ltd. to be Mrs. Rahim Rabee's husband. The allegation has not been contested by the Respondents.

168. The purchase price for Higher Drive was transferred from an account held in the name of Mr. Succar at IBL and on 2 December 2016, the transaction was complete [D1/410; D1/412]. As with the Barn Hill property, Dechert was instructed to send the deeds to ZR Group's address in Lebanon [D1/413].

169. In June 2018, Mr. Briggs of Dechert was asked by a Mr. Ibrahim Zaouk who had an email address at ZR Energy to advise on the tax implications of a potential sale of the Higher Drive property. He asked Mr. Zaouk in that context whether Mr. Succar lived or had lived at the property. Mr. Zaouk's response was that Mr. Succar "*never resided in that property*" [D1/414].

170. Raedas obtained a copy of what is said to be Electoral Roll data for the Barn Hill property. This document, which is dated 31 January 2018, records Dr. Ali Al-Khwildi and Ms. Zahira Kasim as having resided at the property for the previous two years [B2/7].

171. Raedas also obtained a credit agency report on Mr. Hussein Rabee. There appears to be no dispute that Mr. Hussein Rabee is Dr. Rabee's son. The date of the report is 11 June 2019. Mr. Rabee's address is listed as the Higher Drive property and a telephone number is listed in the name of "S. Rabee" [B2/14]. A screenshot of Mr. Rabee's LinkedIn profile from April 2020, also provided by Raedas, lists "Banstead, England" under his name and current employer [B2/15].

172. In March 2019 Dr. Safa Rabee and Mr. Hussein Rabee were photographed, by someone acting under instructions from Raedas, entering the house [B2/17]. Mr. Rabee was also photographed at the property in June 2019.

173. Photographs were also produced to the Arbitral Tribunal which showed Dr. Rabee's daughter at the property on 4 September 2019. She appears to have driven a Mini Cooper car. There is also a photograph, taken on the same day, which shows a delivery or removal van with a man either loading or unloading items [D1/585]. During the course of the evidential hearing, it became apparent that Raedas had arranged for the properties to be put under surveillance. A transcript was produced to the Arbitral Tribunal of communications between Mr. Bortman of Raedas and a member of the

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surveillance team (whose name has been redacted). That individual reported that the van in the photographs was being loaded and that it subsequently unloaded at a Yellow Box self-storage facility [D1/610].

174. IT Ltd. submits that the fact that Rabee family members are seen removing items from the property on 4 September 2019 is significant. That is because the Statement of Claim in what is known by the Parties as the First Shareholder Arbitration was served by IT Ltd. on 28 August 2019. There is no dispute that it was that document which first identified the Higher Drive property as having been purchased by Mr. Succar and which referred to Dr. Rabee's son as living there [D2/228]. The removal of property takes place exactly one week later. It is IT Ltd.'s case that the Rabee family were alerted to the allegation and that they took the precaution of moving out.

175. The Arbitral Tribunal is persuaded that the evidence overwhelmingly invites the inference that the property transactions were arranged as bribes to Dr. Al Khwildi and Dr. Rabee.

176. Both the Barn Hill and the Higher Drive properties were identified by members of the Al-Khwildi and Rabee families. In the case of the former, it was Dr. Ali Al-Khwildi himself who found the property. In the latter, it was Dr. Rabee's daughter. There is no evidence before the Arbitral Tribunal that either Mr. Youssef or Mr. Succar played any role whatsoever in the transactions. Dechert identified no contemporaneous email communications with either individual. Ms. Ratigan, Dechert's Assistant General Counsel, gave a deposition in which she confirmed that Dechert never spoke to Mr. Youssef, either by telephone or in person and that she did not believe that Dechert had either a telephone number of an email address for him. She did not think that anyone at Dechert ever met Mr. Succar and she confirmed that Dechert never communicated with him by email [D1/565/108-128].

177. Although Mr. Youssef was identified to Dechert at an early stage as the intended purchaser of Barn Hill, there is no evidence that he had anything to do with the property at all. Ms. Achkouty made it clear that Dr. Al-Khwildi would not pick up the keys from the agent. Her explanation was that Mr. Youssef did not want him to do so, but that explanation made no sense in circumstances where her earlier emails had suggested that Dr. Al-Khwildi could pick them up from Dechert's office.

178. The agent for the Higher Drive property clearly believed that Ms. Rabee was the intended purchaser, as he listed her in his initial email to Ms. Achkouty. The sales contract contained an address for Mr. Succar which was in fact a property owned by Dr. Rabee's son-in-law. The emergence of Mr. Succar as the nominal purchaser took some time. Ms. Achkouty said initially that the property would be purchased by a company which would rent it to one of its employees who would buy it after 5 years. When the complications with this were pointed out, she said that that scenario had been abandoned and the property would be acquired by a company owned by Mr. Youssef – again. When Dechert pointed out that potential new legislation would require Mr. Youssef's interest to be disclosed, they were told that it would be purchased by Mr. Succar in his own name. These changes of structure are entirely inconsistent with any suggestion that the property was selected by Ms. Rabee for Mr. Succar. He was clearly a pawn to try to shield the Rabee family's interest in the property.

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179. The Arbitral Tribunal is satisfied that the evidence demonstrates that it was the Al-Khwildi and Rabee families that benefited and were intended to benefit from the two properties. Dr. Al-Khwildi is identified on the extract from the electoral roll as resident at Barn Hill for a period of two years. Further support is lent to this view by the fact that the Rabee family were observed on a number of occasions at the Higher Drive property, by the fact that Dr. Hussein Rabee was listed as living there and that a telephone number was listed in Dr. Rabee's name. The photographic and transcript evidence from 4 September 2019 is particularly persuasive showing as it does that Ms. Rabee was arranging to have furniture removed within days of the allegation about her family's interest in the property first being pleaded.

180. In their written closing submissions, the Respondents argued that neither Dr. Al-Khwildi nor Dr. Rabee received any benefit from the two properties. They dismissed and did not satisfactorily deal with the evidence of the electoral roll and the credit check report, and argued that Barn Hill was rented to Dr. Al-Khwildi whilst the Rabee family "*never lived at the Higher Drive property*" [A.45/26-27]. The Arbitral Tribunal does not agree.

181. The Respondents rely upon a lease which emerged during the course of the evidential hearing. It is said to be a shorthold tenancy agreement for a fixed term of 60 months between a company said to be La Loma Five Limited and Mrs. Zahira Kasim, who is accepted by the Parties to be Dr. Al-Khwildi's wife. The lease is said to start on 1 January 2015 and to end on 31 December 2019 [D1/598].

182. The Arbitral Tribunal considers that the lease is not a genuine document. There is no explanation for the involvement of La Loma Five. That company is registered in Gibraltar and is owned by Mr. Rahmeh and his brother, Teddy Zina [D1/583]. There is no apparent connection to the alleged owner of the property, Mr. Youssef. The document purports to have been signed on behalf of the Landlord, but there is simply an "X" where the tenant is supposed to sign. Neither the signature of the Landlord nor the mark have been witnessed, as the form requires. It is clear that the document has been backdated, as Mrs. Kasim is identified as the *"[h]older of the British Passport No. 526036870 – issued on the 5 August 2015*". This date is of course 8 months after the lease is said to have come into effect.[9]

183. The Respondents argue that the existence of the lease is inconsistent with IT Ltd.'s theory. On the contrary, it would appear to have been created precisely to enable the Respondents to argue that Dr. Al-Khwildi – or at least his wife - entered into an arms' length arrangement for the rental of the property. The Arbitral Tribunal does not consider that to be the case. The fact that Mr. Youssef is not listed as the Landlord does not indicate that the lease is genuine, rather it suggests that whoever prepared the lease was keen to distance Mr. Youssef from the transaction.

184. As will be apparent from the Arbitral Tribunal's findings above, it does not accept that the Rabee family never lived at Higher Drive. The Respondents' submission in this regard was based upon Mr. Bortman's cross-examination when he was recalled on the

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9 Some reliance was placed on the fact that the form is identical to one downloaded from the internet. The Arbitral Tribunal does not consider that any inferences can be drawn from that fact. Nor does it consider that the inclusion of Mr. Gervais' details for the service of notices upon the Landlord provides any assistance.

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final day of the evidential hearing. It became apparent that Mr. Bortman or one of his colleagues had arranged for a tracking device to be put on a white Mercedes belonging to the Rabee family. Mr. Bortman was questioned about this. The Respondents argued in closing both that Mr. Bortman "*confirmed in cross-examination that the Rabee family had not lived in the Higher Drive property*" and subsequently that "*Mr. Bortman effectively conceded – contrary to his previous evidence and contrary to the submissions made in Openings – that the Rabee family had never resided at the Higher Drive property*" [A/45/28-29]. This mischaracterises Mr. Bortman's testimony. He was asked whether the data from the tracker on the Mercedes would show how many times it was on the driveway at Higher Drive overnight. Mr. Bortman accepted that the driver of the Mercedes did not use the property every night and that Raedas "*had the sense of the property being used intermittently but I can't say exactly how many, how many nights it was there on any given, you know, for how much time was spent there for any given period*" [Day 7/129:4-8]. He then went on to clarify that *"just to be clear. I don't – I am not absolutely certain about the nights, I am talking visits. So going to the property. I don't know whether they – I can't -- off the top of my head, I don't know whether it was staying overnight or not staying overnight, but certainly more than they certainly visited the property more than twice*" [Day 7/129:14-20].

185. Mr. Bortman was questioned about evidence indicating that the tracking device had identified a property in Acton as the Rabees' residence. He said that they occupied a variety of different properties in London during this period and that they had been seen at different places during the period.

186. This testimony, and the evidence from the tracking device showing the location of one car over a limited period, does not show that the entire Rabee family was not resident at Higher Drive. Their photographed presence at the property on a number of occasions, and their removal of items on 4 September 2019 shows clearly that they had an interest in the property. Indeed, it matters not whether any members of Dr. Rabee's immediate family lived there full time. The question is whether the purchase of the property was procured by the Respondents for the benefit of Dr. Rabee. As the Arbitral Tribunal explains below, it finds that it was.

187. The Respondents continue to argue that IT Ltd.'s allegations in relation to the property transactions are advanced on the basis of a limited subset of the documents disclosed by Dechert and that both the Respondents and the Arbitral Tribunal are therefore unable to test IT Ltd.'s submissions. They further argue that IT Ltd. has "*created an invidious situation whereby any determination reached on the basis of the Dechert Documents introduced by the Claimant up to now which is later shown to be inconsistent with the balance of the Dechert Documents will of course be subject to scrutiny and challenge*" [A/45/36].

188. The Arbitral Tribunal does not agree with this characterisation of the position regarding the Dechert documents. The Respondents' approach to the Dechert documents has been carefully calibrated and has changed as the situation has suited them. The Dechert documents became the subject of an application which was dealt with the Arbitral Tribunal in Procedural Order No. 12, issued on 22 February 2022. IT Ltd.'s lawyers had recently taken the deposition of Ms. Ratigan and sought leave to submit the transcript of that deposition into the record. The Respondents objected to that application unless IT Ltd.'s reliance on the Dechert evidence (whether documentary of

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the deposition transcript) was conditioned, *inter alia*, upon production of the full set of documents produced by Dechert.

189. As the Arbitral Tribunal noted in Procedural Order No. 12, the §1782 proceedings against Dechert were commenced in November 2019. The application was granted by the USDC in December 2019. The documents were due to be produced by Dechert in February 2021 but this was delayed by the late appearance before the USDC of Mr. Youssef and Mr. Succar. Privilege was asserted over a significant number of documents and full production was delayed until November 2021. The Respondents accept, however, that they were aware of the §1782 proceedings at a much earlier stage, given that a number of those documents were exhibited to IT Ltd.'s Statement of Claim, served on 23 April 2021. Indeed, the relevance of the London property transactions was referred to in the Re-Amended Request for Arbitration served on 25 August 2020. It was open to the Respondents both to seek to intervene in the §1782 proceedings to ensure that full disclosure was made by Dechert and to seek disclosure by IT Ltd. through the Redfern Schedule process of any documents provided to IT Ltd. by Dechert. The Respondents did neither, even though they had a copy of the privilege log provided by Dechert.

190. It was initially suggested by the Respondents that it was not open to them to intervene in the §1782 proceedings. This argument was, rightly, dropped. It was then said that Mr. Mustafa had no interest in the Dechert §1782 proceedings, although he had intervened in §1782 proceedings brought against IBL for disclosure of his banking records. The Respondents' case has shifted again and it now appears that they have very belatedly sought leave to intervene in the Dechert §1782 proceedings. By an application filed on 1 July 2022, after the conclusion of the evidential hearing, they have asserted their "undisputable interest" in those proceedings and are seeking access to all of the materials produced by Dechert [D1/611]. The Arbitral Tribunal notes that the Respondents' counsel has asserted in their application to the USDC that "*the Arbitral Tribunal failed to order IT Limited to produce the discovery at issue because it concluded that the proper procedure was for Movants to intervene in this proceeding and obtain the discovery here*" [D1/613/5]. That is not an accurate summary of the Arbitral Tribunal's reasoning in Procedural Order No. 12. As paragraph 54 of Procedural Order No. 12 stated:

> *"The Arbitral Tribunal considers that there is no basis for imposing the condition that the Respondents seek. They will be provided with a full set of the exhibits to Ms Ratigan's deposition and will therefore be able to interrogate every document that was put to her. The Respondents could have applied to participate in the §1782 proceedings and could also have sought disclosure during the formal disclosure process in these proceedings of the material produced by Dechert to IT Ltd. by that stage. They could also have made it clear at that time that they wished to have produced to them such other documents emanating from the §1782 proceedings as might be produced by Dechert following the determination of the claims to privilege. They chose not to do so and, against that background, they have shown no good reason why the Arbitral Tribunal should order the blanket disclosure of such documents at this stage."*
>
> [G/16/12].

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191. On 14 April 2022, IT Ltd. sought leave to introduce a further two documents from the Dechert production into the record. The Respondents objected to what they said was "cherry-picking" from the Dechert documents and argued that, if IT Ltd. wished to advance contentions on the basis of the new material, it should have produced the entirety of the Dechert production. The Arbitral Tribunal concluded that *"[t]he reasoning adopted by the Arbitral Tribunal in relation to the conditions which the Respondents sought to impose on the admission of Ms Ratigan's deposition transcript are equally applicable to the present case. It was open to the Respondents both to seek to intervene in the §1782 proceedings and to seek disclosure at the appropriate phase of these proceedings of any material produced or that might fall to be produced by Dechert. They elected not to do so and have no basis for complaint now that they do not have sight of the whole corpus of material disclosed by Dechert*" [G/19/4].

192. As noted in Chapter C, during the course of Day 5 of the evidential hearing, the Arbitral Tribunal invited the Respondents to consider, *inter alia*, whether there were any specific documents arising out of the Dechert §1782 process which counsel for the Respondents would like to make an application to see. The following morning, Day 6 of the hearing, the Respondents made an application in writing for, amongst other things, the production of all documents produced by Dechert LLP to IT Ltd. during the Dechert §1782 proceedings. On Day 6 the Arbitral Tribunal began by receiving oral submissions from the Parties in connection with the Respondents' written application of that morning and gave its ruling on that application during the course of the morning. The Arbitral Tribunal declined to order the production of the further corpus of documents provided by Dechert pursuant to the §1782 proceedings. Written reasons for the Arbitral Tribunal's decision followed on 26 May 2022 by way of Procedural Order No. 16. The Arbitral Tribunal stated that:

> *"The Tribunal's invitation to the Respondents was to identify "specific" documents that they considered were missing from the corpus of material disclosed from the Dechert production or from the material produced by Raedas. The Tribunal was concerned to ensure that, if the material deployed by IT Ltd. or referred to by Mr. Bortman contained obvious and specific gaps, such as a relevant reference in a document relied upon to another specific document which had not been produced, the missing document should be produced. The Respondents largely ignored this injunction, choosing instead to seek overly broad categories of material, some of which have already been the subject of applications to this Tribunal.*
>
> *In relation to the §1782 material in particular, the Tribunal does not accept that the Respondents were prevented from particularising their requests on the basis that they did not know what they did not know. The practice in international arbitration, and indeed in disclosure or discovery exercises in court litigation, is to discourage fishing expeditions. The allegations made by IT Ltd. in relation to the property transactions are clear and reliance is placed upon specific material. There is no reason why, if the Respondents consider that there are obvious gaps in the material provided, they could not have identified those gaps with particularity and explained why the missing material was relevant and material to the matters which the Tribunal is called upon to decide. The privilege log identifies a series of numbered documents or strings of*

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documents in each case identifying the date, the person by whom it was sent, to whom it was sent, whether persons were copied and if so whom, and the subject matter description. The Respondents could if they had wished formulated requests on the basis of this log but chose not to do so. Equally, it would have been open to the Respondents to have formulated a request to sample an identified population of documents within a specific relevant date range but again chose not to do so" [G/20/7-8].

193. This remains the position. There is no basis for the Respondents to engage in a fishing expedition. The Respondents had ample opportunity to participate in the §1782 proceedings at a very early stage. They chose not to do so. They had the opportunity to make a case for production of any documents produced or to be produced by Dechert at the normal disclosure stage of these proceedings. Again, they chose not to do so. They were given an opportunity during the course of the evidential hearing to identify any specific documents from the Dechert production which they wished to see but chose instead to renew an application for broad, wide-ranging disclosure which had twice been refused.

194. The Arbitral Tribunal finds that there is no merit at all in the Respondents' arguments that they have been prevented from testing the allegation made against them by IT Ltd. in respect of the property transactions.

195. IT Ltd.'s case is that it has presented cogent circumstantial evidence that the London property transactions were bribes to Dr. Al-Khwildi and Dr. Rabee. The Arbitral Tribunal agrees. Mr. Rahmeh and his assistant, Ms. Achkouty, were the conduit for the London property purchases. Dechert had no contact whatsoever with Mr. Youssef or Mr. Succar. Whenever an issue arose, Ms. Achkouty indicated that she would need to discuss the issue with Mr. Rahmeh. When Dechert gave notice to Ms. Achkouty of the §1782 proceedings, there followed an exchange of emails. None of these emails were copied by Ms. Achkouty to either Mr. Youssef of Mr. Succar. Dechert did not have contact details for either man. Ms. Achkouty instructed Mr. Newbold, Dechert's General Counsel, not to produce any of the documents which Dechert had identified for production on the grounds that "*we consider [them] to be covered by attorney-client privilege*". There is no mention in that email of either Mr. Youssef or Mr. Succar [D1/591].

196. The Respondents argue that there is no evidence to connect them to the property transactions and that the fact that Mr. Rahmeh introduced two "*long-standing colleagues*" to Dechert does not provide appropriate grounds for an inference that the property transactions were carried out at the instruction and on behalf of the Respondents [A/45/26]. The evidence shows, however, that Mr. Rahmeh was very closely connected indeed with Mr. Mustafa and the other Respondents and involved in their business dealings with the CMC:

(i) Mr. Mustafa himself confirmed that Mr. Rahmeh was the "*principal negotiator for CS Ltd.*" of the 2011 Transaction and that he had a close relationship with "the principals of CS Ltd. (including Mr. Mustafa) [D1/128];

(ii) Mr. Rahmeh was proposed by CS Ltd. and Mr. Mustafa to be the Independent Director of IH Ltd. and of the KSC [D1/128; D2/66];

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(iii) Mr. Rahmeh was identified by Mr. Mustafa as the individual who should guide and lead the closing plan for the 2011 Transaction [D1/417];

(iv) Mr. Rahmeh was appointed to lead a "*dedicated taskforce*" to find a loan to pay the instalment of license fees due at the end of November 2011 [D2/73/5];

(v) Mr. Rahmeh was involved in liaising with the Iraqi lawyers in the aftermath of the CMC Decision and the attempts to challenge it [D2/3244];

(vi) Mr. Rahmeh attended the meeting of lawyers in Beirut on 11 October 2014 [D1/421];

(vii) Mr. Rahmeh was asked to chair meetings of the KSC and the IH Ltd. board in Mr. Mustafa's absence [D1/421; B1/2/19];

(viii) Mr. Mustafa reacted very strongly to the criticism of Mr. Rahmeh by Mr. Sultan in his letter of 18 July 2014, in which the latter explained that he had hear that Mr. Rahmeh may have been involved in procuring the CMC Decision [D1/425];

(ix) Mr. Rahmeh proposed at a meeting of the KSC on 14 July 2014 that Mr. Mustafa should handle the dispute with the CMC (a proposal which was rejected) [B1/2/15]; and

(x) Mr. Rahmeh sought to water down the resolution of the KSC in connection with the execution of the 3G Annex [D1/206]

197. Most significantly, the Arbitral Tribunal is mindful of the departure of the Rabee family from Higher Drive on 4 September 2019, within days of service of the Statement of Claim in the First Shareholder Arbitration and the first intimation that IT Ltd. was aware of the property transactions. If that transaction had been an innocent arrangement in which Mr. Rahmeh had introduced his friends to Dechert and there had been an arms' length arrangement between Mr. Succar and the Rabees, there would have been no reason at all for the Rabee family to depart in such haste. The only reasonable conclusion that the Arbitral Tribunal can draw is that Mr. Mustafa realised the danger posed by the allegations in the Statement of Claim and advised Dr. Rabee that he needed to remove any trace of his presence at the property. Against that background, Mr. Rahmeh's involvement in the transactions is only explicable as that of a conduit for the bribes.

198. The Respondents have argued that Mr. Rahmeh may have had other reasons to bribe Dr. Al-Khwildi and Dr. Rabee. [redacted]

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[redacted]

199. During closing argument Mr. Hooker, for the Respondents, also sought to rely upon another report produced by Raedas on Dr. Al-Khwildi and the Dawa party. There was no dispute between the Parties that the Dawa party is an influential political party in Iraq. This report stated that Dr. Al-Khwildi was a "*Dawa functionary installed at the CMC to ensure the party's access to one of the country's most direct and reliable revenue streams*" [D3/303/2]. The report also identified Mr. Fadhil Al Khorsan who was described as "*a Dawachi entrenched within the telecommunications industry*" and that, in April 2018 "*it was reported that Fadhil [Al Khorsan], Khwildi and Rahmeh engaged in corrupt deals together.*" Mr. Hooker also referred to a paragraph of the report which referred to an article claiming that Mr. Rahmeh gifted the Dawa party US$ 1.5 million. He suggested that "*if it be the case that Mr. Rahmeh is involved in corrupt dealings with senior Dawa Party/CMC officials in London … that might give rise to alternative explanations*" [Day 9/57:19-58:1]. Mr. Hooker's conclusion was that, in relation to the property transactions, there were "*any number of other explanations*" [Day 9/74:11-12].

200. The Arbitral Tribunal is not persuaded that any of these possible explanations provides a plausible alternative explanation for the London property transactions let alone anything that remotely reaches the balance of probability. [redacted]

201. Mr. Rahmeh's possible links to Dawa party officials and members does not, by itself, provide an alternative explanation for the London property transactions. It was open to Mr. Rahmeh to give money directly to the Dawa party, as the Raedas report referred to by Mr. Hooker suggests that he did. Whilst it is conceivable that Mr. Rahmeh was keen to curry favour with the CMC given his broader interests in Iraq, the Respondents have produced no direct evidence of any specific proposal or activity of Mr. Rahmeh's or the ZR Group, independent of Korek, which would explain the need for a bribe.

202. Mr. Bortman was cross-examined on the activities of Hajras Telecommunications – a company within Mr. Rahmeh's ZR Group operating in Iraq, which was trading with Ericsson [Day 5/28:8-30:7]. There was no evidence that Hajras had any business with the CMC or conducted any activity which required it to be regulated by the CMC.

203. The Arbitral Tribunal is not persuaded that the Respondents' submissions offer a plausible alternative explanation for the London property transactions and the manner in which they were carried out.

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IC4LC

204. It is alleged by IT Ltd. that the Respondents disguised illicit payments intended for CMC officials as "legal and consulting fees", including purported legal fees paid by Korek to an unregistered entity operating under the name of International Company for Legal Consultancy or IC4LC [A/21/59].

205. The Respondents deny this allegation. They submit that there is no evidence to support any of the matters alleged in respect of IC4LC and that IT Ltd.'s case is dependent upon misguided and unsupported inferences.

206. In their written closing submissions, the Respondents accept that there is no dispute that:

(a) On 21 July 2012, the KSC resolved that Korek's management was authorised to identify means to address the ongoing disputes with the CMC, including appointing lawyers as necessary;

(b) On 5 October 2012, the KSC (including representatives of IT Limited) approved a resolution authorising (i) Mr. Mustafa to appoint lawyers in connection with the disputes with the CMC, and (ii) Korek to pay the law firm an up-front fee, a retained fee and a success fee of USD 6 million;

(c) IC4LC was appointed pursuant to the KSC resolution;

(d) IC4LC was paid a success fee of USD 6 million in accordance with the KSC resolution;

(e) IC4LC represented Korek in respect of Korek's appeal of the CMC Decision; and that

(f) Korek's accounts show an increase in spending on legal and consulting fees from 2013.

They maintain that there is a clear and well-documented explanation for these actions, in that by July 2012, Korek was engaged in a number of serious disputes with the CMC which had resulted in the CMC suspending Korek's bank accounts and that these matters needed dealing with urgently.

207. The first question is whether IC4LC is or was a real law firm. The Arbitral Tribunal finds that it was not. Mr. Rahmeh indicated at a meeting of the KSC on 21 July 2012 that it was important to start legal proceedings against the CMC in relation to various matters. He noted that Korek should "*appoint the relevant lawyers of law firms … to deal with the [litigation]*" [D2/92/9-10]. In October 2012 the KSC agreed to the appointment of "a law firm" to deal with three issues. These were identified as:

> *"(i) license fee schedule of payment (including late-payment interests and related method of calculation) involving, inter alia, aggregate disputed amounts totalling USD Four Hundred Sixty One Million (U.S.$461,000,000), as reflected in the CMC letter No. 4585 dated 23 July 2012; (ii) claim No. 5350 dated 15 August 2012 submitted by the Chairman of the CMC (the "Claimant") before the CMC Hearing Panel and whereby the Claimant seeks, inter alia, the decision of the Hearing Panel to immediately suspend the License Agreement*

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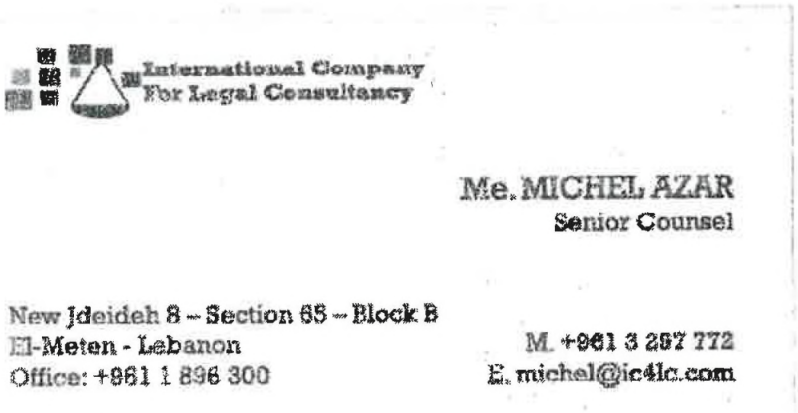
entered into between the CMC and Korek (the "License Agreement"); and (iii) CMC decision to freeze and seize Korek's bank accounts" [D1/441].

The law firm was not identified by name or in any other meaningful way. Mr. Froissart testified that Mr. Rennard was assured by Mr. Mustafa that the law firm that Korek intended to instruct was "*a reputable law firm … in charge of reputable Iraqi people*" [Day 3/158:14-19].

208. The identity of the "law firm" instructed by Korek did not become apparent for a considerable time. It was not until the meeting in Beirut on 14 October 2014 that any representative of the firm communicated with representatives of IT Ltd. Mr. Aziz confirmed that this was also the first time that the IT Ltd. representatives were given any indication of the identity of the law firm that had been allegedly assisting Korek [B1/2/16]. That meeting was attended by Maitres Michel Azar, Elias Younes and Samer Mahdi Eid each of whom presented a business card purporting to identify themselves as representatives of IC4LC. Maitre Azar's business card appears below:



209. Despite the business cards for Maitre Azar and Maitre Younes recording an address in Lebanon, no evidence was produced to the Arbitral Tribunal by the Respondents indicating that IC4LC was a genuine law firm registered to provide legal services in that or any other jurisdiction. The address provided is identical to that used for PGB Group SAL Offshore, the company that Mr. Rahmeh identified in August 2014 as the intended purchaser of Higher Drive before Mr. Succar and of both Korek Telecom SAL Holding and SSB Group SAL Holding. IT Ltd. says that "SSB" are the initials of Mr. Mustafa. The office telephone number listed for both Maitre Azar and Maitre Younes is the same telephone number as that listed for Azar and Associates on the latter firm's website [D1/444].

210. A search of the domain name for IC4LC.COM shows that it was created on 27 November 2012 and that the registrant was Teddy Zina of ZR Group Holding SAL [B2/53]. It was not disputed that Teddy Zina is the brother of Mr. Rahmeh. No explanation was provided as to why Mr. Zina would be involved in registering a domain name for a law firm in which Maitre Azar is said to have held a key role, as "Senior Counsel".

211. Maitre Azar was shown, through extracts from the Republic of Lebanon's Ministry of Justice Commercial Register, to be the officer of record of at least 10 companies within Mr. Rahmeh's ZR Group [B2/33; B2/34; B2/38; B2/40; B2/48; B2/49; B2/50; B2/51; B2/52; B2/80 and B2/82]. He was clearly the legal adviser of choice for Mr. Rahmeh

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and there is no obvious reason why, given that he was clearly purporting to act for Korek, he could not have done so through his own firm, Azar and Associates.

212. If IC4LC was a genuine law firm, it would have been a simple matter for Mr. Azar to submit a witness statement in these proceedings in order to confirm that and to explain his involvement to the Arbitral Tribunal.

213. The next issue is the very significant sums said by IT Ltd. to have been paid to IC4LC. IT Ltd. puts these sums at over USD 50 million.

214. Mr. Mustafa has acknowledged the payment to IC4LC of a "success fee" of US$ 6 million. He says that this is the total of what IC4LC was paid [B3/1/15]. This is said to have been payable as a result of the resolution of the KSC of 5 October 2012 [D1/441]. That provided:

> *"as consideration for the services to be provided by or on behalf of the Law Firm, Korek will pay the Law Firm the following fees (the "Fees"):*
>
> *(x) a one-time fee amounting to USD One Hundred Thousand (U.S.$100,000) (the "Upfront Fee") and payable upfront upon the signature of the Engagement Letter in order to start the relevant proceedings before the relevant Iraqi courts and authorities (including, without limitation, the CMC Hearing Panel) with respect to the Litigation Case;*
>
> *(y) a monthly retainer fee amounting to USD Twenty Five Thousand (U.S.$25,000) (the "Retainer Fee") payable in connection with the Law Firm's continued work and follow-up on the Litigation Case; and*
>
> *(z) a success fee amounting to USD Six Million (U.S.$6,000,000) (the "Success Fee") payable when a final decision is issued by the relevant court or authority and leading to a minimum of one year postponement (from the date of such decision) of the payment of the license fee installment, it being understood and agreed that the Upfront Fee and the Retainer Fee already paid by Korek pursuant to paragraphs (x) and (y) above will be deducted from the Success Fee payable to the Law Firm".*

215. The Arbitral Tribunal agrees with IT Ltd. that there is no evidence that IC4LC obtained a court decision postponing payments to the CMC. On 26 September 2014, Mr. Abou Charaf emailed Mr. Rennard, Mr. Aziz and Mr. Jain, with a copy to Mr. Mustafa, Mr. Rahmeh and others, a copy of a letter from Mr. Mustafa. In his letter, Mr. Mustafa (who still does not identify the law firm involved) sets out a list of the "results" achieved by "*the lawyers instructed by Korek*". They are said, amongst other things, to "*have obtained judicial judgments which have led to a cessation of payment of the amounts payable by Korek in favour of the [CMC]*" [D1/443]. In an email from Mr. Jain to Mr. Mustafa dated 22 December 2014, he notes that:

> *"…your email notes that Korek was able to suspend Korek's obligation to pay the licence fee to the CMC. We have requested a copy of the relevant court order a number of times now, but have not been provided with anything. In fact, contrary to what you state in your email, and what has been represented to us previously, we understand from the CMC's communications that Korek is in default of its obligation to pay licence fees. This goes to the core of Korek's Licence obligations, and therefore to the very basis of our investment, and it is*

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totally unacceptable that we are being kept in the dark about such a fundamental issue" [D1/448/4].

216. In his first witness statement Mr. Mustafa said that IC4LC "*succeeded in obtaining a one-year postponement for payment of the license fee instalment*" [B3/1/15]. In his third witness statement, he states that in July 2013 this decision was reversed by the CMC. Despite this no documentary evidence was produced to the Arbitral Tribunal that any "judicial judgement" was obtained by IC4LC leading to any cessation of payment. On the contrary, the evidence suggests that, at least at 10 July 2013, the CMC continued to regard the license fee payments as due [D2/445].

217. The Arbitral Tribunal further finds that IC4LC was a sham vehicle for passing millions of dollars by way of illicit payments to members of the CMC who were engaged in the issuance of the CMC Decision. The document produced by IT Ltd. at D1/452 comprises an Excel spreadsheet with tabs showing entitled "Islamic B", "ZR Group", "Al Hajras" and "ZR Collection". The "ZR Group" and "ZR Collection" tabs list a large number of invoices apparently issued by IC4LC. Some of these are identified as relating to specific case numbers, whilst others are just identified as "*Legal Fees*" for specific periods. The earliest invoice listed is said to be invoice IC4LC-KTL 005. The entry against that invoice reads "*success,start,monthly fees Nov, 2013*". The figure paid is stated to be US$ 6 million and is stated to be related to "Case 1632". There are no entries for any invoices between 005 and 043. Invoices 044 and 045 are also recorded as being related to the very same case number and are each listed as involving payments of US$ 1.5 million. There are then payments recorded for a run of invoices up to 079, which is identified as being for "*Legal Fees for Nov to Jan 2016*". Totalling the amounts paid in respect of these invoices indicates that IC4LC was paid US$ 21.9 million between November 2013 and January 2016. The Arbitral Tribunal notes that a curious feature of the sums paid is that, with the exception of the alleged success fee of US$ 6 million, every other payment is either for US$ 75,000, US$ 150,000 or US$ 1.5 million. There are also multiple invoices, usually for US$ 75,000 for the same period, which appear to have been paid, as well as quarterly invoices for US$ 1.5 million.

218. It also appears that Korek continued to receive invoices from IC4LC after January 2016. B2/55 is an invoice numbered IC4LC-KTL/084 dated 25 April 2016. It states that it is for US$ 1.5 million. The narrative reads "*Yearly fees for postponing the payment of license fee installments covering the period from Feb 2016 – Apr 2016*".

219. Reading together the entries recorded in the tabs for Islamic Bank, ZR Collection and ZR Group, it appears that the invoices submitted by IC4LC were paid by Korek from its business account at Islamic Bank to Mr. Rahmeh's ZR Group for settling by ZR Group [D2/452].

220. The Respondents' position on the authenticity of both the Excel document at D2/452 and the later invoice at B2/55 is confused. Procedural Order No. 1 in this reference provided, at paragraph 6.6, that "*[a]ll documents submitted to the Tribunal are deemed authentic and admissible … unless the other Party disputes their authenticity or admissibility within 28 days of receipt*" [G/2/5]. Exhibit B2/55 was introduced on 8 December 2020, whilst D2/452 was introduced on 7 January 2022. No dispute was raised as to the authenticity of either document either in correspondence or in any of the Respondents' pleadings. Only at the time of the evidential hearing was any

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objection raised. During closing argument, it became apparent that the Respondents' submissions on these documents effectively came down to weight. Mr. Hooker expressly accepted that he did not have sufficient grounds for contesting the authenticity of the documents [Day 9/87:25-89:13].

221. Even if the Respondents were seeking formally to challenge the authenticity of the documents, it is not now open to them to do so. Even if that were not the case, it is the Arbitral Tribunal's view that both documents are genuine. The Excel spreadsheet contains metadata which shows that it was last saved by Issa Touma. Mr. Touma is, or was, Korek's Chief Financial Officer:

Built-in Document Properties:
Built-in Properties with Metadata: 5
Title:
Subject:
Author: Roger
Keywords:
Comments:
Last Saved By: Issa Tourna
Last Print Date: 02/05/2016 08:05:45
Creation Date: 20/03/2014 15:17:35
Modified Date: 02/05/2016 09:00:08

[D1/453].

222. The Respondents argue that the probative value of the metadata is limited and that "*it cannot be excluded that the spreadsheet has been edited*". In their written closing submissions the Respondents sought to show that metadata can be edited. They produced an extract from a public-source World Bank document which they had then edited using a "*freely available online software tool, Aspose Total*" [D2/441 and D2/442]. No expert evidence was adduced by the Respondents in this regard, and IT Ltd. challenged the Respondents' submissions in this regard. The Arbitral Tribunal concludes on the evidence before it that the metadata does not reveal any editing of the Excel spreadsheet and that it is accepted as stating what it does. Likewise, the Arbitral Tribunal rejects the suggestion advanced that the Excel spreadsheet and invoice ought to be held to be inadmissible or given no weight because of alleged breaches of Iraqi law in their being obtained. These allegations were unsupported, unparticularised and frankly appeared to be a somewhat desperate attempt to exclude damaging documents. The Arbitral Tribunal accords these documents weight. They materially undermine the case being advanced by Mr. Mustafa and the Respondents' legal team.

223. The Respondents also seek to undermine both the spreadsheet and the invoice by reference to the fact that the documents were both obtained by Mr. Bortman. The Arbitral Tribunal discusses the evidence of Mr. Bortman in detail, below. However, these documents speak for themselves and IT Ltd. is not relying upon any hearsay statement allegedly made to Mr. Bortman by relying upon the contents of this Excel spreadsheet and invoice. They are consistent and contain no obvious indications of forgery. If the spreadsheet was believed to be a forgery, then a challenge could have been made in accordance with Procedural Order No.1 and it would have been possible to adduce evidence from Mr. Touma to support such a contention. The Arbitral Tribunal was told that he has recently retired and is living in Lebanon. There was also an unsubstantiated submission that he was in ill health. However, neither his retirement nor his current location would have prevented him from assisting the Arbitral Tribunal.

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224. In their written closing submissions, the Respondents submit that the record shows IC4LC represented Korek in 5 separate disputes with the CMC. Mr. Mustafa states at paragraph 8.16 of his first witness statement that he was authorised to appoint a law firm to deal with 3 of the ongoing disputes. He further states that IC4LC was paid US$ 6 million in total. This assertion is repeated in paragraph 2.5(d)(iii) of his third witness statement. Not only is this evidence at odds with the documents before the Arbitral Tribunal, but it is not credible on its own terms. Given Mr. Mustafa's assertion that IC4LC were entitled to, and were paid, a success fee of US$ 6 million for delaying the payment of the license fee, the logical consequence of Mr. Mustafa's evidence is that IC4LC acted on the other matters which Respondents' counsel purports to identify free of charge.

225. IT Ltd. made the following request for documents in relation to the legal and consulting services provided to Korek:

> *"The following Documents from July 2011 to 31 December 2016 relating to the legal and consulting fees paid by Korek:*
>
> *(i) the contracts and/or terms of engagement between Korek and each of the legal and/or consulting service providers engaged by Korek;*
>
> *(ii) proof of the services provided by the legal or consulting service providers; and*
>
> *(iii) invoices and corresponding payment receipts relating to the legal and consulting fees paid by Korek" [A/9/60-61].*

The Respondents agreed to produce documents responsive to limbs (i) and (iii). The Arbitral Tribunal ordered that they also produce documents responsive to limb (ii) subject to the condition that if any specific document falling under the Request contained privileged information, the Respondents should indicate to the Arbitral Tribunal and to IT Ltd., in respect of each relevant document, the nature of the privilege, by which law it was governed and who the parties/persons were who were affected by it [G/6/17].

226. In the event, no documents were produced by the Respondents between Korek and IC4LC. No contracts or letters of engagement were produced, no documents evidencing the provision of services and no invoices or payment receipts. It is not credible that, if IC4LC had provided any services of value to Korek, no documentary trace of those services would remain. The Respondents in their skeleton stated that it was "not in dispute" that IC4LC represented Korek in respect of its appeal of the CMC Decision. If that is so, there should be documentary evidence of that fact. None has been made available to the Arbitral Tribunal.

227. The Respondents argued in closing that an adverse inference from the Respondents' document production would be based on the unrealistic premise that Korek must hold these records. They say that the evidence on the record shows that Korek is a disorganised business with poor record keeping. The Arbitral Tribunal does not accept that that is the case. As IT Ltd. notes, Korek kept significant records of transactions with Darin, K-Energy and Halabja and of its sponsorships. Its record keeping was sufficiently good for its accountants and management to prepare draft financial statements recording consulting and legal fees of US$ 18,603,268 in 2013, [C2/56/22],

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US$ 12,689,205 in 2014 [C2/73/20], US$ 13,350,606 in 2015 [C2/73/20] and US$ 13,165,342 in 2016 [C2/74/23].

228. The position remains that the Respondents have produced no documentary evidence at all of the legal and consulting services provided by IC4LC. That, combined with the documentary evidence obtained by IT Ltd., the inconsistencies in Mr. Mustafa's evidence and the lack of oral testimony from any witness connected with either the Respondents or IC4LC leads the Arbitral Tribunal to the inexorable inference that many millions of US dollars were paid to IC4LC for which no legitimate services were provided.

229. The Arbitral Tribunal similarly considers that IT Ltd. has established by cogent circumstantial evidence that IC4LC served as a conduit for bribes paid to the CMC. IC4LC was brought in by Mr. Mustafa to deal with matters concerning the CMC. The Respondents' own submissions assert that IC4LC was instructed in relation to these issues. Mr. Mustafa and the Respondents were evasive in identifying the law firm that they had instructed and refused IT Ltd.'s early requests that other lawyers be involved. Mr. Azar, described as "Senior Counsel" with IC4LC clearly has a very close relationship with Mr. Rahmeh. Mr. Rahmeh's brother was the individual who registered IC4LC's domain name. As noted above, there is no documentary evidence for the work that IC4LC is said to have undertaken or been instructed in, Mr. Mustafa's statements regarding the sums paid to IC4LC and the reason therefor lack credibility. The sums paid to IC4LC are therefore entirely unexplained and bear no reasonable relation to any work that could properly have been done.

230. The Arbitral Tribunal is also mindful of the confluence between the payments to IC4LC, the timing of the property purchases and the actions of the CMC:

(a) IC4LC's invoice for the US$ 6 million success fee is said to have been issued on 30 November 2013, just 10 days before the first letter from the CMC to Korek;

(b) Regular payments are made to IC4LC throughout 2014, during which period further threats follow from the CMC and both the CMC Decision and the CMC Appeals Board Decision are issued;

(c) On 4 September 2014, the CMC demands that Korek "invalidate" its partnership with Orange/Agility, a step contemporaneous with the instructions to Dechert to act on the purchase of Barn Hill, a property selected by Dr. Al-Khwildi;

(d) Payments to IC4LC continue throughout 2015 and 2016. On 17 October 2016, the CMC warns Korek "*and all other partners (whether direct or indirect) from any attempt to assign shares in Korek … without the prior written approval of the [CMC]*", a letter signed by Dr. Rabee [B2/98]. On 2 December 2016, the purchase of Higher Drive, a property found by Dr. Rabee's daughter, was complete;

(e) Payments to IC4LC continued until at least late April 2016.

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Unsubstantiated payments for Donations and Gifts

231. IT Ltd. notes that Korek's expenditure on donations and gifts "surged" in 2013 to a figure of US$ 1,484,214 compared with a figure of US$ 324, 504 in 2012 and that the combined total for the years 2103 to 2016 inclusive was $ 3.1 million compared with US$ 1.1 million. It pleads that illicit payments intended for CMC officials were also disguised in Korek's accounting records as charitable donations and "sponsor ceremonies" [A/21/83].

232. The Arbitral Tribunal notes once again the deficiencies in the Respondents' document production in relation to this item. No documents were produced by the Respondents to substantiate the significant figure recorded for 2013 or the US$ 706,057 recorded in 2016. Documents were produced for 2014 and 2015 but, in the case of 2014, the vast majority of the sum recorded in the accounts was unrecorded.

233. The Respondents repeat their argument that Korek has only rudimentary operating and accounting systems and that it is not reasonable to expect it to have complete records. As noted above, this is not an argument that the Arbitral Tribunal accepts. They also say that as a result of ISIL's invasion of Northern Syria in 2013 and its subsequent invasion of Northern Iraq, there was an influx of refugees and a displacement of Iraqi citizens which caused Korek to increase its charitable donations.

234. Despite the absence of records, having considered carefully the evidence before it, the Arbitral Tribunal is not persuaded that the evidence produced by IT Ltd. in relation to this element of its claim justifies the drawing of any inference that the increase in expenditure was linked to the Claimant's claims in tortious conspiracy.

Exorbitant payments to Entities Owned by Mr. Rahmeh

235. IT Ltd. also alleges that Mr. Rahmeh facilitated illicit payments to CMC officials through his various companies while purporting to provide financing and other services to Korek [A/5/51; A/21/85]. The specific allegations are that:

(a) ZR Group charged Korek US$ 6 million in interest on a US$ 70 million letter of guarantee allegedly to "finance" payment to Ericsson;

(b) ZR Collection charged Korek exorbitant fees in exchange for providing "financing services" to Korek;

(c) Hajras, a ZR Group company owned by the daughter of Mr. Youssef, also provided Korek with purported financing services and charged Korek almost US$ 2.8 million for issuing a letter of assignment of Korek liabilities;

(d) Another ZR Group company, RBT, charged Korek US$ 2.5 million in fees for purported "value added services", without providing any explanation for 80% of the fees;

(e) DoubleU issued invoices for purported "Value-added services" in excess of US$ 8 million;

(f) Ersal, a reseller of Nokia products said to be partly owned by a nominee shareholder for Mr. Rahmeh, received sizeable purchase orders from Korek,

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including 2 significant orders issued months before Ersal was even incorporated.

The total payments are said to amount to US$ 36.7 million.

236. IT Ltd. claims that the payments to ZR Group, ZR Collection and Hajras are undisputed whilst those to RBT and DoubleU are said to be unaddressed. The payments to Ersal are a hybrid of the two. IT Ltd. notes that no documentary evidence has been produced by the Respondents substantiating any of the financing services provided by ZR Group, ZR Collection or Hajras and the Respondents have also failed to provide evidence substantiating the so-called "value-added services" provided by Double U and RBT despite an order from the Arbitral Tribunal in both cases that they do so.

237. The Respondents counter that there is no evidence that these payments were disguised bribes. They challenge, belatedly, the authenticity of the ZR Group aging report obtained by Mr. Bortman and say that, even if the payments were as high as US$ 65.3 million, there is no evidence that they those amounts were unusually high, were illicit or were bribes to the CMC.

238. The Respondents further accuse IT Ltd. of seeking to reverse the burden of proof by failing to provide an adequate explanation for the transactions and of impermissibly inviting the Arbitral Tribunal to draw an inference that the payments were bribes without any prima facie evidence upon which any such inference can be based.

239. The Arbitral Tribunal finds the level of the payments made to the various entities identified surprisingly high. Mr. Mustafa, in his third witness statement, offers an explanation for the involvement of ZR Group, ZR Collection and Ersal, but offers nothing in relation to the other entities. The Arbitral Tribunal is also troubled by the Respondents' apparent failure to provide adequate disclosure of documents underlying these transactions. The Arbitral Tribunal does not accept that, in inviting inferences to be drawn from a party's failure to produce documents that it has been ordered to produce and which it would be expected to have, IT Ltd. is seeking to reverse the burden of proof. That said, the Arbitral Tribunal is not persuaded that the evidence presented by IT Ltd. in relation to this particular aspect of the claim is sufficient to connect the payments said to have been made to the improper purpose alleged. It does not therefore meet the appropriate threshold for the inference which it invites the Arbitral Tribunal to draw with respect to the claims in tortious conspiracy.

The evidence of Raedas/Mr. Bortman

240. Very significant criticisms have been levelled by the Respondents at every stage of these proceedings against the evidence gathered by Mr. Bortman and his colleagues at Raedas and the testimony that Mr. Bortman has given in these and other proceedings. In its skeleton argument before the evidential hearing and in tis closing submissions, the Respondents identified the following points:

(a) That Raedas gathered evidence unlawfully by systematically making payments to public officials and to Korek employees in return for confidential information obtained in the course of their employment and thereby committed offences in the UAE, in Iraq and in Turkey;

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(b) Mr. Bortman relies upon anonymised, hearsay (and multiple hearsay) evidence. The DIFC Arbitration Law, UAE public policy, the IBA Rules and the principles of common law do not permit the use of anonymised evidence;

(c) That the payment of witnesses undermines the weight that can be given to the evidence obtained;

(d) That the investigative reports and memoranda produced by Raedas were not supported by the interview transcripts and ignored information relating to countervailing case theories;

(e) That the restricted access regime was falsely based on concerns for the safety of sources; and

(f) That IT Ltd. defied its obligation to produce the full universe of Raedas documents and shielded Mr. Bortman through a persistent refusal to provide proper disclosure, including "*all contextual documents obtained by Raedas through its unnamed subcontracted investigators*".

The result of this, it is said by the Respondents, is that the evidence is inadmissible, alternatively that no weight should be afforded to it [A/38/3-5; A/45/3; A/45/63].

241. On Day 1 of the evidential hearing, the Arbitral Tribunal asked IT Ltd.'s counsel to identify which specific statements which were made to Mr. Bortman by his sources were relied upon by IT Ltd. [Day 1/200:17-201:13; 221:10-25]. On the evening of Day 2 of the hearing, the Arbitral Tribunal received an email from Gibson Dunn for IT Ltd. That email stated as follows:

"We refer to your request during the Claimant's Opening Submissions on 8 May 2022 and at the end of the day today that the Claimant provide a list of hearsay statements from Raedas's anonymous sources that it relies on to make its case on the corruption / bribery claim. As Mr. Benson confirmed during the Claimant's opening statement, the Claimant does not rely on any statements from Mr. Bortman or his sources for that purpose.

The only element of the Claimant's claims that depends on statements from Raedas's sources is with respect to its claims about Mr. Rahmeh's ownership interest in Ersal, namely that Ms. Nathalie Haddad is a nominee shareholder for Mr. Rahmeh (Bortman I, ¶ 108).

Nonetheless, as Mr. Benson confirmed, Mr. Bortman's evidence corroborates the Claimant's case (Tr. Day 1, p. 222:10-21). For the avoidance of doubt none of the evidence of Mr. Bortman is being withdrawn."

242. Further clarification was provided by Mr. Willems for IT Ltd. during the course of Day 3:

96:24 that the claimant is affirmatively relying on one statement
25 from anonymous sources and that is about who has the
97: 1 ultimate ownership of Ersal. In other words, the document
2 says it is owned by that dietitian, Ms Haddad; and the
3 anonymous sources then take it upstream to Mr. Rahmeh.
4 Ersal is relevant in two contexts in the case.
5 It's part of the self dealing claims because it involved the

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6 Nokia equipment, purportedly a value added reseller. And
7 Ersal is also one of the entities that the claimant alleges
8 was used to funnel money out of Korek to be used for bribing
9 the CMC officials.
10 There are other funnels that are in the record
11 that are part of the claimant's claims that are -- that are
12 proven through the documents. Notably IC4LC, ZR Collection
13 and the other ZR entities. But Ersal is one of the six
14 funnels.
15 Anyway, the claimant does rely upon the anonymous
16 source in relation to Ersal; and that's what we tried to say
17 last night.
18 Every other proposition that goes in support of
19 the claimant's claims in this arbitration, corruption, self
20 dealing, IBL loan, what have you, the claimant submits is
21 substantiated and proven through documents or other evidence
22 in the record and the Tribunal does not need to look to the
23 anonymous sources for any other aspect of the claimant's
24 claims.
25 That having been said, as the French like to say,
98: 1 the claimant submits that the other information provided
2 from the anonymous sources to Mr. Bortman is corroboration
3 for the overall claims. And so the claimant does rely upon
4 it to that extent: as corroboration of what you can fully
5 find proven to you from the records and documents in the
6 evidence of this case.
7 So, since it's potentially useful to - for the
8 Tribunal, and since we do not accept the basis for excluding
9 the evidence on grounds of inadmissibility, the claimant
10 submits that that Raedas evidence should remain part of the
11 record; and the Tribunal should give it the weight that the
12 Tribunal would want to give it as tribunals always do; and
13 of course considering that we're talking about anonymous
14 hearsay evidence.

243. The Respondents submit that, given that IT Ltd. continues to rely upon the evidence of the anonymous sources as corroborative, they are not assisted by IT Ltd.'s clarification.

244. The sole statement upon which IT Ltd. places specific reliance is that contained in paragraph 108 of Mr. Bortman's first witness statement concerning Mr. Rahmeh's interest in Ersal. Mr. Bortman says that *"[w]itnesses, including former Korek employees, have identified Ms. Haddad as a nominee shareholder for Mr. Rahmeh"* [B1/1/31]. The Arbitral Tribunal places no weight on that statement and, as indicated above, is not persuaded in any event that Ersal was used as a conduit for bribing members of the CMC.

245. More generally, the Arbitral Tribunal recognises the concerns expressed by the Respondents regarding the hearsay nature of the statements attributed to Mr.

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Bortman's sources. It also has concerns about the statements that are attributed to the source identified as KE1. It appears to the Arbitral Tribunal that the evidence as summarised by Mr. Bortman is not borne out by the transcripts of Ms Burton's meetings and calls with that source.

246. However, it should be clearly understood, and as has already been made clear, that, in reaching its conclusions and making its findings of fact in this reference, the Arbitral Tribunal has placed no reliance whatsoever on any of the statements made by Mr. Bortman's sources. The Arbitral Tribunal has reached its decisions on the basis of the documentary record, the testimony of the Orange and Agility witnesses and on other relevant matters identified herein (such as Mr. Mustafa's failure to attend to give evidence, his behaviour in relation to the Arbitral Tribunal's order that he provide evidence of sums deposited with IBL and the Respondents' failures in document disclosure). It therefore matters not whether the Raedas witness evidence is anonymised, hearsay, was paid for or was obtained in breach of some local legal requirement.

247. The Respondents seek to argue that the Arbitral Tribunal should afford no weight to a number of the documents obtained by Raedas. Those documents are the IC4LC invoice no. 084 of 25 April 2016 [B2/55], the Korek accounting spreadsheet [D1/452], and the ZR Group Ageing report [D1/135]. The Respondents say that these documents were obtained by Mr. Bortman from a sub-contractor, that IT Ltd. deliberately chose to withhold information or document production in respect of those documents "*with the result that the [Arbitral] Tribunal does not have any evidence on the record regarding the origin, context or veracity of those documents*" [A/45/20].

248. The fact that Mr. Bortman obtained these particular, or any other, documents through a subcontractor is quite separate from the issues affecting the hearsay evidence of Mr. Bortman's sources. The Respondents failed to challenge the authenticity of these documents within the time required by Procedural Order No. 1 and indeed do not do so now (see paragraph 220, above). The IC4LC invoice and the ZR Group Ageing Report were exhibits to the Statement of Claim, dated 23 April 2021. The Korek accounting data was exhibited to IT Ltd.'s Statement of Reply, dated 7 January 2022. The obvious inference is that there was no basis for any challenge to be made. So far as the La Loma lease is concerned, this too was a document now accepted to have been obtained by a subcontractor. However, the position in respect of that document seems to be that the Respondents in fact rely upon it in support of an argument that it shows that the Al-Khwildi family must have been renting the property at Barn Hill. The Arbitral Tribunal has in any event concluded that that document is a fabrication (for the reasons explained above) and that the other documents are genuine. Those are conclusions reached by the Arbitral Tribunal itself, on the face of the documents, and without reliance on Mr. Bortman's assessment of their authenticity or otherwise. Those documents, and the other documents relied upon by IT Ltd. in support of its case speak for themselves. The question of how these documents were obtained by IT Ltd. is simply not a relevant part of the analysis.

249. The Respondents argue in their written closing submissions that without the statements of Mr. Bortman or his sources IT Ltd.'s case is irredeemably weakened. The Arbitral Tribunal does not accept that that is the case. In paragraph 2.11, the Respondents set out a list of matters which IT Ltd. "must accept" that it does not rely

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on [A/45/11-13]. In so far as that list contains hearsay statements from Mr. Bortman's sources, the Arbitral Tribunal has made clear above that it places no reliance upon those statements. It does not follow, however, that IT Ltd. cannot rely upon Mr. Bortman's evidence that the Rabee family lived at the Higher Drive property – a statement supported by documentary evidence. Further, the Arbitral Tribunal was not asked to and nor does it place any weight on Mr. Bortman's opinion evidence as to the authenticity of any of IC4LC invoice no. 084, the Korek accounting spreadsheet, the ZR Group Ageing Report or the La Loma lease [Day 8/24:14-21]. As noted above, the authenticity of these documents was not challenged by the Respondents as required by Procedural Order No. 1 and the Arbitral Tribunal has assessed the evidential weight of those documents itself.

250. Furthermore, and as explained in detail in this Chapter, the Arbitral Tribunal considers and finds that without reliance upon or reference to the hearsay statements of Mr. Bortman's sources, the evidence firmly establishes on the balance of probabilities that the Respondents bribed the CMC through the purchase of properties in London in order to procure the CMC Decision and the 3G Annex and that the Respondents paid bribes to the CMC disguised as legal and consulting fees in order to procure the CMC Decision. The Arbitral Tribunal does not consider that it is necessary for it to determine whether the CMC would have issued the CMC Decision if the Respondents had not bribed the CMC. As Romer LJ explained in *Hovenden & Sons v Millhoff* [1900-1903] All ER Rep 848 [E1/235]:

> *"If a bribe be once established to the court's satisfaction, then certain rules apply. Among them the following are now established, and, in my opinion, rightly established, in the interests of morality with the view of discouraging the practice of bribery. First, the court will not inquire into the donor's motive in giving the bribe, nor allow evidence to be gone into as to the motive. Secondly, the court will presume in favour of the principal and as against the briber and the agent bribed, that the agent was influenced by the bribe; and this presumption is irrebuttable."*

In any event, the Arbitral Tribunal is satisfied that the evidence justifies the inference that the CMC would not have issued the CMC Decision had the Respondents not bribed the CMC.

251. It was latterly suggested by the Respondents that IT Ltd. was in breach of its obligations to give disclosure "in connection with" materials gathered by subcontractors. The Respondents' application for disclosure on the morning of the sixth day of the evidential hearing sought documents provided to Raedas by subcontractors and all documents regarding conversations with subcontractors regarding the contents, authenticity or accuracy of documents obtained from third parties. As the Arbitral Tribunal explained in Procedural Order No. 16 (by which the Arbitral Tribunal gave reasons for its rulings on that request), with the exception of Request No. 1 in the Respondents' Redfern Schedule, which the Arbitral Tribunal disallowed as overbroad, none of the other requests addressed the documents sought by the late application. On the contrary, the Respondents had, in other requests, treated Raedas and its subcontractors as one entity. The Respondents were invited during the hearing to identify specific documents arising out of the evidence of Mr. Bortman which were relevant to the issues that the Arbitral Tribunal had to decide, but

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they elected not to do so [G/20/9]. Further, as counsel for IT Ltd. explained, the Respondents accept that they were aware of the use of at least one subcontractor by Raedas as early as 6 October 2021. They could have made an application for further specific disclosure at that time, but they chose not to do so. The Arbitral Tribunal is left with the impression that the Respondents had no real interest in identifying specific documents for disclosure. The Arbitral Tribunal has formed its own view as to the weight to be accorded to the documentary evidence. It should of course be noted that the Respondents do not seek to challenge the authenticity of the La Loma lease, which they argue is a genuine document. As explained above, it quite clearly is not.

Conclusion

252. The Arbitral Tribunal therefore finds that:

(a) There was an agreement between, inter alios, Mr. Mustafa, CS Ltd. and Korek to procure the CMC Decision and the related actions of the CMC (including the amendment of the National License by way of the 3G Annex);

(b) The conspiracy had been formed and acted upon by the latest in December 2013;

(c) Each of the Respondents intended to injure IH Ltd. and IT Ltd;

(d) The acts performed to carry out the conspiracy were unlawful; and

(e) In consequence, IH Ltd. and IT Ltd. each suffered a separate and distinct loss, as set out in Chapter R.



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I. BREACH OF CONTRACT AND/OR STATUTORY DUTY – CMC DECISION

The Parties' Submissions

1. It is IT Ltd.'s case that, by procuring the CMC Decision through bribery and corruption, the Respondents were each in breach of various contractual and statutory obligations [A/5/129-133]. The relevant contractual and statutory provisions relied upon are each set out in Annex A to this Award.

2. Mr. Mustafa is alleged to have breached:

   (a) His obligation to "*promote the best interests of the Group*", pursuant to clauses 3, 4, 6 and 7 of the SHA;

   (b) His obligation as Chairman of the IH Board and KSC and Korek's Managing Director to promote Korek's best interests "*in accordance with international standards of corporate governance*" pursuant to clauses 7.1 and 9.4 of the SHA;

   (c) His obligation to procure that the members of the KSC act in Korek's best interests and that the KSC "*operates at all times in the manner set out in*" the SHA, further pursuant to clause 7.1 of that Agreement; and

   (d) His obligation to give full effect to the Transaction Documents, pursuant to clause 31 of the SHA.

