ADGM COURTS
محاكم سوق أبوظبي العالمي

In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

(1) NMC HEALTHCARE LTD (IN ADMINISTRATION) (SUBJECT TO A DEED OF COMPANY ARRANGEMENT)
(2) – (32) THE COMPANIES LISTED IN SCHEDULE 1 TO THIS JUDGMENT
(33) RICHARD FLEMING and (34) BENJAMIN CAIRNS (acting as current joint administrators of NMC Healthcare LTD and former joint administrators of the Claimants (2) – (32))

Claimants

and

(1) DUBAI ISLAMIC BANK PJSC
(2) – (13) THE INSURANCE COMPANIES AND THIRD PARTY ADMINISTRATORS LISTED IN SCHEDULE 2 TO THIS JUDGMENT

Defendants

JUDGMENT OF JUSTICE SIR ANDREW SMITH

Neutral Citation:	[2023] ADGMCFI 0017
Before:	Justice Sir Andrew Smith
Decision Date:	25 July 2023
Decision:	1. The Assignments of Receivables Agreements did not assign any rights or interests of the Non-Guarantor Claimants in Insurance Receivables. 2. The Non-Guarantor Claimants' claim against the First Defendant for restitution or unjust enrichment is rejected. Further submissions are to be made about their other claims. 3. The First Defendant's counterclaim for rectification of the Assignments of Receivables Agreements is dismissed.
Hearing Dates:	22 May 2023 to 13 June 2023 inclusive
Date of Order:	To be formulated by counsel, giving effect to the Judgment, and setting out directions for resolving outstanding and consequential questions.
Catchwords:	Determining issues of foreign law. Adverse inferences from failure to adduce evidence. UAE law, doctrine that fraud vitiates all. UAE law: abuse of rights, article 106 of the UAE Civil Code. UAE law: contractual interpretation, article 265 of UAE Civil Code. UAE law: contract void for want of subject matter, article 210 of the UAE Civil Code. UAE law: rectification, article 197 of the UAE Civil Code. Rectification: governing law. Rectification, ADGM law. UAE law: gift of future property, article 632 of the UAE Civil Code. UAE law agency, actual and ostensible authority. Acts of company manager: article 83(2) of the UAE Companies Law. UAE law, ratification and application of article 135 of the UAE Civil Code. UAE law, unjust enrichment, articles, 318, 319, 324 of the UAE Civil Code. Remedy of declaration.
Cases Cited:	Iraqi Civilians v Ministry of Defence, [2016] UKSC 25 Byers v Saudi National Bank, [2022] EWCA Civ 43 Wisniewski v Central Manchester Health Authority, [1998] PIQR 324 Royal Mail Group Ltd v Efobi, [2021] UKCS 33 Case No. 55 of 2016 (16 January 2017), Abu Dhabi Court of Cassation Case No. 524 of 2000 (18 April 2000), UAE Federal Supreme Court Case No. 135 of 21 (21 November 2000), UAE Federal Supreme Court Case No. 389 of 2001 (3 February 2002), Dubai Court of Cassation Cassation Appeal No. 205 of 17 (1 December 1949), Egyptian Court of Cassation

	Case No. 435 of 21 (12 June 2001), UAE Federal Supreme Court Case No. 153 of 23 (10 November 2002), UAE Federal Supreme Court Case No. 52 of 29 (30 September 2009), UAE Federal Supreme Court Case No. 137 of 23 (10 January 2004), Dubai Court of Cassation Case No. 202 of 13 (10 March 1992), UAE Federal Supreme Court Case No. 280 of 2012 (10 March 2013), Abu Dhabi Court of Cassation National Commercial Bank v Wimborne, (1978) 5 BPR 11958 (NSW) 41 United States Surgical Corp v Hospital Products International Pty Ltd, [1982] 2 NSWLR 766 FSHC Group Holdings Ltd v GLAS Trust Corpn Ltd, [2019] EWCA Civ 1361 Case No. 280 of 2008 (16 June 2009), Dubai Court of Cassation Case No. 163 of 2010 (16 June 2010, Federal Supreme Court Case No. 493 of 2013 (30 October 2013), Abu Dhabi Court of Cassation Case No. 179 of 2013 (7 January 2014), Dubai Court of Cassation Akfar Capital Ltd v Fikry, [2017] ADGMCFI 1
Legislation Cited:	Federal Law No. (5) of 1985 on the Civil Transactions Law of the United Arab Emirates, the UAE Civil Code Federal Law No 2 of 2015 concerning Commercial Companies, the Companies Law Federal Law No 50 of 2022, the Commercial Transactions Law or the Commercial Code Egyptian Law No 131 of 1948, the Egyptian Civil Code
Case Number:	ADGMCFI-2021-042