3. Mr. Mustafa is further said to have been in breach of his duties under DIFC law. Specifically, it is said that he breached:

   (a) His duty under Article 53 of the DIFC Companies Law 2009 to exercise his power as a company director "*honestly, in good faith and lawfully*", in the best interests of the company; and

   (b) His fiduciary duty of loyalty under Article 159(1) of the DIFC Law of Obligations 2005 requiring company officers and directors to act in the best interests of the company, without regard to self-interest.

   Both duties are said to have applied to Mr. Mustafa in his role as Chairman of the Board of IH Ltd., a DIFC-registered company.

4. Mr. Mustafa is also alleged to have breached the duty he owed under Articles 120 and 124 of the Iraq Company Law No. 21 of 1997, as Korek's Managing Director, to exercise best efforts to serve Korek's interests, run the company in a sound and legal manner, and refrain from acting in a self-serving manner to the company's detriment.

5. By allowing the directors that it appointed to the IH Ltd. Board and the KSC to engage in bribery and corruption, CS Ltd. is alleged to have failed (i) to "*promote the best interests of the Group*", (ii) to "*use [its] respective reasonable endeavours to ensure that the Group is afforded the best possible business advantages*", and (iii) to "*procure that the International Holdings Board of Directors*" and the KSC act in the best interests of IH Ltd, in breach of clauses 3, 4, 6 and 7 of the SHA.

6. CS Ltd. is also alleged to have breached the "*Further Assurances*" clauses at 31.3 of the SHA and 23.2 of the Subscription Agreement by failing to ensure that its "*Affiliates*

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[i.e., Mr. Mustafa] compl[ied] with all obligations under [the SHA and Subscription Agreement]."

7. Further, CS Ltd. is said to have breached Clause 15.8 of the SHA by allowing Korek's accounts to be used to make corrupt payments to CMC officials, including USD 30 million in illicit payments for purported legal and consulting services as part of the same corrupt scheme.

8. As for Korek, it is alleged that, in facilitating the bribery and corruption of CMC officials, and in failing properly to contest the CMC Decision, Korek breached its obligations:

   (a) under clauses 3 and 4 of the SHA to conduct its business "in the best interests of the Group";

   (b) its obligation under clause 9.4 of the SHA to ensure that Mr. Mustafa—as its Managing Director—act in Korek's own best interest; and

   (c) its obligations under the "Further Assurances" clauses in the SHA and the Subscription Agreement to ensure that its "Affiliates compl[ied] with all obligations under [the SHA and Subscription Agreement]."

9. The Respondents' Statement of Defence simply asserts that there is no evidence that the CMC Decision was obtained by bribery and that the CMC issued the Decision for its own reasons [A/6/136-144]. It does not raise any specific defences based upon either the contractual provisions or the statutory duties pleaded by IT Ltd. However, the Respondents further argue that IT Ltd. has not adequately substantiated its claims against CS Ltd. or Korek for failing to restrain the alleged misconduct of Mr. Mustafa or established how those two Respondents caused any loss [A/6/203].

10. In its Reply, IT Ltd. refers to two additional provisions said to have been breached by Mr. Mustafa by his conduct in allegedly orchestrating the fraudulent scheme; namely clause 15.8 of the SHA and clause 23.1 of the Subscription Agreement. CS Ltd. is additionally said to have breached clause 9.4 of the SHA, whilst Korek is said additionally to have been in breach of clause 9.1 of the SHA [A/21/206].

11. IT Ltd. rejects the Respondents' argument that its claims against CS Ltd. and Korek rely solely on the further assurances clauses of the SHA and asserts that it has set out at length the relevant specific breaches of both the contractual and statutory obligations. Its claims in respect of clause 31 of the SHA are said to be based on the literal meaning of the word "procure", which "*connotes an obligation to use an effort and an endeavour to see something achieved*" [A/21/354].

12. The Respondents' Rejoinder responds to the claims in respect of the CMC Decision by addressing the burden of proof, the foreign act of state doctrine and the alleged contractual exclusion of the tortious claim. The Respondents do not engage with the detail of the pleaded breaches of contract and statutory duty [A/34/163-186]. However, at paragraphs 9.88-9.93 of their Rejoinder the Respondents assert that each of clauses 9.4, 15.8 and 31.8 of the SHA and clause 23.2 of the Subscription Agreement are provisions that require CS Ltd. and Korek to procure that certain things be done by others, whilst clauses 3 and 4 pertain to the general interests of Korek and clause 28.1 concerns the notification of conflicts. These are all, the Respondents say, secondary obligations linked to the primary obligations of others. The contractual claims against CS Ltd. and Korek are not breaches of primary obligations [A/34/294-295].

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13. The Respondents also argue that IT Ltd. has articulated no case on causation by showing what steps could and should have been taken by CS Ltd. and Korek to procure Mr. Mustafa to act differently and how those steps would have resulted in a different outcome [A/6/203; A/34/294-295].

14. For their part, the Respondents assert again in their skeleton argument served prior to the evidential hearing that (in addition to denying that they procured the CMC Decision) IT Ltd. "*has not pleaded in sufficient detail which obligations the Respondents are said to have breached and why*". The Respondents also argue that IT Ltd.'s claims that the Respondents are joint and severally liable for any loss caused by any breach rely on an incorrect construction of the Procurement & Notification Clauses. The Respondents refer to Section 9(H) of their Rejoinder.

15. The Respondents also refer to Section 5(E)(i) of their Defence in support of an argument that IT Ltd.'s reliance on DIFC Law and Iraqi Law "is wrong". That section of the Defence is entitled "*IT Limited wrongly seeks to apply DIFC and Iraq Corporate Law to its Related Party Transaction Allegations*" and focuses specifically upon those particular claims and not the contractual and statutory claims now under discussion. To the extent that there is any broader principle articulated by the Respondents, it appears to be that only English law is relevant, as the governing law of the SHA, and that any duties under Iraqi corporate law owed by Mr. Mustafa as a result of his position of Korek's Managing Director are owed by Mr. Mustafa to Korek [A/6/177].

16. The Respondents' skeleton highlights a further argument from the Defence (again advanced specifically in relation to the related-party transactions claim), that the obligations owed under clauses 3, 4, 6.1 and 7.1 of the SHA are merely obligations "*that the Respondents should use their powers to conduct the business of Korek and IH Limited in the best interests of those companies. Contrary to IT Ltd.'s assertion, nothing in these provisions imposes an additional requirement that the business should be conducted "for the benefit of all the shareholders", though acting in the interest of the company will inevitably be for the benefit of its shareholders*" [A/6/178].

The Arbitral Tribunal's Analysis

Introduction

17. The Arbitral Tribunal has set out in detail in Chapter H its findings on the central allegations regarding the bribery and corruption through which the Respondents procured the CMC Decision and deprived IT Ltd. of its interest in IH Ltd. and Korek. It is unnecessary to repeat those findings here.

18. The Arbitral Tribunal does not accept the Respondents' argument that IT Ltd.'s claims for breach of contract and/or statutory duty have been insufficiently articulated. Whilst there have been some very minor adjustments by IT Ltd. as to the precise provisions of the SHA and Subscription Agreement relied upon, the facts underlying the alleged breaches have been fully articulated and IT Ltd.'s reliance on these causes of action clear from the outset. The Statement of Claim and the Rejoinder set out clearly the case that the Respondents have to meet.

19. There is no dispute between the Parties that the contractual claims are governed by English law. The Arbitral Tribunal does not accept the Respondents' argument that

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clauses 3, 4, 6.1 and 7.1 of the SHA, in requiring the parties to act in the best interests of the Group or of IH Ltd. rather than to conduct the business for the benefit of all shareholders fails to impose a duty which is actionable by the shareholders. The parties to the SHA are the direct and indirect shareholders in Korek and Korek itself. Clearly, it is for the shareholder parties to prove that the obligations that are set out in the relevant clause have been breached, and the fact that a matter that might not be to the liking of an individual shareholder will not assist it if the relevant action does not fall foul of the clause (because, for example, it is in the interests of the group). However, that consideration does not arise in the present case. Where the obligation in the clause has been breached, it is actionable, subject always to the precise wording of the clause and to proof of loss, on the part of the shareholder parties to the SHA.

20. Nor does the Arbitral Tribunal consider that there is any merit in the Respondents' argument as to the construction of what they characterise as the "Procurement and Notification" clauses. As IT Ltd. submits, the word "procure" "*connotes an obligation to use an effort and an endeavour to see something achieved*". Where that effort and endeavour has not been forthcoming, there is a potential liability on the part of all those who undertook to use such effort or to ensure that a given end was achieved and failed to do so.

21. In order to recover damages for the breaches which it has identified, it is of course incumbent upon IT Ltd. to demonstrate that it, or IH Ltd. in the case of the derivative claims, has suffered loss as a result of the breaches alleged. This issue is dealt with in another Chapter of this Award. The Arbitral Tribunal is quite satisfied that IT Ltd. has proven its case, and that which it advances on behalf of IH Ltd., with regard to causation as a question of fact. There were clear breaches of contractual and statutory duty flowing from the conduct with regard to the procurement of the CMC Decision and the Arbitral Tribunal concludes as a question of fact that these breaches did effectively bring about the CMC Decision. If and to the extent the Respondents wished to argue that even if they had acted in the best interests of Korek, had acted honestly, in good faith and lawfully, the same outcome would have taken place by reason of some implacable view held at CMC that would have prevailed irrespective of their conduct including bribery, the burden would have been with the Respondents to demonstrate this. It is sufficient to say that the Respondents never came near to establishing any such proposition.

Mr. Mustafa

22. Dealing first with Mr. Mustafa, the Arbitral Tribunal finds that:

(a) Mr. Mustafa, as a party to the SHA, was bound by clause 3 of the SHA to ensure that the "business of the Group" ("Group" being defined in Schedule 2 to the SHA to mean "*International Holdings, Korek and their subsidiaries from time to time*") "*shall be conducted in the best interests of the Group in accordance with the then current Business Plan and Budget*". By procuring the CMC Decision through bribery and corruption, and ousting IT Ltd., which had injected substantial sums into the company and provided technical expertise, Mr. Mustafa breached that obligation;

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(b) Mr. Mustafa, as a party to the SHA, was bound by clause 4 of the SHA to use his "*reasonable endeavours to ensure that the Group is afforded the best possible business advantages and market position in the telecommunications sector in the Republic of Iraq*". By procuring the CMC Decision through bribery and corruption, and ousting IT Ltd., which had injected substantial sums into Korek and provided technical expertise, Mr. Mustafa breached that obligation;

(c) Mr. Mustafa, as a party to the SHA, was bound by clause 6 of the SHA both to procure that the IH Ltd. Board of Directors be responsible for the overall direction and management of IH Ltd. and, in his capacity as a Director, to "*at all times act in the best interests of International Holdings in accordance with international standards of corporate governance*". By procuring the CMC Decision through bribery and corruption, and ousting IT Ltd., which had injected substantial sums into the company and provided technical expertise, as an indirect shareholder Mr. Mustafa undermined the IH Ltd. Board of Directors and breached that obligation;

(d) Mr. Mustafa, as a party to the SHA, was bound by clause 7.1 of the SHA which required him as a member of the KSC to "*at all times act in the best interests of Korek in accordance with international standards of corporate governance*". By procuring the CMC Decision through bribery and corruption and manipulating Korek's accounting to hide the sums being funnelled through IC4LC, Mr. Mustafa breached that obligation;

(e) Mr. Mustafa, as a party to the SHA, was bound by clause 9.4 of the SHA, to procure that he, as Managing Director of Korek, "*act[ed] in accordance with …. the best interests of Korek*". By procuring the CMC Decision through bribery and corruption, Mr. Mustafa breached that obligation;

(f) Mr. Mustafa, as a party to the SHA, was bound by clause 31.2 of the SHA and by clause 23.1 of the Subscription Agreement to "*take (or procure the taking of) all such steps and execute (or procure the execution of) such further documents as may be required by law or be reasonably necessary to give full effect to this Agreement and the other Transaction Documents*". As IT Ltd. alleges, by procuring the issuance of the CMC Decision declaring the 2011 Transaction "*null and void, and as though it never existed*", the Transaction Documents (which term included the SHA and Subscription Agreements themselves) were completely undermined and Mr. Mustafa thereby breached his obligations; and

(g) Mr. Mustafa did not himself breach clause 15.8 of the SHA (as appears to be suggested by footnote 681 to the Statement of Claim [A/5/131]. That provision applies solely to CS Ltd.

23. In relation to the claims for breach of statutory duty, the Arbitral Tribunal has received no expert evidence as to DIFC Law or Iraqi Law from either party. In the circumstances, the Arbitral Tribunal applies the provisions of the statute as they are written. The Arbitral Tribunal finds that by procuring the CMC Decision through bribery and corruption Mr. Mustafa, the Chairman of IH Ltd., a DIFC-registered company, breached his obligation under Article 53 of the DIFC Companies Law of 2009 as a Director or other officer of IH Ltd., in exercising his powers and discharging his duties, to:

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"(a) act honestly, in good faith and lawfully, with a view to the best interests of the Company; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances."

24. The Arbitral Tribunal further finds that Mr. Mustafa, as Chairman of IH Ltd., served in a fiduciary role in relation to that company. He was therefore bound by Article 159(1) of the DIFC Law of Obligations to "*act in good faith in what he considers to be the interests of the principal without regard to his own interests*". By procuring the CMC Decision through bribery and corruption Mr. Mustafa breached that obligation.

25. Both the obligation under Article 53 and that under Article 159(1) were owed to IH Ltd. and not to IT Ltd.

26. The Arbitral Tribunal finds that Articles 120 and 124 of the Iraq Company Law of 1997 imposed obligations upon Mr. Mustafa as Chairman of the Board of Korek "*to serve the interests of the company as they would serve their own personal interests, and run the company in a sound and legal manner*". In procuring the CMC Decision by bribing CMC officials and using Korek in furtherance of this goal, Mr. Mustafa breached his duties under Iraqi law. However, although Article 120 provides that the Chairman and members of the Board of Directors "*are responsible before the general assembly for any work they undertake in this capacity*", the Arbitral Tribunal is not satisfied that IT Ltd. has demonstrated that this breach gives a right of action to IH Ltd., as opposed to permitting it to express its disapproval in a meeting of shareholders.

CS Ltd.

27. Turning to CS Ltd., the Arbitral Tribunal finds that:

(a) CS Ltd., as a party to the SHA, was bound by clause 3 of the SHA to ensure that the "*business of the Group …shall be conducted in the best interests of the Group in accordance with the then current Business Plan and Budget*". By knowingly allowing the directors which it appointed to the IH Ltd. Board and to the KSC to procure the CMC Decision through bribery and corruption, CS Ltd. breached that obligation. CS Ltd. was at all times controlled and directed by Mr. Mustafa who was at the heart and centre of the tortious conspiracy. The Arbitral Tribunal is satisfied that CS Ltd. through Mr. Mustafa breached this obligation.

(b) CS Ltd., as a party to the SHA, was bound by clause 4 of the SHA to use its "*reasonable endeavours to ensure that the Group is afforded the best possible business advantages and market position in the telecommunications sector in the Republic of Iraq*". CS Ltd. was at all times controlled and directed by Mr. Mustafa who was at the heart and centre of the tortious conspiracy. By knowingly allowing the directors which it appointed to the IH Ltd. Board and to the KSC to procure the CMC Decision through bribery and corruption, the Arbitral Tribunal is satisfied that CS Ltd. through Mr. Mustafa breached this obligation;

(c) CS Ltd., as a party to the SHA, was bound by clause 6 of the SHA both to procure that the IH Ltd. Board of Directors "*at all times act in the best interests*

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of International Holdings in accordance with international standards of corporate governance". CS Ltd. was at all times controlled and directed by Mr. Mustafa who was at the heart and centre of the tortious conspiracy. By knowingly allowing the directors which it appointed to the IH Ltd. Board to procure the CMC Decision through bribery and corruption, the Arbitral Tribunal is satisfied that CS Ltd. through Mr. Mustafa breached this obligation;

(d) CS Ltd., as a party to the SHA, was bound by clause 7.1 of the SHA which required the parties to "*procure that the Korek Supervisory Committee is constituted and operates at all times in the manner set out in this Agreement*". Clause 7.1 further required all members of the KSC to "*at all times act in the best interests of Korek in accordance with international standards of corporate governance*". CS Ltd. was at all times controlled and directed by Mr. Mustafa who was at the heart and centre of the tortious conspiracy. By knowingly allowing the directors which it appointed to the IH Ltd. Board to procure the CMC Decision through bribery and corruption, the Arbitral Tribunal is satisfied that CS Ltd. through Mr. Mustafa breached its obligation to ensure that the KSC operated in the manner set out in the SHA;

(e) CS Ltd., as a party to the SHA, was bound by clause 9.4 of the SHA, to procure that Mr. Mustafa, as Managing Director of Korek, "*act[ed] in accordance with … the best interests of Korek*". CS Ltd. was at all times controlled and directed by Mr. Mustafa who was at the heart and centre of the tortious conspiracy. By knowingly allowing the directors which it appointed to the IH Ltd. Board to procure the CMC Decision through bribery and corruption, the Arbitral Tribunal is satisfied that CS Ltd. through Mr. Mustafa breached that obligation;

(f) CS Ltd. was expressly required by clause 15.8 of the SHA to "*procure that following Signing, Korek shall comply with all applicable corruption, anti-money laundering and anti-terrorist financing legislation of the Republic of Iraq including the guidelines and recommendations of the Iraqi Commission on Integrity*". CS Ltd. was at all times controlled and directed by Mr. Mustafa who was at the heart and centre of the tortious conspiracy. By knowingly allowing Korek's accounts to be used to make corrupt payments to CMC officials, the Arbitral Tribunal is satisfied that CS Ltd. through Mr. Mustafa breached that obligation; and

(g) CS Ltd., as a party to the SHA and the Subscription Agreement, was bound by clause 31.3 of the SHA and by clause 23.2 of the Subscription Agreement to "*procure that its Affiliates comply with all obligations under this Agreement and/or the Transaction Documents which are expressed to apply to any such Affiliates*". The term "Affiliates" was defined in Schedule 2 of the SHA to mean "*in the case of a person which is a body corporate. any other entity which, directly or indirectly, owns or controls, is under common ownership or control with or is owned or controlled by, such party, in each case from time to time.*" Mr. Mustafa was an Affiliate as he directly owned or controlled CS Ltd. and was at the heart and centre of the tortious conspiracy. The Arbitral Tribunal is satisfied that CS Ltd. through Mr. Mustafa breached both clause 31.3 and 23.2 by failing to ensure that Mr. Mustafa complied with his obligations under both the SHA and the Subscription Agreement.

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Korek

28. As for Korek, the Arbitral Tribunal finds that:

(a) Korek, as a party to the SHA, was bound by clause 3 of the SHA to ensure that the "*business of the Group …shall be conducted in the best interests of the Group in accordance with the then current Business Plan and Budget*". By acting in combination with Mr. Mustafa and facilitating the bribery and corruption of CMC officials and in failing properly to contest the CMC Decision, Korek breached that obligation;

(b) Korek, as a party to the SHA, was bound by clause 4 of the SHA to use its "*reasonable endeavours to ensure that the Group is afforded the best possible business advantages and market position in the telecommunications sector in the Republic of Iraq*". By acting in combination with Mr. Mustafa in facilitating the bribery and corruption of CMC officials and in failing properly to contest the CMC Decision, Korek breached that obligation;

(c) Korek, as a party to the SHA, was bound by clause 9.4 of the SHA, to procure that Mr. Mustafa, as Managing Director of Korek, "*act[ed] in accordance with … the best interests of Korek*". By acting in combination with Mr. Mustafa to procure the CMC Decision through bribery and corruption and to oust IT Ltd. as a shareholder, Korek breached that obligation; and

(d) Korek, as a party to the SHA and the Subscription Agreement, was bound by clause 31.3 of the SHA and by clause 23.2 of the Subscription Agreement to "*procure that its Affiliates comply with all obligations under this Agreement and/or the Transaction Documents which are expressed to apply to any such Affiliates*". The term "Affiliates" was defined in Schedule 2 of the SHA to mean "*in the case of a person which is a body corporate. any other entity which, directly or indirectly, owns or controls, is under common ownership or control with or is owned or controlled by, such party, in each case from time to time.*" Mr. Mustafa and CS Ltd. were both Affiliates of Korek. By acting in combination with Mr. Mustafa Korek breached both clause 31.3 and 23.2 by failing to ensure that Mr. Mustafa and CS Ltd. complied with their obligations under both the SHA and the Subscription Agreement.

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J. IT LTD.'S ALTERNATIVE CLAIMS

1. IT Ltd. pleads two alternative claims in the event that the Arbitral Tribunal determines that the Respondents did not procure the CMC Decision through bribery and corruption. The first alternative claim is that the failure of the Respondents to unwind the 2011 Transaction following the decision of the Iraqi Supreme Court confirming the CMC Decision amounts to a breach of the Respondents' express and implied obligations to IT Ltd. under the Subscription Agreement [A/5/134-140]. This claim is said to give rise to what the Parties have referred to as the "Scenario B Quantum Assessment".

2. The second alternative claim is that Korek and Mr. Mustafa were unjustly enriched following the issuance of the CMC Decision and the KCR Decree and are liable to make restitution to IT Ltd. [A/5/141-146]. This claim is itself put on alternative bases and is said to give rise to what the Parties have referred to as the "Scenario C Quantum Assessment".

3. The Parties are agreed, and it follows from the manner in which the alternative claims are pleaded, that there is no need for the Arbitral Tribunal to address these claims in the event that it finds for IT Ltd. in respect of its primary claims in relation to the CMC Decision. That being the case, the Arbitral Tribunal makes no further comment on these particular allegations.

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K. THE IBL LOAN

The Parties' Submissions

1. IT Ltd. claims that the Respondents fraudulently induced IT Ltd. to approve a sham loan agreement between Korek and IBL (the IBL Loan) and to enter into a Subordination Agreement pursuant to which repayment of the IT Ltd. shareholder loan would be subordinated to repayment of the IBL Loan. This was, IT Ltd. says, in realty nothing other than a disguised shareholder loan from Mr. Mustafa.

2. IT Ltd. pleads that Orange and Agility were informed during the negotiation of the 2011 transaction that the fourth instalment of the license fee, in the amount of US$ 110 million, would be due in April 2012. However, by an email dated 31 October 2011, Mr. Nawaz Junde, - one of CS Ltd.'s representatives on the KSC, advised the KSC that the Federal Supreme Court of Iraq had accelerated the payment of the fourth instalment to 18 November 2011. His email continued:

"We expect that delays in payment will cause repressive reactions forced by the government on the CMC.

Many informal signals are given to us that it is important to pay the next instalment on time (which is 125 million usd for the installment and approximately 30 million usd interest).

The Korek cash position is 15 million usd. At its best the Korek cash position at years end may reach 25 million usd which falls far too short of the needed sum.

Based on above, Korek needs urgently cash to settle its license fee obligations towards the CMC.

We think that we need to raise up to 150 million Usd in short term loans or in case off none availability of loans we need a shareholder resolution on shareholder capital injection (sic).

…."

[D1/55]

3. Under clause 5.2 of the SHA, Korek's Financing Proposal Committee ("FPC") was required to secure additional funding for Korek in the following order of priority:

(a) *unsecured loans made by financial institutions to the Group on market terms or if such loans are unavailable, an overdraft with the Group's usual bankers on normal commercial terms (External Unsecured Loan);*

(b) *loans made by financial institutions lo the Group on market terms and secured against the assets or the Group {External Secured Loan);*

(c) *loans made by financial institutions to the Group on market terms and guaranteed (on a pro rata basis and on terms reasonably acceptable to them) by each of the Shareholders in their respective Relevant Shareholder Percentages in International Holdings (External Secured and Guaranteed loan); and*

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(d) unsecured loans to International Holdings on market terms (as agreed between the International Holdings Board of Directors and the Shareholders and on terms pari passu and substantially the same (other than in respect of conversion rights) as the terms of the IT Ltd Shareholder Loan) made, by each of the Shareholders in their respective Relevant Shareholder Percentages in International Holdings which shall-rank ahead of all shares issued from time to time by International Holdings (Shareholders Unsecured Loan)."

4. On 17 November 2011, Mr. Junde informed the FPC by telephone that Korek had obtained a proposal from IBL Bank in Lebanon for an external loan with an interest rate of 13.25% [D1/56].

5. On 21 November 2021, Mr. Junde (who was Chairman of the FPC) informed his fellow committee members that a "*formal understanding*" was needed "*regarding proceeding to formalize the IBL loan opportunity*" [D1/57]. He attached a draft letter from Mr. Mustafa and asked that the FPC approve the sending of the letter to the KSC "*as a formal opportunity and proposal which is supported by our committee*". The draft letter from Mr. Mustafa stated that:

"On behalf of Korek, I have been able to obtain a commitment in principle from IBL Bank in Lebanon for a total of US$145 million as follows:

(i) a loan of US$110 million with a final maturity date of two and half to four years (yet to be agreed on) with the possibility to repay not earlier than 31st of December 2012 subject to prepayment penalties of one present;

(ii) a short term loan of US$ 35 million repayable in six months (no later than 31st of June 2012;

(iii) the loan is used to pay the CMC license fees and will have seniority on existing Korek Loans; and each loan has an interest rate of 13.25 per cent. per annum.

IBL Bank has agreed to make these loans on an unsecured basis if Korek's revenues are paid into an account held by Korek with IBL Bank and shareholders provide guarantees and as we discussed I will provide a personal guarantee. I am prepared to provide this personal guarantee provided that either:

(i) a credit worthy affiliate of IT Ltd provides me with a guarantee on the same terms in proportion to IT Ltd's holding in International Holdings Limited;

(ii) a credit worthy affiliate of IT Ltd provides an indemnity to me in proportion to IT Ltd's holding in International Holdings Limited."

[D1/57/2]

6. On 2 December 2011, Mr. Junde provided the FPC with a draft resolution approving the terms of the loan as outlined in Mr. Mustafa's draft letter, a letter requiring IT Ltd. to waive its right to seek repayment of the IT Shareholder Loan from monies provided to Korek under the IBL Loan and a letter requiring IT Ltd. to approve the conclusion of a loan agreement with IBL as required by clause 11.3 of the SHA [D1/154].

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7. IT Ltd.'s representatives on the FPC expressed concerns about the duration of the loan, the reimbursement terms, the interest rate and the arrangement fee and other costs. Mr. Junde informed them that the duration, the reimbursement terms and the interest rate were non-negotiable. Faced with this the IT Ltd. representatives stated that they "*would like to negotiate with IBL at least the arrangement fees and the breakage cost of 1% after one year, and try to delete these two costs. Besides, we need to delete the covenant 8.1.6 of the IBL Term Loan Agreement, since this clause could create some issues with the existing conversion mechanism of the shareholder loan*" [D1/155].

8. On 7 December 2011, Mr. Mustafa, as Chairman of the KSC, sent IT Ltd a signed version of the earlier draft letter. The final version had a number of amendments, including a statement that the loan would have seniority on existing Korek loans "*including any current shareholder loans*". The signed letter again stated that "*IBL Bank has agreed, in principle, to make these loans on an unsecured basis provided that Korek's revenues are paid into an account held by Korek with IBL Bank and shareholders provide guarantees*" [D1/58]. Mr. Junde advised the IT Ltd. representatives the same day that *"[r]egarding the IBL conditions president (sic) for the proposed loan they have made it clear that the loan will be provided when among other conditions the loan is senior to other Korek loans and in specific the shareholder loan*" [D1/158].

9. On 9 December 2011, Mr. Junde forwarded to the FPC an email from Mr. Ghassan Rayes, who described himself as the "Head of the Corporate Banking Division" at IBL, to Mr. Rahmeh. His email set out the terms and conditions of the proposed loan and attached what he described as a "final draft" of the loan agreement. These included a requirement that the IT Shareholder Loan to Korek of US$ 285 million should be subordinated to the IBL Loan. The email stated:

> As discussed over the telephone, the proposed agreement is entirely different from what we agreed on, and which we consider being the best offer we could propose to you after discussing the Korek financing requirements.
> In fact, our last proposal has exhibited Korek requirements in the last version we sent to you on December 6, 2011.
> Accordingly, our bank cannot consent to renegotiate the basics of the offer, as currently proposed by new members of your team! For the sake of clarity, the loan terms and conditions are (Considered as "Best Offer" and are not negotiable):

Mr. Rayes further warned that he did "*not see any reason for IBL to proceed unless above principal conditions are unambiguously accepted and the related draft documents are approved*" [D1/62].

10. The evidence of Mr. Aziz is that IT Ltd. was told by both Mr. Mustafa and Mr. Rahmeh that there were no other viable options and that the proposed interest rate of 13.25% was reasonable in light of the 11% plus US$ LIBOR rate applicable to the IT Ltd. shareholder loan. Mr. Aziz says that, on the basis of the representations from Mr. Mustafa and Mr. Rahmeh, IT Ltd. "relented" and approved both Korek's entry into the IBL Loan (including the unsecured nature of the Loan) and agreed to subordinate IH Ltd.'s liability to IT Ltd. in respect of the IT Ltd. shareholder loan to Korek's liability to IBL [B1/2/33].

11. On 14 December 2011, IBL, Korek, IH Ltd. and IT Ltd. entered into the Subordination Agreement [D1/15] and on 21 December 2011, IBL, Korek and Mr. Mustafa (as guarantor) entered into the IBL Loan Agreement [D1/14]. Clause 7.1.6 of the IBL Loan Agreement confirmed that:

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"the obligations of the Borrower in respect of the Loan and otherwise under this Agreement constitute, and at all times will constitute, the direct, general, unconditional, unsubordinated unsecured obligations of the Borrower and rank, and at all times will rank at least pari passu with all other present and future unsubordinated unsecured obligations of the Borrower, except for indebtedness preferred by laws of general application" [D1/14].

12. It is IT Ltd.'s case that at no point during the discussions concerning the IBL Loan was IT Ltd. ever advised that the Loan was in fact secured with cash collateral and that Mr. Mustafa confirmed that the Loan was unsecured. It says that the high interest rate and the subordination of the IT Ltd. shareholder loan were inconsistent with a fully cash collateralised loan.

13. The IBL Loan was to have been repaid by 21 July 2012 (in respect of the short term element) and by 21 June 2014 (in respect of the long term element). Three extensions of the repayment date were agreed, with the last being until 31 January 2015 for the short term element and 21 June 2015 for the long term portion [D1/160-162]. On each occasion the Subordination Agreement was amended [D1/68]. Discussions on a fourth extension did not result in an agreement.

14. IT Ltd. asserts that neither Korek nor IH Ltd. has paid back the principal of the IT Ltd. Shareholder Loan, which was due on 14 June 2015, nor any of the interest accrued under either the IT Ltd. Shareholder Loan or the IH Ltd. Shareholder Loan since September 2014. On 18 June 2015 IT Ltd. issued a notice of default under its Shareholder Loan [D1/69]. This was followed on 9 July 2015 by a notice of default from IBL, demanding repayment in full of the IBL Loan by 9 August 2105. In its notice, IBL required that Korek:

"immediately comply with Section 1.2 of the Subordination Agreement dated 21 December 2011 among IBL Bank SAL, Korek Telecom Company LLC, International Holdings Limited and Iraq Telecom Limited (the "Subordination Agreement"), including ceasing to make any payments in respect of the On-Loan Agreement and the Guarantee. We also demand that IHL and IT comply with their respective obligations under Section I.2 of the Subordination Agreement" [D1/70].

15. A further notice of default was issued by IBL on 15 September 2015, extending the date for Korek to make payment. This date, IT Ltd. says, passed without payment. IBL took no enforcement measures and waited almost two further years before sending a further notice, on 30 August 2017. That notice stated:

"In the interim, you are requested to provide, within 30 days from the date hereof, additional collateral to IBL Bank SAL to secure the Loan, in the form of a pledge of the Borrower's shares in addition to any other acceptable collateral to IBL Bank" [D1/72].

16. The reference to "additional collateral" in this notice caused IT Ltd. to press IBL and the Respondents for an explanation about the collateral held by IBL in connection with its loan. IBL refused to engage with IT Ltd. [D1/79; D1/85]. The Respondents did not reply.

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17. IT Ltd. commenced arbitration proceedings against IBL, Korek and IH Ltd. in the Lebanese Arbitration and Mediation Centre ("LAMC"). In paragraph 21 of its Answer and Counterclaim, IBL conceded that:

> *"Concurrently with the signature of the IBL Loan Agreement, to be compliant with the applicable laws and regulations, the Respondent requested that the Loan be secured by collateral. This collateralization was materialized in the form of cash collateral..."*

IBL denied that the cash collateral was kept a secret and pointed to a reference to the cash collateral in its yearly audited accounts. IBL (which, IT Ltd. notes, was represented in part by the sister of Mr. Abousleiman, the Dechert partner through whom the instructions were received to act on the London property purchases) further denied that the IBL Loan was an unsecured loan without any collateral and pleaded that "*no bank or financial institution would agree to lend USD 150,000,000 to a company in Iraq, without having obtained adequate and sufficient securities, including for instance, an adequate cash collateral*" [D1/165-6].

18. IT Ltd. points to copies of bank records obtained by means of §1782 discovery proceedings that it commenced against IBL in the United States. These show, IT Ltd. alleges, the transfer by Mr. Mustafa of US$ 155 million on 20 December 2011 from an account in his name at HSBC in Dubai to his account with IBL in Beirut [D1/89]. Under the rubric "Sender Bank Corresp." appears the message "TO MY ACC IN LB".

19. IT Ltd. further alleges that IBL secretly agreed to pay Mr. Mustafa interest of 12.75% on the cash collateral that he provided. This is said to be paid by way of biannual dividend payments on an undisclosed shareholding that Mr. Mustafa holds in IBL, which payments are then transferred to Mr. Mustafa's personal account at IBL. IT Ltd. says that this figure appeared up until 2017 as an "expense" in IBL's accounts. The reference was subsequently removed, IT Ltd. says, after it raised the issue with IBL [D1/76/63; D1/83/2; D1/78/67; A/5/35 at paragraph 84].

20. IT Ltd. further points to an email dated 2 November 2011, produced by the Respondents in the First Shareholder Arbitration, in which Mr. Junde informs Mr. Mustafa and Mr. Rahmeh that:

> *"Good news and I confirm that in the agreements it is stated that any loan to repay CMC indebtedness will rank ahead the existing (shareholder) loans:*
>
> *Any part of a new loan i.e. $145 million provided as shareholder loan cannot rank ahead of the $285 million loan from IT, only pari passu with it. All external third party loans used to repay the CMC can rank ahead".*
>
> [D1/93]

It is IT Ltd.'s case that this email demonstrates that, from the outset, the primary purpose of the IBL Loan was to induce IT Ltd. to subordinate the IT Ltd. Shareholder Loan. This explains, IT Ltd. says, IBL's failure to issue a notice of default under the IBL Loan until IT Ltd. itself issued a notice of default under the IT Ltd. Shareholder Loan and IBL's failure to seek to enforce the IBL Loan. IBL's own notice of default was intended to block repayments under the IT Ltd. Shareholder Loan.

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21. IT Ltd. notes that, although Korek has been in default under the IBL Loan for over 6 years, IBL has still not taken any steps to enforce its Loan, which continues to block IT Ltd. from enforcing its own rights under the shareholder loan.

22. As noted in Chapter D, above, IT Ltd. advances claims in respect of the IBL Loan in tort for an unlawful means conspiracy, comprising:

    (a) a direct claim against the Respondents for the loss IT Ltd. suffered as a result of the subordination of the IT Shareholder Loan to the IBL Loan; and

    (b) a derivative claim, brought on behalf of IH Ltd., against Mr. Mustafa and CS Ltd. for the reduction in value of its shareholding in Korek as a result of Korek's payment of exorbitant interest rates under the IBL Loan Agreement.

    It also advances claims for breach of contract and statutory duty, comprising:

    (c) a direct claim against each of the Respondents for the losses flowing from the subordination of the IT Shareholder Loan and the Korek Guarantee; and

    (d) a derivative claim, on behalf of IH Ltd., against Mr. Mustafa and CS Ltd., for the diminution in value of its shareholding in Korek.

23. In terms of the unlawful act conspiracy claim, IT Ltd. relies extensively upon an award issued by the tribunal appointed to hear the claim commenced by IT Ltd. against IBL, Korek and IH Ltd. referred to at paragraph 17 above (the "LAMC Award'). The tribunal found that:

> *"there can be no doubt that, prior to the signature of the Subordination Agreement, there were deliberate and intentional acts from the Respondents which induced the Claimant to enter into the Subordination Agreement, the Respondents' silence clearly amounting to an act of concealment. The majority of the Arbitral Tribunal considers that the Respondents' act of concealment was the determinative factor which convinced the Claimant to subordinate its rights by concluding the Subordination Agreement …. The majority of the Arbitral Tribunal stresses that the need to quickly find funds to maintain the License of the Respondent N° 2 was simply an underlying fact which led the Parties to find a solution through the various agreements but such fact does not affect the determining role of dol (the Respondents' act of concealment) in the Claimant's acceptance of the various agreements of which the terms of the Subordination Agreement and the IBL Loan Agreement were intimately linked, in particular the terms of the ILB Loan which played a primordial role as confirmed by the email of 13 December 2011 sent to the Claimant from Mr. Junde and "Last version of Loan agreement documents."*
>
> [D1/319/230]

24. The tribunal further found that:

> *"[t]he four conditions for a finding of dol being met, the Arbitral Tribunal unanimously reaches the conclusion that each of the three Respondents actively participated in the commission of dol. Indeed, had any one of the Respondents disclosed to the Claimant the existence of the cash collateral, the Claimant would not have entered into the Subordination Agreement. Therefore,*

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for the maneuver to succeed, it required the participation of all three Respondents."

25. The Respondents' Defence does not engage with the factual aspects of the IBL Loan claim. Their sole argument in relation to the alleged breaches is that IT Ltd.'s claims in these proceedings are advanced on the flawed legal basis that the IBL Loan was a sham transaction which was orchestrated so as to prevent IT Ltd. from recovering its shareholder loan. The Respondents say that these are the same claims advanced by IT Ltd. in the Lebanese proceedings. In those proceedings, IT Ltd. was seeking an order declaring that the Subordination Agreement was null and void on the basis that the IBL Loan was allegedly a sham agreement and IT Ltd was fraudulently induced to enter into it. The Respondents argue that if the tribunal in the Lebanese proceedings declared the Subordination Agreement null and void (as, by a majority, it did) IT Ltd. would be entitled to enforce its rights under the Shareholder Loan and the guarantee from Korek guaranteeing IH Ltd.'s obligations under that loan. As such, there would be no basis in these proceedings for IT Ltd. to assert that it is unable to recover the IT Ltd. Shareholder Loan. If on the other hand, the tribunal in the Lebanese proceedings refused to declare the Subordination Agreement null and void, that matter would have been finally determined and cannot be considered again in these proceedings [A/6/175-176].

26. The Respondents further argue that IT Ltd.'s quantification of damages in relation to the IBL Loan claims is flawed [A/6/246-251].

27. In their Rejoinder, the Respondents again appear to take no issue with IT Ltd.'s factual narrative in respect of the IBL Loan claims. They make essentially 4 points. Firstly, they say that they do not agree with the findings of the tribunal in the LAMC Award. Mr. Mustafa was not a party to those proceedings and therefore the tribunal's findings were limited to their assessment of a selection of documents. The Respondents accept that this Arbitral Tribunal is entitled to take into account the LAMC Award but that it has no greater relevance [A/34/132].

28. Secondly, at A/34/235-237 the Respondents argue that IT Ltd. has entirely changed its claim and, rather than claiming damages in the name of IT Ltd. amounting to the value of the outstanding IT Ltd. Shareholder Loan and the diminution of the value of IH Ltd.'s shareholding in Korek it is now seeking damages based upon the assumption that the IBL Loan was effectively a shareholder loan from Mr. Mustafa which should have been provided in a manner compliant with clause 5 of the SHA. On that premise, it should have ranked *pari passu* with the IT Shareholder Loan so that any amounts paid to IBL in respect of the IBL Loan should have been split between IBL and IT Ltd.

29. The evidence shows, the Respondents say, that it is not credible for IT Ltd. to suggest that if Mr. Mustafa had offered a shareholder loan to satisfy Korek's need for funds, IT Ltd. would have refused to agree unless Mr. Mustafa's loan ranked equally with the IT shareholder loan. IT Ltd was willing in December 2011 to accept whatever finance was available and there is no evidence to suggest that its approach would have been different had the loan been offered by Mr. Mustafa or that Mr. Mustafa would or could have been compelled to offer a shareholder loan on those terms.

30. Thirdly, the Respondents argue that IT Ltd.'s claim relies on an incorrect interpretation of clause 5.2 of the SHA and that, even if it did operate in the manner suggested by IT

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Ltd., the IBL Loan cannot be said to fall within clause 5.2(d) in the manner alleged. The claim also ignores the fact that, as a matter of law, the *pari passu* requirement does not operate as IT Ltd. contends in relation to the partial payment of debts [A/34/288].

31. Fourthly, the manner in which IT Ltd. calculates the loss on the derivative claim it brings on behalf of IH Ltd. proceeds on an incorrect analysis. A shareholder seeking to provide US$ 150 million of funding in 2011 would have been granted a higher rate of interest than the IT Shareholder Loan to reflect the additional share conversion rights available to IT Ltd. which would not have been available to any other shareholder. An interest rate of 13.25% would have represented a reasonable rate of return for such a lender [A/34/289].

32. In its written closing submissions, IT Ltd. argues that the facts established by the LAMC Award provide all of the elements needed to establish IT Ltd.'s claims in this arbitration concerning the IBL Loan. Further, IT Ltd. argues that the LAMC Award gives rise to an issue estoppel preventing the Respondents' from denying facts or matters decided by the LAMC tribunal. IT Ltd. recognised that Mr. Mustafa and CS Ltd. were not party to the LAMC proceedings, but Korek was and is a party to both sets of proceedings. Mr. Mustafa and CS Ltd. are both privies of Korek and are therefore precluded from relitigating the findings of fraud.

33. IT Ltd. further takes issue with the suggestion that the claim in respect of the IBL Loan was a new claim. It also seeks to explain that the evidence presented in the LAMC hearing showed that the Respondents' conduct was specifically designed to circumvent the *pari passu* requirements in the SHA [A/44/52-63].

The Arbitral Tribunal's Analysis

Conspiracy by Unlawful Means - Issue Estoppel and the LAMC Award

34. The first issue to be addressed is whether the LAMC Award gives rise to an issue estoppel which operates to preclude the Respondents from relitigating facts and matters decided in that reference. IT Ltd. argues, by reference to English law principles, that such an estoppel applies in this case [A/21/16]. The Respondents did not effectively engage with this issue in their pleaded case, although Mr. Hunt, for the Respondents, did indicate during oral argument on 2 December 2021 that the Respondents did not regard the LAMC Award as binding upon either Mr. Mustafa or upon CS Ltd., neither of whom were parties to those proceedings.

35. There can be no dispute that, as a matter of English law, for an issue estoppel to arise, there are three requirements to be satisfied:

    (a) The judgment of the foreign court or arbitral tribunal must be: (i) in a court or tribunal of competent jurisdiction in relation to the parties (or their privies) who are to be estopped; (ii) final and conclusive; and (iii) on the merits;

    (b) The parties to the later set of proceedings must be the same parties (or their privies) as in the foreign litigation or arbitration.

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(c) The issues raised must be identical and a decision on the issue must have been necessary for the decision of the foreign court or tribunal.[10]

36. The key issue in the present dispute is whether the parties to this reference are the same parties – or their privies – as those in the LAMC proceedings. The claimant in both cases is the same. However, the respondents are not. The respondents in LAMC case 175/2018 were IBL, Korek and IH Ltd. IBL is not, of course, a party to these proceedings and whilst derivative claims are being brought by IT Ltd. on IH Ltd.'s behalf in this reference, it is not a named party. Neither CS Ltd. nor Mr. Mustafa were parties to the LAMC proceedings.

37. Can Mr. Mustafa and CS Ltd. therefore be said to be the privies of any of the parties to the earlier reference? In *Resolution Chemicals Limited v H. Lundbeck A/S* [2103] EWHC 739 (Pat), Arnold. J. surveyed the authorities and concluded:

> *"i) The test for privity of interest is whether, having due regard to the subject of the matter of the dispute, there is a sufficient degree of identification between the relevant persons to make it just to hold that the decision to which one is party should be binding in the proceedings to which the other is party….*
>
> *ii) Where someone who has knowledge of the earlier proceedings and a legal interest in their outcome sits backs and allows another person with the same legal interest in the outcome to fight his battle, he will be a privy with the other person…. But this is a narrow exception to the general rule that a person will not be bound by the outcome of proceedings to which he is not a party …*
>
> *iii) A direct commercial interest in the outcome of the litigation is insufficient to make someone a privy… .*
>
> *iv) Whether members of the same group of companies are privies or not depends on the facts."* [11]

38. More recently, Foxton J. in *PJSC National Bank Trust v Mints* [2022] EWHC 871 (Comm) was called upon to consider the application of the rules regarding privies in the context of an arbitration award. He held that there were a number of features of the arbitral process which required a more restrictive approach to giving an award preclusive effect in the context of privies. These included the fact that the contractual foundation of arbitration significantly impacts the ability of third parties to the arbitration agreement to participate in the arbitration and to challenge any award.

39. Foxton J. proceeded to identify (at paragraph 33 of his judgment) certain "signposts" which he found to be of assistance in the matter before him:

> *i) The starting point – or "basic rule" – is that "before a person is to be bound by a judgment of a court, fairness requires that he should be joined as a party in the proceedings, and so have the procedural protections that carries with it" (Sales J in Seven Arts Entertainments Ltd v Content Media Corp plc [2013] EWHC 588 (Ch), [73]). As Sales J noted, "the importance of the general rule*

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10 See e.g. *Carl Zeiss Stiftung v Rayner (No. 2)* [1967] 1 AC 853.

11 The Arbitral Tribunal has omitted from this extract the names of the authorities which Arnold J. cited in support of these four points. They may be found at paragraph 100 of the judgment.

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and fundamental importance of the principle of fair treatment to which it gives expression indicate the narrowness of the exception to the rule".

ii) The test of identification is sometimes approached by asking if the party sought to be bound can be said "in reality" to be the party to the original proceedings (Resolution Chemicals, [52]).

iii) That argument must be approached with particular caution when it is alleged that a director, shareholder or another group company is privy to a decision against a company, because it risks undermining the distinct legal personality of a company as against that of its shareholders and directors. The danger is particularly acute as the company must necessarily act through and be subject to the ultimate control of natural persons, and directors and shareholders who "control" the company in this sense will frequently have a commercial interest in the company's success….Nonetheless, there are cases which, on their particular facts, have found privity between a company and a controlling director/shareholder: for example Secretary of State for Business, Innovation & Skills v Potiwal [2012] EWHC 3723, (Ch)."

40. The judge went on to consider whether it was a relevant factor that a party sought to be bound could have been compulsorily joined to the original proceedings. The judge stated that he did "*not accept the suggestion that these cases establish that the ability to join the purported privy to the original proceedings is a necessary condition for the application of the doctrine … However, where it is open to the claimant to join the proposed privy to the original proceedings, but it does not do so, the claimant's failure to remove any doubt as to the effect of a decision on that party at a time when the outcome of the dispute was not yet known might also be thought relevant … If the proposed privy sought to join the original proceedings, but that joinder was resisted by the successful party, that should also tell against a finding of privity*."

41. The LAMC proceedings were brought under the Subordination Agreement, to which the parties were IBL, Korek, IH Ltd. and IT Ltd. IT Ltd. confirmed to the LAMC tribunal that it was not claiming relief against Mr. Mustafa in those proceedings. There were allegations against Mr. Mustafa (and Mr. Rahmeh) but this did not make either of them a respondent. They were, instead "*part of the factual background*". The arbitral tribunal was requested to make binding findings against the respondents being reminded that they were "*corporate entities that act through natural persons who represent them. Indeed, Mr. Mustafa was acting in his capacity as Statutory Manager of [Korek] and/or as Chairman of [IH Ltd.] Similarly, Mr. Rahmeh was acting in his capacity as a member of [Korek's] Supervisory Committee …, Director of [IT Ltd.] and/or as a representative of [Korek] in negotiating the IBL Loan*" [D1/319/66].

42. The Arbitral Tribunal has considered these principles and the facts of this case very carefully. It is not satisfied that, on the facts before it, the respondents in the LAMC proceedings and the Respondents in this reference are privies. IH Ltd. was a respondent in the earlier matter, yet it is a derivative claimant in these proceedings. IBL was a respondent in the LAMC case, but is not party to this reference.

43. Nor does the Arbitral Tribunal consider that Mr. Mustafa should be treated as a privy of Korek for the purposes of issue estoppel. He treated Korek as his sole preserve, to do with as he wished. His actions were frequently against the interests of Korek, as

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evidenced in particular by his funnelling of money from Korek to pay IC4LC to fund his illicit schemes.

44. Further, it is far from clear to the Arbitral Tribunal that the issues before the LAMC arbitral tribunal were identical to those before this one. The principal claim in relation to the IBL Loan in this reference is for unlawful means conspiracy. Whilst the elements of that claim have a considerable amount in common with the claim of *dol* advanced in the LAMC proceedings, they are not precisely the same.

Conspiracy by Unlawful Means – The Merits

45. The Arbitral Tribunal has explained, in connection with the claim for conspiracy in connection with the CMC Decision, why it regards English law as applicable. That is the basis upon which the Parties have approached the claim.

46. Notwithstanding the absence of an issue estoppel, the Arbitral Tribunal has carefully considered the findings of fact made by the arbitral tribunal in the LAMC proceedings and, apart from its mixed conclusion of law and fact that IH Ltd. actively participated in the commission of *dol*, finds them to be highly probative given the similarity of the issues in the two cases. The Respondents made no effort in this reference to address the factual detail of the IBL Loan claim and they did not adduce any new or different evidence to challenge the factual case advanced by IT Ltd. It is particularly pertinent that Mr. Mustafa was a party to the current proceedings, unlike those before the LAMC arbitral tribunal. Notwithstanding that fact, he chose not to appear before this Arbitral Tribunal to give evidence or to answer questions on these very serious allegations.

47. It is therefore the Arbitral Tribunal's own finding that the Respondents did conspire by unlawful means to injure IT Ltd. and IH Ltd. It is common ground between the Parties that in order to establish a claim of unlawful means conspiracy, a party must demonstrate: (i) there was an agreement between parties, (ii) with an intention to cause harm to the claimant, (iii) which was acted upon unlawfully, and (iv) which caused loss to the claimant. The Arbitral Tribunal finds each of those elements to be satisfied in respect of the IBL Loan.

48. As with the claim for unlawful means conspiracy advanced in respect of the CMC Decision, a preliminary issue which arises is whether IT Ltd.'s claim of unlawful means conspiracy is excluded by means of either clause 41.1(b) of the SHA or clause 27.1(b) of the Subscription Agreement. For the reasons set out in Chapter H, the Arbitral Tribunal does not consider that either provision operates in the circumstances to exclude IT Ltd.'s direct or derivative claims. Further, and in addition to the public policy objection set out there, both clauses make clear that there shall be no exclusion for any liability for, or remedy in respect of, fraudulent misrepresentation. Fraudulent misrepresentation is precisely the unlawful act which is complained of in the present case.

49. It is clear to the Arbitral Tribunal that there was an agreement between the Respondents fraudulently to misrepresent to IT Ltd. and to IH Ltd. the nature and terms of the IBL Loan in order to procure the execution of the IBL Loan Agreement and of the Subordination Agreement. The email from Mr. Junde to Mr. Mustafa and Mr. Rahmeh of 2 November 2011 [D1/93] makes clear that Mr. Mustafa, Korek and CS Ltd. (whose representative on the FPC Mr. Junde was) were looking for a way to

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structure any finance in such a way that it would take priority over the IT Ltd. Shareholder Loan. That was the "good news" that Mr. Junde was referring to. As IT Ltd. itself says, the email demonstrates that, from the outset, the primary purpose of the IBL Loan was to induce IT Ltd. to subordinate its loan to the new financing.

50. IT Ltd. and its representatives were repeatedly told that the IBL Loan was being provided on an unsecured basis. The draft letter from Mr. Mustafa which was forwarded to the members of the FPC by Mr. Junde on 21 November 2021 stated in terms that "*IBL Bank has agreed to make these loans on an unsecured basis if Korek's revenues are paid into an account held by Korek with IBL Bank and shareholders provide guarantees*" (emphasis added) [D1/57/2].

51. On 2 December 2011, Mr. Junde provided the FPC with a draft resolution approving the terms of the loan as outlined in Mr. Mustafa's draft letter, a letter requiring IT Ltd. to waive its right to seek repayment of the IT Shareholder Loan from monies provided to Korek under the IBL Loan and letter requiring IT Ltd. to approve the conclusion of a loan agreement with IBL as required by clause 11.3 of the SHA [D1/154].

52. The signed version of the letter that was sent to IT Ltd. on 7 December 2011 repeated the same assurance: "*IBL Bank has agreed, in principle, to make these loans on an unsecured basis provided that Korek's revenues are paid into an account held by Korek with IBL Bank and shareholders provide guarantees*" (emphasis added) [D1/58].

53. The email from Mr. Rayes of IBL to Mr. Rahmeh and Mr. Junde of 9 December 2011 did not, on its face, state that the IBL Loan would be unsecured, but the email makes no mention whatsoever of the provision of any collateral [D1/62]. Both the draft loan agreement provided to IT Ltd. and the final version made no provision whatsoever for the provision of any collateral [D1/64; D1/14].

54. These statements were clearly false. IBL admitted in the LAMC proceedings that the IBL Loan was cash collateralised. However, its insistence in its Answer in those proceedings that the need for collateral would have been obvious serves only to compound the egregious nature of its, and the Respondents' behaviour. The picture being deliberately presented to IT Ltd. by IBL and the Respondents was that the Loan was unsecured.

55. It is also evident that the Respondents and IBL perceived this as a means to ensure that the funding provided would rank ahead of the IT Ltd. shareholder loan. Following Mr. Junde's "good news" email, the point was repeatedly made to IT Ltd. that IBL would only advance the Loan if a Subordination Agreement was signed. Mr. Mustafa emphasised that the loan would be "*senior to other Korek loans and in specific the shareholder loan*" [D1/158]. The point was further emphasised by Mr. Junde.

56. The evidence also makes clear that the Respondents and Mr. Rayes were putting pressure on IT Ltd. and its representatives to agree. Following attempts by IT Ltd. to try and negotiate improved terms, Mr. Rayes stated that IBL "*would not consent to renegotiate the basics of the offer*" and that the principal conditions would have to be "*unambiguously accepted*" [D1/62]. The Arbitral Tribunal has no doubt that this email was sent with the connivance of Mr. Mustafa, Mr. Rahmeh and Mr. Junde, particularly in light of the evidence from Mr. Aziz that IT Ltd. was told by both Mr. Mustafa and Mr. Rahmeh that there were no other viable options.

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57. The documentary evidence also shows that, not only had Mr. Mustafa provided cash collateral for the IBL Loan, but that he was earning interest on it. The documents obtained through the §1782 discovery proceedings against IBL reveal that Mr. Mustafa transferred US$ 155 million to an account at IBL the day before the IBL Loan Agreement was signed. IBL's own annual accounts for 2012 recorded:

"Performing corporate loans to large enterprises, outstanding at year end 2012, include an amount of LBP226 billion related to a non-resident customer which is covered by LBP234 billion cash collateral.

Interest income and expense recorded during 2012 for this customer amounted to LBP30.36 billion and LBP28.83 billion respectively."

[D1/73/53]

IT Ltd. submits, and the Arbitral Tribunal agrees, that the figure of LBP 234 billion represented the sum deposited as collateral by Mr. Mustafa, that the figure of LBP 30.36 billion represents the interest earned by IBL and that the figure of LBP 28.83 billion stated to be an "expense" represents sums paid back to Mr. Mustafa. This represents approximately 95% of the sums earned by IBL.

58. Similar entries appear in IBL's annual accounts for 2013 [D1/74/54], 2014 [D1/75/61], 2015 [D1/76/63] and 2016 [D1/77/59]. The annual accounts for IBL for 2017 contain the following entry:

"Performing corporate loans to large enterprises, outstanding at year end 2017 and 2016, include an amount of LBP226billion related to a non-resident customer which is covered by LBP234billion cash collateral. Related interest income and expense amounted to LBP30.7billion during 2017 and 2016."

[D1/78/67]

This entry therefore lists the sum apparently earned by IBL but omits the figure for "expenses" paid to Mr. Mustafa. The Arbitral Tribunal notes that the accounts for 2017 were signed off at the end of May 2018 [D1/78/31]. This was shortly before IT Ltd.'s Request for Arbitration appears to have been served in the LAMC arbitration and after IT Ltd. had written to IBL seeking an explanation for the reference to collateral on 25 September 2017 [D1/79]. The obvious inference is that at that point IBL was anxious to avoid any reference to the amount of the sums being paid to Mr. Mustafa.

59. The Arbitral Tribunal also notes that, in his 3 witness statements in this matter, Mr. Mustafa has at no point sought to engage with the IBL Loan. His first witness statement addresses most of the allegations made against Mr. Mustafa and his fellow Respondents. The IBL Loan is not mentioned at all.

60. Mr. Mustafa's second witness statement addressed specifically what Mr. Mustafa alleges were the steps taken by him to comply with Procedural Order No. 7. That order required Mr. Mustafa to:

"(i) refrain from disposing of the cash collateral provided as security for the IBL Loan without IT Ltd.'s prior consent, and (ii) provide IT Ltd. and the Arbitral Tribunal on the first working day of each month with bank statements or other evidence sufficient to confirm his compliance with this order." [G/9/28]

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The content of that statement is very carefully phrased. At paragraph 2.2, Mr. Mustafa says:

"At the outset, I wish to put it on the record that I completely reject IT Limited's allegation that I acted dishonestly in respect of security given in support of the loan provided by IBL to Korek in December 2011 (the "IBL Loan"). I strongly dispute and deny any allegation that I misled IT Limited or others in respect of the IBL Loan.

As IT Limited knows, I am a long-standing customer of IBL and IBL holds sums on my behalf. As I communicated through Boies Schiller Flexner, I hold sums at IBL in a blocked account that I am prevented from using and that is, in effect 'frozen' at the control of IBL (the "Blocked Account")" [B3/3/2].

The letter from Boies Schiller to which Mr. Mustafa refers appears at F/12 of the hearing bundle. Clearly written on the instructions of Mr. Mustafa, it is dated 14 January 2022. It states, at paragraph 7:

"For the avoidance of doubt, Mr. Mustafa notes the following:

(a) Mr. Mustafa has never denied (in this reference or elsewhere) that he has a personal banking relationship with IBL Bank, which is one of the few international clearing banks that has a branch presence in the Kurdistan Region of Iraq and is a major provider of banking and depositary services in Erbil.

(b) Any provision of the IBL Statement to the Tribunal should not be taken as any admission: (i) of wrongdoing on the part of Mr. Mustafa or any other person; or (ii) that cash collateral was provided as security for the IBL Loan.

(c) Provision of the IBL Statement and the contents of this letter shall not represent a waiver of any of any applicable confidentiality rights, including under Lebanese banking secrecy law."

61. The Arbitral Tribunal notes that, although Mr. Mustafa asserts that he did not act dishonestly in respect of security given in support of the IBL Loan, and further asserts that he holds sums in a blocked account that he is prevented from using, he does not address the specifics of the allegations made against him and the other Respondents in this regard or indicate whether he did indeed provide cash collateral. In fact, taken together with the letter from Boies Schiller, the position seems to be that, rather than deny that he provided cash collateral, Mr. Mustafa is simply not admitting whether he provided it or not.

62. In his third witness statement Mr. Mustafa again studiously avoids any mention of cash collateral. In three short paragraphs, he expresses his disappointment with the LAMC Award and his disagreement with the findings of the tribunal. He acknowledges the existence of the IBL Loan and says this:

"IBL Bank was quickly identified as the only option available. I was disappointed IT Limited's shareholders were not able to use their contacts to obtain other financing options at the time. This meant Korek was left with IBL Bank as the only potential lender and we had very little ability to negotiate the arrangement with IBL Bank. This included the security package IBL Bank demanded in

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support of the IBL Loan. I was required to give a personal guarantee in support of the IBL Loan. IBL Bank also required that IT Limited and IH Limited subordinate their rights under the IT-IH Shareholder Loan and the IH-Korek Shareholder Loan to the IBL Loan. I remember that IT Limited was not happy about this but ultimately was forced to agree as it was the only option available."

[B3/4/15]

Whilst Mr. Mustafa refers to the "security package", he avoids explaining what that was. He refers to his personal guarantee but does not offer any denial, or any comment at all, on the allegation that he in fact provided cash collateral.