Parties and representation:	***Second, Fourth to Eighth, Twelfth, Seventeenth, Eighteenth, Twenty First, Twenty Second, Twenty Fourth to Thirty Second Claimants*** Mr Bankim Thanki KC, Ms Felicity Toube KC, Mr Henry King KC, Mr Nico Leslie, Mr Matthew Abraham, Ms Alexandra Whelan and Mr Damien Bruneau Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP ***First Defendant*** Mr Ewan McQuater KC, Mr David Quest KC, Mr Andrew Rose, Mr William Day and Ms Katherine Boucher Instructed by Eversheds Sutherland International LLP ***Fourth Defendant*** Mr Tom Shepherd Instructed by Kennedys ***Thirteenth Defendant*** Mr Michael Patchett-Joyce Instructed by Afridi & Angell

JUDGMENT

Introduction

1. The central questions in this case are about the meaning and effect of two Assignments of Receivables Agreements ("**ARAs**") which were made in April 2018, and more specifically about whether subsidiaries of the First Claimant, NMC Healthcare Limited ("**NMCH")**, thereby assigned to the First Defendant, Dubai Islamic Bank PJSC ("**DIB**"), their rights against twelve companies in so-called "Insurance Receivables": that is to say, in monies payable to the subsidiaries under private health insurance arrangements for medical services and supplies provided to insured patients. The ARAs are governed by the law of the United Arab Emirates ("**UAE**"), and the issues before the Court are mostly governed by that law. The claimants whose claims I decide, the so-called Non-Guarantor Claimants or "**NGCs**", argue that the wording of the ARAs does not evince an intention to assign the subsidiaries' interests, and that, in any case, they are not parties to the ARAs. DIB argues that, if this is so, is the result of mistakes, and that UAE law requires the meaning and effect of the ARAs to be decided by identifying the parties' mutual intentions rather than by interpreting the terms of the ARAs; and, if necessary, they should be rectified so as to give effect to that intention.

2. The NMC Group of companies was the largest healthcare provider in the UAE, operating more than 200 hospitals and other medical facilities. Its many operating companies in the UAE and elsewhere were owned by NMCH, a company now incorporated in the Abu Dhabi Global Market ("**ADGM**"). NMCH's parent company was NMC plc, an English company, registered on the London Stock Exchange.

3. By March 2020, it had been discovered that the NMC Group had incurred enormous debts of some US$ 4.3 billion, which had not been disclosed in its financial statements. On 9 April 2020, NMC plc was put into administration by an order of the English High Court. On 27 September 2020, I made an administration order in respect of NMCH and 35 associated companies on the grounds that they were insolvent. The 36 companies, originally

incorporated variously in the Emirates of Abu Dhabi, Dubai and Sharjah, had been registered in the ADGM under certificates of continuance issued by the ADGM Registration Authority dated 14 September 2020. I appointed as their Joint Administrators, Mr Richard Dixon Fleming and Mr Benjamin Thom Cairns (the "**JAs**"), both of Alvarez & Marsal Europe LLP ("**A&M**"): they, together with Mr Mark Firmis, also of A&M, had earlier been appointed administrators of NMC plc.