63. The Arbitral Tribunal has dealt elsewhere in this Award with Mr. Mustafa's refusal to attend to give evidence in person before it. If there was an innocent explanation for this episode, or if Mr. Mustafa had not in fact secretly provided cash collateral upon which he was earning interest, the Arbitral Tribunal would have expected him to be eager to attend in order to explain the matter to it. He has chosen not to do so. No witness evidence was offered either from Mr. Rahmeh, who was clearly involved in the negotiation of the loan, from Mr. Junde of CS Ltd., or indeed from anyone at IBL itself. The Arbitral Tribunal draws adverse inferences against the Respondents. There was a very clear and indeed strong case that appeared from the documents and witness evidence referred to as to the deception of IT Ltd. Mr. Mustafa, Mr. Junde and Mr. Rahmeh would each have been able to assist the Arbitral Tribunal. This is evidence in the control of the Respondents. The only witness evidence adduced was from Mr. Mustafa which did not deal with the central aspects of the complaint and he did not come to give oral evidence or answer questions. The adverse inference as to the absence of any innocent explanation strengthens further the conclusion that the Arbitral Tribunal has reached.

64. The Arbitral Tribunal also notes that the Respondents did not produce any documents relating to the IBL Loan in response to the Arbitral Tribunal's order that it do so. IT Ltd. requested several categories of documents relating to the IBL Loan, including:

(a) Communications between Mr. Mustafa, Mr. Rahmeh, Mr. Junde and/or any other representative of the Respondents relating to Mr. Junde's email dated 2 November 2011;

(b) Documents prior to 21 December 2011 (when the IBL Loan Agreement was signed) relating to the cash collateral provided by Mr. Mustafa to IBL Bank as security for the IBL Loan, including: (i) agreements in any form concluded between Mr. Mustafa and IBL Bank concerning the cash collateral; (ii) communications between Mr. Mustafa or any of the Respondents and IBL Bank relating to the cash collateral; and (iii) Documents exchanged between the Respondents concerning the cash collateral;

(c) Documents relating to or otherwise explaining the purpose of the transfer of US$ 155 million on 20 December 2011 from Mr. Mustafa's account at HSBC in Dubai to his account at IBL in Beirut;

(d) Documents from 1 January 2017 relating to payments made by IBL to Mr. Mustafa in connection with the cash collateral provided by Mr. Mustafa as security for the IBL Loan; and

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(e) Documents discussing or referencing IBL's request or "additional collateral" in the form of a share pledge.

[A/9]

Each of these requests was objected to by the Respondents. By Procedural Order No. 5 the Arbitral Tribunal ordered the Respondents to produce the documents requested. Notwithstanding that order, no responsive documents were produced. Once more the Arbitral Tribunal draws adverse inferences. The Arbitral Tribunal does not consider it to be credible that no such documents exist in the possession and control of the Respondents. Accordingly the Arbitral Tribunal concludes that the failure to produce such documents indicates that their content would not be helpful to the Respondents' case in this arbitration. The Arbitral Tribunal also notes that Mr. Mustafa has continued to defy the Arbitral Tribunal's order of 16 December 2021 that he provide evidence to the Arbitral Tribunal and to IT Ltd. on the first working day of each month that he has not disposed of the cash collateral provided as security for the IBL Loan.

65. The Arbitral Tribunal finds that there was an intention on the part of each of the Respondents to injure IT Ltd. and IH Ltd. by unlawful means, namely by fraudulently misrepresenting to IT Ltd. the nature and basis of the IBL Loan. Those misrepresentations were relied upon by IT Ltd. The IBL Loan did, in fact, operate as a concealed shareholder loan from Mr. Mustafa which was designed to circumvent the requirements of the SHA, to prevent IT Ltd. from seeking repayment of the IT Ltd. Shareholder Loan and which enriched Mr. Mustafa.

66. The Arbitral Tribunal notes that, in his first witness statement, Mr. Bortman refers to witness interviews through which Raedas "*has learned that Mr. Barzani and Mr. Rahmeh have colluded with a Lebanese Bank, IBL, to profit from a secret arrangement on a USD 150 million loan*" [B1/1/34]. IT Ltd. has made clear that it does not place any reliance on this specific hearsay statement other than for its corroborative value. The Arbitral Tribunal emphasises that it has placed no weight upon this statement at all. Its findings in respect of the IBL Loan are based entirely on the documentary evidence and the other factors identified in this Chapter.

67. Whilst the Arbitral Tribunal has formed its own views on this issue, it notes that:

(a) Cooke, J., in giving IT Ltd. permission to bring derivative claims in DIFC proceedings against CS Ltd.'s directors, identified the prima facie existence of a fraud perpetrated on IT Ltd. in respect of the IBL Loan [D2/29/8];

(b) Field, J., in DIFC proceedings commenced by IT Ltd. to prevent the Respondents from granting IBL a share pledge without IT Ltd.'s consent concluded that the loan agreement "*is simply not telling the truth about the situation*" [D1/90/10]; and

(c) In an arbitration brought by IT Ltd. against the Respondents and IH Ltd. seeking an order prohibiting the Respondents from granting any option or interest over the shares in Korek otherwise than in accordance with the SHA, the distinguished arbitral tribunal inferred that "*Mr. [Mustafa] has acted dishonestly in concealing the cash collateral provided to IBL and in misrepresenting the position of IT [Ltd.]*" [D1/92/25].

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68. The Arbitral Tribunal does not consider the fact that the LAMC Award has declared the Subordination Agreement to be null and void such that IT Ltd. may now be able to bring a claim in respect of the sums owing under the IT Shareholder Loan against Korek and Mr. Mustafa's Guarantee to be any bar to the claims advanced in these proceedings. IT Ltd. seeks in these proceedings a proportion of the interest paid by IBL to Mr. Mustafa. The Arbitral Tribunal is in a position to and has adjudicated upon that claim. There is no obvious reason why IT Ltd. should be required to commence fresh proceedings before the LAMC. Moreover, it should be noted that the LAMC Award makes clear that the claims for damages or compensation were declared to be inadmissible before that tribunal [D1/319/243]. The claim is before this Arbitral Tribunal, it falls within the ambit of the arbitration clause in the SHA and, being seized of the claim, the Arbitral Tribunal considers that it is the appropriate forum to consider and determine it.

69. The Arbitral Tribunal is cognisant of the fact that the claim brought by IT Ltd. in the LAMC proceedings named IH Ltd. as a respondent and that the tribunal in that case concluded that it was liable, together with IBL and Korek, in *dol*. The decision in that reference is not binding upon this Arbitral Tribunal and as must be clear the Arbitral Tribunal is not concerned with allegations of *dol* but common law conspiracy. This Arbitral Tribunal's review of the evidence before it demonstrates that the main actors in the conspiracy on behalf of CS Ltd., Mr. Mustafa and Korek were Mr. Mustafa himself and Mr. Rahmeh. They were of course assisted by Mr. Rayes of IBL. This Arbitral Tribunal is not aware of the tactical or reasons pursuant to the *lex causae* for naming IH Ltd. as a respondent in the earlier matter, but it does not consider that, on the evidence before it, IH Ltd. could be said to have been a co-conspirator in the conspiracy the subject of this particular claim and the Respondents have not suggested otherwise. The Respondents have not placed any particular reliance on the identity of IH Ltd. as a respondent in the LAMC Award. Indeed, IH Ltd. was itself harmed by the actions of CS Ltd. and Mr. Mustafa, the conspirators against it.

Breach of Contract and Statutory Duty – Mr. Mustafa

70. IT Ltd. claims that Mr. Mustafa's actions in respect of the IBL Loan were in breach of his contractual and statutory obligations.

71. Specifically, it is alleged that Mr. Mustafa failed to promote IH Ltd.'s and Korek's best interests by deliberately orchestrating a deal that impoverished Korek's finances, whilst failing to provide material information about the IBL Loan. By (i) securing IT Ltd.'s and IH Ltd.'s consent to the IBL Loan and the later extensions of the repayment dates, Mr. Mustafa earned over US$ 172 million in interest payments through the secret interest-splitting arrangement and (ii) by obtaining IT Ltd.'s and IH Ltd.'s consent to the Subordination Agreement and its subsequent extensions, Mr. Mustafa "neutralised" IT Ltd.'s right to seek repayment of the IT Shareholder Loan.

72. These actions are said to constitute a breach of clauses 3, 4, 6.1 and 7.1 of the SHA (which provisions are set out in Annex A to this Award), and breaches of Articles 120 and 124 of the Iraqi Company Law and Article 53 of the DIFC Companies Law. IT Ltd. argues that:

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"acting in Korek's best interests would have entailed making sustained efforts to identify alternative sources of external funding or, alternatively, if indeed the IBL Loan was the only alternative, disclosing Mr. Barzani's cash collateral as well as his personal interest in the transaction so that IT Ltd. could have taken an informed decision before impoverishing Korek's finances. As a last resort, Mr. Barzani could have provided an unsecured shareholder loan in accordance with the fallback provision in Clause 5.2 of the SHA".

[A/5/122-124].

73. It is further alleged that Mr. Mustafa exercised his voting rights in breach of his contractual obligations and statutory duties, in that he failed to disclose the cash collateral and interest-sharing arrangement with IBL to the IH Ltd. Board and the KSC. This is said to be in breach of clauses 6.8, 7.8 and 31 of the SHA, clause 23.1 of the Subscription Agreement, Articles 119 and 124 of the Iraqi Companies Law and Article 54 of the DIFC Companies Law [A/5/124-125].

74. In so far as these particular breaches are concerned, the only additional points raised by the Respondents are (i) that IT Ltd. has not pleaded the necessary elements of breach of clauses 6.8 and 7.1 of the SHA and (ii) that the allegation of breach of clauses 7.1 and 31 of the SHA and of clause 23.1 of the Subscription Agreement is not understood. (The Respondents separately contend that there is no loss and that the derivative claim is barred on the grounds of reflective loss. These issues are addressed elsewhere in this Award). The Arbitral Tribunal rejects these arguments. It considers that the claims for breach of clauses 6.8 and 7.1 of the SHA are clear and fully articulated in the Statement of Claim. Similarly, it does not consider that the Respondents should have had any difficulty understanding the allegations made against them in respect of clauses 7.1 and 31 of the SHA and clause 23.1 of the Subscription Agreement.

75. The Arbitral Tribunal finds that:

(a) Mr. Mustafa, as a party to the SHA, was bound by clause 3 of the SHA to ensure that the "*business of the Group*" ("Group" being defined in Schedule 2 to the SHA to mean "International Holdings, Korek and their subsidiaries from time to time") "*shall be conducted in the best interests of the Group in accordance with the then current Business Plan and Budget*". By entering into a secret interest-splitting arrangement with IBL under which significant sums paid by way of interest by Korek were funnelled back to Mr. Mustafa and failing to make sustained efforts to identify alternative sources of external funding, Mr. Mustafa breached that obligation;

(b) Mr. Mustafa, as a party to the SHA, was bound by clause 4 of the SHA to use his "*reasonable endeavours to ensure that the Group is afforded the best possible business advantages and market position in the telecommunications sector in the Republic of Iraq*". By entering into a secret interest-splitting arrangement with IBL under which significant sums paid by way of interest by Korek were funnelled back to Mr. Mustafa and failing to make sustained efforts to identify alternative sources of external funding, Mr. Mustafa breached that obligation;

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(c) Mr. Mustafa, as a party to the SHA and a director of IH Ltd., was bound by clause 6.1 of the SHA to "*at all times act in the best interests of International Holdings in accordance with international standards of corporate governance*". By entering into a secret interest-splitting arrangement with IBL under which significant sums paid by way of interest by Korek were funnelled back to Mr. Mustafa, Mr. Mustafa breached that obligation;

(d) Mr. Mustafa, as a party to the SHA and a director of IH Ltd., was bound by clause 6.8 of the SHA to (i) to disclose to the IH Ltd. Board the nature and extent of any conflict of interest he had or may have had in a matter proposed to the IH Ltd. Board as soon as he was aware of such interest and (ii) to refrain from exercising voting powers in relation to such a matter. By failing to disclose his hidden interest in the IBL Loan and actively concealing the existence of the cash collateral, Mr. Mustafa breached that obligation;

(e) Mr. Mustafa, as a party to the SHA and a member of the KSC, was bound by clause 7.1 of the SHA to ensure that he acted "*at all times … in the best interests of Korek in accordance with international standards of corporate governance*". By entering into a secret interest-splitting arrangement with IBL under which significant sums paid by way of interest by Korek were funnelled back to Mr. Mustafa and failing to make sustained efforts to identify alternative sources of external funding, Mr. Mustafa breached that obligation;

(f) Mr. Mustafa, as a party to the SHA and a member of the KSC, was bound by clause 7.8 of the SHA (i) to disclose to the KSC any interest he had or may have had which conflicts or possibly may conflict with the interests of the Group as soon as he was aware of such interest and (ii) to refrain from exercising voting powers in relation to such a matter. By failing to disclose his hidden interest in the IBL Loan and actively concealing the existence of the cash collateral, Mr. Mustafa breached that obligation; and

(g) Mr. Mustafa, as a party to the SHA and the Subscription Agreement, was bound by clause 31.2 of the SHA and by clause 23.1 of the Subscription Agreement to "*take (or procure the taking of) all such steps and execute (or procure the execution of) such further documents as may be required by law or be reasonably necessary to give full effect to this Agreement and the other Transaction Documents*". By failing to disclose his conflict of interest in respect of the IBL Loan, actively concealing the existence of the cash collateral and voting to approve the IBL Loan, Mr. Mustafa breached those obligations.

76. In relation to the claims for breach of statutory duty, and as noted in Chapter H, the Arbitral Tribunal has received no expert evidence as to DIFC Law or Iraqi Law from either party. In the circumstances, the Arbitral Tribunal applies the provisions of the statute as they are written. The Arbitral Tribunal finds that by entering into a secret interest-splitting arrangement with IBL under which significant sums paid by way of interest by Korek were funnelled back to Mr. Mustafa and failing to make sustained efforts to identify alternative sources of external funding Mr. Mustafa, the Chairman of IH Ltd., a DIFC-registered company, breached his obligation under Article 53 of the DIFC Companies Law of 2009 as a Director or other officer of IH Ltd., in exercising his powers and discharging his duties, to:

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"(a) act honestly, in good faith and lawfully, with a view to the best interests of the Company; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances."

77. Article 54 of the DIFC Companies Law of 2009 requires that a "*Director of a Company who has, directly or indirectly, an interest in a transaction entered into or proposed to be entered into by the Company or by a subsidiary of the Company which to a material extent conflicts or may conflict with the interests of the Company and of which he is aware, shall disclose to the Company the nature and extent of his interest*". Such disclosure is to be made "*as soon as practicable after the Director becomes aware of the circumstances which gave rise to his duty to make it*". By failing to disclose to the Board of IH Ltd. his conflict of interest in respect of the IBL Loan, and actively concealing the existence of the cash collateral Mr. Mustafa breached those obligations.

78. The Arbitral Tribunal finds that Article 119 and Article 124 of the Iraq Company Law of 1997 imposed obligations upon Mr. Mustafa as Managing Director and a Board Member of Korek. Article 119 states that *"[i]t is impermissible for the chairman or a member of the board to have direct or indirect interests in deals that are concluded with the company, except after obtaining the permission of the general assembly with full disclosure of the nature and extent of such interests. The chairman or board member shall be liable to the company for any damage to it arising from violation of this article*" and further that *"[i]t is impermissible for the chairman or a member of the board to vote upon or participate in a matter in which he or she has direct or indirect interests without disclosing the nature and extent thereof to disinterested members and receiving the permission of a majority of them*". By failing to disclose to the general assembly of Korek his conflict of interest in respect of the IBL Loan, and actively concealing the existence of the cash collateral Mr. Mustafa breached those obligations. However, Arbitral Tribunal is not satisfied that IT Ltd. has demonstrated that this breach gives a right of action to IH Ltd. Article 119 specifically provides that *"[t]he chairman or board member shall be liable to the company for any damage to it arising from violation of this article*" (emphasis added). The only right of action arising from these breaches rests with Korek itself.

79. The Arbitral Tribunal further finds that Articles 120 and 124 of the Iraq Company Law of 1997 imposed obligations upon Mr. Mustafa "*to serve the interests of the company as they would serve their own personal interests, and run the company in a sound and legal manner*". By entering into a secret interest-splitting arrangement with IBL under which significant sums paid by way of interest by Korek were funnelled back to Mr. Mustafa and failing to make sustained efforts to identify alternative sources of external funding Mr. Mustafa breached his duties under Iraqi law. However, although Article 120 provides that the Chairman and members of the Board of Directors "*are responsible before the general assembly for any work they undertake in this capacity*", the Arbitral Tribunal is not satisfied that IT Ltd. has demonstrated that this breach gives a right of action to IH Ltd., as opposed to permitting it to express its disapproval in a meeting of shareholders.

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Breach of Contract – CS Ltd.

80. IT Ltd. claims that CS Ltd. breached its contractual obligations under both the SHA and the Subscription Agreement in respect of the IBL Loan [A/5/126]. As noted in paragraph 49 above, the evidence shows that Mr. Junde, CS Ltd.'s representative on the FPC, was a willing and central participant in the conspiracy. Having considered each of those claims, the Arbitral Tribunal finds:

(a) CS Ltd., as a party to the SHA, was bound by clause 3 of the SHA to ensure that the "*business of the Group … shall be conducted in the best interests of the Group in accordance with the then current Business Plan and Budget*". By knowingly failing to prevent Mr. Mustafa from entering into a secret interest-splitting arrangement with IBL under which significant sums paid by way of interest by Korek were funnelled back to Mr. Mustafa, CS Ltd. breached that obligation;

(b) CS Ltd., as a party to the SHA, was bound by clause 4 of the SHA to use its "*reasonable endeavours to ensure that the Group is afforded the best possible business advantages and market position in the telecommunications sector in the Republic of Iraq*". By knowingly failing to prevent Mr. Mustafa, whom it had appointed both to the IH Ltd. Board and the KSC from entering into a secret interest-splitting arrangement with IBL under which significant sums paid by way of interest by Korek were funnelled back to Mr. Mustafa, CS Ltd. breached that obligation;

(c) CS Ltd., as a party to the SHA, was bound by clause 9.4 of the SHA, to procure that Mr. Mustafa, as Managing Director of Korek, "*act[ed] in accordance with ... the best interests of Korek*". By knowingly failing to prevent Mr. Mustafa, whom it had appointed both to the IH Ltd. Board and the KSC, from entering into a secret interest-splitting arrangement with IBL under which significant sums paid by way of interest by Korek were funnelled back to Mr. Mustafa and voting to approve the IBL Loan, CS Ltd. breached that obligation;

(d) CS Ltd., as a party to the SHA and to the Subscription Agreement, was bound by clause 31.3 of the SHA and by clause 23.2 of the Subscription Agreement to "*procure that its Affiliates comply with all obligations under this Agreement and/or the Transaction Documents which are expressed to apply to any such Affiliates*". The term "Affiliates" was defined in Schedule 2 of the SHA to mean "*in the case of a person which is a body corporate. any other entity which, directly or indirectly, owns or controls, is under common ownership or control with or is owned or controlled by, such party, in each case from time to time.*" Mr. Mustafa was an Affiliate as he directly owned or controlled CS Ltd. CS Ltd. breached both clause 31.3 and 23.2 by knowingly failing to ensure that Mr. Mustafa complied with his obligations under both the SHA and the Subscription Agreement; and

(e) CS Ltd., as a party to the SHA, was bound by clause 28 of the SHA "*immediately [to] give notice in writing to International Holdings, the Korek Supervisory Committee and the other Shareholder(s)*" where "*it becomes aware that its interests (or those of an Affiliate of such Shareholder) conflict or are reasonably likely to conflict with the interests of the Group in any material*

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respect…". By knowingly failing to disclose Mr. Mustafa's conflict of interest in respect of the IBL Loan, CS Ltd. breached this obligation.

Breach of Contract – Korek

81. IT Ltd. claims that Korek breached its contractual obligations under both the SHA and the Subscription Agreement in respect of the IBL Loan [A/5/126-127]. Having considered each of those claims, the Arbitral Tribunal finds:

(a) Korek, as a party to the SHA, was bound by clause 3 of the SHA to ensure that the "*business of the Group …shall be conducted in the best interests of the Group in accordance with the then current Business Plan and Budget*". By entering into the IBL Loan, under which the interest it paid was split with Mr. Mustafa and collateral was secretly provided by Mr. Mustafa, Korek breached that obligation;

(b) Korek, as a party to the SHA, was bound by clause 4 of the SHA to use its "*reasonable endeavours to ensure that the Group is afforded the best possible business advantages and market position in the telecommunications sector in the Republic of Iraq*". By entering into the IBL Loan, under which the interest it paid was split with Mr. Mustafa and collateral was secretly provided by Mr. Mustafa, Korek breached that obligation;

(c) Korek, as a party to the SHA and to the Subscription Agreement, was bound by clause 31.3 of the SHA and by clause 23.2 of the Subscription Agreement to "*procure that its Affiliates comply with all obligations under this Agreement and/or the Transaction Documents which are expressed to apply to any such Affiliates*". The term "Affiliates" was defined in Schedule 2 of the SHA to mean "*in the case of a person which is a body corporate. any other entity which, directly or indirectly, owns or controls, is under common ownership or control with or is owned or controlled by, such party, in each case from time to time.*" Mr. Mustafa was an Affiliate of Korek. Korek breached both clause 31.3 and 23.2 by failing to ensure that Mr. Mustafa complied with his obligations under both the SHA and the Subscription Agreement;

(d) Korek as a party to the SHA, was bound by clause 28 of the SHA "*immediately [to] give notice in writing to International Holdings, the Korek Supervisory Committee and the other Shareholder(s)*" where "*it becomes aware that its interests (or those of an Affiliate of such Shareholder) conflict or are reasonably likely to conflict with the interests of the Group in any material respect…*". By failing to disclose Mr. Mustafa's conflict of interest in respect of the IBL Loan, Korek breached this obligation; and

(e) The Arbitral Tribunal declines to find that Korek, as a party to the SHA, was bound by clause 9.4 of the SHA, to procure that Mr. Mustafa, as Managing Director of Korek, "*act[ed] in accordance with ... the best interests of Korek*" itself in relation to the IBL Loan.

82. The Arbitral Tribunal has dealt in Chapter I with the Respondents' argument concerning the interpretation and extent of the procurement provisions of both the SHA and the Subscription Agreement.

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IT Ltd. and IH Ltd.'s Loss.

83. IT Ltd. claims damages on its own behalf in respect of the IBL Loan (against all three Respondents) as well as damages on behalf of IH Ltd. by way of a derivative claim (against CS Ltd. and Mr. Mustafa).

84. It is common ground between the Parties that IT Ltd. is only seeking damages in respect of the IBL Loan in what is known as Scenario A, which assumes that the Arbitral Tribunal has determined that the Respondents procured the CMC Decision and related acts of the CMC through bribery. As the Arbitral Tribunal has explained in Chapter H of this Award, that is the case. It therefore falls to the Arbitral Tribunal to consider the question of loss and damage. The precise figures are dealt with in Chapter R. The following paragraphs deal with a number of points of principle raised by the Parties.

85. IT Ltd. claims on its own behalf damages of US$ 110.6 million including (i) US$ 11 million in unpaid interest from 15 September 2014 to 9 July 2015, and (ii) US$ 99.6 million representing a pro rata share of the amounts Korek paid to IBL pursuant to the IBL Loan, which IT Ltd. claims Korek would have been required to pay to IT Ltd. (through IH Ltd.).

86. The Respondents say that this is premised upon the unsustainable argument that Korek stopped paying interest on the Korek-IH Ltd. shareholder loan because of the CMC Decision. The Respondents in their pleadings submit that this is wrong, and that the true reason for Korek's electing not to pay was the perilous state of its finances caused by the war with ISIL [A/45/83].

87. As a general point, the Arbitral Tribunal observes once more that the Respondents did not adduce any oral evidence to support their pleaded case and likewise there was a dearth of reliable documentary evidence from the Respondents. The Arbitral Tribunal rejects the Respondents' attempted explanation and on the evidence finds that Korek ceased paying sums due under the Shareholder Loan because the Respondents believed that the Subordination Agreement would provide protection for them if they failed to do so. That was, in essence, the message conveyed by Mr. Junde in his "good news" email in November 2011 [D1/93]. That the war with ISIL is a new construct is made plain by Mr. Abou Charaf's email in late July 2015 in which he passes on Mr. Mustafa's views:

> *"The Chairman believes that IH should draft a strong answer highlighting (among other things) the fact that IH is not in breach of any of its obligations under the Loan as (i) IT has been made previously aware of the unprecedented difficulty experienced by Korek (and hence by IH) to meet its U.S.$ financial commitments as local banks stopped transferring funds outside Iraq, (ii) IT knows perfectly that the U.S.$ is no longer available on the Iraqi market, which constitutes a force majeure event, and (iii) IT has been informed that IH is ready to pay any amount due under the Loan in Iraqi Dinar."*
>
> [D1/469].

There is no mention in this email of the war with ISIL affecting the repayments, as there surely would have been had it been a factor in the decision. Nor does this explanation feature in Mr. Mustafa's own witness statements in these proceedings.

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88. Further, the suggestion that Korek was choosing to prioritise the repayment of external financing is simply wrong. As the Arbitral Tribunal has found, the IBL Loan was effectively a disguised shareholder loan from Mr. Mustafa who continued to earn significant sums in disguised interest throughout the period. It was dressed up in a way to make it look like an external loan.

89. The Respondents also challenge IT Ltd.'s claim for damages of US$ 99.6 million which depends, they say, on the premise that, had Mr. Mustafa offered a shareholder loan up front, IT Ltd. would have refused to agree to that loan unless Mr. Mustafa's loan ranked equally and was repaid in equal share with the IT Ltd. Shareholder Loan. The Respondents say that this is incorrect. Clause 5.2 of the SHA did not require any shareholder debt to be provided on exactly the same terms as the IT Ltd. Shareholder Loan. Had Mr. Mustafa offered to provide shareholder finance in 2011, the terms of the loan would have been a matter of negotiation [A/45/83]. In December 2011, IT Ltd. was unwilling to provide additional financing and was willing to accept whatever financing was available on whatever terms. The Respondents say that this is evidenced by the fact that IT Ltd. agreed to the IBL Loan despite the fact that it considered the terms onerous and expensive. There is further, the Respondents say, no evidence that Mr. Mustafa would have agreed to provide shareholder financing or on what terms.[12]

90. The relevant provisions of clause 5.2 of the SHA are set out at paragraph 3, above. Mr. Hunt, for the Respondents, addressed this provision in closing. He argued that clause 5 does not address the situation where one shareholder is putting in all of the debt. Rather, he said, it is intended to address the situation where multiple shareholders are contributing. He pointed in that regard to clause 5.4. Further, he said, there was no language which obliged shareholders to contribute finance and it was clear that the shareholders did not regard themselves as bound to finance on a *pari passu* basis. Clause 5 envisages a negotiation and is therefore no more than an agreement to agree.

91. The Arbitral Tribunal accepts that clause 5.2(d) of the SHA addresses a situation where financing is needed and is not available from any of the other sources in the list of priority. In those circumstances, it anticipates that an unsecured loan will be provided by "*each of the Shareholders in their respective Relevant Shareholder Percentages*". Further, although the preamble to the clause stipulates that funding "*shall be obtained from the following sources*" (emphasis added), implying that it is a mandatory obligation, the preamble also provides that "*in the event that a Shareholder does not provide the guarantees or funding referred to in clauses 5.2(c) or 5.2(d) (as applicable), the other Shareholders shall not be obliged to provide any guarantees or funding thereunder.*"

92. Clause 5.2 however goes on to provide that nothing in the clause "*shall prevent a Shareholder in its sole discretion from providing the entirety of the guarantee required for the External Secured and Guaranteed Loans or the entire amount required by way of Shareholders Unsecured Loans if it, in its sole discretion, sees fit…*". The term

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[12] In their Rejoinder the Respondents pleaded that the *pari passu* rule would only apply in the case of Korek's bankruptcy or winding-up. This particular argument was not pursued and finds no support in the wording of clause 5.2.

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"Shareholders Unsecured Loan" is a defined term. If, therefore, one shareholder elects to provide an unsecured loan in circumstances where additional funds are required it must be treated as having done so in accordance with clause 5.2(d). That in turn requires that the terms must be "*pari passu and substantially the same (other than in respect of conversion rights) as the terms of the IT Ltd. Shareholder Loan*." The plain and obvious meaning of this provision is that, although the terms of the new loan need not be on identical terms to the IT Ltd. Shareholder Loan– hence the use of the word "substantially" – it would have to rank equally and be repaid in equal shares with that Loan. The term *pari passu* in the context would otherwise be meaningless. It requires the loan to be on an equal footing. That must mean that one shareholder loan would not be subordinated to another.

93. The intent and effect of the conspiracy was to provide a shareholder loan from Mr. Mustafa, on which he would earn and be paid interest, whilst dressing it up as an External Unsecured Loan, under clause 5.2(a) of the SHA whilst at the same time fraudulently obtaining IT Ltd.'s agreement to the Subordination Agreement. Having chosen to provide the funding himself, Mr. Mustafa was bound to observe the restrictions of clause 5.2(d). That he, and the other Respondents, understood that to be the case is evident from the very fact that they deemed it necessary to engage in the conspiracy in the first place.

94. Similarly, the assertion at paragraph 3.13(c) of the Respondents' written closing submissions that the terms of any proposed loan by Mr. Mustafa would have been a matter of negotiation and that clause 5(d) constitutes an unenforceable agreement to agree is rejected. As noted above, the use of the word "substantially" indicates that there would have been some scope for discussion, but it would have been limited by that term and the reference to objectively identifiable criteria by way of "market terms" is also important. It would not have permitted any loan provided by Mr. Mustafa to rank ahead of the IT Ltd. Shareholder Loan.

95. The Arbitral Tribunal does not consider it credible for the Respondents to suggest that IT Ltd. would have agreed to subordinate its lending to any provided by Mr. Mustafa. Mr. Froissart confirmed in his testimony that that was so [Day 3/140:5-22]. He regarded such a proposal as contrary to the SHA. Mr. Mustafa, Mr. Rahmeh and Mr. Junde evidently believed that to be the case as well – hence the email of 2 November 2011 and the elaborate ruse involving IBL.

96. Nor does the Arbitral Tribunal agree with the Respondents' argument that IT Ltd. was unwilling to provide further finance and was willing to accept "*whatever financing was available on whatever terms*". There was a contractually agreed list of priority for the provision of shareholder funding and IT Ltd. expected that order of priority to be observed.

97. The Arbitral Tribunal recognises that the IT Ltd. representatives were not happy with the proposal from IBL and wished to negotiate. They were discouraged from doing so by Mr. Junde and Mr. Rayes of IBL, both of whom indicated that the terms were not negotiable. The testimony of Mr. Froissart and Mr. Aziz was that they expected the priority of clause 5.2 to be observed and only if external funding was not available would they contemplate further shareholder funding [Day 3/137:20-25; Day 4/18:17-21]. Clause 5.2 required that external funding be on terms that were reasonably satisfactory and on a timely basis. Despite its concerns, IT Ltd. preferred the terms of

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what they were told was the basis of the IBL Loan to the provision of further funding themselves. As Mr. Froissart testified, Orange was not prepared "*to provide 100% of the financing each time funds were required*". It was his view that the Iraqi Shareholders had contributed US$ 20 million, whilst Orange and Agility had contributed US$800 million. Orange was prepared to fund, but only on a *pro rata* basis [Day 3/142:9-21]. Mr. Aziz explained that Agility held a similar view. His view was that Mr. Mustafa owed US$ 75 million to Korek and he should provide those funds before IT Ltd. would provide more [Day 4/28:20-29:3]. It does not follow from this that IT Ltd. was prepared to agree to funding on any terms.

98. The Respondents assert that there is no evidence that Mr. Mustafa would have agreed to provide shareholder financing in 2011 or on what terms. This is not a point which Mr. Mustafa addresses in any of his three witness statements in this matter and cannot be maintained in submission. However, as IT Ltd. explain in their closing submissions, Mr. Mustafa did effectively provide financing through the IBL Loan, earning interest on his cash collateral. Whilst that concealed financing was on terms that effectively ensured Mr. Mustafa priority, that was not a requirement that he could have imposed had the negotiation been an open and honest one between the shareholders. Mr. Froissart accepted that IT Ltd. would have agreed to subordinate its Shareholder Loan to an unsecured loan from an external financier, but he was clear that it would not have been acceptable between shareholders [Day 3/139:23-140:2]. The Respondents' assertion that Mr. Froissart admitted that IT Ltd. could not have refused the financing and would have effectively agreed to subordinate its Shareholder Loan to any funds provided by Mr. Mustafa is incorrect. Mr. Froissart was clear that his response to that would have been "no", that the financing should be shared and that he would have negotiated to find a solution [Day 3/142:2-21].

99. The fact that Mr. Mustafa felt it necessary to conspire with IBL, Korek and CS Ltd. in order to provide funding in the fraudulent manner that he did demonstrates to the Arbitral Tribunal's satisfaction that he understood very clearly that IT Ltd. would simply not have agreed to him providing it openly on terms that would have required the subordination to his funds of the IT Ltd. Shareholder Loan.

100. Mr. Hunt argued in closing that the rate of 13.25% charged by IBL was not at all out of line. He relied upon a World Bank document exhibited by IT Ltd. listing lending rates for Iraq between 2013 and 2016. It lists rates of 13.58%, 12.60%, 12.29% and 12.36% between 2013 and 2016. The Arbitral Tribunal is, however, concerned with the situation in 2011. The IT Ltd. Shareholder Loan had been negotiated just a few months earlier and the Arbitral Tribunal considers that to be an appropriate guide to the level of interest that would have been agreed in an honest and open negotiation. No evidence was presented to the Arbitral Tribunal in support of the Respondents' contention that the absence of conversion rights would have led to a higher interest rate.

101. The Arbitral Tribunal therefore finds that, had the Respondents not engaged in their fraudulent conspiracy, Korek would have obtained alternative financing from Mr. Mustafa (who had at his disposal the US$ 155 million which he provided as cash collateral to IBL). The financing would have been provided, under the terms of the SHA, by way of a shareholder loan on terms *pari passu* with the IT Ltd. Shareholder Loan and at a similar interest rate of 11% plus US$ LIBOR. Any funds available to

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Korek to repay that funding would have been split *pari passu* between the funding provided by Mr. Mustafa and that provided by the IT Ltd. Shareholder Loan.

102. The Arbitral Tribunal addresses the quantum of loss arising out of the IBL Loan conspiracy in Chapter R, below.

103. IT Ltd. having succeeded with its claim for unlawful means conspiracy in relation to the CMC Decision (see Chapter G) it is unnecessary for the Arbitral Tribunal to address what IT Ltd. describes as its "*freestanding damages claim*" in respect of the IBL Loan or the Respondents' objection – noted in the List of Issues – that that claim did not form part of IT Ltd.'s pleaded case [A/35/20].

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L. THE 3G ANNEX DECLARATORY CLAIMS

The Background

1. The factual background to the 3G Annex claim is set out in Chapter H of this Award.

The Parties' Submissions

2. IT Ltd. advances two separate claims arising from the events surrounding the signing of the 3G Annex. Its primary claim is in the tort of unlawful means conspiracy and is related to its claim in respect of the CMC Decision dealt with in Chapter H above. The events described there are said to give rise to a direct claim by IT Ltd. against each of the Respondents for the destruction in value of the Call Option, with the CMC Decision rendering the Call Option valueless.

3. IT Ltd.'s secondary claim is that, by causing Korek to enter into the 3G Annex over IT Ltd.'s exercise of its veto rights under clauses 11.3 and 11.4 of the SHA, the Respondents, led IT Ltd. says by Mr. Mustafa, breached those clauses of the SHA. It seeks declarations that:

   (a) Mr. Mustafa and CS Ltd. breached Clauses 11.3 and 11.4 of the SHA by causing, or allowing, Korek to sign the 3G Annex on 10 November 2014; and

   (b) Korek breached Clauses 11.3 and 11.4 of the SHA by signing the 3G Annex on 10 November 2014.

   [A/5/148].

   It is this secondary claim that is addressed in this Chapter.

4. In their Defence [A/6/172-175], the Respondents argue (i) that IT Ltd. consented to the execution of the 3G Annex and that there was therefore no infringement of any shareholder reserved matter and (ii) that even if IT Ltd. had withheld its consent to entry into the 3G Annex, such refusal would not have been in the best interests of Korek.

5. The Respondents point out that the KSC, including the IT Ltd. representatives on that body, approved payment of the first instalment of the 3G license fee. It then consented to Korek entering into the 3G Annex. Although it sought to make that consent subject to certain conditions, there was no provision under the SHA which allowed it to attach conditions.

6. The Respondents further argue that CS Ltd. did everything within its power to comply with the stipulated conditions. It had already used its best endeavours to seek relevant amendments to the draft Annex. In the course of the signing meeting, Korek's representative sought to include a statement that the Annex was being signed under duress but was prevented from doing so by the CMC. However, the reservation was articulated to the CMC, which had made clear that the terms of the 3G Annex were non-negotiable. As to the third condition (that CS Limited would need to confirm in writing that it would not object to the completion of the Call Option and would send a letter to the CMC informing it that the Claimant had exercised the Call Option in accordance with the existing terms of the Shareholders' Agreement) CS Ltd. had an obligation to comply with the Call Option if lawfully exercised. However, it could not

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dictate to the CMC that it approve the exercise of the Call Option or lawfully send a letter to the CMC "*falsely notifying the regulator that the Call Option had been exercised*".

7. There was therefore, the Respondents say, no breach of the SHA. In any event, even if IT Ltd. did not consent to the execution of the 3G Annex, its refusal to provide consent under clause 11.3 of the SHA was unreasonable:

   (a) The CMC had made clear that the terms were non-negotiable. It was untenable for Korek to refuse to enter into the Annex and be left unable to provide 3G services whilst its two competitors proceeded to agree;

   (b) Korek's CEO regarded the request by IT Ltd. as neither realistic nor achievable and as putting Korek in an impossible position;

   (c) As well as having a right to exercise a veto, IT Ltd. was under a concurrent obligation to act in the best interests of Korek;

   (d) A desire to protect the exercise of the Call Option is not borne out by the facts, given that IT Ltd. waited until the "final hour" to exercise its Option and it demonstrates that there was no serious objection to the 3G Annex itself; and

   (e) Given that the CMC had already issued the CMC Decision, there was no realistic expectation of completing the Call Option and it had no legitimate reason for objecting to the Annex.

8. In reality, say the Respondents, the 3G Annex was the catalyst for IT Limited to exercise a Call Option that in its own assessment, it did not value, in order to protect its position in any litigation against Korek's shareholders.

9. IT Ltd. responds that the assertion that IT Ltd. consented to the 3G Annex is contrary to the factual record. It relies, specifically, upon the emails at D1/25 and D1/207. It also rejects the assertion that its refusal was unreasonable. That assertion, it says, is premised on the notion that executing the 3G Annex was in Korek's best interest. IT Ltd. says that that was not the case. The 3G Annex amended the terms of the License, in an effort to frustrate IT Ltd.'s Call Option and to ensure that IT Ltd. did not acquire majority control of Korek while the CMC Decision was challenged. IT Ltd. argues that, had it gained majority control, Korek would have been in a substantially better position, both with respect to the day-to-day running of its business and with regard to its ongoing challenge to the CMC Decision before the Iraqi courts [A/21/256-258].

10. In their Rejoinder [A/34/234-235], the Respondents note that IT Ltd. chased Mr. Mustafa for confirmation that the 3G Annex had been signed and stated that it was Mr. Mustafa's "*fiduciary duty*" to do so immediately. The letters sent by IT Ltd. before 9 November 2014 are irrelevant. IT Ltd.'s objections to the Annex were not *bona fide*. The 3G Annex was also plainly in Korek's best interests. It had always been part of Korek's business plan to provide 3G services and the CMC had made clear that it would not permit Korek to provide such services if it refused to sign the Annex.

11. The Respondents regard as "*farcical*" IT Ltd.'s argument that it was in Korek's best interests to refuse to sign the 3G Annex so that IT Ltd. could gain majority control. It could not have done so in November 2014 and it further had no interest in doing so at that time.

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12. In their written Closing Submissions, the Respondents argue that the evidential hearing showed that a number of IT Ltd.'s claims concerning the Call Option were misleading and disingenuous. The Respondents allege (i) that IT Ltd, had not at all times intended to exercise the Call Option in order to obtain majority control of IH Ltd., (ii) that it did not exercise the Call Option in November 2014 in a *bona fide* attempt to obtain majority control, (iii) that the CMC's consent was required to complete the Call option and (iv) that Korek did not enter into the 3G Annex to frustrate the Call Option.

13. In this context the Respondents refer to the IT Ltd. Shareholders' Agreement, produced during the course of the hearing [D1/600]. The Respondents say that this showed that Orange and Agility had agreed to complex restrictions on when and in what circumstances the Call Option could be exercised. They say that this agreement required Orange and Agility to undertake a valuation of IH Ltd. before the end of 2013. Despite what IT Ltd. says, the "Project Kairos Valuation Update" (the "Kairos Valuation") was that valuation. The IT Ltd. Shareholders' Agreement also shows that Orange had the right to compel Agility to exercise the Call Option, subject to the fair market value of IH Ltd. exceeding US$ 2,025 million.[13] However, the Kairos Valuation showed that Korek and therefore IH Ltd. was worth significantly less than US$ 2,025 million. Orange had no ability to compel Agility to exercise the Call Option and had no intention of exercising it itself prior to July 2014. IT Ltd. only intended to exercise the Call Option if the price was right and at the start of 2104 it was not. IT Ltd.'s submission that as at May 214 it had determined that it would exercise the Call Option is not sustainable.

14. The Respondents also rely upon the minutes of the IT Ltd. Board Meeting of 4 November 2014 [D2/313]. The Respondents say that these show that Agility had decided that it would not provide Korek with additional financing and was looking for an exit strategy, that Orange's representatives voted against exercising the Call Option and that Orange's representatives knew that completion of the Call Option would be impossible without the consent of the CMC.

15. The Respondents also say that it is clear that IT Ltd. had a well-developed litigation strategy. Mr. El-Jeaan, a lawyer, was made a director of IT Ltd. and participated in the board meeting. It was also clear from the evidence of Mr. Aziz that the exercise was not bona fide but was part of a litigation strategy. Agility had no real expectation that the Call Option would be completed, nor did it have any desire to obtain majority control.

The Arbitral Tribunal's Analysis

16. Clause 11.3 of the SHA provides as follows:

> *"During the period up to the Majority Interest Date. the parties shall (and shall procure that International Holdings and Korek shall) use their respective powers to ensure. so far as they are legally able, that no action or decision (whether by the International Holdings Board of Directors, the Korek*

[13] The Respondents Closing gives a figure of US$ 2.025 million. This is clearly a typographical error. The IT Ltd. Shareholders' Agreement, although not particularly legible, seems to use a figure of US$ 2,025 million (that is, US$ 2.025 billion).

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Supervisory Committee, any entity within the Group or any of the officers or managers within the Group) is taken which (i) relates to any of the matters specified in clause 11.4 (IT Ltd. Veto Matters), or (ii) may involve adopting any Business Plan or Budget for the Group or any proposal for financing in excess of the financing for the Group specified in the then current adopted Business Plan or Budget (Funding Plan). or approving or ratifying any departure from the then current Business Plan, Funding Plan or Budget for the Group, in each case, without the prior approval or written consent or IT Ltd (provided that IT Ltd shall not withhold its approval or consent in respect of any financing obtained in compliance with clause 5.8)."

17. The IT Ltd. Veto Matters are set out in clause 11.4 and include any decision, act or omission which may involve:

"(k) National Mobile Licence: any entity within the Group taking any steps or actions or making any decisions which materially adversely affects or might reasonably be expected to have a material adverse effect on the National Mobile Licence or the rights and obligations of any entity within the Group with regard to the CMC or agreeing a settlement of any amounts payable to the CMC (other than in connection with a CMC Reduction in accordance with clause 8.1 of the Subscription Agreement):

(l) Licences: entering into, amending (in any material respect) or terminating any material licence, including the National Mobile Licence".

18. There can be no doubt that the amendments proposed to the Licence by the 3G Annex fell firmly within the parameters of clause 11.4, at least as far as the Assignment and Transfer provisions were concerned and that they constituted an IT Ltd. Veto Matter. This was a material amendment to the terms of the License which dramatically affected the ability of IT Ltd. to exercise the IT Call Option.

19. In analysing the various arguments made in relation to this aspect of IT Ltd.'s claims, the Arbitral Tribunal is guided by its findings in relation to the claim for unlawful means conspiracy in respect of the CMC Decision. In addition to finding that the Respondents were liable for the destruction in value of the IT Call Option by corruptly procuring the CMC Decision, the Arbitral Tribunal finds that the amendments to the License introduced by the 3G Annex were part and parcel of the Respondents' unlawful conspiracy. The introduction of the amendment to the Assignment and Transfer provisions was designed to affect Korek alone and was procured by the Respondents' corrupt behaviour. This is an important factor when assessing the Respondents' argument that IT Ltd.'s objection was not made in good faith. The 3G Annex itself was to a significant extent a dishonest construct.

20. The Arbitral Tribunal rejects the Respondents' argument that IT Ltd. consented to the execution of the 3G Annex. The record shows quite clearly that it sought to impose conditions upon the execution of the Annex. Two emails from IT Ltd. sent on 9 November 2014, the day before the Annex was signed, set out clearly the conditions that IT Ltd. wished to have fulfilled if they were to consent to the Annex being signed [D1/210; D1/271]. The Respondents appear to argue that Mr. Jain's email in the early hours of the morning on 10 November 2014 in which he said that IT Ltd. expected Mr. Mustafa to "*exercise his fiduciary duty by doing so immediately*" should be read as an

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instruction to Mr. Mustafa to go ahead and sign the Annex without demur. That is not what the email says. The full context of the email is clear from the following paragraph:

> *"The Chairman has made it perfectly clear that, in his opinion, signing of the 3G Annex would be in the best interest of Korek. We have also now provided Korek with IT's position in this respect.*
>
> *IT cannot be held responsible for the Chairman's/Korek's failure to act on IT's proposal, and any consequences flowing therefrom. We expect the Chairman to exercise his fiduciary duty by doing so immediately.*
>
> *IT's rights in this respect are hereby reserved" [D2/19/3].*

The reference to "*doing so*" refers back to the previous sentence. In other words, IT Ltd. expected Mr. Mustafa to exercise his fiduciary duty by acting on IT Ltd.'s proposal.

21. The Respondents argue that clauses 11.3 and 11.4 of the SHA do not allow IT Ltd. to impose conditions upon their consent. The Arbitral Tribunal disagrees. IT Ltd. was purporting to exercise a veto but indicating that, provided certain conditions were met, its consent would be forthcoming. That was a legitimate and constructive exercise of its rights.

22. In his witness statement, Mr. Mustafa says that IT Ltd. withdrew its consent for the 3G License [B3/1/11]. This is a mischaracterisation of what happened. In earlier discussions of the need for a 3G License, IT Ltd. could have had no inkling that it would be tied to an amendment of the Assignment and Transfer provisions. The introduction of that amendment into the 3G Annex was unheralded, illogical and highly suspicious. IT Ltd. was entitled to change its stance at that time.

23. In so far as the Respondents argue that the conditions imposed were unrealistic, the Arbitral Tribunal does not consider that this is a sustainable argument in light of the Respondents' bribery and corruption. Certainly IT Ltd. was being told that the CMC was not prepared to countenance any negotiation of the terms of the Annex. No translation of any letter from the CMC saying this in terms has been provided to the Arbitral Tribunal and it is almost certain that any refusal to negotiate over the Assignment and Transfer provisions would have been driven by the Respondents' own bribery of the CMC. The email from Mr. Abou Charaf of 6 November 2014 which purports to report on Ms Gebara's meeting with the CMC refers to her having been told by "*the Head of the CMC*" (Dr. Al Khwildi) that the current draft of the Annex was non-negotiable. There is no email from Ms Gebara herself or any witness statement from her to this effect. The Respondents say that an attempt was made to sign the Annex under protest, but no credible evidence has been produced in this regard.

24. In relation to the argument that IT Ltd. had to have regard to the best interests of Korek, IT Ltd. argues that seeking to preserve its ability to exercise the IT Call Option was in fact in Korek's best interests as, had it gained majority control, Korek would have been in a substantially better position, both with respect to the day-to-day running of its business and with regard to its ongoing challenge to the CMC Decision before the Iraqi courts. The burden of proof on this issue rests with the Respondents. Whilst being in a position to offer 3G services was clearly beneficial to Korek, the Arbitral Tribunal is not persuaded by the Respondents' argument that the ability of IT Ltd. to take control

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and to have the ability to take charge of the challenge to the CMC Decision would not have been in Korek's best interests. Having procured the CMC Decision and the terms of the 3G Annex by an unlawful means conspiracy, the Respondents' assessment of what was in Korek's best interests, as opposed to the interests of CS Ltd. and Mr. Mustafa, lacks credibility.

25. The Respondents' final set of arguments are based on the IT Ltd. board minutes of 4 November 2014. They say that these show that Orange had concerns about the exercise of the IT Call Option, that Agility was looking for an exit strategy and that IT Ltd., did not expect the IT Call Option to be capable of implementation. What IT Ltd. was doing was in effect putting in place a litigation strategy. The Arbitral Tribunal accepts that the board minutes display considerable concern about the position, and about the prospect of failure and of the risk of throwing good money after bad. The Arbitral Tribunal does not find these concerns surprising in light of IT Ltd.'s experience during the course of 2014. The Arbitral Tribunal does not consider that this demonstrates that the purported exercise of the veto was undertaken in bad faith or for any other reason than to protect IT Ltd.'s legitimate interests, including the best interests of the Group. The contents of the IT Ltd. Shareholders' Agreement and the result of the Kairos Valuation are irrelevant to this conclusion.

26. An arbitral tribunal will generally only grant declaratory relief where to do so will serve a useful purpose. In the present case, it is clear that the signing of the 3G Annex against IT Ltd.'s veto was an integral part of the Respondents' unlawful means conspiracy in connection with the CMC Decision. In the circumstances, the Arbitral Tribunal therefore finds and declares that:

(a) Mr. Mustafa and CS Ltd. breached Clauses 11.3 and 11.4 of the SHA by causing, or allowing, Korek to sign the 3G Annex on 10 November 2014; and

(b) Korek breached Clauses 11.3 and 11.4 of the SHA by signing the 3G Annex on 10 November 2014.







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M. CORPORATE GOVERNANCE

The Parties' Submissions

1. IT Ltd. alleges that CS Ltd. and Mr. Mustafa effectively shut it and their nominee directors out from the management and operations of Korek in disregard of the shareholder protections that had been carefully negotiated as part of the 2011 Transaction. There are 4 specific elements to the allegations.

2. Firstly, it is said that when Ms. Gebara resigned as Korek's CEO in 2015, IT Ltd. proposed 4 candidates for Mr. Mustafa's consideration and approval, all of whom were rejected on spurious grounds. IT Ltd. says that this enabled Mr. Mustafa to run Korek "acephalous" and without proper control or restraint for several years, which facilitated his widespread self-dealing. This gives rise to alleged claims:

   (a) Against Mr. Mustafa for breach of clauses 8.4 and 3 of the SHA and clause 23.1 of the Subscription Agreement; and

   (b) Against CS Ltd. and Korek under clauses 8.4, 9.4 and 31 of the SHA, as well as clauses 14.11 and 23.2 of the Subscription Agreement.

   IT Ltd. seeks declaratory relief in respect of these breaches [A/5/148-149].

3. Second, IT Ltd. alleges that, following the resignation of Mr. Rennard as IT Ltd.'s representative on the IH Ltd. Board and the KSC, Mr. Mustafa and CS Ltd. have unjustifiably and inexplicably refused to give effect to IT Ltd.'s requests to appoint Mr. Froissart as his replacement. Mr. Mustafa and CS Ltd. have ignored IT Ltd.'s requests and Mr. Froissart has not been appointed to the IH Ltd. Board. IT Ltd. says that this gives rise to claims:

   (a) Against Mr. Mustafa and CS Ltd. for breaches of clauses 6.1, 6.6, 7.1, 7.7 and 31 of the SHA and clause 23 of the Subscription Agreement; and

   (b) Against Mr. Mustafa for breach of clause 14.11 of the Subscription Agreement.

   IT Ltd. seeks specific performance in respect of these breaches by way of the immediate appointment of Mr. Froissart to the IH Ltd. Board [A/5/149-151].

4. Third, IT Ltd. claims that Mr. Mustafa and CS Ltd. have sought to create an "information vacuum" to entrench their control over Korek, to push IT Ltd. out and enable them to "plunder" Korek. IT Ltd. says that little or no information was provided about Korek's litigation in relation to the CMC Decision, the legal advice received, the KRC Decree and Korek's expenses, liabilities and financial information. This gives rise, IT Ltd. asserts, to claims against both Mr. Mustafa and CS Ltd. for breach of clauses 15 and 31 of the SHA and clause 23 of the Subscription Agreement. IT Ltd. seeks declaratory relief in respect of these breaches [A/5/151-152].

5. Fourth, IT Ltd. asserts that, despite the Parties agreeing by way of clauses 6.11 and 7.12 of the SHA that Mr. Mustafa would convene meetings of the Board and the KSC on at least a quarterly basis, he has not convened any meetings of either body since March 2017 and has failed to provide any explanation for not convening these meetings. This is said to give rise to claims:

   (a) Against Mr. Mustafa for breaches of clauses 6.11 and 7.12 of the SHA; and

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(b) Against Mr. Mustafa and CS Ltd. for breach of clause 31 of the SHA and 23 of the Subscription Agreement.

IT Ltd. seeks declaratory relief in respect of these breaches [A/5/152].

6. Neither the Respondents' Statement of Defence nor their evidence addresses these claims, other than by way of their argument that the SHA was terminated by frustration in March 2019. In their Statement of Rejoinder, the Respondents assert that:

(a) Mr. Mustafa rejected the candidates proposed by IT Ltd. to replace Ms. Gebara on legitimate grounds;

(b) There is no obligation on any of the Respondents to give effect to IT Ltd. wish to appoint Mr. Froissart to the IH Ltd. Board or to the KSC. Article 20 of the IH Ltd. Articles of Association permit IT Ltd. to nominate a director for appointment, but there is no obligation on CS Ltd. appoint that nominee;

(c) IT Ltd.'s request for information was part of IT Ltd.'s "*dogged campaign of litigation*" against the Respondents. Its requests for information were not reasonable, *bona fide* requests and the Respondents were entitled to refuse to provide the requested information;

(d) It is "absurd" to suggest that KSC meetings should continue to be convened in circumstances where IT Ltd. has no economic interest in Korek. In relation to the IH Ltd. Board, its only activities are pursuing claims against the Respondents and it would be an artificial and pointless exercise to proceed on such a basis.

[A/34/130-132].

7. The Respondents' Statement of Rejoinder further reiterates the argument that the SHA has been frustrated, asserts that IT Ltd. claims no loss and argues that the declaratory relief is misconceived as IH Ltd. no longer has any economic interest in Korek [A/34/254-255].

8. The Arbitral Tribunal notes that, at section I of IT Ltd.'s skeleton argument, IT Ltd. purports to summarise by reference to each individual Respondent the various provisions of the SHA and of the Subscription Agreement relied upon and without identifying which provision is relied upon in relation to which element of this general cause of action. The Arbitral Tribunal has therefore relied upon the Statement of Claim in this regard.

The Arbitral Tribunal's Analysis

9. As noted above, the Arbitral Tribunal has dealt with and rejected the Respondents' argument that the SHA was terminated by frustration in March 2019 (see Chapter G of this Award). It therefore turns to the individual claims advanced by IT Ltd. The relevant provisions of both the SHA and the Subscription Agreement are set out in Annex A.

10. As a preliminary observation, the Arbitral Tribunal rejects the suggestion, advanced by the Respondents, that IH Ltd. and Korek should somehow be subject to materially different standards of corporate governance based upon the environment in which they were operating. The Parties negotiated a comprehensive SHA which they agreed to

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subject to English law and in which they agreed, as Directors of IH Ltd. and as Members of the KSC, to act in the best interests of IH Ltd. and of Korek "*in accordance with international standards of corporate governance*" (see clauses 6.1 and 7.1 of the SHA). They must expect to be held to that bargain.

Candidates for CEO

11. Clause 8.4 of the SHA requires the Managing Director of Korek, that is Mr. Mustafa, *"to formally appoint and remove the … CEO proposed pursuant to clauses 8.1, 8.2, 8.3 and 8.6"*. Clause 8.3 provides that, subject to clause 8.6, "*IT Ltd shall propose candidates for appointment as (i) the CEO, and (ii) the CFO and may propose the removal of the CEO or the CFO and the appointment of another in their place*". Neither IT Ltd. nor the Respondents have suggested that clause 8.6 was or is applicable in the present case. It therefore fell to IT Ltd. to propose a replacement for Ms. Gebara when she resigned. Although clause 8.1(b) of the SHA permits a member of the KSC to object on objective grounds to a proposed candidate, the wording of clause 8.1 makes clear that that applies to the appointment of a "Senior Manager". That term is defined by Schedule 2 as referring to "*the senior managers of Korek who report directly to the CEO, including the CFO and the CRO*". It does not refer to the CEO herself.

12. There is no specific reference to the basis upon which any proposal made by IT Ltd. pursuant to clause 8.3 may be rejected or resisted by the Managing Director. The use of the word "propose" rather than, say, "nominate" suggests that the Managing Director has some discretion (notwithstanding that his role pursuant to clause 8.4 is the "formal" appointment of the CEO). However, it is the view of the Arbitral Tribunal that it is implicit that any rejection of the candidate proposed by IT Ltd. must be on reasonable grounds.

13. Ms. Gebara initially tendered her resignation on 15 December 2013 [D1/240/2]. In the event she remained in position until June 2015, having re-tendered her resignation on 14 April 2015. On 14 May 2015, Mr. Ehab Aziz for IT Ltd. provided Mr. Mustafa with the curricula vitae of two candidates for his consideration. These were Mr. Sami Smeirat, who was at the time Vice President for Business Services and the CEO of Jordan Data Communications Ltd. (an Orange company) and Waseem Arsany, who was CEO of a company called LINKdotNET in Egypt [D1/242]. Mr. Mustafa did not respond immediately. On 13 June 2015, Mr. Abou Charaf emailed IT Ltd. asking when the two candidates might travel to Erbil for interview. In the meantime, he suggested appointing Mr. Touma, currently Korek's CFO, as acting CEO [D1/243]. Mr. Jain responded for IT Ltd. giving dates when the candidates were available and urging Mr. Mustafa to select one of the two candidates as soon as possible.

14. No action was taken for 5 months. On 13 October 2015, a KSC meeting took place. Mr. Mustafa was not present and Mr. Rahmeh, who chaired the meeting noted that "*he had been advised by Mr. Mustafa that the two candidates proposed by IT for appointment as CEO did not satisfy in his views the required criteria*" [D1/244/9]. IT Ltd.'s representative expressed his surprise at not having received this feedback several months previously. He was told by Mr. Rahmeh that the CEO appointment was a sensitive matter, and "*keeping the Company the way it is would be better than appointing the wrong person as CEO*". Mr. Monzani, for IT Ltd., highlighted the urgency to appoint a CEO as soon as possible in the best interest of the Company.

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15. Following the meeting, IT Ltd. wrote again to Mr. Mustafa, stressing the urgency in finding and appointing a new CEO. They requested feedback as to why the candidates previously proposed were considered unsuitable and asked that all decisions which would have been made by the CEO be brought before the Board of IH Ltd. to ensure a level of acceptable corporate governance [D1/245].

16. Mr. Jiqsy Hamo Mustafa said that the two candidates were too closely connected with Orange and that this was not appropriate. He also said that Mr. Arsany had very limited experience in mobile telecommunications. He set out the minimum criteria which he said Korek considered that any candidate should satisfy. Once again, it was suggested that Mr. Touma should be appointed acting CEO [D1/246].

17. On 25 November 2015, IT Ltd. proposed a further candidate who it considered met the necessary requirements and attached his curriculum vitae. Mr. Jain urged that he be interviewed as soon as possible. He also explained that he did not think appointing the CFO as acting CEO was in the best interests of Korek [D1/246/1].

18. Once again, no steps were taken by Mr. Mustafa to either interview or appoint the candidate proposed by IT Ltd. On 9 February 2016, Mr. Jain wrote again to Mr. Mustafa complaining about the "inexplicable delays", the lack of response to communications and the failure to take any steps to interview the latest candidate. He asked that confirmation be provided as a matter of priority that the candidate would be interviewed within the next two weeks [D1/247/1].

19. A KSC meeting took place on 19 February 2016. Once again, Mr. Mustafa was not present. The draft minutes record that "*Mr. Rahmeh informed the KSC that, as previously advised a few months ago, there is an issue with the CEO candidate (the "Candidate") proposed by Iraq Telecom Limited ("IT"), which he prefers discussing verbally in order not to damage the reputation of the Candidate and so as to avoid creating potential liability for the Company; he reiterated that Mr. Mustafa, having run the background check, had very serious reservations on the Candidate*" [D1/248/3].

20. A further two months passed without any action on the part of Mr. Mustafa, CS Ltd. or Korek. On 12 April 2016, IT Ltd. wrote to Mr. Mustafa and to Korek expressing their dissatisfaction. They noted that no details had been provided as to the reservations said to exist in respect of the latest candidate. IT Ltd.'s email noted:

> *"IT Ltd. put forward this candidate in November 2015. It is therefore entirely unacceptable for Mr. Mustafa and the other CS Ltd representatives to have waited until the meetings on 19 February 2016 to raise this issue. This is particularly the case when IT Ltd has sent correspondence specifically requesting that this candidate be interviewed as a matter of urgency (see our emails to you dated 11 December 2015 and 9 January 2016) to which IT Ltd received no response, much less any indication that there were misgivings about the proposed candidate".*
>
> IT Ltd. asked that they be provided with the details for rejecting the candidate as a matter of urgency [D1/249/1].

21. Yet again, no action was taken. On 12 September 2016, some 16 months after IT Ltd. first proposed candidates for consideration, it put forward yet another candidate, Mr. Tarek Saadi. Mr. Saadi was said to be "*an industry leader with 21 years' experience*

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of leading organisations in diversified markets. In this respect, Mr. Saadi has substantial experience in the telecoms sector, including in Iraq, and currently serves as President of Ericsson GCC & Pakistan, and Head of Global Customer Unit at the Zain Group. Furthermore, as a result of Mr. Saadi's work at Ericsson, he has gained a unique insight into Korek". As with the previous candidates, Mr. Saadi's curriculum vitae was attached. IT Ltd. requested that Mr. Mustafa formally appoint Mr. Saadi as CEO "*forthwith and without delay*" [D1/250].

22. On 18 September 2016, Mr. Abou Charaf forwarded a message from Mr. Mustafa. It said "*Mr. Saadi is well known to us; he was a decent sales executive at Ericsson. We shall set dates in order to organize a meeting with him in Erbil the soonest*" [D1/252/2]. Mr. Jain acknowledged the email and arranged for Mr. Saadi to organise a trip to Erbil. However, a further email followed from Mr. Abou Charaf on 11 October 2016. This forwarded a message from Mr. Mustafa "*on behalf of the CS Representatives on the IH Board/KSC*". It said:

> *"We refer to your email dated 12 September 2017 proposing Mr. Tarek Saadi as candidate for CEO of Korek. Mr. Saadi is known to our principals and could be the subject of appropriate consideration as potential CEO of Korek. However, given the state of the relationship among the shareholders, including the blocking of certain corporate decisions relating to the operations of the company, it appears to us that the only sensible way forward is for the shareholders to agree on a strategy and a business plan for Korek so as to provide any new CEO with the ability to succeed in his or her mission" [D1/252/1].*

23. Korek remained without a CEO when IH Ltd.'s shares were transferred to the original Iraqi shareholders by the KSC Decree in March 2019.

24. Mr. Mustafa says nothing in his witness statements about his actions, or those of the CS Ltd. representatives, in failing to advance the replacement for Ms. Gebara. It is fair to say that the IT Ltd. witnesses also do not specifically address the corporate governance claims. However, the documents provide a clear guide to the history of this issue. On the basis of that material, it is clear to the Arbitral Tribunal that Mr. Mustafa, and the CS Ltd. representatives on the KSC and the IH Ltd. Board, were determined not to take any action on the proposals being put forward by IT Ltd. This was an urgent issue following the resignation of Ms. Gebara. Neither Mr. Mustafa nor CS Ltd. showed any desire to take the matter forward. They were content to elevate Mr. Touma to the role of acting CEO, contrary to the express wishes of IT Ltd. They took an unconscionable amount of time to respond to IT Ltd.'s proposals. Their reasons for declining even to interview the candidates were contrived. Their refusal even to share the concerns that they had over the third candidate, said to be due to a concern not to damage his reputation, was patently a smokescreen. No internal materials were presented to the Arbitral Tribunal purporting to identify the alleged concerns. When Mr. Mustafa and CS Ltd. were finally presented with Mr. Saadi, they paid lip service to the possibility of interviewing him while making no arrangements to do so. It is evident, both from this narrative and from the fact that no new permanent CEO was put in place prior to the KCR Decree, and the Arbitral Tribunal now finds, that Mr. Mustafa had no intention of appointing any CEO proposed by IT Ltd. after the resignation of Ms. Gebara.

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25. In relation to Mr. Mustafa, the Arbitral Tribunal therefore finds and declares

(a) that by rejecting the various candidates proposed for appointment as Korek's CEO following Ms. Gebara's resignation in 2015, Mr. Mustafa was in breach of his obligations under clause 8.4 of the SHA; and

(b) that by rejecting the various candidates proposed for appointment as Korek's CEO following Ms. Gebara's resignation in 2015, Mr. Mustafa was in breach of his obligation under clause 23.1 of the Subscription Agreement to "*take … all such steps and execute … such further documents as may be required by law or be reasonably necessary to give full effect to this Agreement and the other Transaction Documents*".

26. The Arbitral Tribunal declines to find that Mr. Mustafa was in breach of his obligations under clause 3 of the SHA in rejecting the various candidates proposed for appointment as Korek's CEO following Ms. Gebara's resignation in 2015. It does not consider that the broad obligation in clause 3 is engaged by a dispute as to the appointment of a new CEO.

27. In relation to CS Ltd. and to Korek, the Arbitral Tribunal finds and declares:

(a) that by failing to procure that Mr. Mustafa, as Managing Director of Korek, acted in accordance with clause 8.4 of the SHA and the best interests of Korek by appointing one of the various candidates proposed for appointment as Korek's CEO following Ms. Gebara's resignation in 2015, both CS Ltd. and Korek were in breach of clause 9.4 of the SHA; and

(b) that by failing to procure that Mr. Mustafa, as Managing Director of Korek, acted in accordance with clause 8.4 of the SHA and the best interests of Korek by appointing one of the various candidates proposed for appointment as Korek's CEO following Ms. Gebara's resignation in 2015, both CS Ltd. and Korek were in breach of clause 31.2 of the SHA requiring "*each party to take (or procure the taking of) all such steps and execute (or procure the execution of) such further documents as may be required by law or be reasonably necessary to give full effect to this Agreement and the other Transaction Documents*" and clauses 31.3 of the SHA and 23.2 of the Subscription Agreement to "*procure that its Affiliates comply with all obligations under this Agreement and/or the Transaction Documents which are expressed to apply to any such Affiliates*".

28. The Arbitral Tribunal declines to find that either CS Ltd. or Korek were in breach of any obligation under clause 8.4 of the SHA by reason of Mr. Mustafa's rejection of the various candidates proposed for appointment as Korek's CEO following Ms. Gebara's resignation in 2015. Neither Respondent had any obligation under that provision (or under any of the subclauses incorporated by reference).

29. The Arbitral Tribunal further declines to find that either CS Ltd. or Korek were in breach of any obligation under clause 14.11 of the Subscription Agreement by reason of Mr. Mustafa's rejection of the various candidates proposed for appointment as Korek's CEO following Ms. Gebara's resignation in 2015. The obligation in that clause is owed by Mr. Mustafa and not by either CS Ltd. or Korek.

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Refusal to Appoint Mr. Froissart

30. The behaviour of the Respondents followed a similar pattern when IT Ltd. wished to replace Mr. Rennard with Mr. Froissart. Mr. Rennard had served as the IT Ltd. representative on the IH Ltd. Board since July 2011. He resigned from his appointment and sent a letter to the Board of IH Ltd. on 8 April 2016, announcing his resignation "*with effect from the date of the general meeting or shareholders resolution appointing [his] replacement*" [D1/255/1]. IT Ltd. wrote the same day proposing the removal of Mr. Rennard and the appointment of Mr. Froissart as a director of IH Ltd. pursuant to clause 6.3(b) of the SHA and asking that this be procured pursuant to clause 6.6. A similar proposal was made in relation to Mr. Rennard's appointment to the KSC [D1/257/1].

31. Four months passed before there was any reaction from Mr. Mustafa. In the usual way, this came on 18 October 2016 via an email from Mr. Abou Charaf who, after apologising for the late response, said that he had been "*advised by the Chairman that, while he holds Mr. Froissart in high esteem and has the utmost respect for him, he notes, however, that, as a matter of good corporate governance and in line with the provisions of the Shareholders' Agreement, IT's proposed removal of Mr. Rennard from the IH Board and KSC/subsequent proposed appointment of Mr. Froissart on the IH Board and KSC, respectively, should have been discussed upfront among the parties; accordingly, the Chairman would like to understand the reasons for the removal of the current IT representative and the experience of the proposed IT nominee*" [D1/258/2].

32. Mr. Mustafa was of course familiar with Mr. Froissart as he had led the negotiations leading to the 2011 Transaction and had been a director of IT Ltd. from that time. Notwithstanding Mr. Mustafa's obvious familiarity with both the background and the business, Mr. Rennard politely explained that he had been appointed to a different role within Orange and was no longer in charge of the Middle East/Africa region. He continued:

> *"As for my replacement and pursuant to the SHA agreement, Orange has decided to appoint Olivier Froissart as director in International Holdings and Korek. The appointment of Olivier Froissart seems convenient due to his profound knowledge of the Iraqi file and is well known by the other board members at International Holdings and Korek. Furthermore, he has a solid experience in the Middle-East and North African region where he holds offices as director in many subsidiaries in particular Orange Egypt, Meditel Morocco and Orange Tunisia.*
>
> *Based on the above mentioned reasons, I am confident that both my resignation and appointment of Olivier Froissart are in Korek's best interest. Therefore, I would be grateful if you would kindly accept to ensure that the resolutions of International Holdings Board and the KSC in order to effect my replacement as soon as possible are adopted. Olivier is of course available at the Chairman's earliest convenience should the Chairman have any question."*
>
> [D1/258/1].

33. On 3 March 2017, a meeting took place in Milan of the IH Ltd. Board. It appears that at that meeting Mr. Mustafa and the CS Ltd. nominees on the IH Ltd. Board agreed to

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the replacement of Mr. Rennard by Mr. Froissart. On 9 March 2017 Mr. Lo Gatto, the General Counsel and Company Secretary of Orange Middle East and Africa followed up and asked Mr. Abou Charaf to "*circulate the IH shareholders written resolution which effects the replacement of Marc Rennard and the appointment of Olivier Froissart as a director in IH and KSC member*" [D1/259/3-4]. Mr. Abou Charaf responded the same day, saying that he "*hope[d] be in a position to circulate draft resolutions very soon*" [D1/259/3].

34. Another 6 weeks passed without anything further from Mr. Abou Charaf. Mr. Lo Gatto chased him and was told that he was "*following up from [his] side*" and would run the resolutions by Mr. Lo Gatto "*before sending them to the IH Ltd. Board/KSC*" [D1/259/3].

35. Another month passed without anything further from Mr. Abou Charaf. Mr. Lo Gatto emailed Mr. Abou Charaf on 22 May 2017 noting that over a year had passed since Mr. Rennard's change of position. He enclosed a draft resolution for the IH Ltd. shareholders to assist in the finalisation of Mr. Froissart's appointment. Mr. Abou Charaf again responded promptly and said that he would "*continue chasing [Mr. Mustafa]*" and hoped to be in a position to update Mr. Lo Gatto within 3 days [D1/259/1-2]. Again, Mr. Lo Gatto heard nothing. He followed up on 31 May 2017 and received the following answer from Mr. Abou Charaf:

> *"Still no answer I am afraid, despite my calls and emails. I understand the situation. I also understand that the replacement should be formalized the soonest but, unfortunately, there is not much I could do other than trying to reach the Chairman. I will try again and will keep you posted."*

[D1/259/1].

36. Yet again no action was taken by Mr. Mustafa or by CS Ltd. On 12 December 2017, IT Ltd. wrote a formal letter to CS Ltd., to IH Ltd., to Korek and to Mr. Mustafa complaining about the position and requesting Mr. Mustafa and/or the IH Ltd. Board to call for a general meeting of the shareholders of IH Ltd. to vote upon the replacement of Mr. Rennard by Mr. Froissart [D1/260]. This appears to have produced no response and on 3 February 2018, almost 2 years after Mr. Rennard indicated that he wished to stand down, IT Ltd. wrote to IH Ltd. forwarding "*a written Board Resolution to temporarily appoint Mr. Olivier Froissart as a Director of International Holdings as of 3 March 2017, subject to reappointment by a Shareholders' Resolution at the next General Meeting of the Shareholders in accordance with Article 52(3) of the DIFC Company Law*" and requesting that it be signed by each of Mr. Mustafa, Mr. Aqrawi, Mr. Junde and Mr. Rahmeh within 14 days [D1/261].

37. This last request produced no response and Mr. Froissart has never been confirmed as a director of IH Ltd.

38. The Arbitral Tribunal finds that the refusal of Mr. Mustafa and the other CS Ltd. nominees on the IH Ltd. Board to confirm Mr. Froissart was wilfully obstructive. They all knew that Mr. Froissart was highly experienced and well-versed in the business and structure of Korek. He served on Korek's Finance, Audit and Risk Committee and was involved in the negotiation of the 2011 Transaction. At the Board meeting in Milan in March 2017 Mr. Mustafa and the CS Ltd. nominees on the IH Ltd. Board agreed to the replacement of Mr. Rennard by Mr. Froissart. However, they never took the necessary action to bring it about. No reason appears ever to have been provided to IT Ltd. Mr.

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Abou Charaf indicated repeatedly that he was following up with Mr. Mustafa, and that he had placed calls and sent emails to him. However, there has been no disclosure of such material or of Mr. Mustafa's response. Mr. Mustafa avoids any mention of this episode in his various witness statements. The unavoidable conclusion is, and the Arbitral Tribunal finds, that Mr. Mustafa and the other CS Ltd. representatives sought deliberately to frustrate the replacement of Mr. Rennard with Mr. Froissart.

39. The structure of the SHA is such that IT Ltd. is entitled to propose for appointment by the Shareholders' General Meeting Directors as members of the IH Ltd. Board. It is also entitled to "*propose the removal of any Director so proposed for appointment and propose the appointment of another in his place*" (clause 6.3(b) & 6.4(a)). This is subject to the provisions of clause 6.5, which do not apply in the present case. Clause 6.6 provides that the "*parties shall procure that the Shareholders' general meeting and the International Holdings Board of Directors shall approve and appoint or remove (as applicable) such persons as are proposed pursuant to clauses 6.3, 6.4 and 6.5 for appointment to or removal from the International Holdings Board of Directors promptly upon receiving written notice of such proposal*". The Respondents argue that Article 20 of the IH Ltd. Articles of Association requires the consent of the IH Ltd. shareholders to appointments to the Board and that there was no obligation upon the Respondents to give effect to IT Ltd.'s wish to appoint Mr. Froissart. The Arbitral Tribunal does not accept the second part of the argument. Both Mr. Mustafa and CS Ltd. as parties to the SHA were under an obligation pursuant to clause 6.6 of the SHA to procure the approval and appointment of Mr. Froissart. The Arbitral Tribunal has dealt in Chapter I with the Respondents' argument as to the extent of the obligation to procure. CS Ltd. was the majority shareholder in IH Ltd. and Mr. Mustafa the majority shareholder in CS Ltd. There was no obstacle to them procuring the approval and appointment of Mr. Froissart.

40. Clause 6.1 of the SHA imposed an obligation upon the parties to "*procure that the International Holdings Board of Directors shall be responsible for the overall direction and management of International Holdings*". The Directors in turn, were obliged, in their capacity as Directors to act at all times "*in the best interests of International Holdings in accordance with international standards of corporate governance*". The effective refusal to approve the removal of Mr. Rennard and the approval of appointment of Mr. Froissart for several years was clearly not in accordance with such standards.

41. A similar structure was put in place for the KSC, with each party to the SHA obliged to "*exercise its powers and rights hereunder to procure that the Korek Supervisory Committee is constituted and operates at all times in the manner set out in this Agreement*" (clause 7.1). Clause 7.6 in turn provides that "*in the event that a Shareholder shall propose the appointment or propose the removal of any member of the International Holdings Board of Directors in accordance with clause 6.3 or 6.4, International Holdings and Korek shall procure that such person shall also be appointed or removed (as applicable) as a member of the Korek Supervisory Committee as soon as reasonably practicable*".

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42. The Arbitral Tribunal therefore finds that:

(a) CS Ltd and Mr. Mustafa were in breach of their obligation under clause 6.6 of the SHA to procure the removal of Mr. Rennard and the approval and appointment of Mr. Froissart to the IH Ltd. Board;

(b) CS Ltd and Mr. Mustafa were in breach of their obligation under clause 7.1 of the SHA to procure the removal of Mr. Rennard and the approval and appointment of Mr. Froissart to the KSC;

(c) CS Ltd. and Mr. Mustafa were, in failing to approve the removal of Mr. Rennard and to approve and appoint Mr. Froissart to the IH Ltd. Board and to the KSC, in breach of their obligations under clause 31 of the SHA (i) to exercise their direct and indirect voting rights and powers to ensure that the provisions of the SHA were completely and punctually observed and performed, (ii) to take or procure the taking of all such steps and execute or procure the execution of such documents as were reasonably necessary to give effect to the SHA and (iii) to procure that their Affiliates complied with all obligations under the SHA;

(d) CS Ltd. and Mr. Mustafa were, in failing to approve the removal of Mr. Rennard and to approve and appoint Mr. Froissart to the IH Ltd. Board and to the KSC, in breach of their obligations under clause 23.1 of the Subscription Agreement (i) to take or procure the taking of all such steps and execute or procure the execution of such documents as were reasonably necessary to give effect to the Subscription Agreement and the other Transaction Documents and (ii) to procure that their Affiliates complied with all obligations under the Subscription Agreement and the other Transaction Documents; and

(e) Mr. Mustafa, in failing to approve the removal of Mr. Rennard and to approve and appoint Mr. Froissart to the IH Ltd. Board and to the KSC, was further in breach of his obligation under clause 14.11 of the Subscription Agreement obligation to procure that CS Ltd. comply properly and punctually with their respective obligations under the Subscription Agreement and the Transaction Documents.

(f) Mr. Mustafa was, in failing to approve the removal of Mr. Rennard and to approve and appoint Mr. Froissart to the IH Ltd. Board and to the KSC, in breach of his obligation under clause 6.1 of the SHA as a Director of IH Ltd. to act at all times in the best interests of IH Ltd. in accordance with international standards of corporate governance.

43. The Arbitral Tribunal declines to find CS Ltd. liable for a breach of clause 6.1 of the SHA in relation to this specific matter. It is not apparent that there was a breach by CS Ltd. of obligation in the first sentence of that clause to "*procure that the International Holdings Board of Directors shall be responsible for the overall direction and management of International Holdings*". The obligation in the second sentence is owed by individual directors.

44. IT Ltd. seeks an order for specific performance in respect of the approval and appointment of Mr. Froissart to the IH Ltd. Board. It says that Article 39 of the DIFC Law of Damages and Remedies empowers the DIFC Court to order specific performance where "*the obligation is specific and/or the subject matter of the obligation*

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is specific" and "*the Court decides that damages are unquantifiable or are not a sufficient remedy*". IT Ltd. submits that by analogy and in the absence of language to the contrary in the DIFC Arbitration Law, the ICC Rules and the Parties' arbitration agreement, the Arbitral Tribunal may exercise a similar power in these proceedings. The Respondents do not address the question of specific performance in relation to this aspect of IT Ltd.'s claims, other than to argue that the SHA has been frustrated.

45. Article 39 of the DIFC Law of Damages and Remedies (DIFC Law No. 7 of 2005) states in full:

"39. Specific Performance

(1) The Court may order one party to a contract to perform its contracted obligations so long as:

(a) the obligation is specific and/or the subject matter of the obligation is specific; and

(b) the Court decides that damages are unquantifiable or are not a sufficient remedy.

(2) Contracts for personal services may not be specifically enforced.

(3) An order for specific performance may be made together or in combination with any other order as the Court sees fit to decide."

46. The Arbitral Tribunal considers that it is entitled to exercise the power to order specific performance in these proceedings in accordance with the principles set out in Article 39. The obligation to approve and appoint Mr. Froissart is indeed specific. It does not amount to the enforcement of a contract for personal services on the part of any of the Respondents, or of Mr. Froissart. It is also clear to the Arbitral Tribunal that in this instance damages would not be an adequate remedy. By their actions, the Respondents have prevented the Board of Directors from functioning as required by the Parties' Agreements and the loss caused by the failure to confirm the appointment of Mr. Froissart is not quantifiable.

47. The Arbitral Tribunal therefore orders Mr. Mustafa and CS Ltd. immediately to perform their obligations under Clause 6.6 of the SHA and appoint Mr. Froissart to the IH Ltd. Board provided that Mr. Froissart confirms that he remains ready and willing to act on the IH Ltd. Board.

The "Information Vacuum"

48. Clause 15.1 of the SHA provides that:

"...each Shareholder shall be provided with access to all the books, records, accounts, employees and other information kept by any entity within the Group which it may reasonably require provided such access shall not materially interfere with the operation of the Business. Each party shall be entitled to receive all material information on the operations of the Group, including monthly management accounts and operating statistics and other trading and financial information.

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49. Clause 15.2 sets out a non-exhaustive list of the materials which each shareholder is entitled to receive from IH Ltd. This includes detailed financial information, copies of any communication, document, notice or letter received by the Group from any Government Entity in the Republic of Iraq and details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any entity within the Group by the CMC.

50. Clause 15.4 requires, inter alia, that IH Ltd. and Korek procure, so far as they are able, that the shareholders are kept informed of the progress of any negotiations "*with the CMC or any other Government Entity and given the opportunity to attend any key meetings with the CMC or any other Government Entity*".

51. IT Ltd. says that Mr. Mustafa and CS Ltd. sought to create an information vacuum "*to entrench their control over Korek, push out IT Ltd. and plunder Korek assets for their own benefit*" [A/5/151]. The Arbitral Tribunal agrees that Mr. Mustafa and CS Ltd. deliberately failed to ensure that critical information was provided to IT Ltd. with the aim of entrenching their control and forcing out IT Ltd.

52. As IT alleges, following the CMC Decision, IT Ltd. repeatedly requested from Korek documents necessary to prepare the challenge of the CMC Decision. On 26 September 2014, Mr. Jain wrote to Korek on behalf of IT Ltd. seeking copies of "*all relevant all relevant information and correspondence relating to the interaction between Korek and the CMC since 10 December 2013*" [D1/262]. A month later, Mr. Jain had received nothing and asked for these documents as well as a copy of the court decisions, referred to by Mr. Mustafa, said to have suspended the payment of license fees to the CMC together with any administrative decisions suspending the license fee payments [D1/263]. By 14 November 2014, Mr. Jain and IT Ltd. had still only been provided with a small collection of documents. He stressed the need for IT Ltd. to receive:

> *"(1) all documents, correspondence, submissions, court or administrative orders/decisions, memos and legal advice received in connection with Korek's obligation to pay licence fees under the Licence (including but not limited to any court order suspending such payment obligation); and*
>
> *(2) all documents, correspondence, submissions, court or administrative orders/decisions, memos and legal advice received in connection with Korek's obligation to list its shares on the Iraqi stock exchange.*
>
> *(3) all documents, correspondence, submissions, court or administrative orders/decisions, memos and legal advice related directly or indirectly to third party court or administrative proceedings that could have relevance to CMC's license or partnership allegations.*
>
> *(4) any and all material information that has been withheld from disclosure to the board".*
>
> [D1/264/1]

53. A further request to Korek followed on 21 November 2014. Mr. Jain noted that IT Ltd. was "*contractually entitled to the documents as per the terms of the … SHA*" and that IT Ltd. was "*increasingly concerned that material developments for the company are not being informed or relayed to the shareholders*" [D1/265].

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54. IT Ltd. also repeatedly requested from Korek documents and information relating to Korek's appeal of the CMC Decision before the Iraqi Administrative Court and the Supreme Administrative Court. On 15 May 2017, IT Ltd. asked for an update on the appeal, filed over a year previously, as well as any advice received from Korek's lawyers [D1/266]. Once again, the request appears simply to have been ignored, leading to a follow-up on 30 May 2017 [D1/267].

55. Mr. Mustafa responded directly with an email to Mr. Jain in which he asserted that IT Ltd.'s lawyers had "*had active participation … in each stage of these proceedings*." He told Mr. Jain that all that could be done was to wait. No documents were provided [D1/268]. The absence of material was not lost on Mr. Jain who disagreed with Mr. Mustafa's assertions and asked that Mr. Mustafa share "*copies of all documents relating to this procedure, including without limitation all legal opinions, advice and correspondence with Korek's lawyers referred to in your email*" [D1/268].

56. It is clear to the Arbitral Tribunal that Mr. Mustafa was deliberately choosing not to share information with IT Ltd. to which it was clearly entitled under the SHA and which impacted directly and profoundly upon IT Ltd.'s legitimate interests.

57. The decision of the Iraq Supreme Administrative Court refusing to reverse the decision of the Shoura Administrative Court to decline jurisdiction to review the CMC Decision was rendered on 18 January 2018. A copy was not provided until 1 June 2018, more than 5 months later. No reasonable explanation has been provided for this delay.

58. The KCR Decree was issued on 19 March 2019. IT Ltd. was not informed until 25 June 2019. The Arbitral Tribunal finds it inconceivable that Mr. Mustafa was not aware of the KCR Decree at the time, or at best, very shortly after it was issued. There is no excuse for the delay in providing a copy to IT Ltd.

59. On 2 October 2017, Mr. Jain noted that IT Ltd. had, on several occasions, asked for information about Korek's consulting and legal fees. He complained that IT Ltd. had not received any substantive response, that the financial statements contained "*generic and unsupported figures*" and were out of all proportion. He requested a detailed breakdown [D1/269]. This was never provided and, as noted elsewhere in this Award, no documents relating to these expenses were provided as part of the disclosure process in this reference.

60. Further, in breach of the obligation to keep shareholders informed of litigation, IT Ltd. learned from a Kuwaiti stock exchange announcement that Zain had reported losing a claim advanced against it and the CMC by Korek in the amount of US$ 4.5 billion. Mr. Jain found the failure of both Korek and IT Ltd. to advise of this event to be "*baffling and simply inexcusable*" [D1/271].

61. It is also clear to the Arbitral Tribunal that information was withheld from IT Ltd. by Korek, Mr. Mustafa and CS Ltd. in relation to queries about Korek's liabilities to the CMC, the tax authorities and certain suppliers, as well as Korek's operations expenses. Requests for such information were made on 10 March 2017 [D1/275], 4 May 2017 [D1/276], 27 June 2017 [D1/277], 9 July 2107 [D1/278], 14 August 2017 [D1/279], 4 September 2017 [D1/280], 17 December 2017 [D1/274], 16 January 2018 [D1/281] and 19 March 2018 [D1/282]. Each of these communications follows a similar pattern. IT Ltd. acknowledges receipt of the monthly financials and raises queries in respect of "*omissions, inconsistencies and unexplained items*". These are never

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answered. In the Arbitral Tribunal's view, that was a deliberate policy. No explanation is provided by Mr. Mustafa or CS Ltd. for the failure to provide this, or any of the other missing information complained about, to IT Ltd.

62. However, an arbitral tribunal will not grant declaratory relief unless some concrete purpose would be served. It is not at all clear to this Arbitral Tribunal what purpose would be served in granting declaratory relief now in relation to a failure to provide information requested more than 4 years ago. The Arbitral Tribunal therefore declines to grant the relief requested in respect of this sub-head of claim.

Failure to Convene Meetings of the IH Ltd. Board and of the KSC

63. Clause 6.11 of the SHA requires that, unless otherwise agreed by the Shareholders, meetings of the IH Ltd. Board of Directors should take place at least quarterly. In addition, any Director is entitled to require the Chairman (Mr. Mustafa) to convene a meeting of the Board by giving written notice to the Directors. In such a case, it is the obligation of IH Ltd. to ensure that such a meeting is called "*promptly*".

64. Similarly, Clause 7.12 of the SHA requires that, unless otherwise agreed by the Shareholders, meetings of the KSC shall be held at least quarterly. In addition, any member of the KSC is entitled to require the Managing Director (Mr. Mustafa) to convene a meeting of the KSC by giving written notice to the KSC Members. In such a case, it is the obligation of Korek to ensure that such a meeting is called "*promptly*".

65. There is and can be no suggestion that the Shareholders agreed to dispense with meetings of the IH Ltd. Board or of the KSC. Meetings of both bodies should therefore have been held on at least a quarterly basis. It is IT Ltd.'s case and the Arbitral Tribunal finds that Mr. Mustafa failed to convene such meetings. IT Ltd. notes, for example, that no board meeting was held to discuss the KCR Decree, effectively depriving IH Ltd. of its shares in Korek [D1/35/3]. At paragraph 8.12 of their Rejoinder, the Respondents admit that IH Ltd. "*has not had a board meeting or shareholders' meeting since 2016*" [A/34/261].

66. In their written opening submissions for the evidential hearing, the Respondents raise the argument that "*the suggestion that the KSC meetings should continue to be convened in circumstances where IT Ltd. has no economic interest in Korek is absurd. In relation to the IH [Ltd.] Board, its only activities are pursuing claims against the Respondents, which in practice have been conducted by IT Limited. It would be an entirely artificial and pointless exercise to proceed on such a basis*" [A/34/132]. A similar argument seems to be made by the Respondents about the wisdom of issuing declaratory relief in respect of the corporate governance issues generally. The Arbitral Tribunal rejects both arguments. The deprivation of IT Ltd.'s indirect interest in Korek is itself the very subject-matter of these proceedings. It is IT Ltd.'s case that that was illegitimately procured. IT Ltd. clearly has an economic interest in Korek as the relief sought in these proceedings makes plain. It may have been improperly deprived of its legal interest in Korek, but that provides no basis for arguing that the earlier failure to call meetings of the KSC cannot be the subject of declaratory relief. As for IH Ltd., that company remains in existence and Mr. Mustafa remains under an obligation to call meetings of the Board of Directors. The fact that such meetings may involve discussion

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of possible claims is nothing to the point. By not calling a meeting, Mr. Mustafa is preventing discussion of any matters concerning the company.

67. The Arbitral Tribunal therefore finds and declares that:

(a) By not convening meetings of the Board of Directors of IH Ltd. as required by the terms of the SHA Mr. Mustafa is in breach of his obligations under clause 6.11 of the SHA;

(b) By not procuring the convening of the Board of Directors of IH Ltd. as required by the terms of the SHA both Mr. Mustafa and CS Ltd. are in breach of their obligations under clause 31 of the SHA and clause 23 of the Subscription Agreement;

(c) By not convening meetings of the KSC as required by the terms of the SHA prior to the date of the KCR Decree Mr. Mustafa was in breach of his obligations under clause 7.12 of the SHA; and

(d) By not procuring the convening of meetings of the KSC as required by the terms of the SHA prior to the date of the KCR Decree both Mr. Mustafa and CS Ltd. were in breach of their obligations under clause 31 of the SHA and clause 23 of the Subscription Agreement.







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N. RELATED PARTY TRANSACTIONS

The Parties' Submissions

1. IT Ltd. claims that Mr. Mustafa and CS Ltd. caused Korek to conclude contracts with, and to issue sizeable purchase orders to, suppliers and service providers owned directly or indirectly by the Iraqi Shareholders without making the disclosures required under the SHA, Iraqi law and DIFC law and without, in many instances, obtaining the required approvals in view of the amounts at stake.

2. IT Ltd. asserts that:

   (a) Mr. Mustafa owned the Darin Group, which was Korek's second largest service provider and the recipient of purchase orders totalling approximately US$ 220 million between 2011 and 2017;

   (b) Mr. Mustafa and two other shareholders of CS Ltd., Mr. Jiqsy Hamo Mustafa and Mr. Jawshin Hassan Jawshin, owned K-Energy, the recipient of purchase orders from Korek in excess of US$ 14 million between 2014 and 2017; and

   (c) Mr. Aso Ali, another shareholder of CS Ltd., owned the Halabja Group, which received purchase orders from Korek totalling approximately US$ 87 million between 2012 and 2017.

3. Further, IT Ltd. asserts that Mr. Mustafa and CS Ltd. caused Korek to make unauthorised payments in excess of US$ 50 million to entities owned and controlled by Mr. Rahmeh. These are said to have comprised payments to:

   (a) ZR Group, a company founded by Mr. Rahmeh and his brother, which received US$ 6 million for issuing a letter of guarantee on behalf of Korek to Ericsson;

   (b) ZR Collection, a ZR Group company, which has provided financing services to Korek in exchange for "exorbitant" fees;

   (c) Hajras, another ZR Group company, said to be owned by Ms Rasha Gergi, the daughter of Mr. Youssef, the nominal purchaser of one of the London properties, which also provided financing services to Korek;

   (d) RBT, a company registered in Lebanon and indirectly owned by Mr. Rahmeh through the ZR Group, which charged Korek approximately US$ 2.5 million in fees between October 2015 and June 2016, in most cases without explanation;

   (e) DoubleU, a company also registered in Lebanon and indirectly owned by Mr. Rahmeh through the ZR Group, which issued invoices to Korek in excess of US$ 8 million between October 2015 and June 2016, for alleged "value-added services";

   (f) Ersal FZCO, a reseller of Nokia products, incorporated in Dubai and partly owned by Nathalie Haddad, said to be a nominee shareholder for Mr. Rahmeh, which received purchase orders totalling approximately US$ 17 million between October 2016 and March 2017 (in addition to purchase orders totalling approximately US$ 350,000 in May 2012, before the company was incorporated); and

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(g) IC4LC which received US$ 20 million in legal fees in the period from 201 3 to 2015.

[A/5/69-81]

4. IT Ltd. further asserts that Mr. Mustafa and Mr. Rahmeh caused Korek to pursue significant transactions with Nokia Corporation ("Nokia") and with Huawei Technologies ("Huawei") which were structured via intermediary entities. The Nokia transaction is said to have been structured via purchase orders issued to Ersal, rather than directly through Korek. The Huawei transaction was structured through Beecable, a company in the Darin Group, said to be managed by Mr. Mustafa's cousin. IT Ltd. says that the purpose of these transactions, entered into weeks before the KCR Decree, was to divert assets from Korek to impede the enforcement of any Award. Justice Omar Al Muhairi of the DIFC Court issued an order on 7 February 2019 restraining CS Ltd. and Mr. Mustafa from taking any steps in furtherance of either the Nokia or Huawei transactions until issuance of an order in the First Shareholder Arbitration [D1/137]. This was followed in due course by a finding in the First Shareholder Arbitration that both the Huawei and Nokia transactions were concluded and ongoing [D1/37/19].

5. On the basis of these matters, IT Ltd. claims that:

(a) As Korek's Managing Director and Chairman of the IH Board, Mr. Mustafa breached his obligations pursuant to Clauses 6.8 and 7.8 of the SHA by failing to disclose his interests in the Darin Group and K-Energy;

(b) As Korek's Managing Director, Mr. Mustafa breached his obligations pursuant to Clauses 1 and 2 of the 2011 Resolution by failing to observe the procedure in place for the approval of transactions above a certain threshold;

(c) Mr. Mustafa breached his obligations under the Management Agreement by failing to exercise his powers in accordance with the SHA, the 2011 Resolution and applicable laws;

(d) As a party to the SHA and in his capacity as Korek's Managing Director, Mr. Mustafa breached Clauses 3, 4, 9.4 and 31 of the SHA by failing to act in accordance with the best interests of Korek, the By-Laws, resolutions passed by the shareholders of Korek, and the instructions of the KSC, including the multi-tiered review and approval process;

(e) As the Managing Director of Korek, Mr. Mustafa breached his statutory duties to serve the interests of Korek and run the company in a sound and legal manner, and to refrain from having direct or indirect interests in deals concluded with Korek, except after obtaining the permission of the other shareholders;

(f) As a beneficial owner in Korek, Mr. Mustafa breached his statutory duty to refrain from causing Korek to consent to acts that harm or disadvantage Korek to benefit himself or those associated with him at the expense of other shareholders; and

(g) As Chairman of the IH Ltd. Board, Mr. Mustafa breached his statutory duties to act honestly, in good faith, and lawfully with a view to the best interests of

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Korek, as well as to avoid a situation in which he has a conflict of interest with IH Ltd., and to disclose any such interest that would arise.

6. In relation to CS Ltd. IT Ltd. asserts that:

   (a) CS Ltd. breached clauses 3, 4 and 28 of the SHA by failing to act in the best interests of Korek, and to disclose the Iraqi Shareholders' interests in the transactions concluded with IH Ltd. and/ or Korek;

   (b) CS Ltd. breached its obligations pursuant to clauses 9.4 and 31 of the SHA by failing to procure that Mr. Mustafa complied with his obligations under the SHA, Korek's By-Laws, resolutions passed by the shareholders, instructions of the KSC and other Transaction Documents; and

   (c) As an indirect shareholder in Korek, CS Ltd. breached its statutory duties under Iraqi law to refrain from causing Korek to consent to acts that harm or disadvantage the company to benefit itself or those associated with it, at the expense of other shareholders.

7. IT Ltd. argues that whether or not the transactions were excessive in value or whether the Respondents received any improper benefit is irrelevant. The mere failure to disclose the Iraqi Shareholders' interests in the relevant companies or to obtain the required approvals is by itself a breach of the SA and applicable laws. IT Ltd. seeks an order declaring these transactions null and void and ordering the respondents to reimburse IH Ltd. all of the amounts paid or owed to each of the Darin Group, Halabja Group and K-Energy [A/5/153-156].

8. In relation to the alleged transactions with Rahmeh-related entities, IT Ltd. claims:

   (a) Mr. Mustafa and CS Ltd. breached their obligation under the SHA to act in accordance with the best interests of Korek, the By-Laws, resolutions passed by the shareholders of Korek and the instructions of the KSC;

   (b) As Korek's Managing Director, Mr. Mustafa breached his obligations pursuant to clauses 1 and 2 of the 2011 Resolution by failing to observe the approval process for transactions above a certain threshold;

   (c) Mr. Mustafa breached his obligations under the Management Agreement by failing to exercise his powers in accordance with the SHA, the 2011 Resolution and applicable law;

   (d) as a party to the SHA and Korek's Managing Director, Mr. Mustafa breached clauses 3, 4, 9.4 and 3.1 of the SHA by failing to act in accordance with the best interests of Korek, the By-Laws, resolutions passed by the shareholders of Korek, and the instructions of the KSC, including the multi-tiered review and approval process; and

   (e) as a beneficial owner in Korek, Mr. Mustafa breached his statutory duty under Iraqi law to refrain from causing Korek to consent to acts that harm or disadvantage the company to benefit itself or those associated with them at the expense of other shareholders.

9. Further, it is said that these transactions amounted to breaches of several of CS Ltd.'s contractual and statutory obligations:

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(a) CS Ltd. breached clauses 3, 4, and 31 of the SHA by failing to act in accordance with the best interests of Korek, the By-Laws, resolutions passed by the shareholders of Korek, and the instructions of the KSC, including the multi-tiered review and approval process;

(b) CS Ltd. breached its obligations pursuant to clauses 9.4 and 31 of the SHA by failing to procure that Mr. Mustafa comply with his obligations under the SHA, Korek's By-Laws, resolutions passed by the shareholders, instructions of the KSC and other transaction documents; and

(c) as an indirect shareholder in Korek, CS Ltd. breached its statutory duty under Iraqi law to refrain from causing Korek to consent to acts that harm or disadvantage the company to benefit itself or those associated with it at the expense of other shareholders.

10. IT Ltd. argues that the Respondents' breaches entitle IT Ltd. to advance a derivative claim, in the name and on behalf of IH Ltd., for damages for the diminution in value of IH Ltd.'s shareholding in Korek as a result of the sums extracted from Korek pursuant to these transactions.

11. IT Ltd. also advances a direct claim in its own name against both Mr. Mustafa and CS Ltd. for causing Korek to enter into self-interested and unauthorised transactions, for which it seeks declaratory relief.

12. In their Defence, the Respondents argue that, through the Sourcing and Procurement Committee ("SPC"), on which both Orange and Agility had representatives, IT Ltd. exercised a significant degree of control over Korek's contracts with third parties. IT Ltd. could have requested further information in respect of transactions. Neither IT Ltd. nor its representatives did so. The contemporaneous evidence shows that the SPC was satisfied and approved Korek's procurement procedures.

13. The Respondents also say that it is important to bear in mind that Korek did not operate in a well-developed market. Korek did not have the luxury of choosing between a variety of contractors. IT Ltd. was aware of this and, through its representatives, approved the "vast majority" of the transactions complained about.

14. The Respondents also deny that these transactions were for the benefit of Mr. Mustafa and CS Ltd.

15. As to specific matters:

(a) The Respondents do not deny the existence of amount of the purchase orders with Darin. They say that the transactions were entered into with the approval of the SPC and the knowledge of IT Ltd.'s representatives. Further, the Respondents say, Mr. Mustafa does not own Darin, either directly or indirectly and is not related to the CEO, Mr. Walid Barzani. It was also in Korek's best interests to enter into the transactions with Darin;

(b) The Respondents do not deny that Korek entered into purchase orders with K-Energy or that Mr. Mustafa has a shareholding in K-Energy. This does not make those transactions related-party transactions. IT Ltd. was aware of them and they were in Korek's best interests;

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(c) The Respondents also do not deny that Korek entered into purchase orders with the Halabja Group or that Mr. Aso Ali, one of the minority shareholders in CS Ltd. owns the Halabja Group. The Respondents say that IT Ltd. was well aware of this and did not object to Korek entering into the transactions. The existence of these contracts was set out in the Disclosure Letter. They were also in the best interests of Korek;

(d) The Respondents say that IT Ltd. has been aware of Korek's business dealings with ZR Collection. Korek had ongoing difficulties with the CMC including having its bank accounts frozen. Korek engaged ZR Collection as part of the solution to this problem. It would collect payments in Iraqi dinars from SIM and recharge suppliers in the Iraqi Governates where Korek could not easily operate and would then use these finds to make payments to Korek suppliers and creditors, including the CMC. This solved Korek's payment restrictions and provided an additional line of credit. This arrangement was entered into with the full knowledge of IT Ltd.'s representatives and as in Korek's best interests;

(e) IC4LC was appointed by Mr. Mustafa pursuant to a written resolution of the KSC dated 5 October 2012 authorising him to appoint a law firm in connection with the ongoing disputes with the CMC. It was paid US$ 6 million as a success fee for achieving a one-year postponement of Korek's license fee payments. This was in Korek's best interests and approved by IT Ltd.;

(f) The Respondents acknowledge the issuance of purchase orders totalling US$ 17 million to Ersal between October 2016 and March 2017. It was necessary for Korek to issue these purchase orders. Ersal is one of Nokia's value-added resellers and by contracting through Ersal, Nokia avoided compliance and financial risks in Iraq. The decision was taken by Nokia and Korek had no choice in the matter. IT Ltd. was well aware of this. There is no credible evidence that Mr. Rahmeh has any interest in Ersal.

[A/6/60-68].

16. The Respondents further argue that neither DIFC law nor Iraqi law apply to the related party transaction allegations. DIFC conflicts of laws rules apply and it is plain that they would require the Arbitral Tribunal to apply English law as the governing law of the SHA. The transactions were not entered into by IH Ltd. and neither CS Ltd. nor Mr. Mustafa were exercising any powers at an IH Ltd. level. Only the actions of Mr. Mustafa and CS Ltd. in relation to Korek are relevant. Further, any duties under Iraqi law were owed by Mr. Mustafa to Korek alone.

17. The Respondents also assert that IT Ltd. has misconstrued the SHA:

(a) The SHA provides that the Respondents should use their powers to conduct the business of Korek and IH Limited in the best interests of those companies. It does not impose an additional requirement that the business should be conducted "*for the benefit of all the shareholders*", though acting in the interest of the company will inevitably be for the benefit of its shareholders. Nothing prevented the Respondents from proposing that Korek enter into related party transactions, provided that those transactions are in the best interests of Korek;

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(b) The wording of the provisions of the SHA is such that, in the case of Mr. Mustafa, a related party would be any company which is directly or indirectly "owned or controlled" by Mr. Mustafa. The definition of "Affiliate" refers to both ownership and control. In order to demonstrate that a transaction is with a Related Party under the IH Shareholders' Agreement, IT Limited must demonstrate that the transaction is with an entity controlled or wholly owned by Mr. Mustafa;

(c) The vast majority of transactions are not with related parties. The Respondents repeat the comments made earlier in the Statement of Defence in this regard. They also allege that Mr. Jain recognised that Darin was the only option and that, even if an interest should have been disclosed, the breach would not have caused loss as the transactions would still have been approved as in the best interests of Korek;

(d) There is no evidence that the contracts with Halabja Group caused any loss;

(e) There is no evidence that IT Ltd. would have blocked Korek's entry into the contracts with K-Energy. The transactions were in the best interests of Korek;

(f) As to the entities alleged to be connected to Mr. Rahmeh:

(i) IT Ltd. has not advanced a cogent argument as to why such transactions, even if related party transactions, would give rise to ca claim in damages. The SHA imposes an obligation to disclose when they have an interest in a transaction. It does not impose an obligation to investigate;

(ii) There are already two sets of derivative proceedings in the DIFC courts on behalf of IH Ltd. against Mr. Rahmeh, including in relation to related party dealings. That is the proper forum for these claims as Mr. Rahmeh is not a party to this reference; and

(iii) The transactions with Ersal, ZR Collection and Nokia (through Ersal) were in Korek's best interests.

[A/6/176-185].

18. In its Rejoinder [A/21/160-182], IT Ltd. asserts that documents disclosed in this reference have shown that purchase orders additional to those identified in the Statement of Claim were issued to related parties. They note that the Respondents do not dispute the existence and amounts of transactions with Darin, K-Energy and Halabja, but claim that these were entered into with IT Ltd.'s knowledge and approval.

19. IT Ltd. continues to maintain that Mr. Mustafa is the beneficial owner of Darin. It also says that, whilst IT Ltd. may have been aware of the transactions with K-Energy, it was not aware of the Iraqi shareholders' interest in K-Energy. This, it is said, was never disclosed. IT Ltd. further denies that there was any disclosure of Mr. Ali's interest in Halabja. Whilst CS Ltd. did disclose the existence of an "entrepreneurship contract" with Halabja, there was no disclosure of the ownership interest.

20. IT Ltd. further says that the fact that IT Ltd. was aware of the transactions with K-Energy and Halabja and that they were in the best interests of Korek misses the point. That cannot legitimise the breach of contractual and statutory obligations.

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21. IT Ltd. argues that, in any event, the evidence shows that Korek contracted work out to Darin at a significant overprice. It relies upon the expert evidence of Mr. Turner [C1/3/7].

22. In relation to the transactions with Nokia and Huawei, IT Ltd. continue to maintain that these were entered into in order to dissipate Korek's assets. IT Ltd. notes that the Respondents accept that a contract for the Nokia transaction was signed in 2018 and structured through Ersal, although they continue to deny any connection with Mr. Rahmeh.

23. IT Ltd. points out that the Arbitral Tribunal has found, in Procedural Order No. 7, that an agreement had already been entered into by Korek with Beecable and Huawei to implement the so-called Baghdad Swap Project [G/9]. It continues to assert that Beecable is part of the Darin Group.

24. IT Ltd. denies that it approved the framework contract with Ersal. The SPC gave limited approval in relation to a project in the south of Iraq. This did not include the swap project in Mosul which was the subject of the Nokia transaction.

25. IT Ltd. further contests the Respondents' assertion that there was a good commercial reason and nothing improper in contracting through Value Added Resellers. It says that this caused Korek to incur significant and unnecessary costs in relation to activities which Korek was capable of performing in-house.

26. On the various legal arguments raised by the Respondents, IT Ltd. submits:

    (a) Iraqi and DIFC law are applicable to IT Ltd.'s claims in respect of the self-interested and unauthorised transactions;

    (b) It has not misconstrued the SHA, either in relation to the obligations to act in the best interest of IH Ltd. and/or Korek or in relation to the interpretation of the term "Affiliate".

    (c) It does not seek to argue that the transactions with the entities said to be connected with Mr. Rahmeh are related party transactions. Rather, it submits that by procuring Korek's entry into those transactions, Mr. Mustafa and CS Ltd. breached their obligations under the SHA and applicable laws, including their obligations to act in Korek's best interests.

    [A/21/260-274].

27. In their Rejoinder, the Respondents repeat a number of the points made in their Statement of Defence. They point to the absence of evidence from Mr. Jain and Mr. Despax, who were respectively Agility's and Orange's appointees on the SPC, as well as any evidence from Mr. Robin, Mr. Lucas and Mr. Siksik, all of whom were allegedly seconded to Korek to run procurement operations and to manage programmes. They note the absence of any document questioning or challenging Korek's procurement relationships with any of the relevant entities and they challenge the expert evidence of Mr. Turner.

28. The Respondents continue to argue that:

    (a) IT Ltd. was deeply involved in procurement at the relevant times;

    (b) It has advanced no evidence that Darin is a related party of the Respondents;

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(c) It was well aware of the ownership of both Halabja and K-Energy; and

(d) Each of the alleged transactions was in the best interests of Korek.

[A/34/132-139].

29. At section G of their Rejoinder, the Respondents argue that the related party claims are legally misconceived [A/34/241-254]. They make 4 points.

30. Firstly, the Respondents say that the related-party claims are barred by the rule against reflective loss. This point is addressed by the Arbitral Tribunal in Chapter Q, below.

31. Secondly, the Respondents argue that IT Ltd. has advanced claims in the name of the wrong party. The claim should, they say, have been brought in the name of Korek. That is the only entity under which allegations of breach of Iraqi law could properly lie and the only entity which could bring any of the related-party claims without violating the rule against reflective loss. The Respondents reject IT Ltd.'s argument that the SHA incorporates aspects of Iraqi and DIFC law "*into its architecture*". The Respondents say that the fact that the SHA requires Mr. Mustafa to act in accordance with the By-Laws and resolutions of Korek and that the Management Agreement requires Korek's management to be conducted in accordance with "applicable laws" do not make good the claims under Iraqi law.

32. Thirdly, the Respondents maintain their view that IT Ltd. has misconstrued the SHA. It is not enough, the Respondents say, simply for IT Ltd. to say that the transactions were not in the best interest of Korek. Nor is it correct to say that if CS Ltd. and Mr. Mustafa failed to follow the rules applicable to disclosure, the relevant transactions must necessarily be contrary to Korek's best interests. Whether it is in Korek's best interest is a matter to be determined in the context of Korek's commercial requirements, not by compliance or otherwise with notification provisions. Further, the transaction must be with an entity controlled or wholly owned by Mr. Mustafa.

33. Fourthly, the Respondents argue that there is in any event no breach of the SHA.

The Arbitral Tribunal's Analysis

34. The Respondents have repeatedly sought to argue in this reference that the environment in which Korek operated needs to be taken into account when assessing the complaints made against them. The same point is made in relation to this element of the claims. Whilst the Arbitral Tribunal is fully cognisant of the fact that operating in Iraq is not the same as operating in Dubai or the United Kingdom, it cannot and does not provide an excuse for the Parties' failure to adhere to the terms of their contractual commitments.

What is a Related Party Transaction?

35. Schedule 2 to the SHA provides the definition of a Related Party Transaction. It states:

"Related Party Transactions means any transactions with Shareholders or their Shareholder Groups: any entity within the Group or entering into any transaction with any of the Current Shareholders, IT Ltd. or the CS Ltd. Group and/or their respective Affiliates except for: (i) the Current Shareholders' Representative Services Agreement; (ii) the Management Consultancy

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Agreement, (iii) the Alcazar Management Services Agreement, (iv) the Sourcing and Procurement Agreement, and (v) the IT Ltd. shareholder Loan."

36. The definition of Affiliate has already been set out elsewhere in this Award. In the case of a body corporate, it means "*any other entity which, directly or indirectly, owns or controls, is under common ownership or control with or is owned or controlled by, such party, in each case from time to time*". In the case of an individual, the relevant part of the definition is "*any body corporate or such other entity of which such a person is a director or manager or which, directly or indirectly, is owned or controlled by such a person*".

37. It is the Respondents' contention that, in the case of Mr. Mustafa, a related party is any company that is directly or indirectly owned or controlled by Mr. Mustafa. They say that the distinction and relevance of control would be meaningless if ownership simply meant "owns any shares in" and that IT Ltd. must demonstrate that the transaction is with an entity controlled or wholly owned by Mr. Mustafa.

38. The Arbitral Tribunal does not accept that argument. The words of the definition must be given their plain meaning. The use of the term "control" in a disjunctive context is of no assistance in divining the meaning of "ownership". An individual may control a company with a less than a majority of the shares. In common parlance, a shareholder in a company is an "owner" of that company. If it was the intention of the Parties that the reference to "owned" was intended to mean ownership of all of the shares, it was open to them to say so. They did not.

39. The Respondents pray in aid the decision of the arbitral tribunal in ICC Case No. 22920 in which the definition of Affiliate in the Subscription Agreement was considered. The arbitral tribunal in that case considered that "*the most likely and realistic interpretation of the phrase "is owned" in the definition of Affiliate is to describe a situation where a reasonable business man, having regard to the commercial transaction that the Subscription Agreement describes, would say that company B is wholly owned by company A*" [E2/58/165]. It is however for this Arbitral Tribunal to form its own view on the meaning of the term, particularly as it is used in a different agreement.

40. The purpose of the contractual provisions dealing with related-party transactions would also be compromised if the definition of Affiliate required 100% ownership. The mischief to which such clauses are addressed is the possibility of contracts being steered to individuals or companies which are not at arms' length without the full knowledge and consent of the other shareholders. That purpose would not be served if a non-controlling shareholder with, say, 40% of the shares were not to be treated as an Affiliate.

Which of the entities identified by IT Ltd. are Related Parties?

41. The Respondents accept that Mr. Mustafa has a shareholding in K-Energy and that Ms. Aso Ali, one of the shareholders in CS Ltd. owns the Halabja Group. Mr. Mustafa is also the Managing Director of K-Energy. The Arbitral Tribunal finds those entities to be related parties.

42. The Respondents deny that Darin is a related party. Mr. Mustafa says in his first witness statement that he does not own or control Darin Group "*either directly or*

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indirectly". He says that it is owned by Mala Shnee Shnee and his brother, to whom Mr. Mustafa is not related. He acknowledges that Darin is managed by Walid Barzani but says that he is not related to that gentleman [B3/1/13].

43. IT Ltd. relies upon an interview given by Mr. Mustafa in 2016 to a body identified on the Arabic original as "Mewda Press". In the English translation, Mr. Mustafa reports that he has "shares in many projects". He is asked which projects those are and replies:

"Korek Telecom, the touristic project on Mount Korek, we have a steel factory, we have a share in Family Mall, and shares in other projects" [B2/25].

44. IT Ltd. argues that the evidence shows that Darin claims to own the same assets. Whilst, in their Rejoinder, the Respondents submit that Darin was only responsible for the construction and operation of the Erbil Steel factory, an extract from Darin's website records the Group as "*proud to own and operate a total of nine factories*". The first factory identified is the "*Erbil Steel Factory*". Although the Respondents say that "*the Erbil steel factory is not included in any specific list of nine factories which are purportedly "owned" by the Darin Group*" [A/34/136], that is not what the website shows. It very clearly refers to Darin owning and operating 9 factories. There is no suggestion that it owns some of those listed and operates others.

45. In the same vein, the Respondents say that Darin simply owns the brand name of the "*Family Mall*", but not the Mall itself. This submission is based upon another extract from Darin's website in which it is stated that it "*owns and operates the shopping center brand, "Family Mall"*" [D1/285]. However, a press release from Darin itself refers to Darin adding an extension to the Family Mall in Erbil [D1/524]. The clear implication from this is that it owns the Mall and is not simply the operator of the brand. This is further reinforced by a press report from 22 June 2014 reporting on the construction of a Family Mall in Sulaimani which expressly refers to Darin Group as "*the owner of Family Mall*" [D1/252].

46. Lastly, IT Ltd. points to the very detailed LinkedIn page of Mr. Waleed Barzani, the acknowledged Vice Chairman of the Darin Group. This lists a variety of companies under the title "*Group activities and field of experience*", including the Family Mall, the Korek Mountain Resort, the Erbil Steel Factory and Beecable [D1/353]. Although the Respondents submit that this is a list of projects in which Darin is involved and not projects which it owns, IT Ltd. argues that this is unpersuasive. Had Mr. Waleed Barzani's intention been to include projects not owned by Darin on that list, he would presumably have included Darin's involvement in construction projects for Korek. However, he does not.

47. Having heard the Parties' submissions in relation to IT Ltd.'s application for security, the Arbitral Tribunal was not persuaded that IT Ltd. had established that Beecable – an acknowledged subsidiary of Darin – was a company in which Mr. Mustafa had an interest. It would have been helpful for the Arbitral Tribunal to have been able to hear Mr. Mustafa cross-examined on this issue. In the absence of his oral testimony, and on the balance of probabilities, given evidence now before the Arbitral Tribunal and the other factors identified in this Award, as well as the correspondence between the assets claimed by Mr. Mustafa and those apparently owned by Darin, the Arbitral Tribunal finds that Mr. Mustafa also has an ownership interest in the Darin Group.

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The Rahmeh-Related Entities

48. With the exception of Ersal, the Respondents do not seek to deny that ZR Collection, ZR Group, Hajras, DoubleU and RBT are companies in which Mr. Rahmeh has an interest. The documentary evidence suggests, and the Arbitral Tribunal finds, that he does (or did at the relevant time) have such an interest. That interest should have been disclosed pursuant to clauses 6.8 and 7.8 of the SHA.

49. The Respondents' position in relation to Ersal is that they do not know who owns that company. IT Ltd. describes Ersal as a company incorporated in Dubai on 28 October 2012 and partly owned by a Nathalie Haddad, "*a dietician based in Dubai who has been identified by Raedas' sources as a nominee shareholder for Mr. Rahmeh*" [A/5/78]. In an email to the Arbitral Tribunal on the evening of 9 May 2022, IT Ltd. advised that:

"The only element of the Claimant's claims that depends on statements from Raedas's sources is with respect to its claims about Mr. Rahmeh's ownership interest in Ersal, namely that Ms. Nathalie Haddad is a nominee shareholder for Mr. Rahmeh (Bortman I, 108)."

Mr. Willems confirmed this position during the course of the evidential hearing [Day 3/96:21-97:3]. As noted elsewhere in this Award, the Arbitral Tribunal is not prepared to place reliance on the evidence of Mr. Bortman's sources and, in the absence of any corroborative evidence as to Mr. Rahmeh's interest in Ersal, it declines to find that Mr. Rahmeh had any such interest

The Requirements of the SHA, the 2011 Resolution and the Management Agreement

50. Clause 6.8 of the SHA is set out in Annex A. It provides that, subject to clause 28, the Directors of IH Ltd. may authorise any matter proposed to them in which a Director has an interest which conflicts or possibly may conflict with the interests of the Group, provided that he has disclosed the nature and extent of his interest in writing as soon as he is aware if such interest and shall not vote on or be counted towards the quorum on any vote on the relevant matter.

51. Clause 7.8 of the SHA is in almost identical terms, mutatis mutandis, in respect of the Members of the KSC.

52. Clause 28 is also set out in Annex A. It contains specific provisions in relation to Related Party Transactions. In pertinent part it provides that:

"Each Shareholder agrees that where it becomes aware that its interests (or those of an Affiliate of such Shareholder) conflict or are reasonably likely to conflict with the interests of the Group in any material respect, each such Shareholder shall immediately give notice in writing to International Holdings, the Korek Supervisory Committee and the other Shareholder(s) of such conflict or potential conflict".

53. Clause 28.3 continues:

"Each Shareholder agrees that, if it or any member of its Shareholder Group, is a party or proposed party in any Related Party Transaction ….(an Interested Shareholder), all matters relating to such Related Party Transaction, including

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the exercise of rights and/or compliance with obligations by any entity within the Group, but excluding any claims (which shall be dealt with in accordance with clauses 28.4 and 28.5), shall be dealt with by the other Shareholder (or if the other Shareholder so directs. the Korek Supervisory Committee, International Holdings or the International Holdings Board of Directors) and, accordingly, the Interested Shareholder (and/or any Director proposed for appointment, or SC Member appointed, by it together with any alternate or nominee) shall in relation to such matters, be bound by and subject to the Conflict Restrictions…".

The Conflict Restrictions referred to require that the Interested Shareholder be excluded from all decisions directly related to the matter and disentitlement and disenfranchisement from any vote in connection with that matter,

54. The 2011 Resolution (also referred to as the First Shareholder Resolution), appointed Mr. Mustafa as the Managing Director of Korek and gave him authority to undertake various activities including, by paragraph 1(a), to conclude and sign contracts of various types on behalf of Korek "*for the facilitation of the Company's affairs*" provided that the value of each contract did not exceed US$ 1,000,000. The same limit applied to asset purchase, lease and transfer agreements, as well as to various other activities.

55. Paragraph 2 of the 2011 Resolution provided that Mr. Mustafa, as Managing Director, "*may not take any decision – and any such decision shall be deemed null and void – unless in accordance with the [2011 Resolution] or any agreement concluded between the Shareholders from time to time*" [D1/53].

56. A Management Services Agreement was entered into between Korek and Mr. Mustafa on 27 July 2011 [D1/54]. By clause 6.1 of the Management Agreement, Mr. Mustafa agreed to provide certain Management Services, as defined in that clause. These included "*entering into commitments and duties in accordance with the approved authority levels set by the Supervisory Committee set-out in the Shareholders' Agreement and [2011 Resolution]*". By clause 6.2 of the Management Agreement, Mr. Mustafa agreed to:

"provide the Management Services with all reasonable skill, care and diligence, based on the nature of the Management Services in accordance with all applicable laws and in accordance with the Shareholders' Agreement, the General Assembly Resolution and provisions of the Company's constitutional documents".