4. In 2021, the JAs presented to the creditors of the companies in administration in the ADGM a proposal for reorganisation through a scheme of Deeds of Company Arrangement ("**DOCAs**"). Accordingly, NMCH and 34 of the subsidiary companies in administration (all the 36 companies other than NMC Holding Ltd) entered into DOCAs, which were inter-related and designed to allow the operating subsidiaries to continue as going concerns, providing medical facilities and services. The JAs considered that this scheme provided the best prospect of maximising the returns to all creditors. The proposals were accepted, and the JAs were appointed administrators of all the DOCAs. In the reorganisation, NMCH transferred its interests in the operating companies (and other assets) to a newly created group. On 25 March 2022, the so-called Restructuring Effective Date, the DOCAs of the operating companies came to an end in accordance with their terms. The 34 operating companies that entered into DOCAs are no longer in administration.

The Proceedings

5. DIB, a Dubai company, is an Islamic Bank, which has provided facilities to businesses connected with what became the NMC Group since 2004. After the NMC companies went into administration, DIB took steps to block NMCH's account with it into which Insurance Receivables were paid, the so called "*Amanat*" account. According to the NGCs, between 27 September 2020 and 15 November 2022, NAS Administration Services LLC ("**NAS**"), the Seventh Defendant, paid into the Amanat Account Insurance Receivables to the value of some AED 47 million. DIB also brought proceedings in the Courts of Dubai and Sharjah against various insurance companies, claiming Insurance Receivables to which they said they were entitled.

6. DIB is a creditor of the NMC companies in administration: in April 2021, it submitted a proof of debt in the administration of NMCH and 13 other NMC Group companies. It also claimed that it had an interest in Insurance Receivables of the NMC companies: in its proof of debt, DIB said that it held "*a valid fixed charge security …in its favour*". It has, however, made clear in these proceedings that its primary case is that it took an absolute assignment of Insurance Receivables, and its interest in them is not by way of a charge.

7. By these proceedings, brought by NMCH, 33 other companies that went into administration on 27 September 2020 and the JAs against DIB and twelve Insurance Companies and so-called Third Party Administrators (the "**Insurer Defendants**"), the Claimants disputed DIB's claims to security. On 22 April 2021, DIB issued an application by which it challenged the Court's jurisdiction to grant the relief sought by the Claimants: it relied on:

    a. arbitration agreements in two Master Murabaha Agreements ("**MMAs**") dated 26 April 2018 and 30 April 2018, which were made by DIB with, respectively, NMC Specialty Hospital Ltd ("**Specialty**") and NMC Saudi Arabia Healthcare LLC ("**NMC KSA**") as "*The Purchaser or the Obligor*", by NMCH as the "*Co-Obligor*" and by other NMC companies, who were parties to the MMAs and there referred to as the "*Original Guarantors*"; and

b. jurisdiction clauses in the two ARAs and two Account Pledge and Assignment Agreements ("**APAAs**") dated 26 April 2018 and 30 April 2018, which were entered into by NMCH and DIB.

8. For the reasons set out in a judgment dated 24 May 2021 ([2021] ADGMCFI 0006), and by an order dated 10 July 2021, I stayed the proceedings brought by NMCH and the so-called Original Guarantor claimants, namely Bait Al Shifaa Pharmacy Ltd (**"Bait Al Shifaa"**), the Third Claimant; NMC Pro Vita International Medical Center Ltd (**"Pro Vita"**), the Ninth Claimant; NMC Royal Hospital Ltd (registration no. 0000422500), the Tenth Claimant; NMC Royal Hospital Ltd (registration no 00004245), the Eleventh Claimant); Specialty, the Thirteenth Claimant; New Specialty Hospital Ltd, the Fourteenth Claimant; New Medical Centre Ltd, the Fifteenth Claimant; New Medical Centre Ltd, the Sixteenth Claimant; New Medical Centre Specialty Hospital Ltd, the Nineteenth Claimant; New Pharmacy Company Ltd, the Twentieth Claimant; and NMC Royal Women's Hospital Ltd, the Twenty-Third Claimant. By order of 7 October 2021, with the consent of the Claimants and DIB, I ordered that the proceedings brought by the JAs be stayed. Accordingly, the claims originally brought against DIB by these claimants in these proceedings are now the subject of arbitration proceedings in the London Court of International Arbitration (the "**Arbitration**").