The "Best Interests" of Korek

57. The Respondents argue that the various transactions complained of were, in fact, in Korek's best interests and that it is not enough for IT Ltd. to say that failure to comply with the disclosure requirements means that the transaction were automatically not in Korek's best interest. The matter must be assessed by reference to Korek's commercial requirements.

58. The various contractual provisions in relation to conflicts and Related Party Transactions address the matter in different ways. The definition of a Related Party Transaction in Schedule 2 is unrelated to any question of whether the transaction is in

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the best interests of the Group or conflicts with those interests. However, the notice requirements of clause 28 are triggered only when a Shareholder "*becomes aware*" that its interests (or those of an Affiliate) "*conflict or are reasonably likely to conflict with the interests of the Group*". The provisions of clause 28.2, again contain no specific reference to the interest of the Group or to Korek's commercial requirements but are clearly intended to come into effect when notice of a conflict is given under clause 28.1.

59. Similarly, clauses 6.8 and 7.8 permit Directors or KSC Members to authorise matters which relate to a situation where a Director or Member has an interest which conflicts, or may conflict, with the interests of the Group, but only if it has been disclosed.

60. IT Ltd. argues that it misses the point for the Respondents to argue that certain transactions were in the best interests of Korek as, had disclosure been made, IT Ltd. would have been free to veto any arrangements pursuant to clause 28.3 of the SHA. The Arbitral Tribunal agrees, to this extent: entering into a contract with a related party of itself raises the likelihood of a conflict of interest, because of the potential for the transaction to be concluded on a basis that is otherwise than at arms' length. Whether or not, as IT Ltd. suggest, a veto might have been appropriate or warranted is beside the point. The connection itself is what raises the likelihood of conflict and the need for disclosure.

61. It is unnecessary therefore for the Arbitral Tribunal to analyse each of the contracts or sets of contracts entered into by Korek. Unless disclosure was made of the interest that each of Mr. Mustafa, CS Ltd. and Mr. Rahmeh had in the contractual counterparties, or IT Ltd. can somehow be said to have been aware of those interests, there will have been a breach of clause 28.1 of the SHA. The same principle applies in relation to clauses 6.8 of the SHA (concerning the IH Ltd. Board of Directors) and clause 7.8 (concerning the KSC).

62. Whether or not a particular transaction was in the interest of Korek is irrelevant to the limits on Mr. Mustafa's authority under the 2011 Resolution.

63. The Arbitral Tribunal considers below the applicability of the pleaded provisions of both DIFC and Iraqi law. It is however clear, and the Arbitral Tribunal finds, that the issue of whether a particular transaction is in the best interest of the company is of no relevance to Articles 119(1), 120 and 124 of the Iraq Companies Law. A breach of Article 4(3) on the other hand, does require the "owner of capital" in a company not to exercise its voting or other authority to cause it to do or consent to acts that "harm or disadvantage the company to benefit themselves". In the Arbitral Tribunal's view, this does require an assessment of the impact on the company itself.

64. The text of Article 54 of the DIFC Companies Law 2009 reflects the wording of clause 28.1 of the SHA and the reasoning in paragraph 58 is equally applicable to that provision. Article 53(a) requires a Director or other officer of a DIFC-registered company to "*act honestly, in good faith and lawfully, with a view to the best interests of the Company*". The best interests of the company must include adherence to appropriate principles of good corporate governance, including the disclosure of conflicts arising from an interest in a counterparty intending to contract with the company.

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IT Ltd.'s Knowledge

65. There is a dispute between the Parties as to the level of IT Ltd.'s knowledge. The Arbitral Tribunal finds that it is not sufficient in order for the Respondents to escape liability for the IT Ltd. representatives simply to have been aware of the fact of the transaction; what is required is that they were aware of the existence of the conflict of interest.

66. Mr. Mustafa says in his witness evidence that IT Ltd. "*was heavily involved in the decision-making process within Korek*". He also points out that the Sourcing Director and Program Management Officer were provided by Sofrecom (an Orange subsidiary) and that IT Ltd. was represented on the SPC [B3/1/7-8]. He addresses the alleged related-party transactions at section 8 of his first witness statement. He says that IT Ltd.'s representatives in Korek's management, the SCP, the Internal Sourcing Committee, the IH Ltd. Board and the KSC were "*well aware*" of the transactions, that they did not try to stop them going ahead and that the transactions were all approved [B3/1/12].

67. Mr. Mustafa denies, as noted above, that he has or had any interest in Darin. He admits, at paragraph 8.8, his interest in K-Energy but is careful not to suggest that IT Ltd. was informed of that interest. On the other hand, Mr. Mustafa states that "*everyone, including IT Ltd., was aware that Halabja was owned by Mr. Aso Ali*". He refers to the Disclosure Letter [D1/132/35]. However, as he acknowledges, all that the Disclosure Letter revealed was that there were contracts between Korek and Halabja. There is no mention of Mr. Ali's interest. However, it is said that Mr. Froissart acknowledged during cross-examination that Mr. Ali's interest had been disclosed [Day 3/165:13-16]. The precise exchange was as follows:

"165: 2 Q. That's right. And it was disclosed in 2011 that
3 Korek had a significant contract with Halabja.
4 A. Yes, it was part, I think, of the disclosure
5 letter.
6 Q. Hmm, hmm. And Halabja is owned by Mr. Aso Ali?
7 A. Aso Ali, yes.
8 Q. Sorry. If you just --
9 A. No. So, yes, it is owned by Mr. Aso Ali.
10 Q. And IT was aware that Halabja was owned by
11 Mr. Aso Ali?
12 A. Yes.
13 Q. And -- okay. Thank you. Just to clarify, you were
14 aware, in 2011, that IT was aware that Halabja was owned by
15 Mr. Aso Ali?
16 A. Yes, it had been disclosed."

The Arbitral Tribunal did not and does not understand Mr. Froissart as confirming that the specific ownership interest of Mr. Ali had been disclosed. He was discussing the Disclosure Letter. Further, Korek's accounts for 2013 contain, at Note 23, details of transactions entered into with related parties during 2012 and 2013 [NM-56]. That note contains no entry for Halabja, as it would surely have done were all Parties aware of Mr. Ali's interest in that entity.

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68. Although Mr. Mustafa suggests that the contracts with ZR Collection, with Ersal and with IC4LC were all in the interests of Korek, there is no suggestion in any of his witness evidence that any disclosure was made of any conflict of interest involving those companies.

69. For IT Ltd., Mr. Froissart denies that IT Ltd. was closely involved in the assessment of suppliers and could control their appointment and selection. He states, at paragraph 55 of his witness statement: "*we were however not in a position to identify, on the basis of Korek's financial statements that were shared with us, any self-dealing operations or corrupt practices in which Korek may have engaged at the time*" [B1/3/23].

70. Mr. Aziz also takes issue with the suggestion that IT Ltd. exercised financial controls over Korek. He explains how the identity of IC4LC was concealed from IT Ltd. and how the US$ 6 million "success fee" was improperly paid. He also explains that, until the dispute arose, he had never heard of ZR Collection and was unaware that it was a company in which Mr. Rahmeh held an interest. He accepts that he was aware that Korek's accounts had been frozen but says that he was never told that ZR Collections was being used as a conduit for payments and for financing [B1/4/17-18]. He identifies a set of minutes of a meeting of the KSC on 13 October 2015, chaired by Mr. Rahmeh, at which Korek's financial situation was discussed. These minutes note the freezing of Korek's accounts and explain how certain payments are being made. No mention whatsoever is made of ZR Collection, despite the fact that Mr. Rahmeh was in the chair [D1/244/5]. IT Ltd. says that there is no document demonstrating that the Respondents ever sought approval to use ZR Collection for cash collection and reconciliation. Nor have the Respondents identified any such document.

71. As noted elsewhere in this Award, Mr. Mustafa has declined to present himself for cross-examination in these proceedings. No witness statement has been produced from Mr. Rahmeh. The Arbitral Tribunal prefers the evidence of Mr. Froissart and Mr. Aziz.

72. The Arbitral Tribunal also has regard to the paucity of the document disclosure made by the Respondents in respect of this claim. As IT Ltd. has indicated, the Respondents have produced no documents at all in relation to ZR Group, ZR Collection, Hajras, RBT and DoubleU. Nor has there been any disclosure of documents in relation to the retainer of IC4LC. For the reasons already set out at paragraphs 204-230 of Chapter H of this Award, the Arbitral Tribunal considers IC4LC to be a fictitious law firm established with the connivance of Mr. Rahmeh and in which he had an interest.

73. Independently of whether appropriate disclosure of a related-party interest was made, it was incumbent upon Mr. Mustafa to comply with the multi-tiered approval process before Korek entered into any transactions that required approval at a higher level. Thus the 2011 Resolution contained restrictions on Mr. Mustafa's authority to enter into contracts exceeding US$ 1,000,000 in value, whilst clauses 11.3 and 1.,4 of the SHA gave the Shareholders a right of veto over capital expenditure and material contracts in excess of US$ 10 million.

74. There is no evidence that any of the transactions with the entities in which Mr. Rahmeh had an interest were ever subjected to the required approval process.

75. It is unclear to the Arbitral Tribunal whether the transactions with K-Energy and Halabja were subjected to the appropriate approval processes based on their value. IT Ltd.

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says that D1/530 shows the KSC approving a contract with K-Energy on the basis that it is valued at only US$ 500,000. The Arbitral Tribunal is unable to derive that figure from that document. The purchase order data for both K-Energy and Halabja have been produced. It is not clear from that data whether and to what extent the necessary approvals were sought [B2/28; B2/29].

76. The expert evidence of Mr. Turner was that there were a number of irregularities in Korek's procurement processes. He noted that Darin issued a proposal for work that had already been done, the implication being that Korek chose Darin as the vendor, authorised them to do the work and allowed them to complete the work without any bidding or review process [C1/3/20]. The sum involved was in excess of US$ 2 million.

77. Mr. Turner also noted examples of selective communication with Darin, including "multiple instances" where follow-up discounts were secured from Darin "*but other parties either did not offer a discount or one was not sought*" [C1/3/28]. He also noted that certain projects, whilst being similar in scope, project location and schedule constraints, were separated into five separate purchase orders, awarded to Darin, rather than organised as a single re-build project. By doing this, Mr. Turner says, the involvement of the SPC was avoided. Even then, he notes, the correct approval procedures were not followed because the Deputy CFO was not in attendance when the bids were evaluated [C1/3/25-26].

78. The Arbitral Tribunal finds:

(a) The transactions with Darin, K-Energy and Halabja were undertaken without any disclosure of the interests of Mr. Mustafa in Darin and K-Energy and of Mr. Ali in Halabja and without proper authorisation given the existence of those interests;

(b) The transactions with Darin were further undertaken without the proper processes being followed having regard to the nature and value of the purchase orders; and

(c) The transactions with the entities in which Mr. Rahmeh had an interest, namely ZR Group, ZR Collection, Hajras, RBT, DoubleU and IC4LC were undertaken without any disclosure of Mr. Rahmeh's interest in those companies, without proper authorisation and without the proper processes being followed having regard to the nature and value of the transactions.

The Transactions with Nokia and Huawei

79. IT Ltd. further claims that, in December 2018, Korek entered into an agreement with Nokia for the replacement of Ericsson equipment in Mosul. This is said to have been structured via purchase orders issued by Korek to Ersal The total value of the transaction was said to be in excess of US$ 50 million, of which US$ 20.5 million was reported by Mr. Bortman to have been allocated as payments to Mr. Rahmeh and Ms Hobeika (an employee of Ersal). Mr. Bortman's source further reported that Mr. Rahmeh arranged financing for the transaction with IBL Bank.

80. In mid-January 2019, Korek and Huawei started negotiations for the replacement by Huawei of Ericsson equipment in Baghdad. This was known as the Baghdad Swap project. IT Ltd. says that this was structured through Beecable, a company owned by

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Darin. IT Ltd. feared that this was an attempt to divert assets from Korek to entities associated with the Respondents and it applied to, and obtained, an order from the DIFC Court restraining Mr. Mustafa and CS Ltd. from taking any further steps in furtherance of either transaction until the issuance of an award or order by the arbitral tribunal in the earlier shareholder arbitration [D1/137]. The arbitral tribunal in that arbitration subsequently issued an order enjoining Mr. Barzani and CS Ltd. from causing Korek to consummate or further pursue the Nokia and Huawei transactions until a final award was issued [A/5/83]. That order was effectively carried over into this reference by consent through Procedural Order No. 3.

81. IT Ltd. says that neither the Nokia transaction nor the Huawei transaction was notified to, or approved by, the KSC or the IH Ltd. Board, contrary to the requirements of the SHA. The Respondents' position is that a contract was signed in respect of the Nokia transaction, but they say that there is no evidence of Mr. Rahmeh's ownership of Ersal, that IT Ltd. was aware of the framework agreement with Ersal and that it was necessary for Korek to issue purchase orders to Ersal.

82. The Respondents have argued that they have not pursued or implemented the Baghdad Swap Project. However, the Arbitral Tribunal has found that Korek has already entered into a contract for that project, in breach of the provisions of Procedural Order No. 3 (see Procedural Order No. 7 at G/9). A draft contract presented to the Arbitral Tribunal as part of the Respondents' Response to IT Ltd.'s Application for Security was simply a sham. The Arbitral Tribunal refers to paragraphs 69 and 70 of Procedural Order No. 7 [G/9/17].

83. In so far as the Nokia transaction structured through Ersal is concerned, the Arbitral Tribunal has made clear that it is not persuaded that IT Ltd. has demonstrated that Mr. Rahmeh had or has any interest in Ersal. The Arbitral Tribunal disregards the evidence of Mr. Bortman and his sources in this respect.

84. However, there is no evidence that Korek submitted the contract with Ersal in relation to the Nokia project to the necessary approvals process. Although the Respondents say that IT Ltd. was aware of the framework contract with Ersal, that document has never been produced. That is so notwithstanding the fact that in both this reference and in the earlier shareholder arbitration the Respondents were ordered to produce it. Further, there is no evidence that the framework contract was provided to IT Ltd. or its representatives at the time or that any of the necessary approvals were given for Ersal to be involved in the project in Mosul.

85. As for the contract with Beecable, the Arbitral Tribunal has already found that this has been concluded, in defiance of the restrictions agreed in Procedural Order No. 3. Mr. Akrawi, in his witness statement of behalf of the Respondents, denied this. It is notable that Mr. Akrawi, like Mr. Mustafa, was not made available for cross-examination. As the Arbitral Tribunal noted in Procedural Order No. 7, his evidence was not credible and the Arbitral Tribunal has no basis upon which to revise its earlier finding in this regard (see paragraph 64 of Procedural Order No. 7 [G/9/16]. The Arbitral Tribunal is satisfied that Beecable is owned by Darin (indeed, the Respondents' confirmed during the hearing of IT Ltd.'s application for security that they understand Beecable and Darin to be in common ownership) and that Darin is a company in which Mr. Mustafa has an interest. Given the Respondents' denial of that latter fact, it goes without saying that there can have been no disclosure of Mr. Mustafa's interest in accordance with

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the requirements of the SHA. Nor is there any evidence that the putative agreement went through the approval process required by the SHA, the 2011 Resolution and Korek's internal procedures. The Respondents' argument that the SHA has been frustrated such that IT Ltd. no longer enjoys the right to veto transactions between Korek and third parties is incorrect and has been dealt with in Chapter G of this Award.

86. It follows from the analysis above that IT Ltd. is entitled to the declaratory relief that it seeks. It is unnecessary for the Arbitral Tribunal to consider whether there was any legitimate basis for Korek to structure the Nokia and Huawei transactions through so-called value-added resellers.

87. The Arbitral Tribunal finds that:

(a) The transactions with Beecable were undertaken without any disclosure of the interest of Mr. Mustafa in that company and without proper authorisation given the existence of that interest; and

(b) The transactions with Ersal and Beecable were further undertaken without the proper processes being followed having regard to the value of the contract.

88. The Arbitral Tribunal now addresses the various specific breaches alleged, by reference to the category of transaction.

Breaches in Respect of Related Party Transactions and the Rahmeh-related Entities

89. The Arbitral Tribunal has found that there were failures of disclosure and of process in respect of the various transactions listed above. However, with the exception of the transactions with IC4LC, the Arbitral Tribunal declines to rule on the specific breaches alleged by IT Ltd. Leaving IC4LC on one side for a moment, as set out below the Arbitral Tribunal is not satisfied that IT Ltd. has discharged the burden of showing that any specific loss was caused or what that loss might have been. Further, there seems to the Arbitral Tribunal that no real purpose would be served in such circumstances by giving declaratory relief.

90. It is IT Ltd.'s case that certain of the unauthorised transactions led to the extraction of significant sums out of Korek and the diminution in value of IH Ltd.'s shareholding in Korek. The relevant transactions, referred to by IT Ltd. as the "Impugned Transactions" are:

(a) purchase orders issued to Korek by Darin between 2011 and 2013 in the amount of US$ 10 million;

(b) purchase orders issued to Korek by Halabja between 2011 and 2013 in the amount of US$ 24.5 million;

(c) purchase orders issued to Korek by Ersal in May 2012 totalling US$300,000; and

(d) charges from IC4LC to Korek in respect of alleged legal fees in the amount of US$ 20 million, presumed to have been paid between 2013 to 2015.

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91. IT Ltd. maintains that the Impugned Transactions must be deemed null and void and that they therefore entitle IT Ltd. to recover, in the name and on behalf of IH Ltd. damages for the diminution in the value of IH Ltd.'s shareholding in Korek. IT Ltd. submits that, as a matter of English law, where a director fails to disclose a direct or indirect interest in a transaction concluded with the company, that transaction is voidable at the instance of the company (*Palmer's Company Law* (2012) §8.3104). The Arbitral Tribunal agrees that this is consistent with both Articles 119 and 120 of the Iraq Companies Law and Article 54(4) of the DIFC Companies Law 2009. However, it is for company to exercise that right and the relevant company in the present case is Korek. The transactions are therefore voidable, not void and have not been avoided.[14]

92. In so far as Ersal is concerned, and as noted above, the Arbitral Tribunal is not persuaded that Ersal is an entity in which Mr. Rahmeh has an interest. The Arbitral Tribunal has found that there was a failure to observe the required approval processes having regard to the value of the contract but, again, this does not render the contract null and void.

93. Further, and with the exception of the transactions allegedly entered into with IC4LC (which the Arbitral Tribunal has found to be a means of funnelling bribes), the Arbitral Tribunal is not persuaded that IT Ltd. has discharged its burden of proving the extent to which those transactions caused any loss to IH Ltd. Mr. Turner was critical of the deficiencies in the way that procurement was carried out at Korek but he did not offer any detailed assessment of the extent of any overpayment. In his First Report, Mr. Matthews noted that:

> *"the Claimant does not have sufficient information to assess whether transactions with Darin Group and Halabja Group resulted in Korek purchasing goods or services that were not needed or paying inflated prices. I understand that it is the Claimant's case that transactions with Ersal and IC4LC were illicit transactions" [C1/1/58].*

It was because of this that Mr. Matthews was instructed to assume that all the transactions were unauthorised and should be deemed null and void.

94. In their response to Mr. Matthews, Dr. Barnes and Mr. Chandler made the following points:

(a) That the transactions with Darin, Halabja and Ersal were, based on Mr. Chandler's experience in the telecommunications industry, consistent with the types of transactions that he would expect a company in the industry to be entering into and that it was unlikely that many of these transactions were in respect of goods and services that were not needed. At most, it was more likely that Korek had paid inflated prices; and

(b) It may not have been feasible for the goods and services in question to have been purchased from entities not controlled by the Iraqi Shareholders or their

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[14] The Arbitral Tribunal notes that, under Article 54 of the DIFC Companies law 2009, such a transaction is, again, voidable not void. In the case of DIFC law, it requires an application to the DIFC Court for an order setting aside the transaction concerned.

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close associates. Dr. Barnes and Mr. Chandler pointed to minutes of a KSC meeting in July 2013 when the then-CTIO, Mr. Jean-Marie Garcia, accepted that there was no credible alternative to Darin in relation to network roll-outs.

[C3/1/73-75].

95. As a result of this, in his Second Report Mr. Matthews agreed that "*it is possible that, absent these transactions, Korek would have had to enter into alternative transactions, albeit potentially at lower prices*". He was therefore instructed to calculate losses on the basis that Korek paid inflated prices for goods and services provided by Darin and Halabja and, further, that transactions with Darin and Halabja should have been conducted at a price one-third lower than they actually were[15] [C1/2/83-85]. This affected Mr. Matthews' assessment of Korek's enterprise value and net debt adjustment (as to which see Chapter R – Quantum, below).

96. The Arbitral Tribunal recognises that IT Ltd. is hampered to a considerable degree by the absence of documentation. However, as noted above, it is not satisfied that IT Ltd., which has acknowledged the potential that some value was obtained by Korek from the purchase of goods and services from Darin and Halabja, has proven the extent of any excessive pricing in relation to those companies (or indeed to Ersal). The position is different in respect of IC4LC.

97. As is explained further in Chapter R, below, the Arbitral Tribunal considers that at least US$ 6 million was paid by Korek to IC4LC prior to the end of 2013. IC4LC was a Rahmeh-related entity which was used by the Respondents for its unlawful conspiracy to procure the CMC Decision and the sums paid by Korek to IC4LC were used for that illicit purpose. No disclosure of Mr. Rahmeh's "interest' in IC4LC was made and no approval was given (for obvious reasons) of the true reason behind the payments to IC4LC.

The Injunction contained in Procedural Order No. 3

98. On 7 February 2019 His Excellency Justice Omar Al Muhairi issued an order in proceedings in the DIFC Court temporarily enjoining CS Ltd. and Mr. Mustafa from taking or procuring the taking of any steps in furtherance of certain specific transactions with Nokia Corporation and Huawei Technologies Co. Ltd. unless and until the issuance of an interim order in ICC Case No. 23685/AYZ. On 6 May 2020 the arbitral tribunal in that arbitration issued a decision granting IT Ltd.'s application for interim relief and enjoining CS Ltd. and Mr. Mustafa, subject to limited exceptions, from causing Korek to consummate or further pursue either transaction. Following the withdrawal by IT Ltd. of its claims in the earlier reference and the filing of the present proceedings, the Parties agreed to adopt the earlier arbitral tribunal's decision on interim relief by consent. This agreement was embodied in Procedural Order No. 3 [G/4].

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[15] It should be noted that, in contrast to this instruction, Mr. Matthews remained instructed to treat the transactions with Ersal and IC4LC as "illicit" and that they should be deemed null and void [C1/2/84-85].

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99. The Respondents now seek the discharge of the injunction provided for in Procedural Order No. 3. It is the Arbitral Tribunal's conclusion that, in light of the findings set out in this Award, no useful purpose would be served by continuing the injunction. Indeed, as the Arbitral Tribunal indicated in Procedural Order No. 7, it seemed likely from the material presented to it at that time that each of (i) the order of Justice Al Muhairi, (ii) the order of the arbitral tribunal in ICC Case No. 23685/AYZ and (iii) the consent order in Procedural Order No. 3 had either been breached or rendered meaningless by the Respondents' actions. The Claimant did not oppose the discharge of the injunction. The order is accordingly discharged.

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O. NON-COMPETE

The Parties' Submissions

1. IT Ltd. alleges that Mr. Mustafa is in breach of his obligations under clause 17.1 of the SHA not to compete with the "Group" (defined as IH Ltd., Korek and their subsidiaries) in the Republic of Iraq [A/5/159-161].

2. IT Ltd. says that, consistent with these obligations, Mr. Mustafa entered into the IraqCell Agreement with IT Ltd. [D1/3] under which he warranted and undertook that:

> 1.1 I warrant that, as at the date of this letter, I hold an 80% equity interest in IraqCell, a company which was incorporated prior to the award of the national licence to Korek in August 2007 and that IraqCell holds a wireless local loop licence to operate in Kirkuk and Mosel but has had no operations since the award of the national licence to Korek and as at the date of this letter, IraqCell is not trading.
>
> 1.2 I undertake and agree that
>
> (a) I will not take any action or decision in respect of my shareholding in IraqCell and shall procure that IraqCell shall continue not to trade and shall not compete in any way with Korek without the prior written consent of IT Ltd; and
>
> (b) unless otherwise agreed in writing by IT Ltd, I shall use all reasonable endeavours to liquidate or dissolve IraqCell as soon as reasonably practicable following the date of this letter (without any liability for Korek, International Holdings or IT Ltd) provided that such action does not incur costs to me or IraqCell other than minimal costs.

3. IT Ltd. also says that, for its part, CS Ltd. represented at Schedule 3 of the Subscription Agreement that IraqCell was a dormant company which "*has not traded since 1 July 2009 and has no material assets*" [D1/2/49].

4. It is IT Ltd.'s case that Mr. Mustafa has not honoured these undertakings, that IraqCell has not been liquidated or dissolved and has traded actively in Iraq. With Mr. Mustafa as its Managing Director it was awarded in 2014 a license to install and run a fibre-optic network between all towns and cities in the Kurdistan Region. As a result, IT Ltd. claims a breach of clause 17 of the SHA by both Mr. Mustafa and CS Ltd. and seeks the removal of Mr. Mustafa from the IH Ltd. Board of Directors and from the KSC and an award of US$ 100 million as the Non-Compete Payment under the SHA.

5. In their Statement of Defence, the Respondents make two points. Firstly they say that IT Ltd. has misconstrued clause 17.7 of the SHA. Only a "Competing Party" is liable to the Non-Compete Payment. A Competing Party is defined only as CS Ltd. and IT Ltd. It does not apply to Mr. Mustafa. Similarly, clause 17.7 only requires CS Ltd. to make the Non-Compete Payment if it "*invests in a company or business which holds, or is in the process of obtaining, a licence issued by a notional or regional Government Entity for the provision of Core Restricted Activities in the Republic of Iraq*". The Respondents say that on IT Ltd.'s own case, CS Ltd. has not invested in any company or business which carries on Core Restricted Activities.

6. Secondly, the Respondents say that Korek cannot obtain a license to install fibre-optic networks and is reliant upon third-party providers. IT Ltd. was always aware of the need for Korek to enter into this arrangement and that IraqCell was able to provide these services to Korek. It points to a business review circulated ahead of a KSC meeting on 14 October 2014 referring to a plan for Korek to have either its own "dark fibre" or a strategic partnership with a provider to lease dark fibre. Reference was made

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to negotiations having "*been done*" with three companies, including IraqCell. The Respondents say that IT Ltd.'s representatives were at the meeting at which this business review was discussed and made no objection to an arrangement with IraqCell.

7. The Respondents also suggest that this was an essential service for Korek and that IT Ltd. cannot establish that entering into agreements with IraqCell or Mr. Mustafa maintaining his interest in IraqCell has caused Korek any loss [A/6/185-187].

8. In its Reply [A/21/274-278], IT Ltd. accuses the Respondents of a contrived and commercially irrational interpretation of the relevant contractual provisions. Mr. Mustafa is an "Affiliate" of CS Ltd. and is expressly caught by clause 17.1. All Parties knew at the time the SHA was concluded that the most likely source of impermissible competition was IraqCell and that Mr. Mustafa was the owner. Commercial common sense supports an interpretation that both Mr. Mustafa and CS Ltd. are subject to the obligation not to compete.

9. IT Ltd. also say that the Non-Compete Payment becomes due *"[i]f either CS Ltd or IT Ltd. breaches the provisions of this clause 17 (Competing Party)*". This must be understood to include the Affiliates of CS Ltd. and IT Ltd. Alternatively, IT Ltd. says, the Parties should be taken to have made an obvious mistake when drafting the definition of "Competing Party" in clause 17.5, in that this definition should have included a reference to CS Ltd.'s and IT Ltd.'s Affiliates, consistently with clause 17.1, but did not.

10. As to the Respondents' second argument, IT Ltd. says that this is flawed as:

    (a) The Respondents have not established that it was necessary for Korek to enter into an agreement with IraqCell. The business review referred to by the Respondents makes clear that it was a choice;

    (b) The fact that Korek's management envisaged transactions with IraqCell shows that Mr. Mustafa never took his obligations seriously; and

    (c) For the purposes of the "Core Restricted Activities" defined at clause 17.1(c)(ii) of the SHA, it is immaterial whether or not Korek was able to provide the specific service.

11. In their Rejoinder [A/34/237-240], the Respondents reiterate their argument that "Competing Party" is defined in clause 17.5 of the SHA as CS Ltd. or IT Ltd. Clause 17.7 applies only to those two entities and only they are obliged to make a Non-Compete Payment. As CS Ltd. has not invested in any relevant company or business it cannot have breached clause 17.

12. The Respondents accept that clause 17.1 refers and applies to Affiliates of CS Ltd. This, they say, does not assist IT Ltd. in its claim that Mr. Mustafa is subject to the obligations in clause 17.7. That clause only applies to Competing Parties. The fact that the term "Affiliate" has been carefully used in other parts of clause 17 shows that clause 17.7 has been carefully and deliberately drafted.

13. It is not open to IT Ltd. now to look beyond the clear terms of clause 17.7 and seek to expand the definition of Competing Party to Mr. Mustafa just because IT Ltd. now argues that this is a more commercial approach. Subjective evidence of a party's

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intention is not admissible. The language of the contract needs to be carefully considered to ascertain what the Parties have agreed, not what the Arbitral Tribunal thinks they should have agreed and whilst arguments of commercial common sense are attractive, they cannot be used to undermine the clear meaning of the language of the contract.

14. The Respondents also rely in this regard upon the fact that Mr. Mustafa and IT Ltd. entered into a separate agreement in respect of IraqCell. That document (the IraqCell Agreement) contains no provision for a Non-Compete Payment or indeed any payment from Mr. Mustafa to IT Ltd. in the event that Mr. Mustafa retained his shareholding in IraqCell. This demonstrates, the Respondents say, that the Parties did not agree that the Non-Compete Payment would be due from Mr. Mustafa.

15. The Respondents reject the alternative argument that the Parties made a mistake when drafting the definition of Competing Party. For such an argument to be made, "*something must have gone wrong with the language*" rather than the contractual bargain. Nothing has gone wrong with the language; the error is a commercial one. IT Ltd. has not advanced a claim for rectification, nor could it.

16. In the Respondents' skeleton argument served prior to the evidential hearing, they take a further, pleading, point. They say that, in its pleadings, IT Ltd. pursued the claim for the Non-Compete Payment only in Scenarios B & C (namely, the Alternative "Unwinding Claims" and the alternative Unjust Enrichment Claims). When the List of Issues was compiled, it became apparent that IT Ltd. also seeks the Non-Compete Payment in Scenario A (the Primary Claims). The Respondents say that IT Ltd. cannot advance a new claim for damages at this stage [A/38/30].

17. The Decision Tree produced by IT Ltd. prior to the evidential hearing contains a footnote on page 4 which states that *"[i]n circumstances where none of Scenarios A, B and C apply, the Claimant pursues freestanding damages claims in respect of the IBL Loan and breach of the Non-Compete provisions*".

The Arbitral Tribunal's Analysis

18. The Arbitral Tribunal having determined that IT Ltd. has succeeded with its Primary Claims, the Parties are agreed that it is unnecessary for the Arbitral Tribunal to address the Alternative "Unwinding" and Unjust Enrichment Claims. This does however require the Arbitral Tribunal to determine whether IT Ltd. should be permitted to advance its "free standing damages claim" for the Non-Compete Payment.

19. The ICC Rules provide, by Article 23(4) that *"[a]fter the Terms of Reference have been signed or approved by the Court, no party shall make new claims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances*". Having carefully considered these factors, the Arbitral Tribunal grants leave for IT Ltd. to advance a claim on this basis. It raises no new issues and there is absolutely no prejudice to the Respondents (nor indeed do they seek to argue that there is). The claim raises no disputed issues of fact. The Respondents have addressed the claim fully in argument and there is no reasonable basis for excluding it.

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20. The relevant provisions of clause 17 of the SHA are set out in Annex A. Clause 17.1 provides that for as long as either party holds at least 5% of the shares in IH Ltd. *"neither IT Ltd. nor CS Ltd. nor any of their respective Affiliates (as applicable) shall compete with the Group in the Republic of Iraq".*

21. The definition of "Affiliate" is set out in Schedule 2 to the SHA. It provides:

"Affiliate means:

a. in the case of a person which is a body corporate, any other entity which, directly or indirectly, owns or controls, is under common ownership or control with or is owned or controlled by, such party, in each case from time to time;

b. in the case of a person which is an individual:

(i) any spouse and/or any lineal descendants by blood or adoption;

(ii) any person or persons acting in its or their capacity as trustee or trustees of a trust of which such individual is the settler: or

(iii) any body corporate or such other entity of which such a person is a director or manager or which, directly or indirectly, is owned or controlled by such a person,

save that, in the case of CS Ltd and IT Ltd and each of their Affiliates, the definition of Affiliate shall not include the Group or Sanatel or Iraqcell but, for the purposes of clause 17 and clause 28: (i) France Telecom S.A. and its Affiliates shall be deemed to be Affiliates of IT Ltd, and (ii) any shareholder of CS Ltd holding an indirect interest in Shares comprising at least 5% (five per cent.) of the total number of Shares and their Affiliates shall be deemed to be an Affiliate of CS Ltd." [D1/1/61].

By the terms of this definition, Mr. Mustafa was and is an Affiliate of CS Ltd.

22. It does not appear to the Arbitral Tribunal that the Respondents dispute that, through his admitted interest in IraqCell, Mr. Mustafa was competing with the Group. Clause 17.1(c) provides that "*Compete means undertaking, or being interested in any business which carries out, any Core Restricted Activities*". That further term is defined at clause 17.1(c)(ii) and includes "the provision of any service in connection with or in relation to the telecommunications industry permitted by the National Mobile License". IraqCell was therefore competing.

23. The Respondents' answer to this is that IT Ltd.'s representatives were aware of the fact that Korek was reliant on third-party providers to install fibre-optic cables and that negotiations had taken place with IraqCell for that purpose and made no objection. Although not expressly stated, this appears to be an argument of waiver or estoppel. The Arbitral Tribunal is not persuaded by this argument. The business review plan that was presented at the KSC meeting makes clear that IraqCell was just one party with which negotiations had taken place and also that the company could proceed to have its own network. There was no unequivocal acceptance by IT Ltd. that IraqCell could and should have been involved in the development of the fibre-optic network.

24. The Arbitral Tribunal therefore finds that by retaining his interest in IraqCell which in turn obtained in 2014 a license to install and run a fibre-optic network between all towns and cities in the Kurdistan Region, Mr. Mustafa was in breach of his obligation

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under clause 17.1 of the SHA not to compete with the Group. The Arbitral Tribunal also finds that CS Ltd. was in breach of that obligation. Although CS Ltd. did not itself have any interest in IraqCell, the obligation in clause 17.1(a) must apply to both IT Ltd. and CS Ltd. in respect of the activities of their Affiliates (although no claim is made by IT Ltd. in this instance for a breach of the Further Assurances clause 31 of the SHA, the obligation in that provision for each Party to procure that its Affiliates comply with all obligations under the SHA and the other Transaction Documents must inform the interpretation of clause 7.1(a)).

25. Turning to liability for the Non-Compete Payment, clause 17.5 applies if "*either CS Ltd. or IT Ltd. breaches the provisions of this clause 17*". If so, they are defined as a "Competing Party". The Respondents say that there is quite deliberately no reference in this sub-clause to "Affiliates". Clause 17.7 is however triggered in the event of a breach by either CS Ltd. or IT Ltd. The Arbitral Tribunal has found that there is such a breach of clause 17.1 by CS Ltd. That is sufficient to make it a Competing Party. It does not however make Mr. Mustafa himself a Competing Party (notwithstanding that he is also in breach of clause 17.1(a)). It would, as the Respondents contend, have been a simple matter for clause 7.5 to have referred expressly to Affiliates. It did not. Whilst the Arbitral Tribunal has some sympathy with the argument that the references to IT Ltd. and CS Ltd. as used throughout clause 17 should properly be regarded as referring to those entities and their Affiliates, it is notable that in various places throughout the clause as a whole phrases such as "*any party (together with its Affiliates or the other members of its Shareholder Group*" are used (see e.g. clause 17.2 (a), (b) and (c) and 17.4). That is a very strong indicator that the absence of such a reference in clause 17.5 was a deliberate choice, even if the result appears to lack commercial sense. There is nothing wrong with the syntax of the clause and the Arbitral Tribunal is not prepared to find that anything has gone wrong with the language in this instance.

26. Liability to make the Non-Compete Payment arises under clause 17.7. It arises when (i) the Competing Party (that is, either IT Ltd. or CS Ltd.) "*invests in a company or business which holds, or is in the process of obtaining, a license issued by a national or regional Government Entity for the provision of Core Restricted Activities in the Republic of Iraq*" (defined as a Competing Licence Breach) and (ii) "*the Competing Licence Breach is not cured, to the reasonable satisfaction of an of the other parties, within 30 … days of receipt of [a] Non-Compete Notice*". When those two requirements are fulfilled, the "other parties" may demand, at their sole election and without prejudice to any other right of action or redress they may have, a payment "on account" of US$ 100 million (the Non-Compete Payment).

27. No such liability can arise in the present case. Clause 17.7 of the SHA uses the present tense. There is no complaint that CS Ltd. has invested, during the currency of the SHA, in a company or business "*which holds, or is in the process of obtaining, a license issued by a national or regional Government Entity for the provision of Core Restricted Activities in the Republic of Iraq*". The second element is therefore not engaged.

28. Whilst IT Ltd. says that such a result is "commercially irrational", the Arbitral Tribunal is obliged to apply the clear wording of the SHA. In any event, it is not at all clear that the result is commercially irrational. IT Ltd. knew of Mr. Mustafa's interest in IraqCell and entered into a separate agreement with him in that regard. There has been a breach of clause 17.1 and, although no claim has been made for damages for that

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breach separate from the claim for the Non-Compete Payment, there is no reason in principle why such a claim should not be made.[16] Clauses 17.5 and 17.7 are directed specifically at IT Ltd. and CS Ltd. and, in relation to the Non-Compete Payment, are directed at competing investments going forward from the execution of the SHA (again, the Arbitral Tribunal refers to the use of the present tense – "invests"- in clause 17.7). It makes commercial sense for a forward-looking obligation such as clause 17.7 to provide for the payment of liquidated damages. The precise assessment of loss in such circumstances is difficult, if not impossible, and a reasonable pre-estimate may well be the best that can be achieved. That is not so when the breach relates to improper competition by an existing entity not caught by clause 17.7. In such a case, it should be possible for IT Ltd. for advance a claim for its actual loss. Clause 17.7 appears to be directed at a different mischief.

29. In addition to the Non-Compete Payment IT Ltd. seeks the removal of Mr. Mustafa from the IH Ltd. Board of Directors and from the KSC. The provision relied upon is clause 7.3 of the SHA. This provides:

> *"If a person is appointed to the governing body of a company which competes (as defined in clause 17.1) with the Group in the Republic of Iraq, whether as a result of an acquisition pursuant to clause 17.4 or otherwise, such person may not be appointed to the International Holdings Board of Directors, the Korek Supervisory Committee, the Financing Proposal Committee or any Committee and, if such person is a Director, SC Member or Committee Member prior to such appointment, such person shall immediately be removed from the International Holdings Board of Directors, Korek Supervisory Committee, the Financing Proposal Committee or any Committee by the appointing party and may be replaced by the appointing party in accordance with clause is 5.11, 6, 7 and 10.6."*

30. The first limb of the clause is not engaged because, as far as Mr. Mustafa is concerned, he was appointed to the IH Ltd. Board of Directors and to the KSC when the 2011 Transaction was consummated and with the consent of IT Ltd. Further, it is the second limb of clause 7.3 that must be relied upon to remove a Director or Member of the KSC. The second limb only operates when a person is a Director or Member "*prior to the appointment*" to the governing body of the competing entity. The Arbitral Tribunal understands it to be common ground that Mr. Mustafa was the Managing Director of IraqCell at the time of the 2011 Transaction. His appointment to the competing entity therefore appears to have preceded his appointment to the Board of IH Ltd. and to the KSC. It is true that Mr. Mustafa represented at the time of the 2011 Transaction that IraqCell was dormant and it may be said that at that time it was not a competing entity, but the clear wording of the clause requires an "*appointment*" at the relevant time. There is no evidence before the Arbitral Tribunal that such an appointment took place.

31. The Arbitral Tribunal therefore:

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[16] The Arbitral Tribunal has noted above (at paragraph 17) the footnote on page 4 of IT Ltd.'s Decision Tree. The Arbitral Tribunal does not understand the reference to a "freestanding damages claim" to connote a claim other than for the Non-Compete Payment in circumstances where none of Scenarios A, B & C apply. That at least is the implication from the List of Issues.

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(a) Finds and declares that by retaining his interest in IraqCell, Mr. Mustafa was in breach of his obligation under clause 17.1 of the SHA not to compete with the Group;

(b) Finds and declares CS Ltd. also to be in breach of its obligation under clause 17.1 of the SHA not to compete with the Group;

(c) Finds and declares that neither Mr. Mustafa nor CS Ltd. are liable for the Non-Compete Payment; and

(d) Declines to order the removal of Mr. Mustafa from the IH Ltd. Board of Directors and from the KSC.

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P. BROADER CONSPIRACY

The Parties' Submissions

1. In its Statement of Claim, IT Ltd. pleads what it refers to as the "Respondents' broader conspiracy" [A/5/119]. It states:

> *"the pattern of pervasive and serious wrongdoing, commencing in the months immediately following the 2011 Transaction and extending over a period of several years, strongly indicates a broader agreement or combination on the part of the Respondents to appropriate all or, at a minimum, a substantial portion of IT Ltd.'s investment in Korek as part of the 2011 Transaction. Whilst the precise date on which this conspiracy was hatched remains unknown, the logical conclusion from the scale of the Respondents' fraud and its close proximity to the 2011 Transaction is that such conspiracy started prior to the implementation of the 2011 Transaction."*

2. IT Ltd. further states that:

> *"each of the Respondents represented by implication that, at the time of the 2011 Transaction, they had the intention of fulfilling their obligations under the Transaction Documents, including the SHA. The Respondents' fraudulent conduct immediately following the implementation of the 2011 Transaction, consisting in the IBL Conspiracy, the CMC Conspiracy, and numerous other breaches of contractual obligations and statutory duties, strongly indicates that the Respondents' implied representation was in fact fraudulent."*

3. The Arbitral Tribunal understands the suggestion to be that the 2011 Transaction itself was an integral part of an unlawful conspiracy and that there existed a conspiracy from the inception of the 2011 Transaction to appropriate IT Ltd.'s investment in IH Ltd. and Korek.

4. In their Statement of Defence, the Respondents assert that the allegation is without merit. They say:

   (a) The claim is "hopelessly vague";

   (b) IT Ltd. fails to specify what conspiracy was hatched or by whom;

   (c) That there is no evidence of any conspiracy and that a pattern of wrongdoing does not in and of itself establish evidence of a conspiracy; and

   (d) That the claim that the Respondents fraudulently misrepresented to IT Ltd. that they intended to fulfil their obligations under the Transaction Documents is hopelessly flawed. IT Ltd. has never sought to claim that it was fraudulently induced to enter into the Transaction Documents and there is no evidence that the Respondents did not so intend.

   [A/6/170-172].

5. In its Reply, IT Ltd. seeks to argue that "*the only available conclusion*" is that a conspiracy to deprive IT Ltd. of its investment in IH Ltd. and in Korek existed from the inception of the 2011 Transaction. IT Ltd. says that it has identified the conspirators

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and the conspiracy, that it has chronicled the Respondents' efforts to deprive it of its investment and that the fraudulent misrepresentation by the Respondents is clear. IT Ltd. rejects the suggestion that the Respondents took steps to comply with the Transaction Documents. Lastly, it points to what it says are the Respondents' continued failures to comply with their document production obligations as proof that such a conspiracy both existed and was acted upon [A/21/278-281].

6. IT Ltd. further claims interest of US$ 11 million which it says should have been paid to it in respect of the IT Shareholder Loan from 15 September 2014 to 9 July 2015. IT Ltd. says that although this non-payment was not attributable to the Subordination Agreement with IBL, it formed part of the Respondents' broader conspiracy to deprive IT Ltd. of all, or substantially all, of its investment [A/21/293].

7. In their Rejoinder, the Respondents submit that:

(e) There remains a total lack of clarity as to who in CS Ltd. and Korek are said to be part of the alleged conspiracy;

(f) IT Ltd. has not shown that, at the point of entry into the 2011 Transaction, the conspirators had the intention to deprive IT Ltd. of its investment, that the conspiracy was acted on unlawfully or that fraudulent misrepresentation qualifies as unlawful means; and

(g) IT Ltd. has not explained or identified the means by which the conspiracy would be put into effect.

[A/34/255-256].

8. These points are repeated by the Respondents in their skeleton argument [A/38/31-32]. The Respondents add that, in the Rejoinder, IT Ltd. claimed for the first time that it was entitled to damages of US$ 11 million. The Respondents refer the Arbitral Tribunal to submissions at paragraph 9.12 of their skeleton. However, no such paragraph is to be found in that document. In their notes on the List of Issues, however, the Respondents comment:

"The Respondents object to [IT Ltd.'s] claim that it is entitled to damages in respect of the IBL Loan in respect of the Broader Conspiracy. [IT Ltd.'s] only pleaded case for damages in relation to the Broader Conspiracy allegation was introduced in the Reply and relates to interest paid on the IBL Loan between September 2014 and July 2015 (Reply, paragraph 610(b)). [IT Ltd.] assesses this claim at USD 11 million. The Claimant is not entitled to advance an entirely new claim for damages at this stage."

[A/35/25]

The Arbitral Tribunal's Analysis

9. The Arbitral Tribunal has set out in significant detail in earlier chapters of this Award its findings in relation to the unlawful means conspiracies pleaded in respect of the CMC Decision and the IBL Loan and Subordination Agreement. It has found the Respondents liable in respect of both conspiracies. The conspiracy in respect of the IBL Loan was clearly underway in the final months of 2011. The Arbitral Tribunal has also found that as at December 2013, the unlawful means conspiracy in respect of the

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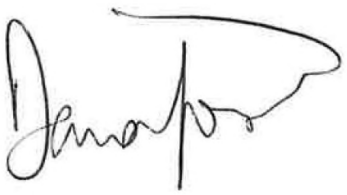
CMC Decision was underway. The reality is that, for the letter of 10 December 2013 to have been sent on 10 December 2013 [D1/17] the conspiracy in respect of the CMC Decision must have been hatched some time earlier.

10. However, the burden of proof in respect of the so-called broader conspiracy, as with the CMC Decision and IBL Loan conspiracies, rests with IT Ltd. Notwithstanding the very close proximity of the Respondents' unlawful acts in respect of the IBL Loan to the finalisation of the 2011 Transaction, IT Ltd. has not discharged its burden of proving that there was, at the time of the 2011 Transaction itself, a broader conspiracy to deprive IT Ltd. of all, or substantially all, of its investment. IT Ltd.'s claim in this regard therefore fails. It is unnecessary for the Arbitral Tribunal to address the pleading point raised in respect of the List of Issues in relation to the claim for damages.







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Q. REFLECTIVE LOSS

Introduction

1. It is the Respondents' position that the derivative claims advanced in the name and on behalf of IH Ltd. in respect of the Impugned Transactions and the IBL Loan are both barred by a rule of English law which prohibits the recovery of so-called "reflective" loss - here reflective of loss suffered in Korek as a result of wrongs to it. This is an issue which has developed during the course of the reference as a result of certain decisions issued by the Privy Council and by the Court of Appeal of England & Wales. Those decisions are *Primeo Fund (in Official Liquidation) v Bank of Bermuda (Cayman) Ltd. and Anr.* [2021] UKPC 22 ("*Primeo*") and *Allianz Global Investors GmbH and Ors. V Barclays Bank plc and Ors.* [[2022] EWCA Civ. 353 ("*Allianz*"). The decision in *Primeo* was handed down on 9 August 2021, just days after the Respondents served their Statement of Defence. With the agreement of IT Ltd. the Respondents served an Annex to their Statement of Defence pleading that the judgment in *Primeo* barred the relevant claims [A/6.1/1-11]. The decision in *Allianz* was issued by the Court of Appeal on 23 March 2022, after the service of IT Ltd.'s Statement of Reply and just before service of the Respondents' Rejoinder.

The Parties' Submissions

2. The issues between the Parties on this aspect of the matter are narrowly defined. It is not suggested by IT Ltd. that the English law on reflective loss is irrelevant to the matters that the Arbitral Tribunal has to decide. However, it is IT Ltd.'s position that the Arbitral Tribunal is not bound to apply *Primeo*, that it has a discretion in this regard and that it should not do so. The Respondents argue that *Primeo* is binding upon the Arbitral Tribunal, particularly after the decision in *Allianz* and it operates to bar recovery by IH Ltd. of any losses in respect of the Impugned Transactions and the IBL Loan. Those are losses suffered by Korek and it is for Korek alone to pursue them, not IH Ltd. IH Ltd.'s losses are merely reflective of loss suffered, if at all, by Korek. This the Respondents submit is an application of the rule in *Foss v Harbottle* namely that the only party who can seek relief for injury done to a company where the company has a cause of action is the company itself.

3. IT Ltd. argues that the rule in *Primeo* does not apply to bar the recovery of losses by former shareholders, particularly where the shares in the relevant company have been taken away from them [A/37/26]. It relies upon the decision of Flaux LJ in *Nectrus Ltd. v UCP plc* [2021] EWCA Civ. 57. The rule should also not be applied to bar what are good claims [A/44/73-74]. The policy concerns highlighted in *Primeo* are not engaged in the present case [Day 8/165:3-175:23].

4. Furthermore, IT Ltd. argues, the damages sought on behalf of IH Ltd. with regard to the Impugned Transactions and the IBL Loan are advanced in connection with the primary claim in respect of the CMC Decision. That requires an assessment of the value of IH Ltd.'s shareholding in Korek as at December 2013. At that time, IH Ltd. lost the entire value of Korek, including all of its assets [A/44/74].

5. The Respondents reply that *Allianz* has resolved the conflict between *Primeo* and *UCP* and has confirmed that UCP was wrongly decided. The Arbitral Tribunal is bound by

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that determination. Further, they argue, *Primeo* has established a "bright line" rule of substantive law. All of the relevant losses were incurred when IH Ltd. was a shareholder in Korek and the result of that is that recovery of losses in those circumstances is barred [A/45/79-81&83]. The fact that IH Ltd. is no longer a shareholder in Korek is irrelevant. The relevant date for assessment is when the loss crystallised. IH Ltd.'s shareholding was intact at that point [Day 9/118:6-126:16].

The Arbitral Tribunal's Analysis

6. Although this is a somewhat questionable starting point as a matter of law, there appears to be no dispute between the Parties that the Arbitral Tribunal should apply English law in determining whether the losses in respect of the Impugned Transactions and in part the IBL Loan are barred on the basis that they represent reflective losses of Korek. The Arbitral Tribunal suggests that this is a somewhat artificial and questionable starting point, given that Korek is not an English, or DIFC, company but incorporated in Iraq and the claims that Korek would have to recover the monies wrongly taken from it and dispensed to IC4LC may well not be governed by English or indeed DIFC law.

7. The first question is whether the Arbitral Tribunal is bound to apply the principles set out by the Privy Council in *Primeo* or not. It is IT Ltd.'s argument that, as a decision of the Privy Council, it is not binding upon the Arbitral Tribunal and that the Arbitral Tribunal should prefer the decision in *UCP*. In that case, Flaux LJ regarded as "*unarguable*" the proposition that the Supreme Court in the earlier case of *Sevilleja v Marex Financial Ltd.* [2020] UKSC 31 ("*Marex*") had "*left open the possibility that the rule against reflective loss is applicable to an ex-shareholder*" ([2021] EWCA Civ. 57 at paragraph 55).

8. The Board in *Primeo* made it clear in terms that they regarded *UCP* as wrongly decided. The applicability of the rule against reflective loss was not to be assessed, as Flaux LJ had done, as at the time the claim was made, but as at the date when the breach occurred [*Primeo* at paragraph 61]. Furthermore, this approach was endorsed by the Court of Appeal in *Allianz*. At paragraph 18 of his judgment, Phillips LJ, noted that:

> *"The Board [in Primeo] (comprising five of the seven Justices who decided Marex) held that, as the reflective loss rule is substantive rather than procedural in character, the relevant time to assess whether it applies is when the loss which is said by the claimant to be recoverable in law is suffered by it. Further, the Board held that Nectrus was wrongly decided, Lord Kitchin and Lord Sales (giving the judgment of the Board) stating at [61]:*
>
> *"A shareholder which suffers a loss in the form of a diminution of value of its shareholding which is not recoverable as a result of the application of the reflective loss rule cannot later convert that loss into one which is recoverable simply by selling its shareholding. It is necessary to focus on the nature of the loss in respect of which the shareholder's claim is made. It is not enough to consider the position as at the date of the issue of proceedings without regard to the nature of the loss and a consideration of whether it is, in the eyes of the law, separate and distinct from that of the company.""*

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9. The Court of Appeal in *Allianz* applied the law as laid down by the Privy Council in *Primeo*, further making it clear that there is no material difference between a former shareholder selling its shares and a shareholder redeeming its shares. It follows from that that it is no longer open to IT Ltd. to seek to rely on the judgment of Flaux LJ in *UCP*, nor is it open to it to argue that *Primeo* does not represent English law. Notwithstanding that decisions of the Privy Council, whilst not strictly binding on English courts, are highly persuasive, the position now is that the Court of Appeal has accepted *Primeo* as setting out the principles applicable as a matter of English law.

10. The question for the Arbitral Tribunal therefore is whether those principles operate in the present case to bar recovery by IH Ltd. of the losses to Korek caused by the Impugned Transactions and the IBL Loan. As the Board explained in *Primeo*, "*the reflective loss rule applies in relation to claims against a person who is a common wrongdoer, in the sense that they have by their action or omission committed wrongs both against the claimant who is a shareholder in a company and against the company itself.*" The Board examined the earlier decision of the Supreme Court in *Marex* and noted (at paragraph 520 that:

> *"[a]s Lord Reed said (para 81), "the effect of the rule in Foss v Harbottle is that the shareholder has entrusted the management of the company's right of action to its decision-making organs, including, ultimately, the majority of members voting in general meeting." Lord Hodge said (para 100), "[the reflective loss rule] is a rule of company law arising from the nature of the shareholder's investment and participation in a limited company and excludes a shareholder's claim made in its capacity as shareholder." The Board emphasised that "[i]t is important to note that the reflective loss rule is, as was made clear in the majority judgments in Marex, a rule of substantive law associated with the rule in Foss v Harbottle and concerned with the recognition in law of particular types of loss. It is not a procedural rule concerned only with the avoidance of double recovery. Applied as a substantive rule of law, whether the reflective loss rule is applicable or not falls to be assessed as at the point in time when the claimant suffers loss arising from some relevant breach of obligation by the relevant wrongdoer" (paragraph 55 – emphasis added).*

11. The Board regarded this substantive rule as critical. It held that "*to test the application of the reflective loss rule at the time when proceedings are brought rather than when the loss is suffered would have the effect of making the wrongdoer very wary of settling with the company, if the practical outcome of doing so is made uncertain and precarious by the future conduct of the company and shareholder and the vagaries of procedural law. That would undermine the intended effect of the rule (reflecting the rule in Foss v Harbottle), which is to ensure that the company has a full opportunity to decide how to pursue its own cause of action, where properly identified as such, and to obtain as good value from it as is possible*" (paragraph 63).

12. The Board emphasised that the reflective loss rule derives from the "*follow the fortunes*" bargain which arises from membership of a company: "*the shareholder is precluded from asserting that they have suffered a separate loss because of the "follow the fortunes" bargain they made upon becoming a member of the company, according to which they agreed that in such a situation the company alone should be in a position to pursue a remedy against the wrongdoer, thereby protecting the company asset (in*

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the form of the company's own cause of action) and company autonomy to the extent required by Foss v Harbottle". There was a further timing issue in *Primeo* which caused the Board to consider whether to apply the reflective loss rule to preclude a new shareholder from enforcing rights of action which had already accrued to them before they became a member of the company. This would, the Board concluded, be an "*unwarranted extension of the rule*". It would deprive the new shareholder of property rights which it already owned and in relation to which "*it was not possible to identify any agreement, whether express or implied, in the articles of association of the company that the shareholder agreed to this*" (paragraph (67).

13. These references to the "follow the fortunes" bargain and to an agreement to which the shareholder should be held reflects a central principle of the rule against reflective loss. Lord Reed in *Marex* stated that:

> *"the effect of the rule in Foss v Harbottle is that the shareholder has entrusted the management of the company's right of action to its decision-making organs, including, ultimately, the majority of members voting in general meeting. If such a decision is taken otherwise than in the proper exercise of the relevant powers, then the law provides the shareholder with a number of remedies, including a derivative action, and equitable relief from unfairly prejudicial conduct.*
>
> *…[T]he company's control over its own cause of action would be compromised, and the rule in Foss v Harbottle could be circumvented, if the shareholder could bring a personal action for a fall in share value consequent on the company's loss, where the company had a concurrent right of action in respect of its loss. The same arguments apply to distributions which a shareholder might have received from the company if it had not sustained the loss….*
>
> *The critical point is that the shareholder has not suffered a loss which is regarded by the law as being separate and distinct from the company's loss, and therefore has no claim to recover it. As a shareholder (and unlike a creditor or an employee), he does, however, have a variety of other rights which may be relevant in a context of this kind, including the right to bring a derivative claim to enforce the company's rights if the relevant conditions are met, and the right to seek relief in respect of unfairly prejudicial conduct of the company's affairs" (paragraphs 81-83).*

14. Neither the "follow the fortunes" bargain nor any form of meaningful and genuine express agreement is present in the circumstances of the present case. The Respondents argue that the Arbitral Tribunal is required to look at the nature of the claim and the cause of action at the date of the loss in order to determine whether the loss is reflective or not. The Arbitral Tribunal is invited to treat the date of loss in respect of both the Impugned Transactions and the IBL Loan under Scenario A as December 2013. The Arbitral Tribunal recognises that, at those dates, IH Ltd. was a shareholder in Korek. However, it was a shareholder in name only. As the Arbitral Tribunal has found elsewhere in this Award, the Respondents were engaged in a conspiracy to bribe the CMC which led to the actions leading up to the CMC Decision, the issuance of the CMC Decision itself and the subsequent implementation of that Decision, including the issuance of the KCR Decree. There was therefore in place at that time a deliberate scheme to deprive IH Ltd. of its shareholding in Korek. There remained, at that stage no real "bargain" in place between the shareholders let alone any protection

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in Iraq, as far as the Arbitral Tribunal was informed, from the consequences of unfairly prejudicial conduct. IH Ltd. was, of course, a 100% shareholder but any attempt by Korek to take action in respect of these losses was doomed to be frustrated by the votes of Mr. Mustafa and of the other CS Ltd. representatives. The idea that a derivative action could be brought in the name of Korek to enforce its rights is entirely fanciful. There was no prospect of the loss to Korek being made good.

15. Nor, self-evidently, can it be said that there was any agreement in the Articles of Association of Korek that IH Ltd. would forego its right to relief in these circumstances. The Articles did not and could not have provided for a situation in which IH Ltd. would be subjected to a scheme to deprive it entirely of its shareholding in Korek.

16. The mischief to which the rule against reflective loss is directed as described in Lord Reed's judgment in *Marex* is entirely absent from the present case. There was no effective mechanism available to IH Ltd. by which the loss to Korek could be made good. Equally there was no effective remedy in the hands of Korek that this claim on the part of IH Ltd. would be "interfering" with, more particularly since Korek is said to be the wrongdoer. The Arbitral Tribunal therefore declines to find that the rule against reflective loss applies to the claims in respect of the Impugned Transactions or the claim brought on behalf of IH Ltd. in respect of the IBL Loan. It is artificial to consider that the rule in *Foss v Harbottle* or its possible circumvention have anything really to do with the present claims or facts. It is unnecessary in these circumstances to address Mr. Harb's contention, advanced during closing submissions, that even if the reflective loss rule did bar freestanding claims, the value of Korek's causes of action should still be taken into account as part of the valuation exercise.





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R. QUANTUM

Introduction

1. IT Ltd. has identified 4 scenarios in respect of the relief that it seeks, depending upon the outcome of certain claims. As the Arbitral Tribunal has found in favour of IT Ltd. in respect of the primary claims based upon the Respondents' bribery and corruption, it is only necessary to consider Scenario A.[17]

2. Under Scenario A, IT Ltd. seeks to recover, on a derivative basis, damages for losses suffered by IH Ltd., as well as damages said to have been directly suffered by IT Ltd. itself. On behalf of IH Ltd. damages are sought from Mr. Mustafa and CS Ltd. on a joint and several basis for losses suffered in connection with the following claims:

   (a) as a result of the Respondents' tortious conspiracy to procure the CMC Decision through bribery and corruption, together with their related breaches of contract and statute, the value of IH Ltd.'s shareholding in Korek was destroyed. IT Ltd. says that that loss should be quantified by reference to the fair market value of IH Ltd.'s shareholding in Korek as at December 2013 or, in the alternative, July 2014. IT Ltd. relies upon Mr. Matthews' quantification of this value which is US$ 1.002 billion as at December 2013 or, alternatively, US$ 669.8 million as at July 2014;[18]

   (b) as a result of the Respondents' tortious conspiracy to procure Korek's entry into the IBL Loan, together with their related breaches of contract and statute, Korek paid exorbitant interest in connection with that loan. The value of IH Ltd.'s shareholding in Korek was reduced by the extent of that overpayment, which should be calculated as the difference between the interest Korek actually paid under the IBL Loan and the interest it would have paid had the IBL Loan incorporated the same interest rate as the IT Shareholder Loan. IT Ltd. says that this loss is reflected in the reduced value of IH Ltd.'s shareholding and should be quantified on the same date as that adopted for the CMC Decision claim. It relies once again on Mr. Matthews' calculation which puts the loss at US$ 3.8 million as at December 2013 and US$ 5.1 million as at July 2014; and

   (c) as a result of Korek's entry into unauthorized and self-interested transactions, in breach of the Respondents' contractual and statutory obligations, Korek made substantial overpayments for third party products and services. The value of IH Ltd.'s shareholding in Korek was reduced by the extent of those overpayments. Since this loss is reflected in the reduced value of IH Ltd.'s shareholding, it should be quantified on the same date as that adopted for the CMC Decision claim. Mr. Matthews has calculated the overpayments to amount to US$ 73.8 million if measured in December 2013 and US$ 95.7 million if measured in July 2014.