9. The claims brought by the NGCs against DIB and the Insurer Defendants were not stayed. By orders of 27 April 2022, the NGCs obtained judgments in default under rule 39 of the ADGM Court Procedure Rules ("**CPR**") against three of the Insurance Defendants, who had not filed or served acknowledgments of service, namely, NAS, Saudi Arabian Insurance Company BSC ("**SAICO**"), the Eighth Defendant, and Al Buhaira National Insurance Company ("**Al Buhaira"**), the Ninth Defendant. The orders required those defendants to pay specified sums and provided that the NGCs had liberty to apply to the Court for orders for further payments.

10. By a notice dated 19 September 2022, the proceedings against GlobeMed Gulf Healthcare Solutions LLC, the Twelfth Defendant, were discontinued.

The Trial

11. The NGCs' claims therefore proceeded against DIB and eight Insurer Defendants, namely: Aetna Global Benefits (Middle East) LLC ("**Aetna**"), the Second Defendant; Dubai Insurance Company psc ("**DIC**"), the Third Defendant; AXA Insurance (Gulf) BSC, ("**AXA**"), the Fourth Defendant; American Life Insurance Company – Alico (Metlife) ("**ALICO**"), the Fifth Defendant; Neuron LLC ("**Neuron**"), the Sixth Defendant; MedNet UAE FZ LLC ("**MedNet**"), the Tenth Defendant; National General Insurance (psc) – Healthnet ("**NGI**"), the Eleventh Defendant; and Mobility Saint Honore International for Medical Insurance Claims Management LLC ("**MSH**").

12. The proceedings came to trial on 22 May 2023. The NGCs were represented by Mr Bankim Thanki KC, Mr Henry King KC, Mr Matthew Abraham, Ms Alexandra Whelan and Mr Damien Bruneau, together with Ms Felicity Toube KC and Mr Nico Leslie for the written opening submissions. DIB was represented by Mr Ewan McQuater KC, Mr David Quest KC, Mr Andrew Rose, Mr William Day and Ms Katherine Boucher. With regards to the Insurer Defendants, on the first morning of the trial AXA was represented by Mr Tom Shepherd, and MSH was represented by Mr Michael Patchett-Joyce, but they took no further part in it. The other Insurer Defendants played no part in the trial.

13. Two witnesses gave evidence of fact for the NGCs:

a. Mr Julian Jones, a Managing Director at A&M, who gave evidence in support of the NGCs' allegations of fraud in the NMC Group. He was not cross-examined, and his witness statement was admitted without him giving oral evidence.

b. Mr Jean-Philippe Sarther, who is the current Chief Financial Officer of the NMC Group. His evidence did not really impact on issues with which this judgment is concerned.

14. DIB adduced evidence from seven witnesses of fact, six of whom were cross-examined: I refer to their evidence later in my judgment.

15. Although procedurally the proceedings were brought by the Claimants, their essential purpose was to refute the interest that DIB claims in Insurance Receivables. The claims and allegations made by DIB are at the heart of the case. At the Pre-Trial Review, therefore, I directed that the case should be opened by DIB, its expert in UAE law gave evidence before the NGCs' expert witness, and it made its closing submissions first. This procedure was not resisted by the parties.

16. The pleadings are convoluted, sometimes vague and much amended. Both parties made further significant amendments during the hearing after contentious applications for permission to do so, which I granted only in part. This made the trial more difficult, and I have not decided some differences between the parties in view of the unsatisfactory state of the pleadings.

The Evidence of UAE law

17. As I have said, most of the issues are governed by UAE law. (Although at clause 14, which is headed "*Governing Law and Jurisdiction*", each ARA provided that it was to be "*governed by and … construed in accordance with the laws of the Emirate of Dubai and the applicable federal laws of the United Arab Emirates and the principles of Sharia* ….", which were to prevail in the event of any conflict with the laws of Dubai or Federal Laws, in my judgment I simply refer to "*UAE*" law.

18. I permitted expert evidence of UAE law on defined issues agreed between the parties, and both DIB and the NGCs put reports by expert witnesses in evidence, and they were cross-examined. DIB's expert witness was Professor Mohammed Sameh Amr, who is the Dean of the Faculty of Law at Cairo University, a practising member of the Egyptian Bar, a Founding and Managing Member of a Cairo law firm that specialises, inter alia, in banking and financial law, and an arbitrator. Expert evidence on behalf of the NGCs was given by Mr Ali Al Aidarous, who is a UAE national advocate licensed to practise in the UAE Federal Courts, in the Courts of Dubai and in the Courts of the Dubai International Financial Centre. He is the Managing Partner of Al Aidarous Advocates and Legal Consultants, which he founded in 1994, and an arbitrator.

19. Mr Al Aidarous explained that UAE law takes Shari'a principles as a primary source of legislation, and article 7 of the UAE Constitution provides (according to the translation before the Court) that Islamic Shari'a shall be a main source of legislation of the Union. The roles of Shari'a principles are reflected in the UAE Civil Code, which was promulgated under *Federal Law No. (5) of 1985 On the Civil Transactions Law of the United Arab Emirates* (the "**UAE Civil Code**") : for example, it refers to their role in supplementing legislation at article 1, and their role in interpretation of texts at article 2, which states "*the rules and principles of Islamic jurisprudence shall be the point of reference in the understanding, construction and interpretation of texts*". Further, as the expert evidence explained, Part 2 of the UAE Civil Code, which sets out in articles 29 to 70 "*certain jurisprudential maxims and rules of*

interpretation", has its origins in Majjalat Al-Ahkam Al-Adliah ("**Al Majalla**"), which was said to be the first attempt in 1876 to codify Shari'a principles.

20. The UAE Civil Code is to be interpreted, as the evidence of both expert witnesses confirmed, with the guidance of court decisions, scholarly writings and the Official Commentary on the UAE Civil Code of the Ministry of Justice (the "**Commentary**"). In his introduction to his translation of the Commentary (2010), Mr James Whelan described the Commentary as follows: "*The Commentary is a substantial and scholarly work published by the Ministry of Justice in 1987, which provides an analysis of the historical, jurisprudential and comparative background of each of the various parts of the Civil Code and, in most cases, of individual articles. It also provides numerous examples of how many of the provisions work in practice. Although the Commentary does not have statutory authority, it is nevertheless so important, so profuse in its guidance, and held in such respect by the courts of the United Arab Emirates, that it can properly be said that it is an essential tool for the correct interpretation of the statutory provisions of the Code, and it is often unsafe to rely on the words of the Code alone in determining their meaning and effect*". Although Professor Amr would not accept in cross-examination that the Commentary has greater authority as an aid to interpretation than Court decisions or scholarly writings, I would find it difficult to adopt an interpretation of the UAE Civil Code that is inconsistent with it. It is clear from the authorities cited by the experts that the Commentary is often referred to in judgments in UAE Courts: the NGCs listed ten examples in their closing submissions.

21. With regard to scholarly writings, Professor Amr referred particularly to Al-Waseet, the work of El-Sanhoury, whom Mr Al Aidarous described as "*a renowned Egyptian scholar whose views have significant influence on the Arab Legal system including in the UAE*", and *"a renowned authority on the Egyptian Civil Code, which has the same civil code system as the UAE*"**.** Egyptian jurisprudence has had a great influence on UAE law, and it is given great weight in the Courts of the UAE. However, as Mr Al Aidarous explained, there are differences between Egyptian law and UAE law, specifically with regard to questions of construction. He said that the starting point for questions of construction in UAE law is the principles of Shari'a as codified in Al Majalla, whereas the Egyptian Code is based upon the French Napoleonic Code, albeit not adopting it where to do so would override or compromise Shari'a principles. This different starting point is reflected in differences between the Egyptian and the UAE Civil Codes in that the Egyptian Code does not include provisions corresponding to Part 2 of the UAE Civil Code, which apply to the interpretation of statutes as well as contracts and other documents; nor does it include articles corresponding to many of the articles in the UAE Civil Code in the chapter dealing with the construction of contracts at articles 257 to 266: the Egyptian Code has articles corresponding only to articles 257, 265 and 266, although Professor Amr's evidence was that the principles set out in the other seven articles reflect principles established by the Egyptian courts.