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17 Scenario B is said to apply where the Arbitral Tribunal accepts the alternative "unwinding" claims and Scenarios C and D apply to the further alternative unjust enrichment claims.

18 The Arbitral Tribunal invited the Parties to provide an alternative assessment of quantum as at July 2014 on the basis that that was the date upon which the CMC Decision was issued.

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3. IT Ltd. seeks to recover damages from each of the Respondents (that is, from Korek as well as Mr. Mustafa and CS Ltd.) on a joint and several basis, for losses suffered in connection with three claims:

   (a) as a result of the Respondents' tortious conspiracy to procure the CMC Decision through bribery and corruption, together with their related breaches of contract and statute, IT Ltd. says that the value of its Call Option was destroyed. IT Ltd. says that the Call Option's value is, by definition, dependent on the value of IH Ltd.'s shareholding in Korek and that this destruction in value necessarily occurred when IH Ltd.'s shareholding was rendered valueless (in December 2013 or July 2014). Once again, IT Ltd. relies upon the evidence of Mr. Matthews who quantifies IT Ltd.'s loss as US$ 129.2 million if measured in December 2013 and US$ 69.6 million if measured in July 2014;

   (b) as a result of the Respondents' tortious conspiracy to procure Korek's entry into the IBL Loan, their related breaches of contract and statute, and their broader conspiracy to deprive IT Ltd. of all (or substantially all) of its investment, IT Ltd. was deprived of payments that should have been made under the IH Shareholder Loan (and thus the IT Shareholder Loan) in the amount of US$ 110.6 million; and

   (c) CS Ltd. and Mr. Mustafa are liable to make a Non-Compete Payment in the amount of US$ 100 million pursuant to Clause 17 of the SHA. (The Arbitral Tribunal having found that neither Mr. Mustafa nor CS Ltd. are liable to make the contractual Non-Compete Payment, this particular claim is not addressed further).

The Parties' Submissions

4. The Parties have made extensive submissions in connection with the quantum issues. These are set out in their pleadings, in their skeleton arguments and in their written closing submissions [A/5/162-179; A/6/204-252; A/21/287-344; A/34/264-295; A/37/18-19; A/38/12-16; A/44/78-102; A/45/66-76]. They have also been the subject of extensive expert evidence from Mr. Matthews and Mr. Turner and from Dr. Barnes and Mr. Chandler. The Parties also addressed the Arbitral Tribunal on these points during oral closing argument on 1 and 2 August 2022. The Arbitral tribunal has taken all of these submissions into account. However, the main areas of difference between the Parties are set out below.

5. In relation to the various claims for joint and several liability, IT Ltd. argues that it is axiomatic that CS Ltd. and Mr. Mustafa (in respect of the derivative claims for tortious conspiracy) and all three of the Respondents (in respect of IT Ltd.'s claims for tortious conspiracy) should be jointly and severally liable. As co-conspirators, they share liability for the losses resulting from the conspiracy [A/21/354-355]. The Respondents argue that IT Ltd. has not adequately demonstrated how, for example, CS Ltd. and Korek failed to restrain Mr. Mustafa [A/6/203].

Date upon which the loss is to be assessed

6. IT Ltd. argues that damages are to be assessed at the date of breach. It says that the relevant date for this purpose is December 2013. At that point, IT Ltd. says, the tortious

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conspiracy and all of the breaches of contract and of statute were under way. The CMC Decision was, by that stage, a foregone conclusion. IH Ltd.'s shares in Korek had lost all value as a result. It is IT Ltd.'s case that breach and loss occurred simultaneously at that time as any third-party purchaser appraised of the facts would have concluded that the risks posed by the conspirators were too great to justify according any value at all to the shareholding [A/5/173; A/21/296; A37/18; A/44/80-88].

7. The Respondents say that the losses should be valued as at the date of trial. The Arbitral Tribunal must be governed by the compensatory principle and valuation at a date other than the date of trial will result in a windfall for IT Ltd. The shareholding could not have been sold in 2013 without approval from CS Ltd. and this would not have been forthcoming. IT Ltd. cannot show that a breach took place in December 2013 or that any damage occurred at that date [A/6/216-221; A/34/268-273; A/38/12-13; A/45/71-74].

8. IT Ltd. counters that the Respondents are prohibited by the decision in *OMV v Glencore* [2016] EWCA Civ. 778 from arguing that the trial date should be taken. Further, the Respondents have produced no financial data which would enable the experts or the Arbitral Tribunal to conclude that the shareholding would be worth less now or that such an assessment as of December 2013 would yield a windfall. IT Ltd. says that the Respondents' expert, Mr. Barnes, has not been provided by the Respondents with the material that he would require to provide a valuation of the shareholding at May 2022 (being the date of the evidential hearing).

9. IT Ltd. also says that the damages connected with the other claims should be assessed at the same date. It emphasises that the damages claimed by IT Ltd. in connection with the Call Option are not the result of the 3G Annex, but rather a further consequence of the tortious conspiracy. Further, the damages associated with the claims for the overpayment of interest and the unauthorised and self-interested transactions are reflected in the valuation of Korek. Thus, IT Ltd. says, it is appropriate to value those losses, through that prism, at the same date.

10. At the Arbitral Tribunal's request, the experts provided an alternative valuation as at July 2014, being the date when the CMC Decision was issued. IT Ltd. says that, if December 2013 is not appropriate, the Arbitral Tribunal should instead assess the loss at the slightly later date.

The Experts' Methodology

11. Unsurprisingly, the Parties each take issue with the methodology adopted by the expert(s) instructed by their opponent, both in relation to the valuation of Korek and in respect of the other claims to damages [A/5/174-179; A/6/204-250; A/21/289-344; A/34/264-292; A/37/18-19; A/38/14-16; A/44/88-102; A/45/66-76 & 79-87].

12. IT Ltd. says that Mr. Matthews adopted a triangulated approach utilising (i) multiples, (ii) a DCF analysis and (iii) a sense-check with previous transactions and that his methodology was both sound and appropriate. It says that his multiples analysis was reasonable and conservative. IT Ltd. attacks Mr. Barnes' experience as inadequate and his methodology as limited and simplistic. It also says that it became apparent

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during the hearing that Mr. Barnes ignored various matters and failed to request important financial information.

13. IT Ltd. also says that Dr. Barnes' opinion proceeded upon false logic. He sought to rely upon the fact that neither Mr. Matthews nor IT Ltd. had provided a foundation for a claim that "*expropriation*" by the KCR Decree 5 years later would have been seen as unavoidable. That is, IT Ltd. says, not its case. It does not say that a hypothetical buyer would have viewed the expropriation as inevitable and thus ascribed no value to Korek. Rather, it is that: "*a hypothetical buyer would have viewed the risk associated with buying Korek as too great since … it would have required contracting with fraudsters to purchase an asset that those same fraudsters were already in the process of attempting to steal by bribing Korek's principal regulator*" [A/44/83].

14. For their part, the Respondents assert that the correct way to assess value is, as Dr. Barnes and Mr. Chandler did, to use a multiples-based approach. They note that no attempt was made by IT Ltd.'s counsel to cross-examine Mr. Chandler, who was the telecommunications industry expert supporting Dr. Barnes and who opined that a multiples-based approach was usual in that industry. Dr. Barnes' and Mr. Chandler's multiples approach shows that the correct valuation of the shareholding at the relevant time was effectively zero.

15. Dr. Barnes and Mr. Chandler also take issue with the multiples selected by Mr. Matthews for that element of his own analysis. They say that he has selected companies which lack comparability, has discarded other companies that he should have included in his analysis and has improperly exercised his judgment over the comparables that he has selected and/or discarded.

16. The Respondents also argue that the way in which Mr. Matthews' DCF analysis has been conducted is flawed as he has failed to take account of the cost of renewing Korek's license. They point out that Orange itself expected that significant future license fees would be incurred. They also argue that Mr. Matthews' use of a discount rate of 15% is too low. They say that this failed to take account of the serious risks to which Korek was exposed and argue that Agility itself used a discount rate of 25% in its internal valuation.

17. The Respondents also say that Mr. Matthews' analysis is flawed because:

    (a) it relies upon (i) a high scenario derived from overly optimistic forecasts of Korek's performance and (ii) a low scenario which gives inadequate weight to Orange's own contemporaneous valuation of Korek:

    (b) it fails to have regard to comparables which IT Ltd. used in its contemporaneous valuation of Korek;

    (c) it is based upon an unfounded assumption that Korek would experience significant growth in cash flows and market share which would lead to a growth in earnings; and

    (d) it places reliance upon an irrelevant value accorded to Korek by the 2011 Transaction.

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The Respondents also criticise IT Ltd. for withholding contemporaneous valuations which show a lower value for Korek. The "Ovide" forecast, prepared by Orange, gave a lower value which should have formed the lower end of Mr. Matthews' range.

18. The Respondents further criticise Mr. Matthew's assessment of the value of IT Ltd.'s Call Option. They say that the value at the date of trial is effectively zero, whilst at December 2013, it would have been worth at most US$ 14.8 million. They point to what they say are two errors. The first is an assumption that a 44% interest in IH Ltd. was subject to a minority discount and an assumption that when it became a majority interests, it would attract a control premium. This is dependent upon IT Ltd. showing that it could prove that it improve the management of Korek and prevent the diversion of funds. Secondly, the Respondents say, the assessment relies upon an overstated valuation. Even if there were to be a minority discount and a control premium, the value would be at most US$ 14.8 million.

The Arbitral Tribunal's Analysis

Date upon which the loss is to be assessed

19. The Respondents agree that the loss in respect of the Impugned Transactions and the Call Option claims fall to be valued at the same date as the CMC Decision claim [Day 9/127:22-25].

20. IT Ltd. argues that the relevant date at which damages should be assessed is December 2013 or, in the alternative, July 2014. The Respondents argue that the appropriate date is either the trial date or, if no calculation can be done at that date, March 2019, when the KCR Decree was issued. The Respondents say that this is essential to give effect to the compensatory principle.

21. The general rule is that damages should be assessed at the date of the breach or wrong. If the Respondents seek to rely upon a later date, it is for them to justify why that should be the case. IT Ltd. relies on the decision in *OMV v Glencore* [2016] 2 C.L.C. 651 (Comm.) as supporting a broad finding that a fraudster defendant cannot invoke a flexible approach to the valuation date for damages so as to relieve itself of the effect of the general rule that damages should be valued at the date of the breach.

22. The Respondents argue that the claims advanced by IT Ltd., both on its own behalf and by way of derivative claims, are not properly characterised as claims in fraud or deceit. Although the English High Court in *Chancery Client Partners Limited v MRC 957 Limited* [2016] EWHC 2142 (Ch) recognised bribery as a specialised form of fraud, the Respondents say that the effect of that case and of *OMV* is that there must be some form of wrongful inducement. There has been no deceit or wrongful inducement of IT Ltd. in relation to the CMC Decision (although the Respondents accept that such a case might be made in respect of the IBL Loan).

23. The Arbitral Tribunal considers the Respondents' position on this issue to be wholly untenable. The claim in respect of the CMC Decision is for a conspiracy to cause damage by an unlawful act. The mechanism for giving effect to that conspiracy was, as the Arbitral Tribunal has found, the payment of very significant bribes to members of the CMC. There can be no clearer example of fraudulent conduct. The fact that there

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was no specific inducement of either IT Ltd. or IH Ltd. in so far as the CMC Decision claim is concerned is irrelevant.

24. Further, as IT Ltd. has argued and Mr. Hunt, for the Respondents, accepted in closing, there are "*significant data issues*" with endeavouring to provide a valuation at the trial date [Day 9/140:1-4]. The reason for this is that, despite IT Ltd. making requests for detailed financial information which would enable a view of Korek's financial position to be constructed, no such material has been provided by the Respondents. Mr. Matthews, for IT Ltd., opines that it is not possible to form a reliable view of Korek's recent performance [C1/2/107]. Dr. Barnes and Mr. Chandler were instructed by the Respondents to value IH Ltd.'s interest in Korek as at 18 January 2018 and 19 March 2019 'as a proxy' for the trial date [A/6/221; Day 7/45:12-23]. It is clear that a valuation as at the trial date is unachievable in any event.

25. IT Ltd. says that the date of breach and of loss was December 2013. On 10 December 2013, Dr. Rabee wrote its first letter to Korek raising issues about the performance of the partnership [D1/17]. By that date, IT Ltd. says, an understanding had been reached with the key individuals at the CMC as to the "*corrupt plot*" which had been hatched [Day 8/181:4-8]. By that stage, Mr. Rahmeh had already established PGB, a company intended to be involved with the Barn Hill property purchase and US$ 18.6 million had already been transferred to IC4LC. The conspiracy was under way.

26. Although the Arbitral Tribunal requested the Parties to ask their experts to provide an alternative valuation as at July 2014, when the CMC Decision itself was handed down, it is IT Ltd.'s case that December 2013 is still the correct date. The interactions with the CMC between December 2013 and July 2014 were all a facade and were moving inexorably to an agreed destination, which was the expropriation of IH Ltd.'s stake on Korek. The Arbitral Tribunal agrees. There is nothing artificial about the date of December 2013. Having regard to the totality of the evidence (with the exception of the testimony of Mr. Bortman and his sources) and for the reasons set out in Chapter H of this Award, it has found that the Respondents were engaged in an unlawful means conspiracy to deprive IT Ltd. and IH Ltd. of their interest in Korek and finds that that conspiracy was complete as at 10 December 2013. Mr. Mustafa himself warned IT Ltd. that the CMC would not change their mind. That date is the date of breach.

27. The Arbitral Tribunal further accepts IT Ltd.'s argument that the date of breach and the date of loss are the same. As Mr. Willems put it in closing:

"181:24 That's because a hypothetical buyer of these shares in
25 Korek, as of this time, would know -- we presume full
182: 1 knowledge on the part of the hypothetical buyer. The buyer
2 would know that people at the CMC are conspiring with senior
3 management at IH, at Korek, to evict IH from Korek, to evict
4 the foreign shareholders, to evict the new investors in
5 Korek.
6 That is, of course, a horribly terrifying scenario
7 for any potential investor or purchaser of the shares. If

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8 that crowd can do it to Orange, to Agility, to IT Limited,

9 then they can do it to the next purchaser of the shares in

10 Korek.

11 No buyer of IH's shares in that scenario, assuming

12 full knowledge of the (indecipherable) state, would give

13 value to owning shares in such a corrupt and pernicious

14 environment. So that means the fair market value of the

15 shares at this point in time is zero or effectively zero."

28. The Respondents argue that there are both conceptual and factual reasons why the dates of breach and loss cannot be the same. Conceptually, they say, it is not open to the Arbitral Tribunal to assume that a hypothetical buyer would have regarded Korek as worthless in December 2013. There was no guarantee at that time that the KCR would have deregistered IH Ltd.'s shares in 2019 and events might have taken a different course. It is not appropriate to conduct a valuation knowing what did in fact happen in the future. The fact that the Call Option was exercised was itself evidence that the picture was not as bleak as IT Ltd. now argues.

29. Factually, the Respondents say, any loss cannot be said to have taken place before June 2014 as it was during that month that the CMC Commissioners (rather than Dr. Rabee) became involved and instructed Dr. Rabee to issue the CMC Decision [D1/23].

30. The Arbitral Tribunal is not persuaded by either of these arguments. As to the factual objection, the Arbitral Tribunal has dealt with this above. The conspiracy was complete in December 2013 and the actions taken between then and June/July 2014 (and indeed afterwards) were merely steps in an agreed plan. As to the conceptual objection, the Arbitral Tribunal considers that a hypothetical purchaser approached to purchase an interest in Korek and having regard to the extraordinary actions taken by the CMC and the behaviour of the Respondents would have been unwilling to pay anything for the shares for fear of suffering the same experience as IT Ltd. The fact that IT Ltd. sought to trigger the Call Option does not assist the Respondents. That was a response to the parlous position in which IT Ltd. found itself. It provides no evidence that a third-party purchaser might have taken an optimistic view.

31. The Arbitral Tribunal therefore finds that the correct date for the assessment of loss is December 2013. As noted above, the Respondents accept that the Impugned Transactions and the Call Option claims should therefore be valued at the same date.

Which Experts' Methodology is to be Preferred?

32. Mr. Matthews, for IT Ltd., undertook an assessment of the Scenario A losses by having regard to the three common ways of determining the market value of an asset. These are by reference to (i) previous transactions in the asset the subject matter of the valuation, (ii) a discounted cash flow ("DCF") analysis and transactions in comparable assets (or a "multiples-based valuation") [C1/1/18].

33. Mr. Matthews explained that the most recent transaction in Korek was the 2011 Transaction itself. Because the structure of the investments was relatively complex, it

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was difficult to calculate the precise value of Korek. However, he considered that he was able to rely upon a contemporaneous presentation by Orange which appeared to assess Korek's enterprise value at US$ 2 billion in determining the transaction price.

34. Mr. Matthews' DCF analysis was produced relying upon contemporaneous forecasts prepared by Korek in February 2013 and revised in December 2013.

35. Mr. Matthews' multiples-based analysis sought the multiples implied by (i) a "*broad set of telecom companies that operate in the Middle east and Africa that have listed shares*" and (ii) Korek's two main competitors in Iraq, being AsiaCell and Zain Iraq [C1/1/19].

36. From this tripartite analysis, Mr. Matthews calculated an enterprise value of Korek at December 2013 of US$ 2 billion. He then deducted Korek's debt and gave credit for cash and cash equivalents held by Korek at the valuation date to arrive at an equity value of US$ 1.1 billion.

37. Having arrived at this figure, Mr. Matthews then adjusted his valuation to take account of the alleged interest overpayment on the IBL Loan and for the value of the Impugned Transactions.

38. In relation to the Call Option, Mr. Matthews valued this applying a variant of the Black-Scholes equation, which he describes as "*a commonly applied methodology for valuing options*" [C1/1/22]. He was also asked to provide an assessment of the losses resulting from the IBL Loan.[19]

39. Dr. Barnes and Mr. Chandler take the view that the assessment of the value of IH Ltd.'s shareholding in Korek should be undertaken purely by means of "*an appropriate multiples analysis*" [C3/1/64]. They do not dispute that a DCF analysis is the most accurate and flexible method for valuing companies but explain that a key pre-requisite for the primacy of DCF is the ability to generate reliable and robust estimates of expected future cash flows that properly account for all of the risks that are faced by the company being valued [C3/1/64]. That, they say, is not possible in the present case. Notwithstanding their acceptance of the accuracy of a DCF analysis, Mr. Chandler also opines that a multiples-based analysis is standard in the telecommunications industry.

40. Dr. Barnes and Mr. Chandler provide, on the instructions of the Respondents, a valuation of Korek as at 31 December 2017 and as at 31 December 2018. They use a multiples-based analysis for this purpose. Revealingly, they say that "*the inherent difficulties of performing a DCF analysis … are exacerbated by the fact that we do not have access to multi-year forecasts as of any date later than December 2013*" [C3/1/81].

41. Dr. Barnes and Mr. Chandler then value IT Ltd.'s losses on the Call Option as at 19 August 2015 as well as analysing Mr. Matthews' valuation of that head of claim as at December 2013. They also address the losses resulting from the IBL Loan.

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[19] For the sake of completeness, the Arbitral Tribunal notes that Mr. Matthews also conducted valuations of the losses arising under Scenarios B & C. These are no longer relevant.

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42. In reviewing Mr. Matthews' opinion of the value of Korek as at December 2013, Dr. Barnes and Mr. Matthews argue that Mr. Matthews (i) has selected the wrong set of comparable companies for use in his multiples analysis and applies an inappropriate adjustment to the result so this analysis, (ii) has failed to take account of the potential costs of license renewals and the material risks faced by Korek in his DCF analysis and (iii) that his reliance on the Orange presentation from 20111 is inappropriate [C3/1/10].

43. Dr. Barnes and Mr. Chandler challenge the suggestion that there was any overpayment of interest on the IBL Loan. They also question Mr. Matthews' adjustment to reflect the impact of the Impugned Transactions. They say that these assume without foundation that Korek obtained no benefits from those transactions.[20]

44. In relation to the Call Option, Dr. Barnes and Mr. Matthews say that due to Mr. Matthews' use of an overstated value for the equity of IH Ltd., being the underlying asset for the option, his assessment of its value is significantly overstated.[21]

45. It is the view of the Arbitral Tribunal that the multi-faceted approach to valuation adopted by Mr. Matthews is to be preferred in the present case. The use of several different valuation methodologies allows a valuer, and an arbitral tribunal, to triangulate and provides a check that one particular method is not producing a result that lies outside or at the extremes of a reasonable assessment. That is the process that Mr. Matthews has adopted. Indeed, Dr. Barnes admitted that cross-checking is a tool that valuers use, where possible, when presenting a valuation [Day 7/35:17-20].

46. The Arbitral Tribunal recognises that Mr. Chandler opines that a multiples-based approach is standard in the telecommunications industry and that it is said that that evidence must stand as there was no attempt to cross-examine Mr. Chandler on this point. However, when the valuation exercise involves an entity in a market such as Iraq, the need for a cross-check is vital. Indeed, the Parties appear to have recognised this. In its definition of "Fair Market Value" for the purposes of the Call Option mechanism, the SHA required "*two or more recognised valuation methodologies*" to be taken into account [D1/1/65]. Moreover, the Arbitral Tribunal is not ignoring the use of multiples as a standard, instead it gives weight to such multiples alongside the use of DCF and prior transactions in order to arrive at the most accurate valuation with the data before it. In this regard, the Arbitral Tribunal notes the acceptance by Dr. Barnes and Mr. Chandler that a DCF analysis is the most accurate and flexible method for valuing companies. Both Orange and Agility carried out DCF analyses in 2013. Indeed, the Arbitral Tribunal is left with the impression that one of the reasons why no DCF analysis was undertaken by Dr. Barnes and Mr. Chandler was the lack of detailed financial information that would have permitted them to conduct such an analysis for

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20 Dr. Barnes and Mr. Chandler also challenge the assumption made by Mr. Matthews that "*no reasonable person having full knowledge of the situation would have chosen to acquire IH Ltd.'s shareholding in Korek*" which was thereby rendered valueless. That assumption was one that Mr. Matthews made on the basis of IT Ltd.'s pleaded case [C1/1/51]. It raises a question of fact which the Arbitral Tribunal has determined in favour of IT Ltd.

21 Dr. Barnes and Mr. Chandler also criticise what they describe as Mr. Matthews' "claim" in respect of the IBL Loan. The Arbitral Tribunal notes again that, at the relevant point in his First Report, Mr. Matthews is merely setting out IT Ltd.'s pleaded case. He is not advancing a position of his own [C1/1/7].

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the alternative dates that they were instructed to use. Dr. Barnes admitted that equity analysts who were valuing AsiaCell and Zain were using a DCF analysis [Day 7/84:23-85:2].

47. The lack of financial information for Korek is problematic for several reasons. For one thing, it was the subject of a document production request from IT Ltd which led to an order from the Arbitral Tribunal which was not complied with by the Respondents. Once more the Arbitral Tribunal considers that this essential financial information would be in the possession or control of the Respondents and draws adverse inferences from its non-production. Of equal concern in the present context is that, not only did it obviously prevent Dr. Barnes from conducting a DCF analysis for his later dates, he did not appear to have considered it important even to ask those instructing him for it. During cross-examination he was asked a number of questions about the absence of financial information:

(a) He acknowledged that he would have expected financial statements for Korek for 2019 and 2020 to exist. He did not know why they did not exist and admitted that he did not ask [Day 7/7:19-8:6];

(b) He agreed that it is "useful" to consider management's forecasts when preparing a valuation of a company. When asked whether he had asked for copies of those forecasts from Korek, he said he had not [Day 7/9:13-19];

(c) He made no attempt to speak with Mr. Mustafa, with Mr. Akrawi, with anybody at Korek or with the auditors [Day 7/11:12-12:3].

48. Dr. Barnes explained during his oral testimony the large number of variables that he considered existed between the business of Korek on the one hand and AsiaCell and Zain Iraq on the other. He was asked by the Arbitral Tribunal whether that was not a further reason for using a DCF analysis rather than relying purely on multiples. His answer suggested that there was no argument from principle against using a DCF analysis; rather, the problem was in assessing the appropriate discount rate:

112:16 So it's, you know, I think it's important that

17 I stress that, you know, I fully acknowledge that DCF is

18 a -- is a preferred valuation methodology in a lot of

19 cases, it is the one that is taught in business schools

20 and I am certainly not -- I don't want to come across as

21 a Luddite that doesn't believe in DCF. It's just that

22 the issues that I have just talked about, you know,

23 I think were so, so severe that the applicability of DCF

24 was seriously compromised and certainly if somebody was

25 to put a gun to my head and say you have to do a DCF

113: 1 then I am certainly using a discount rate that is way,

way in excess of 15%.

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49. There was also evidence that Dr. Barnes had not been as thorough in certain aspects of his analysis as he would have liked to have been. He was asked during cross-examination why, according to his analysis, the enterprise value of Korek had risen in the period between July and November 2014, when the security situation was deteriorating. He admitted that his report was prepared in a "*very short period of time*" and that he did not pay as much attention to this aspect as he should have done [Day 7/89:11-90:9].

50. The Respondents make the point that Dr. Barnes is a highly experienced academic. The Arbitral Tribunal entirely accepts that. By his own admission, however, his experience tends more towards commenting upon valuations put forward by other experts than upon conducting valuations of his own. The Arbitral Tribunal prefers the valuation methodology adopted by Mr. Matthews to that utilised by Dr. Barnes and Mr. Chandler.

The Criticisms of Mr. Matthews

51. It is however necessary for the Arbitral Tribunal to consider the criticisms made by Dr. Barnes and Mr. Chandler of Mr. Matthews' analyses.

Multiples Analysis

52. Dr. Barnes and Mr. Chandler's approach to their multiples-based valuation was to take the multiple of AsiaCell and use that as the bottom end of their range. They then took the multiples from a subset of the companies utilised by PwC when valuing the Call Option in July 2015. The two ranges were then applied to the EBITDA figure calculated by Mr. Matthews to give an enterprise value for Korek. This was a very simple exercise, although Dr. Barnes explained that it took hours to decide upon the correct approach and the relevant companies to use.

53. Mr. Matthews opined that Korek's multiple should be higher than that of AsiaCell and Zain because of the correlation between growth levels and multiples. Dr. Barnes explained that in his opinion there was no correlation. Mr. Matthews responded to this charge in his Second Report and explained that "*a positive relationship between the ratio of a company's valuation to its current earnings and the rate at which those earnings are expected to grow is ordinarily uncontentious*" [C1/2/59-64]. In his oral testimony he explained that Dr. Barnes had excluded from his calculation two companies with higher growth rates than Korek and higher multiples. Had Dr. Barnes used the complete set of comparable companies, he would have found that growth accounts for over 80% of the variation in the multiples [Day 6/141:17-142:21]. Mr. Matthews also pointed out in his Second Report that Korek's actual market share increased from 17% in 2013 to 25% in 2015. Trends in market share growth up to December 2013 continued until 2015 and it is likely that an investor familiar with Korek's business would have anticipated that continued growth. He acknowledged that the expectation of growth in market share would not, of itself, entail higher earnings growth and it was for that reason that he had focused on expectations of earnings growth, calculate by reference to EBITDA forecasts. These exceeded those forecast for IraqCell and for Zain [C1/2/61-64]. Mr. Matthews also explained that he took a

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conservative approach and did not adopt a valuation multiple at the top of the range implied by his chosen comparables, despite Korek's high growth rate.

54. Mr. Matthews was also criticised for excluding only one company from the list of potential candidates that he identified on the basis of lack of comparability on size, market and service offering and for including companies with different service offerings and geographical footprints. On cross-examination, Mr. Matthews explained that that was a consequence of the manner in which he sequenced his screening. Other companies had already been excluded by the application of other distinguishing criteria [Day 7/143:17-144:8]. In his Second Report Mr. Matthews explained that only two companies (Turk Telekomunikasyon and Orange Jordan) in his set of 22 comparables derived less than 50% of their revenues from mobile services and that removing them would have had little impact. One would also have expected these companies to have lower multiples [C1/2/56]. In terms of geographical diversification, there was no perfectly comparable company to Korek. Although AsiaCell and Zain were well-matched in terms of risk profile, they were undergoing very different growth trajectories to Korek, which was taking market share from both of them. There is a trade-off between relying on a large dataset which might impact the individual comparability of some companies and relying on a smaller group that might be individually more comparable but would allow the average multiple to be distorted. He considered that, collectively, his samples provided a range of multiples within which Korek could reasonably be expected to fall [C1/2/57-59].

55. Dr. Barnes and Mr. Chandler also challenged Mr. Matthews for not taking sufficient account of the smaller size of, and the regulatory risk to, Korek. Mr. Matthews rejected this criticism. He considered that, whilst size might have some bearing on the appropriate multiple, it could give rise to a higher multiple rather than a lower one. His. assessment already took into account, by way of regulatory risk, the amounts owed to the CMC and the possibility of investment to cover future payments [C1/2/64-65].

56. Mr. Matthews concluded in his report that Korek's multiple was in the range of 6.5 to 7.5. This is challenged by the Respondents who point out that the average multiple which appears from Table A4-2-2 in Mr. Matthews' First Report is precisely 6.5 [C1/1/117]. Mr. Matthews explained during his cross-examination that he was applying his judgment. An average is just that and had he applied the average figure itself that too would have been an exercise of judgment [Day 6/146:13-23].

57. Dr. Barnes' own use of AsiaCell as the sole multiple was inconsistent with his testimony that Korek was a lot smaller than AsiaCell and had far fewer subscribers. He acknowledged that between 2013 and 2014 Korek grew significantly faster than AsiaCell in terms of subscriber numbers, revenues and EBITDA. The latter grew by 29% in Korek's case and dropped by 15% at AsiaCell [Day 7/93:23-94:3]. Further, and as noted above, it produced a higher enterprise value in November 2014, when the security situation was far worse, than at the end of December 2013.

58. In his Second Report, Mr. Matthews recognised that his adopted range of 6.5x to 7.5x LTM EBITDA for Korek was at a premium to the multiples for AsiaCell and Zain (at 4.4x to 5.0x) but it was below some of the highest multiples in his list of comparables. He considered that this reflected Korek's "superior growth prospects" relative to its competitors in Iraq and its higher risk profile relative to certain of the comparables. He did not consider any adjustment necessary [C1/2/69]. The Arbitral Tribunal agrees.

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59. The Arbitral Tribunal finds the criticism of Mr. Matthews' multiples analysis by both Dr. Barnes and Mr. Chandler and by the Respondents to be unfounded.

DCF Analysis

60. In closing, the Respondents made three specific criticisms of Mr. Matthews' DCF analysis. These were:

(a) That the discount rate adopted by Mr. Matthews of 15% is not high enough;

(b) That he failed to take account of the future license fees; and

(c) That he ignored the impact of Orange's "Ovide" forecast.

61. On the DCF generally, Mr. Hunt, for the Respondents, submitted that the analysis was not capable of taking account of the "*very serious fundamental risks*" specific to Korek. It was the smallest operator in a highly competitive, capital-intensive market and a high-risk jurisdiction with increasing "*security events*", risks associated with the regulator and financial pressures [Day 9/156:11-18]. Mr. Hunt noted that Dr. Barnes had said that if he was forced to carry out a DCF, he would use "*a discount rate that is way, way in excess of 15%*" [Day 7/112:22]. Dr. Barnes did not indicate what level of discount rate he had in mind. Mr. Hunt was asked by the Arbitral Tribunal whether a discount rate in excess of 15% was required irrespective of whether the assessment was done in December 2013 or July 2014. His submission was that, because of what was effectively a civil war in Iraq, a higher discount rate would be required in July 2014 than in December 2013. However, he said that Dr. Barnes was talking about a valuation at December 2013 so that the risks he identified at that time would still require a discount rate higher than 15%.

62. In this regard, Mr. Hunt pointed to a document from November 2014 which is an internal Agility email which purports to calculate the fair market value of Korek [D1/601]. In this document, Agility appears to apply a 25% discount rate. Mr. Hunt also argued that this document was disclosed late and after they had already cross-examined Mr. Aziz and Mr. Sultan, so they had no opportunity to put the document to them.

63. Mr. Willems dismissed this document. It was not, he said, a valuation for balance sheet purposes, but an "*internal homeworking exercise*" to come up with an opening price for a negotiation [Day 8/196:8-11]. It was further conducted in November 2014, after the CMC Decision had been issued, with the result that it was conducted at a time when the investment was very obviously in a difficult situation.

64. The Arbitral Tribunal does not consider that the figure in D1/601 is an appropriate discount rate to use as at December 2013, for both of the reasons that Mr. Willems cited, as well as Mr. Hunt's recognition that the situation in Iraq was much worse at the time that the Agility exercise was being carried out.

65. Mr. Matthews' use of a 15% discount rate is supported by a number of other pieces of evidence. Agility and Orange both undertook contemporaneous valuations of Korek in December 2013. In a valuation conducted on 16 December 2013 Agility adopted a discount rate of 15% [C2/45]. In a valuation performed in the same month, Orange used a range of discount rates between 14.00% and 16.00%. A rate of 15% is, as Mr.

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Matthews said, the mid-point in that range [C2/40; C1/1/52]. It was also consistent with a number of valuations carried out by independent analysts at around December 2013:

(a) A valuation by HSBC of Zain Iraq dated 9 December 2013, which used a WACC of 15% [C2/25];

(b) A sum-of-the-parts valuation of Ooredoo Group (of which AsiaCell is part) performed by Morgan Stanley on 30 October 2013, which used a WACC in the. Range of 10.6% to 17.7%. Mr. Matthews noted that Morgan Stanley noted that it used a higher WACC for "*high-risk countries such as Iraq, Indonesia, Tunisia and Algeria, etc.*", implying that it used a WACC towards the higher end of this range for AsiaCell [C2/61];

(c) A valuation of Zain Iraq by Morgan Stanley in September 2013, which used a WACC of 17.9% [C2/38]; and

(d) A sum-of-the-parts valuation of the Zain Group by JP Morgan in May 2013 which used a WACC in the range of 12.5% to 15% for each of its subsidiaries. Mr. Matthews concluded that JPO Morgan likely used a WACC towards the upper end of this range when valuing Zain Iraq [C2/62].

66. Dr. Barnes and Mr. Chandler criticised Mr. Matthews for his inclusion of a country risk premium in the calculation of his discount rate. Their reasons for doing so were that a discount rate should reflect only "systematic" or "undiversifiable" risk and that the civil war in Iraq was a non-systematic risk which should have been reflected in expected cash flow, rather than the discount rate. In addition, they said, it was impossible to say whether the country risk premium of 8.62% included in Mr. Matthews' discount rate was sufficiently high [C3/1/63].

67. Mr. Matthews explained that it is common for valuers to make downward adjustments to their valuations for risks such as a deterioration in the security situation through the addition of premiums to the discount rate. That is what he had done and what he had observed in the independent valuers' valuations of Ooredoo Group and Zain Group. The effect of the premium that Mr. Matthews had added in respect of country risk lowered his valuation of Korek by approximately 65%.

68. The Arbitral Tribunal considers the discount rate of 15% used by Mr. Matthews in his DCF analysis to be appropriate.

69. The next issue is that of the "Ovide" forecast. This formed part of the valuation analysis prepared by Orange in December 2013. There were two forecasts included in this analysis. The first was one apparently prepared by Korek's management on 24 October 2013 and is referred to as the "Kairos" business plan. This document was the basis for the DCF valuation performed by Orange in December 2013. A further forecast was prepared by Orange on 15 November 2013. This has become known as the "Ovide" forecast [C2/76(a)]. It is more conservative than the Kairos document and contains lower assumptions for revenue growth and EBITDA margin and higher assumptions for capital expenditure.

70. Mr. Froissart described these forecasts in his witness statement in the following terms:

"These two scenarios reflect the positions that could support a shareholder selling its shares and a potential third party buyer seeking to reduce the price

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to be paid on the same. This type of exercise is usually performed when trying to determine the selling or purchasing value of a company. For Orange, the second scenario based on the Orange BP constituted a "worst case scenario" because it reflected the lowest value of the company determined by a third party seeking to enter into negotiations. It does not reflect Korek's value as seen by Orange as a shareholder" [B1//3/18].

71. Mr. Matthews explained in his Second Report that, notwithstanding Mr. Froissart's explanation, the Ovide forecast represented an alternative view of contemporaneous expectations of Korek's future financial performance formulated by a company with knowledge and understanding of Korek and the telecommunications sector in Iraq. He therefore considered it appropriate to afford some weight to the forecast and to adjust his "Low Scenario". He did this by giving a 25% weighting to the Ovide forecast compared to a 75% weighting for the December 2013 Low Scenario set out in his First Report. Mr. Matthews conceded that there is a range of weightings that are potentially appropriate to take account of the Ovide forecast, but that he considered a 25% weighting was consistent with it reflecting a worst-case scenario sensitivity analysis, as well as it being lower than the value for Korek reported by Orange in its audited financial statements [C1/2/34-37].

72. Mr. Hunt accepted in closing that the Ovide forecast should not be the only one used, but he argued that a weighting of 25% was not sufficient. Mr. Froissart described the forecast as reflecting the "lowest value" of the company and Mr. Hunt submitted that Mr. Matthews' Low Scenario should therefore reflect that forecast.

73. In his testimony, Mr. Froissart sought to explain the contents of his witness statement. He explained it as an exercise conducted by Orange's M&A specialists to ascertain the value that a buyer seeking to start negotiations as to the purchase of Korek might begin with:

169: 8 It was an illustration of

9 what -- how could these two valuations be interpreted. And

10 the -- this one could be seen as the value that someone --

11 someone wanted -- wanting to come in negotiations with

12 Orange, a buyer, would begin the negotiation with. It

13 doesn't mean that anyone would believe it's a real value for

14 Korek. But when you enter into negotiation you have to be

15 as low as possible, when you're a buyer, but you have to be

16 credible. So you have to have an -- a depleted business

17 plan and try to minimise the valuation. So, in this sense,

18 that's what I meant in my witness statement.

And

192:18 A. Again, the Orange internal BP is a sensitivity

19 exercise. It doesn't mean that it's seen as the more

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20 credible valuation. Nobody thought in Orange, at that time,
21 that it was the value of [Korek]; and it was not taken into
22 account by the account -- in the accounting department for
23 the year end figures; it was -- it was just a theoretical
24 exercise if things turned out to be worse than expected what
25 would be the impact on valuation? But it's an "if". And
193: 1 with a significant depletion of operational figures.
2 So it is not -- it -- again, when we do
3 valuations, it's also something that M&A people do because
4 valuation is always buried. You cannot synthesise all the
5 complexity of a company in one figure. So they love to have
6 sensitivities, be it around the WACC value, be it around
7 what we call the perpetual growth, which is the terminal
8 value; around the main operational hypotheses, to see what
9 is the impact of all these -- these inputs on the valuation.

74. As noted above, Mr. Matthews explained in his Second Report that Orange clearly did not rely upon the Ovide forecast in its audited financial statements and he reiterated this point on cross-examination. He explained that Dr. Barnes gave a 100% weighting to the Ovide forecast but that he considered:

48:20… that doesn't take proper account of either Mr. Froissart's
21 evidence about the basis on which that was prepared; but
22 also the fact that Orange, in its audited financial
23 statements, clearly didn't rely upon that Ovide forecast
24 because they had a value of at least $1.75 billion whereas
25 Dr Barnes uses that forecast to arrive at a DCF of
49: 1 $993 million.

75. The Arbitral Tribunal considers the weighting given by Mr. Matthews to the Ovide forecast to be appropriate.

76. A further criticism made of Mr. Matthews' DCF analysis is that it does not take account of the future license fees to be paid by Korek. Before discussing this aspect, it is important for the Arbitral Tribunal to point out that this issue does not concern the 3G license fees. Mr. Matthews has accounted for that item in his analysis. Rather, the issue concerns the renewal fee for the basic license. The original telecommunications license award to Korek ran for 15 years from August 2007 at a cost of US$ 1.25 billion.

77. Dr. Barnes and Mr. Chandler explain that in July 2020 the CMC announced that the renewal fee would be US$ 233 million at the end of the initial term. The renewal would be for 8 years and would allow Korek to offer 4G services [C3/1/50-51].

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78. Mr. Hunt pointed out that the Ovide documents contained a note saying *"[v]aluation assuming no renewal cost of license/spectrum at perpetuity"* [C2/76.1/7 7 13]. He pointed out that the Arbitral Tribunal had asked Mr. Froissart about this, and he had explained that nobody had any idea what would be the cost of renewal, so the person who performed the valuation inserted boilerplate language saying that it had not been taken into account [Day 3/194:14-195:3]. Mr. Hunt submitted that the license renewal fee would have to be taken into account.

79. Dr. Barnes and Mr. Chandler envisage two scenarios: one in which no new license is applied for and another in which a 5-year extension is granted at zero cost and then a new license is applied for in 2027 and every 20 years thereafter. Mr. Matthews explained in his Second Report that the extent to which license renewal costs should be included in any DCF valuation depended upon the expectations at the valuation date as to future costs. Mr. Matthews considered that relevant evidence of those expectations was provided by the approach taken in the contemporaneous valuation of the various Iraqi mobile telephone operators:

    (a) The long-term forecasts of Korek's cash flows prepared by Orange on 4 March 2011 did not include any adjustment for license renewal costs [C2/31];

    (b) The DCF valuations of Korek prepared by both Orange and Agility in 2013 did not include any adjustment for those costs; and

    (c) None of the analysts which prepared valuations of Ooredoo and the Zain group prior to December 2013 explicitly incorporated license renewal costs. Mr. Matthews notes that it is possible that some of those analysts may have been implicitly modelling license renewal costs through their choice of terminal value growth rate, but the terminal value growth rate that he applied was lower than or equal to the rates applied by those analysts[22] [C1/2/37-38].

80. Mr. Matthews concluded from this that the valuers considered the costs to be sufficiently low and/or sufficiently far into the future so as not to be material at the relevant valuation date. Dr. Barnes accepted in cross-examination that he had not seen any instance in which a valuer of an Iraqi telecommunications operator during this period of time had made a downward adjustment to value in order to take into account a payment that would be due at the end of the original lease term [Day 7/86:19-24].

81. As for Dr. Barnes and Mr. Chandler's two scenarios, Mr. Matthews considered the first to be unrealistic and the second overly conservative. Korek has continued to operate, and ongoing license fees have been significantly less than the figures Dr. Barnes and Mr. Chandler envisaged (as indeed their earlier report had noted). Mr. Matthews opined that if he were to adjust his 2013 valuation to take account of costs of US$ 233 million to be paid in August 2022 and discount those back, it would result in a decrease of only US$ 71 million, everything else being equal and without the benefit to Korek of being able to provide 4G services [C1/2/40-41].

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22 Mr. Matthews points out that the valuation of Zain Iraq did not implicitly incorporate future license fee costs as it explicitly forecast cash flows to 2023.

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82. Having regard to all of these factors, the Arbitral Tribunal does not consider that any adjustment is necessary to Mr. Matthews' analysis on account of license renewal fees.

83. The Arbitral Tribunal further finds that Mr. Matthews' approach to the valuation under Scenario A as at December 2013 is conservative and appropriate and is to be preferred to that of Dr. Barnes and Mr. Chandler.

84. It is now necessary for the Arbitral Tribunal to look at the losses for each of IH Ltd. and IT Ltd.

IH Ltd.

85. The following losses are claimed by IT Ltd. in the name and on behalf of IH Ltd.:

Category	Loss as at December 2013 (US$ million)
CMC Decision	1,002.2
IBL Loan	3.8
Impugned Transactions	73.8

CMC Decision

86. For the reasons set out above, the Arbitral Tribunal finds the loss suffered by IH Ltd. as a result of the CMC Decision to be US$ 1,002.2 million, subject to the adjustments required in respect of the Impugned Transactions, below.

IBL Loan

87. The loss claimed by IT Ltd. on behalf of IH Ltd. in relation to the IBL Loan is based on an assumption that that loan should have been structured as a shareholder loan and that clause 5.2(d) of the SHA would have required that to be "*on terms pari passu and substantially the same … as the terms of the IT Shareholder Loan*" [D1/1/5]. The rate payable on the IT Shareholder Loan was 11% plus US$ LIBOR. Mr. Matthews calculates that the interest overpayment on the IBL Loan between 21 December 2011 (being the date of the IBL Loan) and December 2013, reflecting the difference between the interest actually paid of 13.25% and a rate of 11.0% plus US% LIBOR is US$ 3.8 million. The calculation of this figure is agreed.

88. It is, however, the Respondents' position that Mr. Matthews' scenario assumes a willingness on the part of Korek's shareholders to lend Korek an additional US$ 150 million at the same interest rate and without subordination. Dr. Barnes and Mr. Chandler say that this assumption is without foundation. For the reasons set out by the Arbitral Tribunal in Chapter K of this Award, it finds that criticism to be unjustified. Mr. Mustafa did, in fact, provide what was to all intents and purposes a shareholder loan and should have done so on terms substantially the same as the IT Shareholder Loan. The Arbitral Tribunal finds Mr. Mustafa and CS Ltd., as co-conspirators, to be jointly and severally liable to IH Ltd. in the amount of US$ 3.8 million.

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Impugned Transactions

89. As the Arbitral Tribunal has indicated in Chapter N of this Award, and with one exception, it is not persuaded that IT Ltd. has discharged its burden of proof in relation to important aspects of the claim in respect of the Impugned Transactions. It has not shown, on the balance of probabilities, that Ersal is connected to Mr. Rahmeh. Nor has it discharged its burden of demonstrating the actual loss sustained by IH Ltd. in respect of most of these transactions (notwithstanding any breach of contract and statutory duty in relation to the disclosure and approval of the transactions).

90. The one exception is the claim advanced in respect of the payments to IC4LC. As the Arbitral Tribunal has explained in Chapter H it finds that IC4LC was not a legitimate law firm and that the Arbitral Tribunal is entitled to draw the inference that no legitimate services were provided by it.

91. Mr. Matthews was instructed by IT Ltd. to assume that, between 2013 and 2015, Korek paid approximately US$ 20 million in purported legal fees to IC4LC and that one-third of those fees was paid in 2013 [C1/1/57].

92. The Arbitral Tribunal assumes that the reason for instructing Mr. Matthews to assume one-third of the fees paid to IC4LC is that 2013 represents one year out of three. Whilst the Arbitral Tribunal understands the reasoning, the figures in the spreadsheet at D1/452 appear to show only one IC4LC invoice relating to 2013 – that is number 005 for US$ 6 million [D1/452]. It is possible that invoice 043, which refers to fees "up to January 2014" was paid in 2013, but the Arbitral Tribunal cannot be sure. The Arbitral Tribunal recognises that there are no entries on the spreadsheet for invoices before 005, nor for any invoices between 005 and 043 and it is entirely possible that there were additional payments to IC4LC in 2013. However, on the evidence before it, the Arbitral Tribunal finds the figure paid to IC4LC in 2013 for illicit purposes was US$ 6 million.[23]

93. The Impugned Transactions are relevant to the calculation of IH Ltd.'s losses because Mr. Matthews makes two adjustments to his assessment of the value of a 100% shareholding in Korek (leaving aside the interest overpayment on the IBL Loan). These are a US$ 50 million uplift to the Enterprise Value of Korek and a US$ 23.8 million adjustment to the debt. In his second report, Mr. Matthews suggests that these together add US$ 73.8 million to the US$ 1,002.2 million value.

94. In his First Report, Mr. Matthews calculates that the Impugned Transactions depressed the 2013 EBITDA by US$ 32.2 million. Once corrected, he says, the true EBITDA should have been US$ 299.2 million rather than US$ 266.9 million. Once multiplied by the range he derives from his multiples analysis of 6.5x to 7.5x, this gives an Enterprise Value of US$1.9 billion to US$ 2.2 billion. His previous transactions and DCF analyses are unaffected [C1/1/59-60]. He therefore concludes, having regard to the figures derived from his three valuation methods that a reasonable estimate for the Enterprise Value of Korek at December 2013 is US$ 2.1 billion, rather than US$ 2.0 billion, an increase of US$ 100 million.

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[23] The Arbitral Tribunal is aware that the spreadsheet contains an entry of 30 June 2014 for invoice 005. The Arbitral Tribunal does not understand that to be the date that IC4LC was paid.

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95. In his Second Report, Mr. Matthews accepts some of the criticisms made by Dr. Barnes and Mr. Chandler in respect of the Impugned Transactions and assumes that the transactions with Darin and with Halabja should have been conducted at a price 1/3 lower. He is instructed that the transactions with Ersal and IC4LC should be deemed null and void. This results in an EBITDA adjustment of US$ 15.2 million, some 50% lower than his earlier assumption. He therefore assumes an upward adjustment to the Enterprise Value of US$ 50 million (itself a 50% reduction in his earlier assessment).

96. As indicated above, the Arbitral Tribunal is not persuaded that IT Ltd. has made out its case in relation to the sums spent with Darin, Halabja and Ersal. The only adjustment that calls to be made is therefore in relation to the US$ 6 million paid to IC4LC in 2013. This would have increased the EBITDA for 2013 from US$ 266.9 million to US$ 272.9 million. Multiplied by Mr. Matthews' multiples range of 6.5x to 7.5x gives an adjusted Enterprise value of US$ 1.77 billion to US$ 2.05 billion. This is barely different to his original unadjusted multiples-based range of US$ 1.7 billion to US$ 2.0 billion. The Arbitral Tribunal therefore concludes that no adjustment to the Enterprise Value is called for.

97. In terms of an adjustment to net debt, Mr. Matthews in his First Report calculates an adjustment to Korek's cash balance as at December 2013 resulting from the Impugned Transactions [C1/1/60-61]. This includes sums paid to Halabja and Ersal in 2012 and 2013 and sums paid to Darin in 2011, 2012 and 2013. In light of the Arbitral Tribunal's findings, these sums can be disregarded. Mr. Matthews was instructed in his Second Report to make the adjustments noted above, which also reduced the adjustment to the net debt figure to US$ 23.8 million. The only adjustment required is US$ 6 million paid to IC4LC in 2013 [C1/1/60-61], which reduces Korek's net debt by the same amount and increases the value of the equity in Korek.

IT Ltd.

98. IT Ltd. claims the following losses on its own behalf:

Category	Loss as at December 2013 (US$ million)
CMC Decision	129.2
IBL Loan	110.6
Non-Compete Payment	100

CMC Decision

99. IT Ltd.'s case is that the Respondents' efforts to procure the CMC Decision and other related actions of the CMC by way of an unlawful means conspiracy rendered IT Ltd.'s Call Option valueless as at December 2013 [A/5/179]. The Arbitral Tribunal has found in Chapter H of this Award that the Respondents are jointly and severally liable for such a conspiracy and that the effect of the conspiracy was indeed to render the IT Call Option valueless.

100. In their written closing submissions, the Respondents refer to the IT Ltd. Shareholders' Agreement, which was produced at the Arbitral Tribunal's request during the course of

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the hearing. The Respondents argue that this imposed complex restrictions on both the timing and the circumstances in which the IH Ltd. Call Option could be exercised. As noted above, the Respondents say that had they been aware of this earlier, they would have put questions on it to some or all of Mr. Froissart, Mr. Aziz and Mr. Sultan and that the cross-examination of those witnesses proceeded "*on incorrect premises*" [A/45/85]. The Arbitral Tribunal notes in this particular regard that it was open to the Respondents to make an application for those witnesses to be recalled for questioning. No such application was made.

101. What the IT Ltd. Shareholders' Agreement shows, the Respondents say, is that Orange and Agility only intended to exercise the IT Call Option if the price was right. At the start of 2014, the price was not right and it continued to deteriorate.[24]

102. The Arbitral Tribunal does not consider that this argument assists the Respondents. The position is that, at the time the conspiracy became effective in December 2013, IT Ltd. had the benefit of a Call Option which they were at liberty to exercise in accordance with the IH Ltd. Shareholders' Agreement and whatever restrictions Orange and Agility had agreed between themselves. The question for the Arbitral Tribunal is what the value of that Call Option was at that time.

103. Mr. Matthews has valued the IT Call Option as at December 2013 at US$ 133.5 million.

104. The Respondents argued in their Defence that a December 2013 valuation date for the Call Option was wrong and that it should be valued as of 19 August 2015, being the date upon which IT Ltd. indicated the sale and purchase triggered by the Option should be completed. They have now accepted that the IT Call Option claim should be valued at the same date as the CMC Claim, if the Arbitral Tribunal accepts that claim, which it has done. The Arbitral Tribunal has dealt with the date of valuation, above. The Respondents further rely upon Dr. Barnes and Mr. Chandler who opine that the value of the Call Option as of December 2013 was at most US$ 14.8 million. Further, the say that this represents an upper limit to IT Ltd.'s loss, for two reasons. Firstly, they say, Korek's equity value was not reduced to zero in December 2013 and secondly, Mr. Matthews has used a control premium to increase the value of the call option. This is unclear and unsubstantiated [A/6/242-246; C3/1/93-94].

105. In its Reply, IT Ltd. asserts that Mr. Matthews' approach to calculating Korek's enterprise value as at December 2013 is correct and, in relation to the second point, that neither the Respondents nor Dr. Barnes and Mr. Chandler offered any alternative measure of minority discount. Mr. Matthews used companies in Venezuela as an appropriate benchmark on the basis that, according to the World Bank, that country was characterised by similarly poor standards of corporate governance and that it was not uncommon to use minority discounts of 30% when assessing the value of a minority shareholding in markets with poor corporate governance or limited protection for minority shareholders [A/21/342-344; C1/2/91].

106. Dr. Barnes and Mr. Chandler regard it as questionable whether a 51% shareholding in IH Ltd., as opposed to the 44% held by IT Ltd. prior to the KCR Decree attracted either a control premium or should lead to a minority discount. The Respondents suggest

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[24] It is also said by the Respondents that the exercise of the Call Option in 2014 was simply part of IT Ltd.'s litigation strategy. This allegation has been dealt with in Chapter H.

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that the premise of the claim is that Mr. Mustafa had effective management control of Korek, notwithstanding the many IT Ltd. appointees in the company. If that were so, it was unclear how obtaining a 51% shareholding would have enabled IT Ltd. to change that position, particularly as even a 51% shareholder would remain subject to the minority shareholder protections and veto rights contained in the SHA and IH Ltd.'s Articles of Association. They further argue that the deficiencies in Mr. Matthews' quantum analysis undermines the value of the Call Option [A/34/289-291].

107. In their Third Report, Dr. Barnes and Mr. Chandler reiterated that, in the absence of any control premium or minority discount, the value of the IT Call Option at any date would have been zero. As at November 2014 the value is the same as, they say, in order for it to be rational to exercise the IT Call Option at all, the equity value in Korek would have to exceed US$ 409 million. The chance of that occurring was, they say, zero and they use Mr. Matthews' Black-Scholes method to illustrate the point [C3/4/14].

108. Mr. Matthews was also instructed to calculate the value of the IT Call Option as at 14 November 2014. However, as he pointed out, if the value of IH Ltd.'s interest in Korek had been rendered valueless in December 2013 (as the Arbitral Tribunal has found), the IT Call Option would have no value from that date onwards.

109. The question for the Arbitral Tribunal however is what the value of the IT Call Option was at the moment immediately prior to the value of IH Ltd.'s interest being destroyed. That requires an assessment of the experts' competing opinions on the issues of control premium and minority discount. The Arbitral Tribunal prefers the approach of Mr. Matthews. IT Ltd. was very clearly in a disadvantageous position as a minority shareholder, even though it held a significant stake. As Mr. Matthews noted in his presentation to the Arbitral Tribunal, discounts of 30% are not uncommon in markets with poor corporate governance and limited protections. Although IH Ltd. is a company incorporated and registered in the DIFC, its sole operating asset was Korek, based and operating in Iraq. As the history of the company bears out, a minority discount is clearly warranted.

110. The Arbitral Tribunal is also of the view that Mr. Matthews is also right to have had regard to the advantages of control. The Arbitral Tribunal accepts that the SHA would have continued to provide veto rights to CS Ltd., but the terms of the SHA would have permitted IT Ltd. to appoint the majority of directors of IH Ltd. and the majority of representatives of the KSC once it had a majority of the shares. This would have enabled it to exercise a significant degree of control. Indeed, it appears to the Arbitral Tribunal that this was a significant factor in the efforts made by the Respondents to ensure that the IT Call Option could not be exercised.

111. The Arbitral Tribunal therefore finds the Respondents, as co-conspirators, jointly and severally liable to IT Ltd. in the amount of US$ 129.2 million in respect of the destruction in value of its Call Option.

IBL Loan

112. In terms of the quantum of loss sustained by IT Ltd. as a result of the IBL Loan, Mr. Matthews opines in his second report that, had the IBL Loan been provided *pari passu* with the IT Ltd. Shareholder Loan then, for any periods when amounts were falling due and not being paid under the IH Ltd. Shareholder Loan and IT Ltd. Shareholder Loan,

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amounts that were paid to IBL in relation to the IBL Loan should have been split between IBL and IT Ltd. Any such amounts should have been split on a basis proportionate to the amounts loaned under the IT Shareholder Loan and the IBL Loan. Mr. Matthews calculates that IT Ltd. was due 65.5% of the payments made on the IBL Loan during the periods when Korek was failing to make payments under the IT Ltd. Shareholder Loan but continuing to make payment to IBL [C1/2/93-94]. That percentage reflects the proportion that the IT Ltd. Shareholder Loan bears to the total of the IT Ltd. Shareholder Loan and the IBL Loan.

113. Mr. Matthews explains his understanding that the principal on the IBL Loan has not been repaid, that interest runs at 13.25% and at 15.25% in the event of a default. He has assumed that Korek has been paying interest on the IBL Loan to the date of his report. In the absence of any disclosure from Korek or Mr. Mustafa regarding the IBL Loan, neither Mr. Matthews nor the Arbitral Tribunal can reasonably make any other assumption. He has assumed that the rate of interest increased to 15.25% from July 2015 when the notice of default was served by IBL. He has also included in his calculation a "Loan Utilization Fee" of 0.10% of the loan principal, which is payable quarterly.

114. Mr. Matthews further explains, by reference to D1/69 that the IT Ltd. Shareholder Loan principal was due in September 2015, but has not been repaid. The last payment of interest was a partial payment in September 2104.

115. On his assumption that Korek continued to pay interest on the IBL Loan from 9 July 2015 to 31 December 2021 and that 65.5% of this interest should have been paid to IT Ltd. through IH Ltd., Mr. Matthews calculates IT Ltd.'s loss as US$ 99.6 million [C1/2/96 and C1/2.5]. For the reasons set out in Chapter K of this Award, the Arbitral Tribunal confirms that it finds the Respondents jointly and severally liable to IT Ltd. in the amount of US$ 99.6 million in respect of the breaches relating to the IBL Loan.

116. Mr. Matthews was also instructed by those representing IT Ltd. that payments should have been made under the IT Ltd. Shareholder Loan from September 2014 to July 2015, but that these payments were not made as a result of a broader conspiracy between the Respondents to defraud IT Ltd. Using the same approach as above, Mr. Matthews assumes that 65.5% of the interest paid on the IBL Loan over this period should have been paid to IT Ltd. and that the interest which should have been paid to IT Ltd. from 15 September 2014 to 9 July 2015 amounts to US$ 11.0 million [C1/2/96 at paragraph 4.33; C1/2.5]. This particular element of the claim is said to be dependent upon IT Ltd.'s claim that there was a broader conspiracy between the Respondents, in place at the time of the 2011 Transaction, effectively to deprive IT Ltd. of its investment in Korek. As the Arbitral Tribunal explains in Chapter P of this Award, IT Ltd. has failed to discharge its burden of proof in relation to that particular claim and the claim for US$ 11.0 million therefore fails.

Non-Compete Payment

117. For the reasons set out in Chapter O, the Arbitral Tribunal finds that neither Mr. Mustafa nor CS Ltd. are liable for the Non-Compete Payment.