22. Mr Al Aidarous was pressed in cross-examination about this part of his evidence, particularly on the basis that in his report he had made general statements about the similarities of the two systems, and had not qualified them by particular reference to principles of construction. In its final submissions, DIB argued that Mr Al Aidarous made an "*attempt to backtrack on the influence and relevance of El-Sanhouri*", and this was "*unreliable evidence and may have been influenced by a belated realisation that that the relevant passage [*of Al Waseet*] is strongly supportive of DIB's case*". In my judgment, Mr Al Aidarous' evidence about this identified a proper explanation of the differences between the UAE and the Egyptian Codes, and he properly and usefully qualified his general statements about the similarities between the Codes as the forensic process focused attention upon the approach to construction of contracts: I reject any criticism implicit in the term "*attempt to backtrack*".

23. As for Court decisions, in principle UAE law affords less standing to judicial precedent than the common law tradition. The NGCs cite academic writing that attribute this to its roots in immutable Shari'a principles, and the practice of adopting codes based upon the French model. That said, and while UAE law does not have a system of binding precedents, Mr Al Aidarous explained in an expert report made for the purpose of the Arbitration that "*lower courts almost invariably apply judgments delivered by Court of Cassation. Therefore, practically speaking, precedents still have a very significant role to play*". I accept that this gives a fair picture of the practice in UAE Courts.

24. In *Iraqi Civilians v Ministry of Defence,* [2016] UKSC 25, Lord Sumption said that, where there are issues of foreign law, the essential question is "*what the foreign court would decide to be the relevant foreign law*" (at paragraph 14). More recently, in *Byers v Saudi National Bank*, [2022] EWCA Civ 43 Newey LJ said this (at paragraph 104): "*Where the foreign law is in the form of a provision of a code, statute or other written source, the task of the Court remains one of determining how the foreign Courts would itself interpret and apply it, based on the evidence of the expert witnesses. Generally speaking the Court's task is not to address how it would interpret and apply the provision; the wording of the provision is to be considered only as part of the evidence and as a help to deciding between conflicting expert testimony*".

25. Both experts undoubtedly had great authority and experience, and were well qualified to give expert evidence. Both were certainly honest witnesses, and I am grateful for their assistance. They had different backgrounds: Professor Amr's evidence reflected his distinguished academic standing, but his expertise is primarily in Egyptian law. There can be no question about the great influence of Egyptian jurisprudence on the development of UAE law, and indeed the legal systems of the region more generally. Professor Amr's profound understanding of jurisprudential thinking certainly provided valuable insights into the issues of UAE law between the parties. But Professor Amr has never practised in the Courts of the UAE, and indeed had never attended a hearing, and, as Mr Al Aidarous' evidence made clear, UAE law is not simply a mirror of Egyptian learning. In contrast, Mr Al Aidarous was able to draw on his experience of appearing in UAE Courts over many years. Given the proper approach to issues of foreign law, as stated by Lord Sumption and expounded by Newey LJ, I found his evidence on disputed questions particularly valuable, and for this reason I have generally (although not invariably) preferred Mr Al Aidarous' evidence where the experts' views differed significantly.

26. Before the trial, I gave directions designed to minimise issues during the hearing about the translation of statutory provisions, academic authorities and case reports. For this purpose, the parties agreed to use the services of an independent translation service, Transperfect Legal Solutions ("**TLS**"). Nevertheless, translation issues were not entirely avoided, although to my mind, by the end of the trial, only one of any significance remained, a question about the translation of article 83 of Federal Law No 2 of 2015 (the "**Companies Law**"). As I explain later in my judgment, in each case I can resolve the translation question sufficiently for the purpose of my decision.

DIB's management structure and procedures

27. I should next say something about DIB's management structure. Five of DIB's witnesses of fact were from its Corporate Business Department, or "**CBD**". At the relevant times, Mr Naveed Ali was the Chief of Corporate Banking. Under him were Mr Yasser Nasser, with the title Senior Vice President of Abu Dhabi Corporate Banking, and then Mr Salimullah Qazi, a Unit Head of Corporate Banking. Mr Qazi was in turn assisted by Mr Tamer Al Hussaini, a Senior Relationship Manager, and Mr Anfel Patel, a Relationship Manager.