118. The table below summarises the sums payable under Scenario A. CS Ltd. and Mr. Mustafa are jointly and severally liable, as co-conspirators, for the losses caused to IH

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Ltd. in the amount of US$ 1,012.0 million. Korek, CS Ltd. and Mr. Mustafa are jointly and severally liable, as co-conspirators, for the losses caused to IT Ltd. in the amount of US$ 228.8 million:

Category	IH Ltd.'s Losses (US$ million)
CMC Decision	1,002.2
IBL Loan	3.8
Impugned Transactions – Enterprise Value adjustment	0
Impugned Transactions – net debt adjustment	6.0
Total	1,012.0
	IT Ltd.'s Losses (US$ million)
Call Option Loss of Value	129.2
IBL Loan	99.6
Non-Compete Payment	0
Total	228.8

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S. INTEREST

The Parties' Submissions

1. IT Ltd. seeks both pre- and post-award interest. It relies on an analysis carried out by Mr. Matthews which proceeds on the basis that IT Ltd. itself had no debt and that an award of interest should reflect the borrowing costs of IT Ltd.'s own shareholders, Orange and Agility. This analysis appears at section 8 of Mr. Matthews' First Report [C1/1/79-85]. He assumes annual compounding in respect of all claims.

2. The Respondents confirm in their written skeleton argument that the Parties agree that the Arbitral Tribunal is entitled in principle to award both pre- and post-award interest. However, they say, it is for IT Ltd. to prove (i) that it is entitled to interest on the basis that it has sustained loss as a result of the non-payment of sums due to it and (ii) the appropriate rate [A/38/33].

3. It is the Respondents' position that IT Ltd. is unable to satisfy this burden. Firstly, they contend, IH Ltd. and IT Ltd. are both shell companies holding shares in other entities and with no business operations of their own. In the period between the incidence of damage and the making of the Award, neither company would have avoided expense or sought to deploy monies received somewhere else. There is no evidence of any interest paid on deposits held by IT Ltd. and any monies held by it would have been distributed back to the ultimate shareholders. There is no loss [A/6/260-261; A/34/295-300].

4. Secondly, the Respondents say, a rate of interest calculated by reference to Agility and Orange's borrowing costs is irrelevant. Neither company is a party to this reference.

5. The Respondents further argue that, if the Arbitral Tribunal is to award interest, it should be on the basis of 3-month LIBOR plus 1% irrespective of whether it is pre-award or post-award [A/38/33]. They say that IT Ltd. is wrong to argue, as it does, that utilising a company's borrowing rate is a widely accepted and appropriate methodology for the calculation of interest. The current state of the law is that the rate of interest should be determined by reference to the rate of interest generally available to the class of borrowers into which the current claimant falls. The Respondents rely for this statement of the applicable principle on *Tate& Lyle v GLC* [1982] 1 WLR 149. As there is no evidence of this rate, the Arbitral Tribunal should utilise the rate recommended by the Law Commission in its 2004 report on Pre-Judgment Interest on Debt and Damages, which they say is 1% over the relevant base rate [A/34/297-300; A/38/33]. Neither the Respondents nor their experts address the question of compounding.

6. IT Ltd. takes issue with this analysis. They argue that the Respondents' position is dependent upon a presupposition that the only legal ground for an award of interest is as an element of an award of compensatory damages in accordance with *Sempra Metals v Inland Revenue Commissioners* [2007] UKHL 34. That is not the case, they say, and the Arbitral Tribunal has a wide discretion as to the award of interest. This is reflected in the analogous statutory powers given to the DIFC Courts and to the English High Court and ignores the existence of an equitable jurisdiction to award interest in cases of fraud [A/44/102-104].

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7. As to rate, IT Ltd. continues to rely upon the analysis of Mr. Matthews which, it says, is conservative and likely understates Agility and Orange's cost of borrowing. Mr. Matthews also contrasts the rate paid by IT Ltd. to Alcazar and Atlas for its shareholder loan of LIBOR plus 11% with the rates used by him which reflect a range of 2.4% to 5%. It further argues that there has been no attempt by the Respondents to explain why the principle set out in *Tate & Lyle* should apply in arbitration and states that even the English courts have departed from it. The rate proposed by the Law Commission is outdated and too low. It does not reflect current practice [A/44/102-104].

The Arbitral Tribunal's Analysis

8. There is no dispute between the Parties that the Arbitral Tribunal is entitled in principle to award both pre- and post-award interest. The Arbitral Tribunal agrees. It is also clear to the Arbitral Tribunal that it has considerable discretion in the award of interest.

9. The Arbitral Tribunal agrees with IT Ltd. that there exists a separate equitable jurisdiction to award interest in cases of fraud. That this is so follows from the decision of the Court of Appeal in *Kuwait Oil Tanker Co. SAK v Al Bader* [2000] 2 All ER (Comm) 271, quoted in *Kazakhstan Kagazy plc & Ors v Zhunus* [2018] EWHC 369 (Comm), cited by IT Ltd. In the former case, at paragraph 210 of his judgment, Nourse L.J. reviewed the authorities on the award of compound interest and stated:

> *"In such a case, the award of compound interest is made on the basis that a trustee misapplying monies for his own benefit, and a person obtaining or retaining money by fraud who is to be similarly treated, should be obliged either to account in full for the benefit he has unjustly derived or, in lieu of such account, to pay compound interest when the circumstances justify an award on that basis. The rationale is historically and essentially that of restitution i.e. that a fiduciary should not be permitted to make a profit from his trust."*

10. In the present case, CS Ltd. and Mr. Mustafa are jointly and severally liable for the tort of unlawful means conspiracy both in bribing the CMC to achieve the expropriation and destruction of IH Ltd.'s interest in Korek and in dishonestly presenting what was in reality a shareholder loan from Mr. Mustafa as an arms' length loan from IBL. By those same actions, each of the Respondents also caused damage to IT Ltd. The Arbitral Tribunal has found that the conspiracy was in effect and under way as at December 2013 and that the loss falls to be valued at that date. In the exercise of its discretion, the Arbitral Tribunal considers it entirely proper in those circumstances that CS Ltd. and Mr. Mustafa in the first case and each of the Respondents in the second case should be held liable for interest on those losses from that same date.

11. The question then arises as to the rate that the Arbitral Tribunal should apply. The Arbitral Tribunal does not consider that it is bound to apply the approach adopted in the *Tate & Lyle* decision. That decision is 40 years' old and cannot be said to reflect the modern approach adopted by international arbitration tribunals. As IT Ltd. notes, more recent decisions of the English courts have also been willing to have regard to the characteristics of particular claimants in order to determine a fair rate to compensate the claimants (*Petrobras v FPSO Construction Inc.* [2007] EWHC 1359 (Comm); *Fiona Trust & Holding Corp. v Privalov* [2011] EWHC 644 (Comm)).

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12. The Arbitral Tribunal does not consider it appropriate to adopt the methodology proposed by the Law Commission in 2004 [E2/160/32]. Their figure of base rate + 1% was said to represent the rate "*paid by well-placed and well-informed borrowers*". It was not a rate that, even at that time, applied universally.

13. Mr. Matthews has been instructed to apply an interest rate set by reference to the cost of borrowing that IT Ltd. and IH Ltd. would have incurred on any debts at the relevant time. Given the difficulty in assessing the borrowing costs of IT Ltd. (and the fact that IH Ltd.'s only debt was the IT Shareholder Loan) Mr. Matthews has used as a proxy the long-term borrowing costs of Orange (Agility having no credit rating at any point during the relevant period). The Arbitral Tribunal considers this to be an appropriate starting point. IT Ltd., as a special purpose vehicle, would only be able to borrow if its parent companies were prepared to stand behind it. It would not be able to borrow from an external lender at a more advantageous rate than its parents. Table 8-1 of Mr. Matthews' First Report shows that Orange's long-term borrowing costs in the period between 2014 and 2021 varied between 1.9% and 5.0%. In their Statement of Rejoinder, the Respondents argue that, if interest is to be awarded at all, the Arbitral Tribunal should follow the "*standard practice of English courts for non-US companies engaged in international transactions in US Dollars*". They describe this practice as using as a base rate 3-month US$ LIBOR [A/34/300]. The Arbitral Tribunal agrees that the 3-month US LIBOR rate is an appropriate reference point. The 3-month LIBOR rate in the relevant period varied between 0.23.% and fractionally over 2.8%. Given the above factors, the Arbitral Tribunal concludes that pre-award interest should be calculated on the sums awarded at the rate of 3% per annum. Mr. Matthews' calculation of interest assumes compounding on an annual basis. [C1/2.7/1]. The Arbitral Tribunal considers that to be an appropriate approach in the present case, particularly having regard to the egregious nature of the Respondents' behaviour. Pre-award interest will run from 31 December 2013 until the date of this Award. As at the date of this Award, CS Ltd. and Mr. Mustafa are jointly and severally liable to IH Ltd. for pre-Award interest in the total amount of US$ 317,004,217.00, whilst each of the Respondents is jointly and severally liable to IT Ltd. for pre-Award interest in the amount of US$ 71,670,518. The Arbitral Tribunal's calculation of these sums is set out in Annex B.

14. IT Ltd. seeks post-award interest. It makes no specific submissions regarding the rate of such interest, arguing simply that it should be awarded on the same basis as pre-award interest [A/37/38]. The Respondents also do not specifically address the issue of post-award interest, as opposed to the question of interest generally. They accept that the Arbitral Tribunal has the power to award interest. The Arbitral Tribunal is mindful of the fact that the US$ LIBOR rate has been discontinued for the pricing of new loans in the United States and that all US$ LIBOR setting panels will cease as of 30 June 2023. It would not therefore be appropriate for the Arbitral Tribunal to express an award of post-award interest by reference to a metric which is shortly to become redundant. On 16 December 2022, the Federal Reserve Board adopted a final rule which identified replacement benchmark rates based on the Secured Overnight Financing Rate (SOFR) to replace overnight, one-month, three-month, six-month and twelve-month LIBOR. In the exercise of its discretion, the Arbitral Tribunal considers it appropriate to award post-award interest at the SOFR three-month term plus 2% per annum. For the reasons set out in paragraph 13, above, the Arbitral Tribunal considers

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that the circumstances of the case further require that interest should be compounded annually. Post-award interest shall be due until full payment of the sums awarded.

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T. COSTS

1. The Arbitral Tribunal's power and discretion to award costs in this reference is governed by both the Arbitration Law of the DIFC and the ICC Rules.

2. Article 38(5) of the DIFC Arbitration Law provides:

"The Arbitral Tribunal shall fix the costs of the Arbitration in its award. The term "costs" includes only:

(a) The fees of the Arbitral Tribunal to be stated separately as to each arbitrator;

(b) The properly incurred travel and other expenses incurred by the arbitrators;

(c) The costs of expert advice and of other assistance required by the Arbitral Tribunal;

(d) The travel and other expenses of witnesses to the extent such expenses are approved by the Arbitral Tribunal;

(e) Such other costs as are necessary for the conduct of the Arbitration, including those for meeting rooms, interpreters and transcription services;

(f) The costs for legal representation and assistance of the successful party if such costs were claimed during the Arbitration, and only to the extent that the Arbitral Tribunal determines that the amount of such costs is reasonable;

(g) Any fees and expenses of any arbitral institution or appointing authority."

3. Article 38 of the ICC Rules provides, in pertinent part:

1 The costs of the arbitration shall include the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court, in accordance with the scales in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the arbitral tribunal and the reasonable legal and other costs incurred by the parties for the arbitration.

...

4 The final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.

5 In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.

The Parties' Submissions

4. IT Ltd. claims a total of US$ 32,222,448.67 in costs. These are broken down as follows:

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Claimant's Counsel Fees and Costs

Phase	Law Firm	Fees (US$)	Costs (US$)
First Shareholder Arbitration (Disclosure)	Gibson Dunn	$684,546.36	$10,085.15
	Jones Day	$133,559.04	N/A
	Kirkland & Ellis	$64,143.45	$422.07
	Total	$882,248.85	$10,507.22
First Shareholder Arbitration (Merits)	Gibson Dunn	$264,565.66	$41,248.80
	White & Case	$1,080,906.00	N/A
	Jones Day	$314,027.09	$54.84
	Kirkland & Ellis	$3,001,859.93	$23,159.69
	Total	$4,661,358.68	$64,463.33
Second Shareholder Arbitration	Gibson Dunn	$5,610,151.03	$166,422.38
	White & Case	$8,670,464.78	$77,479.47
	Jones Day	$2,307,361.90	$18,487.75
	Total	$16,587,977.71	$262,389.60
Total:		$22,131,585.24	$337,360.15
Total Counsel Fees and Costs:			$22,468,945.39

Claimant's Witness and Expert Fees and Costs

Description	Fees (US$)	Costs (US$)
Raedas Consulting Limited (Nicholas Bortman)	$5,523,833.00	N/A
FTI Consulting (Noel Matthews/ Steven E. Turner)	$1,886,554.00 (Matthews) $246,200.00 (Turner)	N/A
JuridiFin Consulting (Olivier Froissart)	$6,431.04	$2,452.29
Total:	$7,663,018.04	$2,452.29
Total Witness and Expert Fees & Costs:		$7,665,470.33

Costs of the ICC and Tribunal

Description	Costs (US$)
Claimant's Advance on Costs	$1,730,000.00
Filing Fees	$8,000.00
Total:	$1,738,000.00

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Hearing-Related Costs

Description	Costs (US$)
Record Management (Opus 2)	$240,391.94
Hosting of Hearings (IDRC)	$39,434.42
Hosting of the Closing Hearing (Gibson Dunn)	$70,206.59
Total:	$350,032.95

5. IT Ltd. argues in its Submission on Costs [A/48] that, if it is successful, the Arbitral Tribunal should apply the general principle that the prevailing party should have its costs paid by the unsuccessful party. It says that it need not prevail in all respects, so long as it succeeds with its core or primary claim. On this basis, IT Ltd. continues, it should be awarded its full costs if the Arbitral Tribunal determines that the Respondents are liable on any of IT Ltd.'s primary or alternative claims.

6. IT Ltd. asserts that each of its witnesses and experts addressed issues that were pertinent to the claims and defences and its submissions engaged with the Respondents' arguments in a substantial and focused manner. By contrast, it says, not a single witness appeared at the evidential hearing on behalf of the Respondents to confront the serious allegations advanced by IT Ltd. The Respondents produced no documents relating to the IBL Loan, services or payments to any of Mr. Rahmeh's ZR Group companies, services from and payments to IC4LC or contemporaneous reactions to the CMC Decision. Further, the Respondents made no effort to engage with certain claims, "*fixating instead on Raedas' sources*".

7. IT Ltd further invites the Arbitral Tribunal to have regard to the procedural conduct of the Parties. In this regard, IT Ltd. identifies what it says are a number of tactics, said to have been employed by the Respondents.

8. Firstly, IT Ltd. says, the Respondents engaged in pre-arbitral gamesmanship:

   (a) The Respondents forced the constitution of a new tribunal to delay resolution of the Parties' dispute. They objected to consolidation of this reference with the First Shareholder Arbitration on the basis that it would cause delay. Having succeeded, they then discarded this concern and agreed to the discontinuance of the First Shareholder Arbitration and the constitution of a new tribunal to hear the same claims;

   (b) The Respondents insisted on ICC mediation as a compulsory pre-arbitral step and then refused to engage;

   (c) The Respondents resisted IT Ltd.'s application for permission to bring derivative claims even though they agreed to the discontinuance of the First Shareholder Arbitration precisely so that such claims could be brought and then advanced meritless arguments which were designed to cause delay and drive up costs.

9. Second, the Respondents engaged in improper conduct in document production. They refused to agree to limit the scope of document production in this reference by taking into account the findings of the arbitral tribunal in the First Shareholder Arbitration.

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They then failed to produce any documents on critical issues in depute. This resulted in IT Ltd.'s application for certification and disclosure which resulted in the admission that the Respondents' searches for documents were carried out by Mr. Mustafa himself.

10. Third, the Respondents engaged in "*guerrilla tactics*":

    (a) They implemented the Baghdad Swap Project in violation of an order from the Arbitral Tribunal enjoining them from doing so which necessitated an application for interim measures in which the Arbitral Tribunal found that Korek had undertaken the Project;

    (b) They submitted a Subject Access request to Raedas in an attempt to circumvent the Arbitral Tribunal's rulings on production and to frustrate the confidentiality regime laid down in Amended Procedural Order No. 2. This necessitated IT Ltd.'s Application for Interim Measures on Subject Access Request; and

    (c) Mr. Mustafa failed to provide his bank statements to IT Ltd. as repeatedly ordered by the Arbitral Tribunal, forcing IT Ltd. to attempt to secure Mr. Mustafa's compliance and to submit the further Application for Security, all driving up the costs of the proceedings.

11. Fourth, the Respondents interfered in the conduct of this arbitration in an attempt to render any award unenforceable, leading the Arbitral Tribunal to restrain Mr. Mustafa from disposing of the cash collateral provided to IBL. At the same time, IT Ltd. says, the Respondents' overarching strategy was to submit no meaningful defence on the merits but to focus instead on Raedas' evidence and to disregard IT Ltd.'s clarification that its claims relied on documentary evidence.

12. Fifth, the Respondents adduced false evidence from Mr. Akrawi in relation to the Baghdad Swap Project and from Mr. Mustafa, both in connection with his explanations for his failure to provide his bank statements to IT Ltd. and on "*all critical issues in dispute*".

13. Sixth, the Respondents sought to revisit matters already decided by the Arbitral Tribunal causing IT Ltd. to incur costs responding to duplicative and superfluous applications.

14. Seventh, the Respondents failed to pay their share of the ICC's further advance on costs, forcing IT Ltd. to have to pay both Parties' share.

15. IT Ltd. then submits that its costs are reasonable and should be awarded in full. They are proportionate to the complexity of the case and the substantial damages claimed – in excess of US$ 1 billion. IT Ltd. bore the burden of proving an elaborate corrupt scheme which was designed to elude detection. The need to protect Raedas' sources necessitated the confidentiality protocol which required IT Ltd. to review and conform over 2,000 Raedas documents to that protocol. The Respondents, who barely produced any documents, faced no such burden. The many interlocutory applications also added to the costs. Many of these could have been avoided had the Respondents not disregarded the Arbitral Tribunal's procedural orders or sought to manufacture procedural incidents to create ammunition for annulment proceedings.

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16. For their part, the Respondents claim a total of US$ 7,581,004.98 and £1,212,913.88, comprising the following elements:

1. BOIES SCHILLER FLEXNER (UK) LLP/PALLAS PARTNERS LLP FEES

PHASE	FEE EARNER	HOURS	TOTAL (USD)
Phase 1: Preparation of the Response to the RfA, re-Amended RfA; constitution of the Tribunal, ToR; and response to Application for Permission to continue derivative claims [14 April 2020 - 22 April 2021]	William Hooker (Partner)	315.3	$250,699.57
	David Hunt (Associate/Counsel)	151.6	$105,271.24
	Shouvik Bhattacharya (Associate)	77.1	$51,411.71
	Rosalind Axbey (Associate)	434.2	$264,828.19
	Irene Ding (Associate)	105.6	$51,071.78
	Rachel Ong (Associate)	71.7	$38,452.64
	Paralegals	145.9	$42,672.74
	TOTAL FOR PHASE 1:		**$804,407.87**
Phase 2: Preparation of the Statement of Defence [23 April 2021 - 30 July 2021]	William Hooker	321.4	$267,008.44
	David Hunt	216.1	$153,516.60
	Shouvik Bhattacharya	119.0	$80,801.68
	Rosalind Axbey	429.3	$277,717.51
	Michael Smyth (Associate)	209.3	$132,097.20
	Rachel Ong	256.6	$137,333.28
	Paralegals	348.0	$102,240.34
	TOTAL FOR PHASE 2:		**$1,150,715.05**
Phase 3: Document Production, Respondents' Application for Disclosure of Documents [31 July 2021 - 29 October 2021]	William Hooker	134.6	$111,970.56
	David Hunt	126.3	$89,946.96
	Rosalind Axbey	250.4	$162,272.16
	Michael Smyth	221.7	$129,472.80
	Rachel Ong	135.8	$72,788.80
	Paralegals	171.2	$49,305.60
	TOTAL FOR PHASE 3:		**$615,756.88**
Phase 4: Response to Application for Interim Measures on Subject Access Request; response to Second Application for Interim Measures and Application for Permission; response to Claimant's Application for Certification and Disclosure [30 October 2021 - 6 January 2022]	William Hooker	125.2	$104,132.12
	David Hunt (Partner)	193.2	$137,516.53
	Rosalind Axbey	224.7	$145,529.78
	Michael Smyth	214.9	$125,501.60
	Rachel Ong	148.6	$79,654.96
	James Newton (Associate)	145.7	$78,441.58
	Paralegals	178.1	$51,265.79
	TOTAL FOR PHASE 4:		**$722,042.36**
Phase 5: Second round of submissions up to the filing of the Statement of Rejoinder, response	William Hooker	279.1	$251,989.13
	David Hunt	279.9	$199,557.50
	Rosalind Axbey	437.9	$319,290.10

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to Application for Security; Application for Order to Protect Arbitral Confidentiality; response to PO No. 10, Application to Amend Amended Procedural Order No. 2; Respondents' Application for an Extension of Time [7 January 2022 - 1 April 2022]	Michael Smyth	229.5	$133,999.24
	Rachel Ong	320.3	$200,445.48
	James Newton	390.5	$242,029.93
	Paralegals	259.2	$78,540.53
	TOTAL FOR PHASE 5:		**$1,425,851.91**
Phase 6: Costs incurred in relation to the hearing, including but not limited to preparing and attending the hearing, preparation of the List of Issues, Reading List and Skeleton Argument and Review of Claimant's Decision Tree [2 April 2022 - 15 May 2022]	William Hooker	319.9	$293,028.40
	David Hunt	183.5	$152,305.00
	Rosalind Axbey	330.7	$247,363.60
	Michael Smyth	188.3	$112,980.00
	Rachel Ong	262.8	$169,243.20
	James Newton	291.9	$187,983.60
	Paralegals	255.1	$80,979.60
	TOTAL FOR PHASE 6:		**$1,243,883.40**
Phase 7: Costs incurred in relation to Respondents' written closing submissions, closing submissions hearing including but not limited to preparing and attending the hearing [16 May 2022 - 2 August 2022]	William Hooker	214.5	$196,482.00
	David Hunt	133.2	$110,580.90
	Rosalind Axbey	261.4	$195,527.20
	Michael Smyth	98.7	$59,226.00
	Rachel Ong	85.7	$55,190.80
	James Newton	107.1	$68,972.40
	Paralegals	104.3	$33,011.60
	TOTAL FOR PHASE 7:		**$718,990.90**
Phase 8: Costs incurred in relation to the submissions on costs [3 August 2022 - 30 September 2022]	William Hooker	14.0	$12,824.00
	David Hunt	13.5	$11,205.00
	Rosalind Axbey	11.0	$8,228.00
	Michael Smyth	99.1	$59,478.00
	Rachel Ong	24.0	$15,456.00
	James Newton	4.0	$2,576.00
	Paralegals	101.3	$32,422.40
	TOTAL FOR PHASE 8:		**$142,189.40**
TOTAL:			**$6,823,837.77**

2. Disbursements

Item	Amount (GBP)	Amount (USD)
Expert fees of Cornerstone Research UK Limited ("**Cornerstone**")	£1,068,069.20	
Expert fees of Franklin Court Partners Inc. ("**FCP**") (Scott Chandler)		$33,750.00
Counsel fees of Kabine Law Office (Turkish law counsel)		$27,292.50
Expert fees of Hugh Tomlinson KC	£12,000.00	
Other BSF and Pallas Partners disbursements (including domestic and international travel, Opus2 International Limited platform expenses, translation and other expenses)	£132,844.68	$346,124.71
TOTAL:	**£1,212,913.88**	**$407,167.21**

3. ICC COSTS

Item	Amount (USD)
ICC Advance on Costs (Respondents' share)	$350,000.00

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17. The Respondents assert that in ICC arbitrations, costs should follow the event and that "*there is no reason to depart from the general principle in these proceedings: whichever party prevails should be awarded its costs incurred in connection with the aspects of the proceedings in relation to which it prevails*" [A/47]. The Arbitral Tribunal should consider whether the successful Party's costs were reasonable and should take into account a variety of factors including the conduct of the successful party, the complexity of the issues in dispute and whether the successful party conducted the arbitration in an expeditious and cost-effective manner.

18. In addressing these principles, the Respondents argue that the costs they incurred were reasonable and proportionate to the issues in dispute and show that the Respondents have conducted the proceedings in an appropriate manner, in contrast, they say, to IT Ltd. They note:

    (a) The total claims amount to well over US$ 1 billion and involve complex issues of law and fact, with four different damages scenarios;

    (b) The Respondents have used a small and efficient legal team with work allocated carefully across various levels of seniority and a clear division of advocacy to avoid duplication;

    (c) These costs are lower than IT Ltd. which has instructed four different international law firms;

    (d) IT Ltd. has advanced a large number of overlapping claims to which the Respondents have had to respond in full. IT Ltd. did not substantively address its alternative scenarios in oral opening or closing submissions and if IT Ltd. were to succeed in its primary claim, but has its alternative claims rejected, the Respondents should not be forced to bear the costs of addressing the alternative claims.

19. In a submission which mirrors that advanced by IT Ltd., the Respondents argue that IT Ltd.'s conduct is relevant to the exercise of the Arbitral Tribunal's discretion. They say:

    (a) That the evolution of IT Ltd.'s position in relation to the evidence of Raedas has resulted in significant wasted costs. When brought, the primary basis for the claim was the evidence of Mr. Bortman. Careful analysis by the Respondents demonstrated "*serious dishonesty and fundamental deficiencies*" in Mr. Bortman's evidence, which caused IT Ltd. to minimise its reliance on that evidence. The Respondents estimate the costs of dealing with Mr. Bortman's evidence at over US$ 480,000. They say that whatever the outcome of these proceedings, the Respondents should not be forced to bear the costs of dealing with that evidence nor should the costs of obtaining and presenting that evidence be recoverable by IT Ltd.;

    (b) The difficulties presented by IT Ltd.'s improper reliance on the Raedas investigation were compounded by its insistence on an unnecessary and unjustified restricted access regime, compliance with which added greatly to the costs of the proceedings by restricting the ability of Respondents' counsel to seek instructions which in turn required painstaking and time consuming analysis of the underlying documents; and

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(c) IT Ltd.'s tactics of commencing a series of unmeritorious interim applications for relief significantly increased the costs of the dispute.

20. The Respondents say that, if the "*substantive claim*" is decided in their favour, their costs in their entirety should be ordered against IT Ltd. If the Respondents are unsuccessful, IT Ltd.'s costs should be significantly discounted as neither reasonable nor proportionate.

21. The Respondents further argue that neither the DIFC Arbitration Law nor the ICC Rules specify that an arbitral tribunal should award interest on costs or prescribe any particular rate of interest. In the absence of any such prescribed rate of interest, the Respondents rely on their submissions dealing with interest in respect of the principal claims.

22. In its reply submissions on costs [A/50], IT Ltd. makes three main points.

23. Firstly, IT Ltd. argues that the Respondents' costs are unreasonable given how little they participated in the merits of the case. They presented no affirmative factual case on bribery and corruption and, as their Schedule of Costs shows, did not engage in any detailed factual investigation or record-building. Nor did they present any factual witnesses at the evidential hearing. They sat back and focused their efforts on casting doubt on IT Ltd.'s evidence, which required less time and cost.

24. The Respondents further scorned their document production obligations, refusing to produce any documents in response to 27 of the 36 categories of documents that they were required to produce. Searches for documents were carried out by Mr. Mustafa such that virtually no expense was incurred by third-party discovery vendors or by counsel during the document collection process.

25. It is therefore hard to understand on what basis the Respondents incurred the costs that they claim. This contrasts with the extensive efforts of IT Ltd. to uncover the Respondents' fraud. This involved extensive tasks which made it entirely appropriate for IT Ltd. to designate multiple counsel for what is a joint venture vehicle. Notwithstanding the engagement of several firms, IT Ltd.'s counsel worked in a coordinated fashion to avoid duplication. The costs incurred by the Respondents, combined with the nature of their defence, casts doubt on the reasonableness of their costs whilst at the same time validating IT Ltd.'s expenses.

26. Second, IT Ltd. argues that only the Respondents are to blame for the costs of this arbitration. It reiterates the points made in its earlier submission whilst challenging what it says are the Respondents' efforts to shift responsibility for their costs to IT Ltd.:

(a) The Respondents cannot be heard to complain about IT Ltd. deploying overlapping and alternative claims. IT Ltd. was entitled to utilise the causes of action available to it as a result of the Respondents' actions;

(b) The Respondents' claim that IT Ltd.'s position in relation to its reliance on the Raedas evidence evolved is misplaced. Its pleaded case remained unchanged. Further documentary evidence was adduced as it became available. The §1782 process in the United States depended upon there being a proceeding in respect of which discovery could be sought; and

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(c) It was the Respondents' conduct in relation to the confidentiality or restricted access regime which increased the Parties' costs. The regime was necessitated by the Respondents' conduct, was agreed to by the Respondents who drafted it and was then twice challenged by them. Respondents' counsel made only a late effort to engage with the process for agreeing summaries of restricted access documents, deployed Raedas documents undiscerningly and without referring to the vast majority of those documents in their written submissions and chose repeatedly to attack Mr. Bortman's evidence rather than focusing on substantively answering IT Ltd.'s claims; and

(d) The Respondents' claim that IT Ltd. brought unmeritorious interim applications is wrong. All of IT Ltd.'s interim applications were brought as a result of the Respondents' gamesmanship. The only example cited by the Respondents of an unmeritorious application is that in relation to the Subject Access Request. Even in that case, the Arbitral Tribunal professed themselves troubled by the use of that Request by Mr. Mustafa.

27. Third, IT Ltd. submits that the Respondents' position that there is no applicable legal principle on post-award interest is irreconcilable with the position they took in the First Shareholder Arbitration where they invited the arbitral tribunal to follow the rules of the DIFC Court proving for interest to accrue at a simple rate of 9% "*or such other rate as the judge may prescribe*". IT Ltd. argues that the Respondents should be ordered to pay the DIFC post-judgment interest rate on any costs award that is unpaid after thirty (30) days. Alternatively, IT Ltd. seeks the rate sought for post- award interest at the August Hearing, i.e., 2.9% by reference to Orange's cost of borrowing in 2021.

28. In their reply submissions [A/49], the Respondents point out that IT Ltd.'s costs exceed those of the Respondents by a factor of 3.6.

29. The Respondents argue that IT Ltd. is seeking to recover categories of costs which are unrecoverable. There are, they say, five categories of such fees and costs:

(a) At least US$ 5,543,607.53 in fees and US$ 74,970.55 in costs were occasioned in connection with the First Shareholder Arbitration. The task of the Arbitral Tribunal is to assess the costs of the present proceedings. The claims in this reference are substantially different from the claims in the earlier proceedings and seek to rectify the serious errors in the earlier case. The Arbitral Tribunal has no jurisdiction to make an order for costs that arose in a different reference. Further, the arbitral tribunal in the earlier reference ordered the Parties to bear their own costs. That was a final determination of the fees and costs in that arbitration and the arbitral tribunal neither ordered that those costs would be recoverable in any future arbitration nor reserved the question of costs until such a time. That decision gives rise to a *res judicata*. The same objection is made in respect of the fees and costs charged by FTI Consulting in respect of the First Shareholder Arbitration;

(b) IT Ltd. is not entitled to be awarded its full costs if successful on any of its primary or alternative claims. There is no support for that position and it would not be acceptable in the circumstances of this reference. IT Ltd. pleaded an unnecessarily complicated set of overlapping cases which the Respondents

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had to discuss in full. The Arbitral Tribunal should only award cots in relation to the relevant scenario or issue in respect of which a Party is successful;

(c) US$ 5,523,833.00 is claimed by way of fees paid to Raedas. These costs cannot and should not be recoverable in circumstances where IT Ltd. went to great lengths to side-line and neutralise that evidence from and following its Statement of Reply. Nor should the time spent by counsel in connection with Raedas' engagement be recoverable;

(d) US$ 70,206.59 is claimed in respect of the costs of hosting the two-day hearing in New York in August 2022. This compares with US$ 39,434.42 for the 6-day evidential hearing at the IDRC. There was no mention of such a charge and the amount is excessive; and

(e) US$ 8,883.33 is claimed in for the fees and expenses of Mr. Froissart. These should be disallowed as it is inappropriate that Mr. Froissart was out forward as a witness of fact without his evidence identifying that fact or that he was being paid through JuridiFin Consulting. Mr. Froissart does not appear simply to have been paid his costs for attending but for acting as a paid consultant.

30. The Respondents then argue that, in any event, the level of fees and costs claimed by IT Ltd. is unreasonable and disproportionate. After deducting the amounts which they argue are irrecoverable, the Respondents say that IT Ltd. is still claiming a total of US$ 20,793,300.44.[25] This is still, the Respondents say, 2.3 times the level of fees and costs incurred by the Respondents.

31. The Respondents repeat a number of points made in their initial costs submissions about the number of law firms representing IT Ltd. and the number of named lawyers (including partners) engaged, compared with the Respondents' legal team. They continue to argue that the structure was inefficient and disproportionate. They also criticise IT Ltd. for providing no detail as to its costs and speculate that providing this information would make clear that proceedings have been conducted in a grossly inefficient manner.

32. The Respondents then turn to the criticisms made by IT Ltd. of the Respondents' conduct in the arbitration. The Respondents reject these criticisms, which they say are a smokescreen:

(a) IT Ltd. brought its claim in the First Shareholder Arbitration on an unsustainable basis and sought to rectify matters by commencing a new arbitration and seeking to consolidate. The arbitral tribunal in the First Shareholder Arbitration refused IT Ltd.'s request for consolidation. Whilst it was concerned about delay, it is clear that it would have rejected consolidation in any event;

(b) It is untrue that the Respondents refused to engage with the mediation and it was IT Ltd. which proposed abandoning the process;

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[25] This figure does not include the fees claimed for preparation of the costs submissions which all Parties updated in their reply submissions. For the avoidance of doubt, the figures in the fee and cost tables set out above are taken from the reply submissions.

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(c) It was not improper for the Respondents to have opposed the application for leave to bring derivative claims;

(d) The Respondents accept "*that there have been shortcomings in certain aspects of their document production, in particular as concern matters relating to Mr. Mustafa's personal banking arrangements*" but say that it is "*unclear*" that any of these matters caused the costs of the proceedings to be increased. The Respondents also challenge the assertion by IT Ltd. that its own document production was "*robust*";

(e) The Respondents say that they stand by the evidence given by Mr. Akrawi, even though it was rejected by the Arbitral Tribunal;

(f) The Respondents also insist that Mr. Mustafa was entitled to exercise his statutory right to access his personal data by way of a Subject Access Request;

(g) The application for an order that the Respondents post financial security was one which IT Ltd. was entitled to make but it was unsuccessful and a waste of time and cost;

(h) The Respondents do not have a strategy aimed at "*annulment proceedings*". It is IT Ltd. which has engaged in gamesmanship in its attempt to shield Mr. Bortman from cross-examination. The Respondents' criticisms of Raedas' unlawful collection of evidence were "*comprehensively well-established*";

(i) The Respondents consented to the Restricted Access Regime in order to avoid the mandatory destruction of documents previously produced to them and without prejudice to their right to apply to discharge or vary the order encapsulating the regime. They applied to vary it, once, and on reasoned grounds. It is now clear, the Respondents say, that the regime should have been changed "*far beyond the Respondents' application*";

(j) The documents obtained by the §1782 process should have been produced by IT Ltd. When the Respondents sought to intervene in that process, IT Ltd. sought to derail it; and

(k) The Respondents' refusal "to date" to pay a proportion of their share of the costs of the reference does not constitute guerrilla tactics. The ICC costs will inevitably form part of the costs of the arbitration for the purposes of any award on costs.

The Arbitral Tribunal's Analysis

33. Article 38(5)(f) of the DIFC Arbitration Law permits the award of costs for legal representation and assistance of the "*successful party*" to the extent that the Arbitral Tribunal determines that the amount of such costs is "*reasonable*". Article 38 of the ICC Rules permits the award of reasonable legal and other costs incurred by the parties for the arbitration. It is for the Arbitral Tribunal to decide which of the parties shall bear them or in what proportion they shall be borne by the parties and "*in making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner*". Both the ICC Rules and the

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DIFC Arbitration Law therefore grant the Arbitral Tribunal a significant degree of discretion in assessing and awarding the costs of the arbitration.

34. The Respondents argue that the Arbitral Tribunal should have regard to the individual claims advanced by IT Ltd. and should proportionately account for IT Ltd.'s success or otherwise in relation to its four pleaded scenarios. The Arbitral Tribunal does not agree. It is true that IT Ltd. advanced, both on its own behalf and by way of derivative actions on behalf of IH Ltd., a complex series of claims. The Arbitral Tribunal does not criticise IT Ltd. for that approach. The factual background to the disputes was complex and IT Ltd. was entitled to advance the various claims, in tort, in contract and for breach of statutory duty, that it did.

35. There can be no doubt that IT Ltd. is the successful party in this reference. Its primary claims, in respect of the CMC Decision and the IBL Loan, have been entirely successful. The Arbitral Tribunal has found in both cases that IT Ltd. and IH Ltd. were the victims of an unlawful means conspiracy. It has also succeeded with direct and derivative claims for breach of contract and statutory duty. To the extent that a very few of the pleaded claims for breach of contract and statutory duty have not been allowed, the impact is *de minimis*. The Arbitral Tribunal has found that IT Ltd. is entitled, both in its own name and on behalf of IH Ltd., to very substantial sums by way of damages.

36. IT Ltd. has also been successful in its claims for declaratory relief in respect of the 3G Annex and in respect of almost all of its claims for breaches of corporate governance.

37. In so far as IT Ltd.'s alternative claims are concerned, the Arbitral Tribunal did not find it necessary to address these. The Parties were agreed that, if the Arbitral Tribunal found in favour of IT Ltd. on its primary claims, it was unnecessary for it to consider the alternative claims. No criticism can be made of IT Ltd. for pleading those claims in the first place, nor for advancing alternative damages scenarios. That was its right. It cannot be said to have been unsuccessful with those claims. The fact that neither IT Ltd. nor the Respondents sought to spend any material time addressing those claims during the evidential hearing takes the matter no further. These are hearing and time management issues that parties make in every arbitration.

38. The Arbitral Tribunal recognises that IT Ltd. was unsuccessful in persuading it that certain of the expenses incurred by Korek were used for corrupt purposes. It was also not persuaded that Ersal was a company related to Mr. Rahmeh. It also found against IT Ltd. in respect of the Non-Compete Payment and the so-called broader conspiracy. These issues took up a very small part of the time and costs associated with the arbitration.

39. The Arbitral Tribunal therefore declines to apportion costs between different causes of action. IT Ltd. has been successful and is entitled to its costs and expenses, subject to what is said further below.

40. The Respondents argue that certain categories of cost claimed by IT Ltd. are simply irrecoverable.

41. The first such category is the costs incurred in relation to the First Shareholder Arbitration. The arbitral tribunal in that reference stated, at paragraph 47 of its award [D2/33/18-19]:

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> The Tribunal further notes that, despite the withdrawal of proceedings, it is not at all certain that the work conducted by the Parties and the decisions issued by the Tribunal in this arbitration will become obsolete. As already determined by this Tribunal, the subject matter of ICC Case No. 25194 is "very much alike and connected" to this arbitration,
>
> and involves "similar and connected questions of law and fact". As such, it is not unlikely that the work performed by the Parties on the merits (including for the purpose of their Statement of Claim, Statement of Defence, witness statements and expert reports) may serve the discussions in the Second Arbitration. At least, the Tribunal cannot disregard this possibility. Also, the production of documents has been ordered by this Tribunal, pursuant to which several documents have already been produced. Here also, it is not improbable that these documents may become useful in the Second Arbitration. On that basis, and to the extent the dispute on the merits is still ongoing, the Tribunal considers it justified that each Party bears its own costs (save for the costs associated with the Application for Interim Relief as discussed above).

42. The Respondents say that this amounted to a ruling on costs in that arbitration such that it is not now open to IT Ltd. to claim those costs in this reference. Further, they say, this Arbitral Tribunal has no power to order the Respondents to pay costs incurred in an earlier arbitration. It appears to the Arbitral Tribunal that the arbitral tribunal in the earlier case was simply saying that some of the work undertaken in the earlier reference might be deployed in the later case and would therefore be recoverable as costs properly incurred in pursuing the case in the later reference. It was for that reason, it would seem, that the decision was made that both parties should bear their own costs.

43. Given the decision of the earlier tribunal, it would be inappropriate for this Arbitral Tribunal to allow IT Ltd. to recover without further justification costs incurred in the earlier matter, This Arbitral Tribunal does not consider that it is prevented from awarding as costs in this arbitration sums that might initially have been incurred on the earlier reference so long as the product of that work advanced the claims and/or defences in this matter. Having said that, the Arbitral Tribunal is not in a position to make that judgment with any confidence and it therefore declines to do so.

44. The Respondents then challenge the very significant sum claimed in respect of the fees of Raedas, which the Respondents say has effectively been wasted as a result of the "evolution" of IT Ltd.'s position in respect of the Raedas evidence. As will have been apparent from the earlier chapters in this Award, the Arbitral Tribunal has placed no reliance upon the evidence obtained from Mr. Bortman's various sources and it is not prepared to allow IT Ltd. to recover the costs and fees associated with that part of Mr. Bortman's work. It would be wrong, however, to characterise Mr. Bortman's work as wholly worthless in the context of this arbitration. As he notes at paragraph 6 of his first witness statement [B1/11/3], in addition to gathering information by conducting interviews, he and his personnel:

> *"collect[ed] and/or review[ed] documentary evidence such as Land Registry and other property documents, electoral roll data, corporate records, court documents and CMC and other Iraqi government documents, as well as media reports, academic journal articles, blogs, and whistle-blower sites, as well as*

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documents disclosed by third parties in the context of discovery proceedings in the United States".

45. The Arbitral Tribunal considers that this latter aspect of Mr. Bortman's work was instrumental in contributing to IT Ltd.'s success in relation to its primary claims. Had the work not been undertaken by Raedas, it would have had to have been carried out by counsel. The Arbitral Tribunal anticipates however that this will have been a relatively minor part of Raedas' role and it therefore allows just 20% of the sum claimed for Raedas. This amounts to US$ 1,104,766.60. It also makes a deduction from the legal fees claimed by IT Ltd. in respect of the time spent by IT Ltd.'s counsel team in dealing with matters relating to Raedas' sources.

46. The Respondents also complain about the sum claimed in respect of Gibson Dunn's hosting of the two-day oral closing hearing in August 2022. The sum claimed, being US$ 70,206.59, appears high and the Arbitral Tribunal allows US$ 35,000.00.

47. Lastly, the Respondents challenge the US$ 8,883.33 in fees and expense claimed by Mr. Froissart. The Arbitral Tribunal considers this sum to be entirely reasonable. The fact that Mr. Froissart was paid through JuridiFin Consulting is unremarkable and the Arbitral Tribunal does not consider that that is matter which ought to have been disclosed in his evidence. There is no suggestion that he was being paid to give evidence in a particular way. The implication is that he was being paid for his time. This is not at all unusual in international arbitrations, as the Respondents' counsel will know well.

48. It falls to the Arbitral Tribunal to assess the reasonableness of the fees and costs claimed by IT Ltd. The Arbitral Tribunal rejects the suggestion by the Respondents that IT Ltd. structured its counsel team in an inefficient and wasteful way. In light of the Arbitral Tribunal's decision not to allow the costs said to have been incurred in respect of the First Shareholder Arbitration, it is unnecessary to consider the involvement of Kirkland & Ellis. In the present reference, IT Ltd. used the services of Gibson, Dunn, White & Case and Jones Day. This was a highly complex matter, involving two joint venture partners. The Arbitral Tribunal does not consider that it was inappropriate for IT Ltd. to have instructed several firms to work on the matter together, given the amount of work required. Nor does the Arbitral Tribunal consider that those firms ran the matter in an inefficient manner. There appeared to the Arbitral Tribunal to be a clear division of responsibility and there was no obvious evidence of duplication.

49. The Respondents emphasise the number of fee earners deployed by IT Ltd. and the disparity in costs claimed by both sides. The Arbitral Tribunal does not consider this to be of any significance in the circumstances of this case. This dispute involved a hidden conspiracy to commit fraud on a massive scale. The Arbitral Tribunal does not consider it to be in the least surprising that it was necessary for IT Ltd. to deploy a very significant team of fee earners on this matter, nor does it find it surprising that IT Ltd.'s fees are so much greater than those claimed by the Respondents. As IT Ltd. points out, the Respondents failed to engage with the factual detail of significant parts of IT Ltd.'s case. The Respondents' disclosure was very limited and was not an exercise in which the Respondents' legal team appears to have played any significant part.

50. The Respondents further criticise IT Ltd. for failing to give details of the fee-earners, hours and hourly rates employed in pursuing its claims. The Arbitral Tribunal does not

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consider this necessary, nor does it regard the failure to provide this information as indicative of a fear that this information would reveal that the proceedings were conducted in an inefficient and unproductive manner. The Arbitral Tribunal is experienced in assessing costs in international arbitrations and is confident that the costs are not overstated.

51. Both Parties accuse the other of having engaged in conduct in these proceedings which should be taken into account in the assessment of costs. This was an extremely hard-fought case on both sides. There were a significant number of interlocutory applications. It was the view of the Arbitral Tribunal at the time that the costs of those applications should be costs in the reference. The Respondents argue that IT Ltd.'s application for the provision of security failed. That is true, but it was prompted by Mr. Mustafa's ongoing failure to comply with the Arbitral Tribunal's order that he provide evidence on a monthly basis that the collateral provided by him for the IBL Loan remained in place. In dismissing the request for security, the Arbitral Tribunal found it necessary to reiterate its order that Mr. Mustafa provide the evidence required. He never did.

52. Several of the Procedural Orders issued by the Arbitral Tribunal concerned the Restricted Access Regime. The Respondents now say that this regime should have taken a much less strict form. That is of no concern to the assessment of costs. The Parties took the positions that they did on that regime and the Arbitral Tribunal reached its decisions on the basis of the information available to it at the time. The fact that the Arbitral tribunal ultimately concluded that it was not prepared to place any reliance on Mr. Bortman's sources does not undermine the importance of the regime that was – by agreement - put in place by the Parties.

53. The fees claimed by IT Ltd. in respect of the current reference amount to US$ 16,587,977.71. The Arbitral Tribunal applies a discount of 10% to that figure to reflect the time spent by the legal team in dealing with matters relating to Mr. Bortman's sources as well as the limited number of aspects in respect of which its claims against the Respondents were unsuccessful.

54. The Arbitral Tribunal also notes that the figure for FTI Consulting includes its work on both the First Shareholder Arbitration and the current reference. The total is not split. Mr. Matthews prepared three reports for the Arbitral Tribunal in these proceedings and also appeared to give evidence. The Arbitral Tribunal therefore allows 75% of the costs claimed for Mr. Matthews and 100% of the costs claimed for Mr. Turner (who does not appear to have been involved in the First Shareholder Arbitration).

Costs of the arbitration fixed by the ICC Court

55. Based upon its analysis above, the Arbitral Tribunal therefore orders that the Respondents shall bear in their entirety and on a joint and several basis the costs of arbitration fixed by the ICC Court (i.e. the fees and expenses of the arbitrators and the ICC administrative expenses). At its session of 11 January 2023, the ICC Court fixed the costs of arbitration at US$ 2,037,400, which sum is entirely covered by the advance on costs paid by the Parties. IT Ltd. paid US$ 1,730,000 towards the advance on costs whilst the Respondents paid US$ 350,000. Therefore, the Respondents are to pay to

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IT Ltd. US$ 1,687,400 as the costs of the arbitration fixed by the ICC Court. That sum is broken down as follows:

Description	US$
Nicholas Fletcher KC	828,000.00
J. William Rowley KC	506,000.00
David Joseph KC	506,000.00
Administrative expenses of ICC	150,000.00
Other expenses	47,400.00
Total	**2,037,400.00**

Further costs

56. Based further upon its analysis above, the Arbitral Tribunal orders the Respondents to bear, on a joint and several basis, the following legal and other costs and to pay to IT Ltd. the further amount of US$ 18,247,089.30:

Counsel fees and costs

Current reference	Fees (US$)	Costs (US$)
	16,587,977.71	258,331.85
Less 10%	1,658,797.77	
Total	**14,929,179.94**	**258,331.85**

Witness and Expert Fees and Costs

Description	Fees (US$)	Costs (US$)
Raedas Consulting Limited	1,104,766.60	
FTI Consulting - Matthews	1,414,915.50	
FTI Consulting - Turner	246,200.00	
JuridiFin Consulting - Froissart	6,431.04	2,452.29
Total	**2,772,313.14**	**2,452.29**

Hearing-Related Costs

Description	Costs (US$)
Record management (Opus2)	210,377.66
May hearing (IDRC)	39,434.42
August hearing (Gibson Dunn)	35,000.00
Total	**284,812.08**

57. There appears to be no dispute that the Arbitral Tribunal is in principle entitled to award interest on costs. In their submissions on costs, the Respondents invite the Arbitral Tribunal to adopt the approach to the award of interest for which they argue in respect of the principal claims [A.47.7]. IT Ltd. argues that interest on costs should accrue at the post-judgment rate of 9% permitted by the DIFC Courts. Alternatively, it says, the Arbitral Tribunal should set the rate by reference to IT Ltd.'s cost of borrowing and that interest should start to run on any unpaid award of costs from the day after 30 days of the date of this Award [A/48/17; A/50/11]. Having regard to the significant sums that IT Ltd. has properly incurred in the enforcement of its claims, to the arguments made by

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the Parties in respect of the award of interest generally and in the exercise of the Arbitral Tribunal's discretion the Arbitral Tribunal considers that post-award interest should accrue on the sums awarded in respect of both the costs of the arbitration and the other costs awarded in paragraph 56 above at the three-month term Secured Overnight Financing Rate (SOFR) plus 2% per annum. For the reasons set out in Chapter S, paragraph 13, the Arbitral Tribunal also considers that the circumstances of the case further require that interest should be compounded annually. In accordance with IT Ltd.'s claim for relief in respect of costs [A/48/17], post-award interest on costs shall start running on any unpaid sums from the day after 30 days of the date of this Award until full payment of the sums awarded to IT Ltd.

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U. DISPOSITION

1. For the reasons stated the Arbitral Tribunal makes the following AWARD and ORDER:

(a) With respect to Iraq Telecom Limited's claims in tort, contract and under statute in respect of the CMC Decision and related actions, the IBL Loan and the Related Party Transactions:

(i) Korek International (Management) Limited and Sirwan Saber Mustafa are ordered to pay to International Holdings Limited, on a joint and several basis, damages in the amount of US$ 1,012,000,000 (United States Dollars One Billion and Twelve Million); and

(ii) Korek International (Management) Limited, Sirwan Saber Mustafa and Korek Telecom Company LLC are ordered to pay to Iraq Telecom Limited, on a joint and several basis, damages in the amount of US$ 228,800,000 (United States Dollars Two Hundred and Twenty Eight Million and Eight Hundred Thousand).

(b) With respect to Iraq Telecom Limited's claim for breach of contract in respect of the 3G Annex, the Arbitral Tribunal declares that:

(i) Korek International (Management) Limited and Sirwan Saber Mustafa breached clauses 11.3 and 11.4 of the Shareholders' Agreement by allowing/procuring Korek Telecom Company LLC to sign the 3G Annex on 10 November 2014; and

(ii) Korek Telecom Company LLC breached clauses 11.3 and 11.4 of the Shareholders' Agreement by signing the 3G Annex on 10 November 2014.

(c) With respect to Iraq Telecom Limited's claims for breaches of contract and statute in relation to the corporate governance obligations of Korek International (Management) Limited, Sirwan Saber Mustafa and Korek Telecom Company LLC, the Arbitral Tribunal declares that:

(i) With respect to the failure to appoint a CEO:

A. Sirwan Saber Mustafa breached clause 8.4 of the Shareholders' Agreement and clause 23.1 of the Subscription Agreement by failing to appoint the CEO candidates proposed by Iraq Telecom Limited pursuant to Clause 8.3 of the Shareholders' Agreement; and

B. Korek International (Management) Limited and Korek Telecom Company LLC breached Clauses 9.4 and 31 of the Shareholders' Agreement and clause 23.2 of the Subscription Agreement by failing to procure Sirwan Saber Mustafa's compliance with his obligations under Clause 8.4 of the Shareholders' Agreement.

(ii) With respect to the withholding of information from Iraq Telecom Limited, the Arbitral Tribunal declines to grant the relief requested; and

(iii) With respect to the failure to convene meetings of the Korek Supervisory Committee and the International Holdings Limited Board:

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A. Sirwan Saber Mustafa breached Clauses 6.11 and 7.12 of the Shareholders' Agreement; and

B. Korek International (Management) Limited and Sirwan Saber Mustafa breached Clause 31 of the Shareholders' Agreement and Clause 23 of the Subscription Agreement.

(d) Further with respect to Iraq Telecom Limited's claims for breaches of contract and statute in relation to the corporate governance obligations of Korek International (Management) Limited, Sirwan Saber Mustafa and Korek Telecom Company LLC, the Arbitral Tribunal orders that Korek International (Management) Limited and Sirwan Saber Mustafa immediately perform their obligations under Clause 6.6 of the Shareholders' Agreement and appoint Mr. Froissart to the International Holdings Limited Board provided that Mr. Froissart confirms that he remains ready and willing to serve on the International Holdings Limited Board.

(e) With respect to the claims advanced by Iraq Telecom Limited in relation to the Related Party Transactions of this Award, the Arbitral Tribunal declares that:

(i) The transactions with Darin, K-Energy and Halabja were undertaken without any disclosure of the interests of Sirwan Saber Mustafa in Darin and K-Energy and of Mr. Ali in Halabja and without proper authorisation given the existence of those interests in breach of Korek International (Management) Limited and Sirwan Saber Mustafa's contractual obligations under the Shareholders' Agreement and their statutory duties;

(ii) The transactions with Darin were further undertaken without the proper processes being followed having regard to the nature and value of the purchase orders, in breach of Korek International (Management) Limited and Sirwan Saber Mustafa's contractual obligations under the Shareholders' Agreement and their statutory duties; and

(iii) The transactions with the entities in which Mr. Rahmeh had an interest, namely ZR Group, ZR Collection, Hajras, RBT, DoubleU and IC4LC were undertaken without any disclosure of Mr. Rahmeh's interest in those companies, without proper authorisation and without the proper processes being followed having regard to the nature and value of the transactions in breach of Korek International (Management) Limited and Sirwan Saber Mustafa's contractual obligations under the Shareholder" Agreement and their statutory duties.

(iv) No loss has been proven to have arisen from the Impugned Transactions save in respect of the payments to IC4LC which form part of the Arbitral Tribunal's order in paragraph (a)(i) above.

(f) Iraq Telecom Limited's claims in respect of the breach of the non-compete obligations of Korek International (Management) Limited, Sirwan Saber Mustafa and Korek Telecom Company LLC and in respect of the broader conspiracy are dismissed.



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(g) The claim of Korek International (Management) Limited, Sirwan Saber Mustafa and Korek Telecom Company LLC that the Shareholders' Agreement has been terminated by frustration is dismissed.

(h) The Arbitral Tribunal orders that Korek International (Management) Limited, Sirwan Saber Mustafa and Korek Telecom Company LLC, on a joint and several basis, pay the sum of US$ 1,687,400 to Iraq Telecom Limited in respect of the costs of the arbitration, namely the fees and expenses of the Arbitral Tribunal and the administrative expenses of the ICC, such sum to be paid within 30 days of this Award.

(i) The Arbitral Tribunal orders that Korek International (Management) Limited, Sirwan Saber Mustafa and Korek Telecom Company LLC, on a joint and several basis, pay the sum of US$ 18,247,089.30 to Iraq Telecom Limited in respect of the legal fees and other costs and expenses of the proceedings, such sum to be paid within 30 days of this Award.

(j) The Arbitral Tribunal orders that Korek International (Management) Limited and Sirwan Saber Mustafa, on a joint and several basis, pay International Holdings Limited pre-Award interest on the sum identified in paragraph (a)(i) above at the rate of 3% per annum, compounded annually from 31 December 2013 until the date of this Award, in the amount of US$ 317,004,217.00.

(k) The Arbitral Tribunal orders that Korek International (Management) Limited, Sirwan Saber Mustafa and Korek Telecom Company LLC, on a joint and several basis, pay Iraq Telecom Limited pre-Award interest on the sum identified in paragraph (a)(ii) above at the rate of 3% per annum, compounded annually from 31 December 2013 until the date of this Award, in the amount of US$ 71,670,518.00.

(l) The Arbitral Tribunal orders that Korek International (Management) Limited and Sirwan Saber Mustafa, on a joint and several basis, pay International Holdings Limited post-Award interest on the sums awarded to it by this Award at the three month term Secured Overnight Financing Rate (SOFR) plus 2% per annum compounded annually from the date of this Award until payment in full.

(m) Save as provided for in paragraph (n) below, the Arbitral Tribunal orders that Korek International (Management) Limited, Sirwan Saber Mustafa and Korek Telecom Company LLC, on a joint and several basis, pay Iraq Telecom Limited post-Award interest on the sums awarded to it by this Award at the three month term Secured Overnight Financing Rate (SOFR) plus 2% per annum compounded annually from the date of this Award until payment in full.

(n) The Arbitral Tribunal orders that Korek International (Management) Limited, Sirwan Saber Mustafa and Korek Telecom Company LLC, on a joint and several basis, pay Iraq Telecom Limited post-Award interest on the sums identified in paragraphs (h) and (i) above at the three month term Secured Overnight Financing Rate (SOFR) plus 2% per annum compounded annually from the day after 30 days of the date of this Award until payment in full.

(o) The injunction issued by this Arbitral Tribunal by consent in Procedural Order No. 3 is hereby discharged.

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(p) All other claims and requests are rejected.

Place of Arbitration: Dubai International Financial Centre, Dubai, United Arab Emirates.

Date: 20 March 2023

J. William Rowley KC

David Joseph KC

Nicholas Fletcher KC
Presiding Arbitrator

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ANNEX A

Contractual provisions and statutory obligations alleged by IT Ltd. to have been breached by the Respondents

The SHA

3 Business of the Group

The business of the Group shall be mobile telecommunications and related services (together with such other business or businesses as shall from time to time be carried on in accordance with the provisions of clauses 11 and 12) and any ancillary or incidental businesses, and shall be conducted in the best interests of the Group in accordance with the then current Business Plan and Budget.

4 Responsibilities of the Parties

In order to promote the best interests of the Group, the parties shall use their respective reasonable endeavours to ensure that the Group is afforded the best possible business advantages and market position in the telecommunications sector in the Republic of Iraq by utilising (where relevant) their experience, knowledge in the telecommunications sector in the Republic of Iraq for the benefit and contacts of the Group.

6 International Holdings Board of Directors

6.1 The parties shall procure that the International Holdings Board of Directors shall be responsible for the overall direction and management of International Holdings. The Directors shall in their capacity as Directors, at all times act in the best interests of International Holdings in accordance with international standards of corporate governance. The International Holdings Board of Directors shall not, however, take any decision (and if it takes any such decision it shall be deemed invalid and ineffective) unless such decision complies with the provisions of clauses 11, 12 and 28.

Number of Directors

6.2 Unless the parties agree otherwise, the International Holdings Board of Directors shall consist of 7 (seven) members.

Appointment and Removal of Directors

6.3 Subject to clause 6.5 and prior to the Majority Interest Date:

(a) CS Ltd shall propose for appointment by the Shareholders' general meeting 3 (three) Directors as members of the International Holdings Board of Directors and may propose the removal of any Director so proposed for appointment and propose the appointment of another in his place, provided

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that 1 (one) of the Directors so proposed for appointment by CS Ltd shall be Mr. Sirwan Saber Mustafa;

(b) *IT Ltd shall propose for appointment by the Shareholders' general meeting 3 (three) Directors as members of the International Holdings Board of Directors and may propose the removal of any Director so proposed for appointment and propose the appointment of another in his place; and*

(c) *CS Ltd shall propose for appointment by the Shareholders' general meeting, 1 (one) independent person to act as the seventh director of the International Holdings Board of Directors, such person to be selected in accordance with clause 6.15 (Independent Director).*

6.4 Subject to clause 6.5 and following the Majority Interest Date:

(a) *IT Ltd shall propose for appointment by the Shareholders' general meeting 4 (four) Directors as members of the International Holdings Board of Directors and may propose the removal of any Director so proposed for appointment and propose the appointment of another in his place; and*

(b) *CS Ltd shall propose for appointment by the Shareholders' general meeting 3 (three) Directors as members of the International Holdings Board of Directors and may propose the removal of any Director so proposed for appointment and propose the appointment of another in his place, provided that one of the Directors so proposed for appointment by CS Ltd shall be Mr. Sirwan Saber Mustafa.*

6.5 In the event that either Shareholder's Relevant Shareholder Percentage of International Holdings shall:

(a) *be less than 20% (twenty per cent.) but not less than 10% (ten per cent.), such Shareholder shall lose its rights to propose the appointment and removal of Directors pursuant to clauses 6.3 and 6.4 (as applicable) and shall propose for appointment by the Shareholders' general meeting 1 (one) Director only as a member of the International Holdings Board of Directors and may propose the removal of such Director and propose the appointment of another in his place (in the case of CS Ltd, for as long as Mr. Sirwan Saber Mustafa's Relevant Shareholder Percentage of International Holdings shall exceed 5.1 (five point one per cent.), such Director shall be Mr. Sirwan Saber Mustafa); or*

(b) *be less than 10% (ten per cent.), such Shareholder shall lose its rights to propose the appointment and removal of Directors pursuant to clauses 6.3, 6.4 and 6.5(a),*

and such Shareholder shall (i) procure the prompt removal of such number of Director(s) as have been previously proposed for appointment by such Shareholder and which exceed their rights pursuant to this clause 6.5, and (ii) shall indemnify International Holdings for any damages, whether for compensation for loss of office, wrongful dismissal or otherwise, and any reasonable costs and expenses incurred in defending such proceedings which arise out of the removal of such Director(s) from office.

Annex A2

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6.6 The parties shall procure that the Shareholders' general meeting and the International Holdings Board of Directors shall approve and appoint or remove (as applicable) such persons as are proposed pursuant to clauses 6.3, 6.4 and 6.5 for appointment to or removal from the International Holdings Board of Directors promptly upon receiving written notice of such proposal, unless the notice indicates otherwise. Prior to such appointment or removal, the proposing Shareholder shall, as far as practicable, consult with the other Shareholders as to the identity and experience of the proposed nominee and the reasons for the removal of their proposed representative. The Shareholder proposing the removal of any Director in accordance with clauses 6.3 or 6.4 shall indemnify International Holdings for any damages, whether for compensation for loss of office, wrongful dismissal or otherwise, and any reasonable costs and expenses incurred in defending such proceedings which arise out of the removal of such Director from office.

Quorum

6.7 IT Ltd and CS Ltd shall use all reasonable endeavours to ensure that their respective nominees as Directors shall attend each International Holdings Board Meeting and to procure that a quorum is present throughout each such meeting. Subject to clauses 6.14 and 28, a quorum for each International Holdings Board Meeting shall be a majority of Directors including 1 (one) IT Ltd IH Director and 1 (one) CS Ltd IH Director provided that, if within one hour from the time appointed for an International Holdings Board Meeting a quorum is not present, the meeting shall be adjourned to the same calendar day of the next week (or such other date as may be agreed by at least 1 (one) CS Ltd IH Director and at least 1 (one) IT Ltd IH Director (each acting reasonably)) at the same time and place, and with the same agenda, then at such adjourned meeting any 4 (four) Directors present shall constitute a quorum.

Conflict of Interest

6.8 Subject to clause 28, the Directors may authorise any matter proposed to them in accordance with this Agreement which relates to a situation in which a Director has, or can have, an interest which conflicts, or possibly may conflict, with the interests of the Group, provided that (i) he has disclosed to the International Holdings Board of Directors the nature and extent of his interest in writing as soon as he is aware of such interest and (ii), he shall not vote on, or be counted in the quorum in relation to, any resolution of the International Holdings Board of Directors or of a committee of the International Holdings Board of Directors concerning such matter.

Notice of Board Meetings

6.9 Subject to clause 26, International Holdings Board Meetings shall be convened by written notice from the chairman of International Holdings to each Directors no less than 14 (fourteen) days before such International Holdings Board Meeting, unless (i) any Director reasonably determines that an Emergency Situation has arisen, or (ii) at least 1 (one) CS Ltd IH Director and at least 1 (one) IT Ltd IH Director approves in writing a shorter notice period (for the avoidance of doubt and for the purposes of this clause 6.9 such approval in writing may be delivered by electronic mail pursuant to clause 44.3). Any notice shall include an agenda identifying in reasonable detail the matters to be discussed at the meeting. Copies of any

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relevant papers relating to the items specified in the agenda shall be sent to all the Directors no later than 7 (seven) days prior to the date of the meeting unless (i) at least 1 (one) IT Ltd IH Director and at least 1 (one) CS Ltd IH Director approves a shorter period, or (ii) any Director reasonably determines that an Emergency Situation has arisen. If any matter is not included on the agenda, the International Holdings Board of Directors shall not decide on it unless at least 1 (one) CS Ltd IH Director and at least 1 (one) IT Ltd IH Director agrees otherwise.

Chairman of Board Meetings

6.10 Subject to clause 28:

(a) the chairman of International Holdings shall preside as chairman of the International Holdings Board Meeting but, if the chairman of International Holdings is not present within one hour after the time appointed for holding a meeting and willing to act, the Directors present shall elect 1 (one) of their number to be chairman of that International Holdings Board Meeting by simple majority vote;

...

(c) at each general meeting of International Holdings at which the annual accounts of International Holdings are approved, the minority Shareholder shall propose for appointment the person to act as vice chairman of the International Holdings Board of Directors and the first vice chairman of International Holdings shall be so appointed at the first general meeting of International Holdings following Closing; and

(d) neither the chairman nor the vice chairman of an International Holdings Board Meeting shall have a casting vote in any case.

Attendance at Board Meetings

6.11 The location for the International Holdings Board Meetings shall be the registered office of International Holdings or at such other location as may be agreed in writing by at least 1 (one) IT Ltd IH Director and 1 (one) CS Ltd IH Director. The first International Holdings Board Meeting shall take place immediately upon Closing and thereafter, unless otherwise agreed by the Shareholders, International Holdings Board Meetings shall be held (i) immediately prior to a meeting of the Korek Supervisory Committee, and (ii) at least quarterly. In addition, any Director shall be entitled to require the chairman of International Holdings to convene an International Holdings Board Meeting by giving written notice to the Directors in which case International Holdings shall ensure that such meeting is promptly called in accordance with the provisions of this Agreement and, if relevant, the constitutional documents of International Holdings. The Directors shall be entitled to attend International Holdings Board Meetings by means of conference telephone or any other form of communications equipment, provided that all persons participating in the meeting are able to hear each other throughout such meeting and such person shall accordingly be counted In the quorum and entitled to vote. The International Holdings Board of Directors may invite the Shareholders. any members of management of any entity of the Group, and any other persons (including advisers) to attend any of its meetings as observers provided, however, that the International Holdings Board of

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Directors shall be responsible for procuring that any such observer (other than members of management) will comply with any confidentiality undertakings reasonably required by the International Holdings Board of Directors. For the avoidance of doubt, (i) the International Holdings Board of Directors shall decide by a prior simple majority vote if it accepts the attendance of the observers, and (ii) the observers will not have any rights to vote and will not be counted as part of the quorum at meetings of the International Holdings Board Meetings.

Board Minutes

6.12 Subject lo clause 28, the chairman of International Holdings shall procure that a written record (in sufficient detail to enable the Directors to comprehend in full the matters contained therein) of any International Holdings Board Meeting (IH Minutes) together with copies of any documentation produced al such International Holdings Board Meeting ·shall be sent lo each Director within 5 (five) Business Days of such International Holdings Board Meeting. The IH Minutes shall be ratified by the International Holdings Board of Directors at the next following International Holdings Board Meeting.

Board Committees

6.13 If International Holdings establishes any committee, such committee shall consist of at least 2 (two) persons proposed by IT Ltd and at least 2 (two) persons proposed by CS Ltd. Committees of International Holdings shall operate by consensus and shall only have the power to make recommendations to the International Holdings Board of Directors.

Board Resolutions

6.14 Subject to clauses 11, 12 and 28 and prior to the Majority Interest Date, no resolution of the Directors proposed at any International Holdings Board Meeting shall be effective. including, for the avoidance of doubt, any approval of the Business Plan or Budget, unless it is voted in favour of by a majority of the Directors present al such international Holdings Board Meeting, Including at least 1 (one) IT Ltd IH Director and 1 (one) CS Lid IH Director. Each Director shall have 1 (one) vote, except that any Director who Is absent from a meeting may elect in writing (for the avoidance of doubt and for the purposes of this clause 6.14 such election in writing may be delivered by electronic mail pursuant to clause 44.3) any other Director to act as his unfettered alternate (who must be a Director) and to vote in his place at the meeting, in which case the Director present shall be entitled to exercise both his own vote and the unfettered vote of the other Director(s) that he represents, and the represented Director shall be deemed to be present and counted for quorum purposes. A person entitled to be present at an International Holdings Board Meeting or of a committee of the International Holdings Board of Directors shall be deemed to be present for all purposes if he is able (directly or by telephonic communication) to speak to and be heard by all those present or deemed to be present simultaneously. A Director so deemed to be present shall be entitled to vote and be counted in a quorum accordingly. For the avoidance of doubt, a written resolution signed and dated by all of the Directors, entitled at the relevant time to attend at and vote at the International Holdings Board Meeting, shall be a valid and effective approval of such matters as if the same had been duly passed at an International Holdings Board Meeting held in accordance with the provisions of this clause 6.

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Appointment of Independent Director

6.15 The Independent Director shall be selected as follows:

(a) whenever there is a vacancy for the position of Independent Director, each Shareholder may propose 1 (one) or more candidates for appointment as the Independent Director, provided that each of the proposed candidates:

(i) either:

(A) has no less than 5 (five} years aggregate experience in a senior position in the telecommunications sector or a sector that a reasonable investor in Korek would deem to be sufficiently relevant to the Business, with 1 (one) or more international companies: or

(B) has experience of serving on the board of directors of an international listed company; and

(ii) is a person with knowledge of doing business in, and the market culture of, the Middle East; and

(iii) has demonstrated a successful track record of taking executive decisions in the carrying on of business with international companies: and.

(iv) is independent of each of the Shareholders and their respective Affiliates,

and each Shareholder shall, when requested in relation to a proposed candidate, provide to the other parties sufficient information required in order to establish that such candidates satisfy all the above criteria;

(b) CS Ltd shall propose for appointment the Independent Director (in accordance with clause 6.3(c)) from the list of candidates proposed by each Shareholder pursuant to clause 6.15(a).

Execution of Documents

6.16 Subject to clauses 6.14, 11, 12 and 28, any documents to be entered into by or on behalf of International Holdings shall be executed, only after approval by the International Holdings Board of Directors. by the chairman of the International Holdings Board of Directors (or in the event that the chairman is absent or otherwise unavailable, any other Director duly authorised by the International Holdings Board of Directors) appointed, from time to time. in accordance with clause 6.10.

7 Korek Supervisory Committee

7.1 The parties and International Holdings shall procure that the Korek Supervisory Committee shall be responsible for the overall direction and management of Korek. Each party shall exercise its powers and rights hereunder to procure that the Korek Supervisory Committee is constituted and operates at all times in the manner set out in this Agreement. The SC Members shall, in their capacity as SC Members, at all times act in the best interests of Korek in accordance with international standards of corporate governance. The Korek Supervisory Committee shall not, however, take any decision (and if it takes any such decision it shall be

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invalid and ineffective) unless such decision complies (where relevant) with the provisions of clauses 11, 12 and 28.

Number of SC Members

7.2 Unless the parties agree otherwise, the Korek Supervisory Committee shall consist of 7 (seven) members.

Appointment and Removal of SC Members

7.3 Subject to clauses 7.5 and 7.6 and prior to the Majority Interest Date:

(a) CS Ltd shall propose for appointment by the Shareholders' general meeting 3 (three) SC Members as members of the Korek Supervisory Committee and may propose the removal of any SC Member so proposed for appointment and propose the appointment of another in his place, provided that 1 (one) of the SC Members so proposed for appointment by CS Ltd shall be Mr. Sirwan Saber Mustafa;

(b) IT Ltd shall propose for appointment by the Shareholders' general meeting 3 (three) SC Members as members of the Korek Supervisory Committee and may propose the removal of any SC Member so proposed for appointment and propose the appointment of another in his place;

(c) CS Ltd shall propose for appointment by the Shareholders' general meeting, 1 (one) Independent person to act as the seventh SC Member of the Korek Supervisory Committee, such person to be selected in accordance with clause 7.18 (Independent SC Member) and propose the removal of the SC Member so proposed for appointment and, in accordance with clause 7.18, propose the appointment of another in his place: and

(d) upon Closing, Mr. Sirwan Saber Mustafa shall be the first chairman of the Korek Supervisory Committee.

7.4 Subject to clauses 7.5 and 7.6 and following the Majority Interest Date:

(a) IT Ltd shall propose for appointment 4 (four) SC Members as members of the Korek Supervisory Committee and may propose the removal of any SC Member so proposed for appointment and propose the appointment of another in his place; and

(b) CS Ltd shall propose for appointment 3 (three) SC Members as members of the Korek Supervisory Committee and may propose the removal of any SC Member so proposed for appointment and propose the appointment of another in his place, provided that one of the SC Members so proposed for appointment by CS Ltd shall be Mr. Sirwan Saber Mustafa.

7.5 In the event that either Shareholder's Relevant Shareholder Percentage of International Holdings shall:

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(a) be less than 20% (twenty per cent.) but not less than 10% (ten per cent.), such Shareholder shall lose its rights to propose the appointment and removal of SC Members pursuant to clauses 7.3 and 7.4 (as applicable) and shall propose for appointment 1 (one) SC Member only as a member of the Korek Supervisory Committee and may propose the removal of such SC Members and propose the appointment of another in his place (in the case of CS Ltd, for as long as Mr. Sirwan Saber Mustafa's Relevant Shareholder Percentage of International Holdings shall exceed 5.1 % (five point one per cent.), such CS Ltd SC Member shall be Mr. Sirwan Saber Mustafa); or

(b) be less than 10% (ten per cent.), such Shareholder shall lose its rights lo propose the appointment and removal of SC Members pursuant to clauses 7 .3, 7.4 and 7 .5{a),

and such Shareholder shall (i) procure the prompt removal of such number of SC Member(s) as have been previously proposed for appointment by such Shareholder and which exceed their rights pursuant to this clause 7 .5, and (ii) shall indemnify Korek for any damages, whether for compensation for loss of office, wrongful dismissal or otherwise, and any reasonable costs and expenses incurred in defending such proceedings which arise out of the removal of such SC Member(s) from office.

7.6 Unless the parties otherwise agree, the members of the Korek Supervisory Committee shall, at all times, be the same persons as the members of the International Holdings Board of Directors and in the event that a Shareholder shall propose the appointment or propose the removal of any member of the International Holdings Board of Directors in accordance with clause 6.3 or 6.4, International Holdings and Korek shall procure that such person shall also be appointed or removed (as applicable) as a member of the Korek Supervisory Committee as soon as reasonably practicable. The Shareholder proposing the removal of any member of the Korek Supervisory Committee shall indemnify Korek for any damages, whether for compensation for loss of office, wrongful dismissal or otherwise, and any reasonable costs and expenses incurred in defending such proceedings which arise out of the removal of such member of the Korek Supervisory Committee from office.

Quorum

7.7 Subject to clause 28, IT Ltd and CS Ltd shall use all reasonable endeavours to ensure that their respective nominees shall attend each meeting ·of the Korek Supervisory Committee and to procure that a quorum is present throughout each such meeting. Subject to clause 7.10, a quorum for each meeting of the Korek Supervisory Committee shall be a majority of SC Members including one proposed for appointment by each of IT Ltd and CS Ltd provided that, if within one hour from the lime appointed for a meeting of the Korek Supervisory Committee, a quorum is not present, the meeting shall be adjourned to the same calendar day of the next week (or such other date as may be agreed by at least, (one) IT Ltd SC Member and at least 1 (one) CS Ltd SC Member (each acting reasonably)) at the same time and place, and with the same agenda, then at such adjourned meeting 4 (four) SC Members shall constitute a quorum.

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Conflict of Interests

7.8 Subject to clause 26, the SC Members may authorise any matter proposed to them in accordance with this Agreement which relates to a situation in which a SC Member has. or can have, an interest which conflicts, or possibly may conflict, with the interests of the Group, provided that (i) he has disclosed to the Korek Supervisory Committee the nature and extent of his interest in writing as soon as he is aware of such interest, and (ii) he shall neither vote on, nor be counted in the quorum in relation to, any resolution of the Korek Supervisory Committee or of a committee of the Korek Supervisory Committee concerning such matter.

Notice of SC Meetings

7.9 Subject to clause 28, meetings of the Korek Supervisory Committee shall be convened by written notice from the Managing Director to each SC Member at least 14 (fourteen) days prior to such Korek Supervisory Committee meeting, unless (i) any SC Member reasonably determines that an Emergency Situation has arisen, or (ii) at least 1 (one) IT Ltd SC Member and at least 1 (one) CS Ltd SC Member approves in writing a shorter notice period (for the avoidance of doubt and for the purposes of this clause 7.9, such approval in writing may be delivered by electronic mail pursuant to clause 44.3). Any notice shall include an agenda identifying in reasonable detail the matters to be discussed at the meeting. Copies of any relevant papers relating to the items specified in the agenda shall be sent to all the SC Members no later than 7 (seven) days prior to the date of the meeting unless (i) at least 1 (one) IT Ltd SC Member and at least 1 (one) CS Ltd SC Member approves a shorter period, or (ii) any SC Member reasonably determines that an Emergency 'Situation has arisen. If any matter is not included on the agenda, the Korek Supervisory Committee shall not decide on it unless at least 1 (one) IT Ltd SC Member and at least 1 (one) CS Ltd SC Member agree otherwise.

SC Resolutions

7.10 Subject to clauses 11, 12 and 28 and prior to the Majority Interest Date, no resolution of the Korek Supervisory Committee shall be effective, including, for the avoidance of doubt, any approval of the Business Plan or Budget, unless it is voted in favour of by a majority of the SC Members present at such meeting of the Korek Supervisory Committee, including at least 1 (one) IT Ltd SC Members and 1 (one) CS Ltd SC Members. Each SC Member (including the chairman of any meeting of the Korek Supervisory Committee) shall have 1 (one) vote, except that any SC Member who is absent from a meeting may elect in writing (for the avoidance of doubt and for the purposes of this clause 7.10, such election in writing may be delivered by electronic mail pursuant to clause 44.3) any other SC Member to act as his unfettered alternate and to vote in his place at the meeting, in which case the SC Member present shall be entitled to exercise both his own vote and the unfettered vote of the other SC Member(s) that he represents, and the represented SC Member shall be deemed to be present and counted for quorum purposes. A person entitled to be present at a meeting of the Korek Supervisory Committee or of a committee of the Korek Supervisory Committee shall be deemed to be present for all purposes if he is able (directly or by telephonic communication) to speak to and be heard by all those present or deemed to be present simultaneously. A SC Member so deemed to be present shall be entitled to vote and be counted in a quorum accordingly. For the avoidance of doubt, a written resolution signed and dated by all of the SC Members,

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entitled at the relevant time to attend at and vote at the Korek Supervisory Committee meeting, shall be a valid and effective approval of such matters as if the same had been duly passed at a meeting of the Korek Supervisory Committee held i. accordance with the provisions of this clause 7.

Chairman at SC Meetings

7.11 Subject to clause 28, the chairman of the Korek Supervisory Committee shall preside as chairman of the meetings of the Korek Supervisory Committee but, if the chairman of the Korek Supervisory Committee is not present within 1 (one) hour after the time appointed for holding a meeting and willing to act, the SC Members present shall elect 1 (one) of their number to be chairman by simple majority vote. For the avoidance of doubt, the first chairman of the Korek Supervisory Committee on Closing shall be Mr. Sirwan Saber Mustafa.

Attendance at SC Meetings

7.12 Subject lo clause 28, the location for the meetings of the Korek Supervisory Committee shall be in the Republic of Iraq or at such other location as may be agreed in writing by at least 1 (one) IT Ltd SC Member and one CS Ltd SC Member. The first meeting of the Korek. Supervisory Committee shall take place immediately upon Closing and thereafter, unless otherwise agreed by the Shareholders, meetings of the Korek Supervisory Committee shall be held at least quarterly. In addition, any SC Member shall be entitled to require the Managing Director to convene a meeting of the Korek Supervisory Committee by giving written notice to the SC Members in which case Korek shall ensure that such meeting is promptly called in accordance with the provisions of this Agreement and, if relevant, the constitutional documents of Korek. The members of the Korek Supervisory Committee shall be allowed to attend the Korek Supervisory Committee by means of conference telephone or any other form of communications equipment, provided that all persons participating in the meeting are able to hear each other throughout such meeting. A person so participating by being present or being in telephone communication with those in the meeting shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and be entitled to vote. The Korek Supervisory Committee may invite the Shareholders, any members of management of any entity of the Group, and any other persons (including advisers) to attend any of its meetings as observers provided, however, that the Korek Supervisory Committee shall be responsible for procuring that any such observer will comply with any confidentiality undertakings reasonably required by the Korek Supervisory Committee. For the avoidance or doubt, (i) the Korek Supervisory Committee shall decide by a prior simple majority vote if it accepts the attendance of the observers and (ii) the observers will not have any rights to vote and will not be counted as part of the quorum at meetings of the Korek Supervisory Committee.

Minutes

7.13 Subject to clause 28, the chairman of the Korek Supervisory Committee shall procure that a written record (in sufficient detail to enable the SC Members to comprehend in full the matters contained therein) of any Korek Supervisory Committee Meeting (SC Minutes). together with copies of any documentation produced at such Korek Supervisory Committee Meeting shall be sent to each SC Member within 5 (five) Business Days of such Korek

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Supervisory Committee Meeting. The SC Minutes shall be ratified by the Korek Supervisory Committee at the next following Korek Supervisory Committee Meeting.

Subsidiary Boards

7.14 The members of the boards of a subsidiary or undertaking of Korek shall be proposed by the Korek Supervisory Committee. Each relevant board of directors shall consist of at least 1 (one) director proposed for appointment by IT Ltd and at least 1 (one) director proposed for appointment by CS Ltd. The Shareholders shall be entitled to receive reasonable notice of and attend any meeting of the board of directors of a subsidiary or undertaking of Korek. The shareholders shall not have a right to vote at any meeting of the board of directors of a subsidiary or undertaking of Korek.

Appointment of Chairman

7.15 Provided that 20% {twenty per cent.) or more of the Shares are held by CS Ltd, CS Ltd shall propose a candidate (who shall be a CS Ltd SC Member} for appointment by the Korek Supervisory Committee as the chairman of the Korek Supervisory Committee. If such proviso ceases to be correct, the SC Members shall propose a candidate for appointment as the chairman of the Korek Supervisory Committee from among their number.

Conversion to PJSC

7.16 The provisions of this clause 7 shall be amended by clause 27 upon Korek converting into a PJSC. Further, references in this Agreement to the Korek Supervisory Committee (and SC Members) shall (upon Korek converting into a PJSC) unless the context otherwise requires be deemed to refer to the PJSC board of directors (and its directors).

7.17 The parties acknowledge and agree that the provisions of this Agreement are deliberately intended to set out the detailed corporate governance arrangements for Korek as agreed between the parties. If any of the provisions of this Agreement conflict with or provides any other additional provisions, then the provisions of this Agreement shall prevail as between the parties.

Appointment of the Independent SC Member

7.18 The Independent SC Member shall be selected as follows:

(a) whenever there is a vacancy for the position of Independent SC Member, each Shareholder may propose 1 (one) or more candidates for appointment as the Independent SC Member, provided that each of the proposed candidates:

(i) either:

(A) has no less than 5 (five) years aggregate experience in a senior position in the telecommunications sector or a sector that a reasonable investor in Korek would deem to be sufficiently relevant to the Business, with 1 (one) or more international companies; or

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(B) has experience of serving on the board of directors of an international listed company; and

(ii) is a person with knowledge of doing business in, and the market culture of, the Middle East; and

(iii) has demonstrated a successful track record of taking executive decisions in the carrying on of business with international companies; and

(iv) Is independent of each of the Shareholders and their respective Affiliates,

each Shareholder shall, when requested in relation to a proposed candidate, provide to the other parties sufficient information required in order to establish that such candidates satisfy all criteria;

(b) CS Ltd shall propose the Independent SC Member for appointment (in accordance with clause 7.3(c)) from the list of candidates proposed by each Shareholder pursuant to clause 7.18(a).

8 Senior Management of Korek

8.1 Subject to clauses 8.3 and 8.6, from Closing, all members of the Korek Supervisory Committee may propose candidates for appointment to the Korek Supervisory Committee as Senior Managers of Korek, and may propose the removal of any Senior Manager and the appointment of another in his place (in each case, such person to be proposed for appointment or remove a Senior Manager of Korek, a Management Candidate), provided that such member of the Korek Supervisory Committee shall:

(a) give the Korek Supervisory Committee 10 (ten) Business Days' notice of the proposal setting out in reasonable detail the reasons why they believe that it is appropriate for such Management Candidate to be appointed or removed (Appointment Notice);

(b) permit any other member of the Korek Supervisory Committee to object, on objective grounds, to such proposal and to propose an alternative candidate; and

(c) refer to and take into account the criteria for such appointment or removal as agreed by the Shareholders from time to time. which criteria shall include the bases on which individuals should be removed from office, including (without limitation): (i) a failure to adhere to certain parameters (as specified from time to time by the Shareholders in the then current adopted Business Plan;: (ii) bankruptcy; (iii) a breach of law or regulation (except in relation to minor offences such as minor traffic violations); (iv) gross misconduct: and (v) any other criteria as may be agreed between the Shareholders.

8.2 Upon receipt of an Appointment Notice, the Korek Supervisory Committee shall decide by simple majority whether to appoint or remove (as applicable) any Management Candidate proposed pursuant to clause 8.1.

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8.3 CS Ltd shall propose the candidate for appointment as the CRO and may propose the removal of the CRO and the appointment of another in his place. Subject to clause 8.6, IT Ltd shall propose candidates for appointment as (i) the CEO, and (ii) the CFO and may propose the removal of the CEO or the CFO and the appointment of another in their place.

8.4 The Managing Director shall be the person to formally appoint and remove the Senior Managers and the CEO proposed pursuant to clauses 8.1, 8.2. 8.3 and 8.6.

8.5 The CEO shall be the sole executive reporting directly to the Managing Director and all discussions, communications and interactions between the Managing Director and the Senior Managers shall be carried out together with the CEO and the Managing Director shall have access to the information provided by the Senior Managers to the CEO at all times.

8.6 For the duration of the Management Consultancy Agreement, (i) the CEO shall, and the Senior Managers (other than the CRO) may (where applicable under the Management Consultancy Agreement at that time), be proposed pursuant to the terms of the Management Consultancy Agreement, and (ii) the parties shall take such actions as shall be required to ensure such candidates are able to take up and fulfil such roles for the benefit of the Business.

8.7 The parties and the Managing Director shall take all reasonable steps lo ensure (so far as they are abie) that, at all times:

(a) the CEO and the Senior Managers will act in accordance with the instructions of the International Holdings Board of Directors and the Korek Supervisory Committee and the terms of this Agreement and the Transaction Documents; and

(b) the CEO and the Senior Managers shall have full authority, acting in the best interests of Korek, to implement the then current Business Plan in accordance with the then current approved Budget.

8.8 The CEO and, if necessary, the Senior Managers shall provide the Korek Supervisory Committee with such access to the CEO and Senior Managers, the documents, reports, records and books of the CEO and the Senior Managers and any other information as it may reasonably require to monitor compliance with this clause 8. The CEO will report to, and advise, the Managing Director and the Korek Supervisory Committee, on a regular basis, in respect of any proposed amendments to the Business Plan and Budget or the activities of Korek that the CEO and Senior Managers believe will be in the best interests of Korek.

9 Managing Director of Korek

...

9.4 The parties shall procure that, at all times, the Managing Director shall act in accordance with clause 8.4, the best interests of Korek, the By-Laws, any resolution passed by the shareholders of Korek, the instructions of the Korek Supervisory Committee and any FPC Proposal adopted by the International Holdings Board of Directors or the Korek Supervisory Committee provided that such instructions and the FPC Proposal are not contrary to Iraqi law and are in accordance with the provisions of the National Mobile Licence.

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11 Shareholder Veto Matters

11.1 The parties shall (and shall procure that International Holdings and Korek shall) use their respective powers to ensure, so far as they are legally able, that no action or decision relating to any of the matters set out in clause 11.2 below, is taken (whether by the International Holdings Board of Directors, the Korek Supervisory Committee, any entity within the Group or any of the officers or managers within the Group) without the prior approval or written consent of any party whose Relevant Shareholder Percentage of International Holdings (together with any of their Affiliates) shall exceed 10% (ten per cent.) (Shareholder Veto Matters).

11.2 The Shareholder Veto Matters are any decision, action or omission which may involve:

(a) constitutional documents: amending the constitutional documents of any entity within the Group save for any immaterial amendments which do not affect the rights of any Shareholder or any amendments which are required by law;

(b) change in nature of the Business: materially changing the nature or scope of the Business (as summarised in clause 3} Including the introduction or discontinuance of any field of activity and the relocation or expansions of the Business, or the commencement of any new business not being ancillary or incidental to the Business;

(c) conversion of Korek: converting Korek or any other entity within the Group from a limited liability company to any other type of company;

(d) changes in share capital: changing the number of, or rights, privileges or preferences attaching to, shares in any entity within the Group (including any cancellation, conversion, consolidation or subdivision of shares) or granting any option or interest over any shares or any uncalled capital of any entity within the Group;

(e) equity funding: any funding plan for the Group which is not provided for in the then current adopted Budget or Business Plan or which requires new Shareholder equity contributions;

(f) acquisitions: any entity within the Group acquiring (whether in a single transaction or series of transactions) any business (or any material part of any business) or any material asset, or any shares in any company, or making any other investment, or entering into any other transaction other than in the ordinary course of business and: (i) where the acquisition or investment or transaction is. not provided for in the then current adopted Budget or Business Plan; and (ii) where the acquisition price of that business or those shares exceeds the higher of: (I)·US$10 million: or (II) 10% (ten per cent.) of the total capital expenditure provided for in the then current adopted Budget or Business Plan;

(g) winding up: any proposal to wind up any entity within the Group or other voluntary proceeding seeking liquidation, administration (whether out of court or otherwise). reorganisation, readjustment or other relief under any bankruptcy, insolvency or similar law or the appointment of a trustee, receiver, administrator {whether out of court or otherwise) or liquidator or similar officer;

(h) establishing subsidiaries: any entity within the Group establishing any subsidiary or undertaking;

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(i) dividends: any entity within the Group declaring or paying any dividend or distribution where any dividend or distribution is not provided for in the then current adopted Budget or Business Plan and where declaring or paying any dividend or distribution would result in the Group's Indebtedness being greater than the Group's EBITDA for the preceding 12 (twelve) month period;

(j) exit: a Listing, Sale or refinancing (other than pursuant to the IT Ltd Shareholder Loan) or any entity of the Group;

(k) accounts or accounting policies: approving the Group's statutory accounts or modifying the accounting policies of any entity within the Group;

(l) auditors: appointing or removing any auditor of any entity within the Group: and

(m) Promissory Note: save as contemplated pursuant to the Subscription Agreement, any transfer of any rights in the Promissory Note.

11.3 During the period up to the Majority Interest Date. the parties shall (and shall procure that International Holdings and Korek shall) use their respective powers to ensure. so far as they are legally able, that no action or decision (whether by the International Holdings Board of Directors, the Korek Supervisory Committee, any entity within the Group or any of the officers or managers within the Group) is taken which (i) relates to any of the matters specified in clause 11.4 (IT Ltd Veto Matters), or (ii) may involve adopting any Business Plan or Budget for the Group or any proposal for financing in excess of the financing for the Group specified in the then current adopted Business Plan or Budget (Funding Plan). or approving or ratifying any departure from the then current Business Plan, Funding Plan or Budget for the Group, in each case, without the prior approval or written consent or IT Ltd (provided that IT Ltd shall not withhold its approval or consent in respect of any financing obtained in compliance with clause 5.8).

11.4 The IT Ltd Veto Matters are any decision, action or omission which may involve:

(a) financing: determining that the Group requires further working capital and determining the method of procuring such additional funding, relevant amounts and terms thereof;

(b) acquisitions: any entity within the Group acquiring (whether in a single transaction or series of transactions) any business (or any material part of any business) or any material asset, or any shares in any company, or making any other investment, or entering into any other transaction other than in the ordinary course of business and where the acquisition price of that business or those assets or shares is below: (i) US$10 million; or (ii) 10% (ten per cent.) of the total capital expenditure provided for in the then current adopted Budget or Business Plan for the Group;

(c) disposals: any entity within the Group disposing or (whether in a single transaction or series of transactions) any business (or any material part of any business) or any shares in any company or entering into any other transaction other than in the ordinary course of business and: (i) where the disposal or transaction is not provided for in the then current adopted Budget or Business Plan for the Group; or (ii) where the disposal price of that business or those assets

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or shares exceeds the higher of: (I) US$10 million: or (II) 10% (ten per cent.) of the total capital expenditure provided for in the then current adopted Budget or Business Plan;

(d) partnerships and joint ventures: any entity within the Group entering into (or terminating) any material partnership, joint venture, profit-sharing agreement, technology licence or collaboration where entry into or termination of the partnership, joint venture, profit-sharing agreement, technology licence or collaboration is not provided for in the then current adopted Budget or Business Plan;

(e) capital expenditure: any entity within the Group Incurring any capital expenditure in respect of any single item or project (or related items or projects) where any capital expenditure to be incurred in respect of any single item or project (or related items or projects), is not in the ordinary course of business and: (i) where the incurrence of the capital expenditure is not provided for in the then current adopted Budget or Business Plan; and (ii) where the incurrence of the capital expenditure exceeds the higher of: (I) US$10 million: or (II) 10% (ten per cent.) of the total capital expenditure provided for in the then current adopted Budget or Business Plan;

(f) material contracts: any entity within the Group entering into, terminating or making any material amendment to any contract. liability or commitment which is not provided for in the then current adopted Budget or Business Plan and where the total value of such contract, liability or commitment exceeds the higher of: (i) US$10 million; or (ii) 10% (ten per cent.) of the aggregate contingent and non-contingent liabilities of the most recent audited balance sheet of the Group;

(g) senior managers: appointing or removing any senior manager of the Group:

(h) Intellectual Property Rights: any entity within the Group making any material acquisition or disposal (including any assignment, grant or entering into of any material licence) of or relating to any intellectual property owned or used by the Group other than in relation to the Brand Licence Agreement;

(i) branding: changing the logo, business name or trade marks of the Group other than in accordance with the Brand Licence Agreement:

(j) material litigation: decisions relating to the initiation and/or conduct (including the settlement) of any material litigation including any legal proceedings to which any entity within the Group is a party which adversely affects or might reasonably be expected to adversely affect the National Mobile Licence;

(k) National Mobile Licence: any entity within the Group taking any steps or actions or making any decisions which materially adversely affects or might reasonably be expected to have a material adverse effect on the National Mobile Licence or the rights and obligations of any entity within the Group with regard to the CMC or agreeing a settlement of any amounts payable to the CMC (other than in connection with a CMC Reduction in accordance with clause 8.1 of the Subscription Agreement);

(l) licences: entering into, amending (in any material respect) or terminating any material licence, including the National Mobile Licence;

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(m) cash management: any entity within the Group entering into or terminating any agreements or arrangements, or varying (in any material respects) such agreements or arrangements, in relation to the cash management of the Group (including in relation to decisions relating to hedging, foreign exchange and earning a return on the Group's cash) which is not provided for in the then current adopted Budget or Business Plan:

(n) ordinary course: any entity within the Group taking any steps or actions or making any decisions other than in the ordinary course of business and: (i) where the decisions, steps or actions are not provided for in the then current adopted Budget or Business Plan; and (ii) where the decisions, steps or actions would result in the incurrence of capital expenditure the higher of (I) US$10 million or (II) 10 % (ten per cent.) of the total capital expenditure provided for in the then current adopted Budget or Business Plan:

(o) borrowings: any entity within the Group incurring any indebtedness or raising money or guaranteeing, pledging or providing any other form of security for any indebtedness of the Group which would result in the Group's aggregate indebtedness being greater than the higher of: (i) the total amount of indebtedness stated in the then current adopted budget or business plan for the Group: or (ii) 150% (one hundred and fifty per cent.) of the total amount of aggregate indebtedness incurred by the Group in the preceding 12 (twelve) month period (such amount to be increased by a percentage equal to the percentage increase in CPI over the same 12 (twelve) month period);

(p) release of obligations: any release, modification or abrogation of any significant liabilities, obligations or covenants (whether contingent or otherwise) owed to the Group where such amounts shall be regarded as significant if they are not provided for in the then current adopted Budget or Business Plan and (i) exceed US$10 million: or (ii) relate to a liability, obligation or covenant from or on behalf of IT Ltd or any of CS Ltd and/or their respective affiliates);

(q) Management Consultancy Agreement: following the termination of the Management Consultancy Agreement the entering into of any agreement or arrangement in respect of the same or similar subject matter as the Managemenl Consultancy Agreement with any person who is engaged in any activity that is in direct or indirect competition with ASN or any of its Affiliates:

(r) Alcazar Management Services Agreement: following the termination of the Alcazar Management Services Agreement, the entering into of any agreement or arrangement in respect or the same or similar subject matter as the Alcazar Management Services Agreement (the Replacement Services Agreement) unless Alcazar had been given the opportunity to provide the services offered under such agreement or arrangement and was unable to do so on terms and conditions which were at least comparable in terms of quality and pricing as the Replacement Services Agreement; and

(s) Shareholders Resolutions: any amendment or replacement of the Shareholders Resolutions or the passing of any resolution of the shareholders of Korek which is contrary to or inconsistent with the Shareholders Resolutions.

11.5 Where any matter is proposed for approval as a Shareholder Veto Matter or an IT Ltd Veto Matter pursuant to clause 11.1 or 11.3 and such matter may be prohibited or restricted under the terms of the IT Ltd Shareholder Loan Agreement (or any other agreement pursuant

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to which IT Ltd has provided a loan to International Holdings or Korek), including, without limitation, those provisions of the IT Ltd Shareholder Loan Agreement which are permissive If a matter is a Permitted Transaction (as defined in the IT Ltd Shareholder Loan Agreement):

(a) International Holdings or Korek (as applicable) shall ensure that (i) the notice convening the International Holdings Board Meeting or the Korek Supervisory Committee (as applicable) at which such approval shall be sought (to be sent to the Directors pursuant to clause 6.9 or the SC Members pursuant to clause 7.9 (as applicable) shall include reasonably comprehensive details of those provisions of the IT Ltd Shareholder Loan Agreement which may prohibit or restrict the matter(s) for which approval is sought (IT Ltd SLA Requirements). and (ii) in addition to being sent to the Directors pursuant to clause 6.9 or the SC Members pursuant to clause .7.9 (as applicable), a copy of the notice referred to in (i) above shall also be sent to IT Ltd (in its capacity as tender under the IT Ltd Shareholder Loan) in accordance with clause 44:

(b) IT Ltd (in its capacity as Lender under the IT Ltd Shareholder Loan) may prior to such meeting being held, notify the IT Ltd IH Directors and/or the IT Ltd SC Members (as applicable) of its view on the matters proposed for approval in light of the IT Ltd SLA Requirements; and

(c) where any Shareholder Veto Matter or IT Ltd Veto Matter is approved or not approved pursuant to clause 11.1 or 11.3 (as applicable), the parties shall procure that a minute of the decision relating to such Shareholder Veto Matter or IT Ltd Veto Matter shall be provided to IT Ltd. (in its capacity as Lender under the IT Ltd Shareholder Loan) within 8 (eight) Business Days of such decision becoming effective, including reasonably comprehensive details of each of the IT Ltd SLA Requirements and whether the Shareholder Veto Matter or IT Ltd Veto Matter was approved in relation to each of such IT Ltd SLA Requirements,

and for the avoidance of doubt, any consent or approval granted by IT Ltd pursuant to clause 11.1 or 11.3 shall not be deemed to be a waiver of, or consent to an amendment of, the terms of the IT Ltd Shareholder Loan Agreement and no view or opinion of IT Ltd. provided pursuant to clause 11.5(b) above shall invalidate such consent or approval.

15 Information and Reporting

15.1 Subject to clause 15.6, each Shareholder shall be provided with access to all the books, records, accounts, employees and other information kept by any entity within the Group which it may reasonably require provided such access shall not materially interfere with the operation of the Business. Each party shall be entitled to receive all material information on the operations of the Group, including monthly management accounts and operating statistics and other trading and financial information.

15.2 Without prejudice to the generality of clause 15.1 and subject to clause 15.6, International Holdings shall supply the parties with copies of:

(a) the audited accounts for each entity within the Group (complying with all relevant legal requirements) within 7 (seven) days of the receipt by International Holdings of the final audited accounts from International Holdings' auditors;

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(b) *a Business Plan and itemised revenue and capital Budget for each Financial Year covering each principal division of the Group and showing proposed trading and cash flow figures, manning levels and all material proposed acquisitions, disposals and other commitments for that Financial Year;*

(c) *following the Transition Date, monthly management accounts of the Group; which shall include a consolidated profit and loss account, balance sheet and cash now statement (including a statement of progress against the then current adopted Business Plan, a statement of any variation from the quarterly revenue Budget and up-to-date forecasts for the balance of the relevant Financial Year and itemising all transactions referred to in the capital Budget entered into by each principal division of the Group during that period), within 20 (twenty) Business Days of the end of the period to which they relate;*

(d) *copies of any communication, document, notice or letter received by the Group from any Government Entity in the Republic of Iraq as soon as reasonably practicable;*

(e) *all documents dispatched by International Holdings to its creditors generally at the same time as they are dispatched;*

(f) *details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any entity within the Group by the CMC as soon as reasonably practicable upon becoming aware of them;*

(g) *details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any entity within the Group, and which might, if adversely determined, have a material adverse effect on any entity within the Group, as soon as reasonably practicable upon becoming aware of them;*

(h) *details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against International Holdings by any Third Party Lender as soon as reasonably practicable upon becoming aware of them;*

(i) *a list of any contingent liabilities; and*

(j) *any financial data reasonably requested by the parties.*

15.3 Subject to clause 15.6, a draft of the Business Plan and Budget for each full Financial Year commencing after Closing will be provided by International Holdings for approval (with or without amendments) in accordance with clause 11 no less than 45 (forty-five) Business Days before the start of that Financial Year. The Business Plan and Budget as so approved shall be the Business Plan and Budget adopted for the Financial Year to which they relate.

15.4 Subject to clauses 15.6 and 15.7, International Holdings and Korek shall procure so far they are able (and without prejudice to the parties' rights and obligations pursuant to schedule 7 of the Subscription Agreement) that:

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(a) *the Shareholders are kept fully informed of the progress of any material dispute or potential dispute in relation to the tax affairs of International Holdings and Korek;*

(b) *the Shareholders are kept fully informed of the progress of any negotiations with the CMC or any other Government Entity and given the opportunity to attend any key meetings with the CMC or any other Government Entity;*

(c) *the Shareholders, as soon as reasonably practicable, receive copies of all material correspondence with any tax authority insofar as it is relevant to the dispute or potential dispute; and*

(d) *no document will be submitted to any tax authority in respect of the dispute or potential dispute which is not true and accurate in all material respects.*

15.5 Unless agreement is reached to the contrary, IT Ltd, CS Ltd and International Holdings shall procure that International Holdings is a tax resident and liable to tax solely in Dubai and that Korek is a tax resident and liable to tax solely in the Republic of Iraq.

15.6 A Shareholder shall cease to have the benefit of the rights set out in clauses 15.1, 15.2 (other than 15.2(a) and 15.2(e)), 15.3 and 15.4 upon its Relevant Shareholder Percentage in International Holdings falling below 20% (twenty per cent).

15.7 The obligations of International Holdings set out in clause 15.4 shall be conditional on the parties supplying such information and/or correspondence as is their respective possession or power in relation to such dispute or potential dispute to International Holdings.

15.8 CS Ltd shall procure that following Signing, Korek shall comply with all applicable corruption, anti-money laundering and anti-terrorist financing legislation of the Republic of Iraq including the guidelines and recommendations of the Iraqi Commission on Integrity.

15.9 The parties shall procure that International Holdings and Korek shall provide such information and assistance as may be reasonably required by the Shareholders to enable the Shareholders to incorporate financial information about the Group in their own or their Affiliates statutory accounts.

15.10 IT Ltd shall provide to CS Ltd a copy of its annual accounts and any interim accounts in each case within 10 (ten) Business Days of such information being provided to the shareholders in IT Ltd.

15.11 CS Ltd shall provide to IT Ltd a copy of its annual accounts and any interim accounts in each case within 10 (ten) Business Days of such information being provided to the shareholders in CS Ltd.

28 Related Party Transactions

28.1 Each Shareholder agrees that where it becomes aware that its interests (or those of an Affiliate of such Shareholder) conflict or are reasonably likely to conflict with the interests of the Group in any material respect, each such Shareholder shall immediately give notice in writing to International Holdings, the Korek Supervisory Committee and the other Shareholder(s) of such conflict or potential conflict.

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28.2 For the purposes of this clause 28:

(a) Conflict Restrictions means the following restrictions and exclusions which are to apply only to the specific circumstances and matters and to the relevant Shareholder (and/or Directors proposed for appointment, or SC Members appointed, by such Shareholder) to which such Conflict Restrictions are expressly stated to apply in this Agreement (and no others):

(i) exclusion from all decisions directly relating to such circumstance or matter: and

(ii) complete disentitlement and disenfranchisement from exercising any consent or any votes on any resolutions proposed directly in connection with such circumstance or matter {including any directly connected vote which would otherwise be a Shareholder Veto Matter or a Super Majority Approval Matter) and, to such extent, the requirements as to quorum specified in this Agreement shall be amended so that a quorum may be present notwithstanding the relevant Shareholder and/or any Director or SC Member proposed for appointment by it may not be in attendance or notified thereof.

(b) Conflict Exclusions means the following restrictions and exclusions which are to apply only to the specific circumstances and matters and to the relevant Shareholder (and/or Directors proposed for appointment, or SC Members appointed, by such Shareholder) to which such Conflict Exclusions are expressly stated to apply in this Agreement (and no others):

(i) exclusion from all decisions directly relating to such circumstance or matter:

(ii) complete disentitlement and disenfranchisement from attending the relevant parts of any meetings or exercising any consents or votes on any resolutions proposed directly in connection with such circumstance or matter (including !any directly connected vote which would otherwise be a Shareholder Veto Matter or a Super Majority Approval Matter) and, to such extent, the requirements as to quorum specified in this Agreement shall be amended so that a quorum may be present notwithstanding the relevant Shareholder and/or any Director or SC Member proposed for appointment by it may not be in attendance or notified thereof; and

(iii) disentitlement and disenfranchisement from receiving or being provided with any information from or by the Group (including any legal advice received by the Group) directly in connection with· such circumstance or matter. For the avoidance of doubt nothing In this clause 28.2(b)(iii) shall prevent such Shareholder (and/or any Directors proposed for appointment, or SC Members appointed, by such Shareholder) receiving a redacted notice in respect of a meeting at which such circumstance or matter is discussed.

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28.3 Each Shareholder agrees that, if it or any member of its Shareholder Group, is a party or proposed party In any Related Party Transaction which for the purposes or this clause 28.3 shall include a dispute by International Holdings, as a borrower, of the existence of an event of default under the IT Ltd Shareholder Loan (an Interested Shareholder), all matters relating to such Related Party Transaction, including the exercise of rights and/or compliance with obligations by any entity within the Group, but excluding any claims (which shall be dealt with in accordance with clauses 28.4 and 28.5), shall be dealt with by the other Shareholder (or if the other Shareholder so directs the Korek Supervisory Committee, International Holdings or the International Holdings Board of Directors) and, accordingly, the Interested Shareholder (and/or any Director proposed for appointment, or SC Member appointed, by it together with any alternate or nominee) shall in relation to such matters, be bound by and subject to the Conflict Restrictions unless the other Shareholder otherwise agrees in writing and the rights under clauses 11 and 12, as the case may be. shall not apply to such Interested Shareholder. For the avoidance of doubt, this clause 28.3 shall not apply to clauses 5.10 to 5.17.

28.4 Where either of the Shareholders or any of its Affiliates asserts any claim against any entity within the Group (whether under this Agreement or otherwise):

(a) CS Ltd shall (if such claim is asserted by IT Ltd or one of its Affiliates) be entitled to conduct such claim in the name and at the reasonable expense of the relevant entity within the Group (or if CS Ltd so directs, the Korek Supervisory Committee, International Holdings or the International Holdings Board of Directors shall conduct such claim) without IT Ltd's further authority or Involvement in the defence or the claim and, accordingly, IT Ltd together with any Directors proposed for appointment, or SC Members appointed, by it shall, in relation to such claim, be bound by and subject to the Conflict Exclusions unless CS Ltd otherwise agrees in writing: and

(b) IT Ltd shall (if such claim is asserted by CS Ltd or one of its Affiliates) be entitled to conduct such claim in the name and at the reasonable expense of the relevant entity within the Group (or if IT Ltd so directs, the Korek Supervisory Committee, International Holdings or the International Holdings Board of Directors shall conduct such claim) without CS Ltd's further authority or involvement In the conduct of the claim and, accordingly, CS Ltd together with any Directors proposed for appointment, or SC Members appointed, by it shall, in relation to such claim only, be bound by and subject to the Conflict Exclusions unless IT Ltd otherwise agrees in writing.

28.5 Where any entity within the Group has, or either of the Shareholders asserts that any entity within the Group has, any claim against one of the Shareholders or one of its Affiliates, the other Shareholder shall be entitled to conduct such claim in the name and at the reasonable expense of the relevant entity within the Group (or, if such Shareholder so directs International Holdings, the International Holdings Board of Directors or the Korek Supervisory Committee {as applicable shall conduct such claim) without the other Shareholder's further authority or involvement in the conduct of the claim and, in each case, the Shareholder being claimed against (or whose Affiliate is being claimed against) and any Directors proposed for appointment by it or SC Members appointed by it shall, in relation to such claim, be bound by

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and subject to the Conflict Exclusions unless the other Shareholder otherwise agrees in writing.

28.6 International Holdings, the International Holdings Board of Directors, the Korek Supervisory Committee and the Managing Director hereby irrevocably appoint each Shareholder (and any Director proposed for appointment by it and any SC Member appointed by that Shareholder) as their lawful attorneys irrevocably and by way of security for the purpose of doing any act or thing on behalf of them pursuant to, and in accordance with, the provisions of clauses 28.4 and 28.5. International Holdings, the International Holdings Board of Directors, the Korek Supervisory Committee and the Managing Director {as applicable) undertake to ratify whatever any attorney shall lawfully do or cause to be done In accordance with such power of attorney and to indemnify and keep indemnified the attorney from all claims, expenses, damages and losses which the attorney may suffer or incur as a result of the lawful exercise by him of the powers conferred under such power of attorney. Furthermore, upon the written request of any Shareholder, International Holdings, the International Holdings Board of Directors, the Korek Supervisory Committee and the Managing Director shall procure that each other entity within the Group shall grant identical powers of attorney to those granted pursuant to this clause 28.6. Each of the Shareholders agrees to procure, so far as necessary, that all such powers of attorney remain in full force and effect until such time that any claim has been determined or otherwise settled in full.

31 Further Assurances

31.1 So far as it is legally able, each party agrees with the others to exercise all voting rights and powers (direct or indirect) available to it in relation to any person, International Holdings, and/or Korek to ensure that the provisions of this Agreement (and the other agreements referred to in it) are completely and punctually observed and performed and generally that full effect is given to the principles set out in this Agreement.

31.2 Each party shall take (or procure the taking of) all such steps and execute (or procure the execution of) such further documents as may be required by law or be reasonably necessary to give full effect to this Agreement and the other Transaction Documents.

31.3 Each party shall procure that its Affiliates comply with all obligations under this Agreement and/or the Transaction Documents which are expressed to apply to any such Affiliates.

31.4 The liability of a party under this clause 31 shall not be discharged or impaired by any amendment to or variation of this Agreement, any release of or granting of time or other indulgence to any other member of its group or any third party or any other act, event or omission which but for this clause 31 would operate to Impair or discharge the liability of such party under this clause 31.

Schedule 2

Definitions

Affiliate means:

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(a) in the case of a person which is a body corporate, any other entity which, directly or indirectly, owns or controls, is under common ownership or control with or is owned or controlled by, such party, in each case from time to time;

(b) in the case of a person which is an individual:

(i) any spouse and/or any lineal descendants by blood or adoption;

(ii) any person or persons acting in its or their capacity as trustee or trustees of a trust of which such individual is the settler: or

(iii) any body corporate or such other entity of which such a person is a director or manager or which, directly or indirectly, is owned or controlled by such a person,

save that, in the case of CS Ltd and IT Ltd and each of their Affiliates. the definition of Affiliate shall not include the Group or Sanatel or Iraqcell but, for the purposes of clause 17 and clause 28: (i) France Telecom S.A. and its Affiliates shall be deemed to be Affiliates of IT Ltd, and (ii) any shareholder or CS Ltd holding an indirect interest in Shares comprising at least 5% (five per cent.) of the total number of Shares and their Affiliates shall be deemed to be an Affiliate of CS Ltd;

....

Group means International Holdings, Korek and their subsidiaries from time to time;

....

Related Party Transactions means any transactions with Shareholders or their Shareholder Groups: any entity within the Group or entering into any transaction with any of the Current Shareholders, IT Ltd or the CS Ltd Group and/or their respective Affiliates except for: (i) the Current Shareholders' Representative Services Agreement; (ii) the Management Consultancy Agreement. (iii) the Alcazar Management Services Agreement, (iv) the Sourcing and Procurement Agreement, and (v) the IT Ltd Shareholder Loan.

The Subscription Agreement

14 Guarantee

CS Ltd Guarantee

14.11 Mr. Sirwan Saber Mustafa unconditionally and irrevocably guarantees to IT Ltd and to each of its Affiliates as a continuing obligation to procure that CS Ltd and the Current Shareholders will comply properly and punctually with their respective obligations under this Agreement and the Transaction Documents.

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23 Further Assurances

23.1 Each party shall take (or procure the taking of) all such steps and execute (or procure the execution of) such further documents as may be required by law or be reasonably necessary to give full effect to this Agreement and the other Transaction Documents.

23.2 Each party shall procure that its Affiliates comply with all obligations under this Agreement and/or the Transaction Documents which are expressed to apply to any such Affiliates.

23.3 The liability of a party under this clause 23 shall not be discharged or impaired by any amendment to or variation of this Agreement, any release of or granting of time or other indulgence to any other member of its group or any third party or any other act, event or omission which but for this clause 23 would operate to impair or discharge the liability of such party under this clause 23.

Management Services Agreement

6. Management Services

6.1 Mr. Sirwan Saber Mustafa will provide, as may be required by the Supervisory Committee from time to time, the following services (the "Management Services") to the Company in relation to the Business:

6.1.1 acting as Managing Director and representing the Company in the Republic of Iraq and abroad before regulatory authorities and private companies and individuals;

6.1.2 responsibility for the overall management of the Company in accordance with decisions of the Supervisory Committee and provisions of the Company's constitutional documents and applicable laws;

6.1.3 entering into commitments and duties in accordance with the approved authority levels set by the Supervisory Committee set out in the Shareholders' Agreement and General Assembly Resolution;

6.1.4 subject to the terms of the Shareholders' Agreement, the CEO Resolution or any ancillary document, delegating or revoking general and special authority to the CEO;

6.1.5 keeping the Supervisory Committee informed and up to date with information received by him and/or the Company in connection with the performance of his duties; and

6.1.6 such other services as may be delegated to him from time to time by the Supervisory Committee.

6.2 Mr. Sirwan Saber Mustafa shall provide the Management Services with all reasonable skill, care and diligence, based on the nature of the Management Services in accordance with all applicable laws and in accordance with the Shareholders' Agreement, the General Assembly Resolution and provisions of the Company's constitutional documents.

6.3 The Company shall reimburse Mr. Sirwan Saber Mustafa, as such amounts are invoiced each Quarter by Mr. Sirwan Saber Mustafa, all reasonable out-of-pocket expenses properly

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incurred by Mr. Sirwan Saber Mustafa (including the reasonable out-of-pocket expenses of up to 2 (two) assistants of Mr. Sirwan Saber Mustafa) in connection with the performance of his duties under clause 6.1 and in accordance with the then current T&L Policies (the "Out-of-Pocket Expenses").

Iraqi Company Law No. 21 of 1997

Article 4: First: The company is a contract binding two or more persons. Each person shall subscribe to the economic project by a quota of the capital or service in order to share the resulting profit or loss.

Second: With the exception of the provisions of Paragraph First of this article:

1. *A company may be established by one natural person in accordance with the provisions of this law. Such a company will henceforth be referred to as a "sole owner enterprise."*

2. *A limited liability company may be formed with one owner in accordance with the provisions of this law.*

Third: Owners of capital in a company may not exercise their voting or other authority in the company to cause it to do or consent to acts that:

1 *harm or disadvantage the company to benefit themselves or those associated with them at the expense of other owners of the company; or*

2. *jeopardize the rights of creditors by causing withdrawal of capital or transfer of assets when insolvency is imminent or when prohibited by law.*

Article 119: First. It is impermissible for the chairman or a member of the board to have direct or indirect interests in deals that are concluded with the company, except after obtaining the permission of the general assembly with full disclosure of the nature and extent of such interests. The chairman or board member shall be liable to the company for any damage to it arising from violation of this article. Compliance with this Article shall not exclude liability under Article 4, paragraph Third. Second. It is impermissible for the chairman or a member of the board to vote upon or participate in a matter in which he or she has direct or indirect interests without disclosing the nature and extent thereof to disinterested members and receiving the permission of a majority of them. If no members are disinterested, all may act. In either case, however, the details of the matter shall be recorded in the minutes of the board and made available to the general assembly and the company's external auditors.

Article 120: The chairman and members of the board of directors shall do their best to serve the interests of the company as they would serve their own personal interests, and run the company in a sound and legal manner. They are responsible before the general assembly for any work they undertake in this capacity.

Article 124: In the exercise of his jurisdictions and powers, the managing director is subject to the provisions of Articles 119 and 120 of this Law. In addition, the compensation of the five most highly compensated employees of the company, in whatever form received, shall be disclosed in writing to the general assembly.

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DIFC Companies Law – DIFC Law No. 2 of 2009

53. Duties of Directors and officers

A Director or other officer of a Company, in exercising his powers and discharging his duties, shall:

(a) act honestly, in good faith and lawfully, with a view to the best interests of the Company; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

54. Duty of Directors to disclose interests

(1) A Director of a Company who has, directly or indirectly, an interest in a transaction entered into or proposed to be entered into by the Company or by a subsidiary of the Company which to a material extent conflicts or may conflict with the interests of the Company and of which he is aware, shall disclose to the Company the nature and extent of his interest.

(2) The disclosure under Paragraph (1) shall be made as soon as practicable after the Director becomes aware of the circumstances which gave rise to his duty to make it.

DIFC Law of Obligations - DIFC Law No. 5 of 2005

Article 159 (Fiduciary duties)

1. Loyalty

A fiduciary must act in good faith in what he considers to be the interests of the principal without regard to his own interests.

DIFC Law of Damages and Remedies – DIFC Law No. 7 of 2005

Article 39 (Specific Performance)

(1) The Court may order one party to a contract to perform its contracted obligations so long as:

(a) the obligation is specific and/or the subject matter of the obligation is specific; and

(b) the Court decides that damages are unquantifiable or are not a sufficient remedy.

(2) Contracts for personal services may not be specifically enforced.

(3) An order for specific performance may be made together or in combination with any other order as the Court sees fit to decide.

Annex A27

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ANNEX B

Pre-Award Interest

The following sums are due to International Holdings Limited and to Iraq Telecom Limited in respect of pre-Award interest:

Jointly and severally due from Korek International (Management) Limited (CS Ltd.) and Sirwan Saber Mustafa to International Holdings Limited:

Opening balance (US$)	Period	Interest at 3% p.a. (US$)	Closing balance (US$)
1,012,000,000	1/1/2014-31/12/2014	30,360,000	1,042,360,000
1,042,360,000	1/1/2015-31/12/2015	31,270,800	1,073,630,800
1,073,630,800	1/1/2016-31/12/2016	32,208,924	1,105,839,724
1,105,839,724	1/1/2017-31/12/2017	33,175,192	1,139,014,916
1,139,014,916	1/1/2018-31/12/2018	34,170,447	1,173,185,363
1,173,185,363	1/1/2019-31/12/2019	35,195,561	1,208,380,924
1,208,380,924	1/1/2020-31/12/2020	36,251,428	1,244,632,352
1,244,632,352	1/1/2021-31/12/2021	37,338,971	1,281,971,323
1,281,971,323	1/1/2022-31/12/2022	38,459,140	1,320,430,463
1,320,430,463	1/1/2023-20/3/2023	8,573,754	1,329,004,217
Total pre-Award interest due		**317,004,217**	

Jointly and severally due from Korek International (Management) Limited (CS Ltd.), Sirwan Saber Mustafa and Korek Telecom Company LLC to Iraq Telecom Limited:

Opening balance (US$)	Period	Interest at 3% p.a. (US$)	Closing balance (US$)
228,800,000	1/1/2014-31/12/2014	6,864,000	235,664,000
235,664,000	1/1/2015-31/12/2015	7,069,920	242,733,920
242,733,920	1/1/2016-31/12/2016	7,282,018	250,015,938
250,015,938	1/1/2017-31/12/2017	7,500,478	257,516,416
257,516,416	1/1/2018-31/12/2018	7,725,492	265,241,908
265,241,908	1/1/2019-31/12/2019	7,957,257	273,199,165
273,199,165	1/1/2020-31/12/2020	8,195,975	281,395,140
281,395,140	1/1/2021-31/12/2021	8,441,854	289,836,994
289,836,994	1/1/2022-31/12/2022	8,695,110	298,532,104
298,532,104	1/1/2023-20/3/2023	1,938,414	300,470,518
Total pre-Award interest due		**71,670,518**	

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