28. The CBD's role is to develop business for DIB, and it is expected to cultivate relationships with customers and potential customers. If a member of the CBD learns that a customer does or might require credit or other facilities, it is responsible for exploring the opportunity, and collecting documents and information to see whether DIB might enter into an arrangement, having regard to its policies about extending credit. If appropriate, the next step is for the CBD to issue to the customer an indicative term sheet for the proposed facility, a document which is for discussion purposes only and is not binding on either party. If, in principle, the customer is content with the suggested terms, the CBD will prepare a credit proposal for DIB's internal purposes. This will comprise a risk assessment of the proposed facility, setting out, for example, details about the customer (or potential customer), any previous dealings with the customer, the proposed terms for the facility, including terms as to security, and financial analysis.

29. As far as is relevant for present purposes, the CBD has no authority to approve facilities. Its credit proposals are sent by the CBD to the Corporate Credit Department ("**CCD**"), which undertakes an independent assessment of them, and makes its own recommendations. If the CCD requires more information from the customer, it is obtained through the CBD: the CCD does not itself deal with the customer.

30. After review by the CCD, a credit proposal will then be submitted to the Management Credit Committee ("**MCC**"), which can authorise some smaller facilities. However, larger facilities, including all the facilities for the NMC Group with which these proceedings are concerned, require the approval of the Board Credit & Investment Committee ("**BCIC**"), and then DIB's Board. Mr Ali is a member of the MCC, and he attends meetings of the BCIC as an invitee.

31. If a proposal is approved, the Credit Administration Department ("**CAD**"), which is a part of the Risk Management Department ("**RMD**"), will prepare a Facility Agreement Letter (or "**FAL**") and term sheet, which are sent to the customer. An FAL offers a facility on stated terms, and invites the customer to countersign it to record its agreement to them.

32. The CAD, or more specifically, the Syndication Agency Unit ("**SAU**") within the CAD, will also generally prepare the contracts required to give effect to the transaction, as approved, drawing upon DIB's standard documents. It is not authorised to change the terms for the facility that have been approved. The members of the CAD are not lawyers, but were described by Mr Qazi as "*specialists in documentation*". The documentation will also be considered by Dar Al Sharia, a subsidiary of DIB, to ensure compliance with Shari'a principles, and the documentation also has to have the approval of the Shari'a Board before a transaction can be concluded. On occasions, a first draft of contractual documentation is prepared by Dar Al Sharia: it initially prepared the documentation for the facilities with which these proceedings are directly concerned.

33. The contractual documentation is then provided to the CBD, which is responsible for arranging it to be executed on behalf of DIB and by the customer and any other required signatories. The CBD submits the executed documents to the RMD, which is charged with reviewing them together with any relevant board resolutions, memoranda of association and powers of attorney to ensure that they are executed by properly authorised signatories. If the drawdown of the facility is subject to conditions precedent, the RMD is also responsible for ensuring that they are satisfied. If the RMD is satisfied that the documentation is in order, it will authorise the Credit Control Unit ("**CCU**"), which is also part of the RMD, to allow the facility to be drawn down.

34. The role and responsibilities of the RMD, or more specifically the Documentation Unit ("**DU**") within the RMD, are set out in DIB's Credit Policy Document of 16 July 2014 (the "**Credit Policy Document**"). It included the following "*key responsibilities*" of the DU:

> "*To check all documentation before sending to [CBD] for onward delivery to the customer …";*
>
> *"DU is responsible for the preparation of the required documents, check list etc. as per terms of the approval, while the respective Business Departments are responsible for getting them completed from the customers";*
>
> *"Upon receipt of the executed documents through [CBD], the staff of DU reviews the document, … and compare to ensure accuracy and completeness…";*
>
> *"To check & ensure validity/scope of financing authority/POA [sc. power of attorney] of customers' signatories from the valid source and constitutional documents"; and*
>
> *"Once the documentation as per the approval is completed, DU advises implementation of the facility with joint signature as per CAD's internal delegation":* Mr Ali explained that this refers to the CCU being responsible for authorising drawdown of the facility to go ahead.

35. The Credit Policy Document also provided "*General Guidance on Documents*", including the following:

> *"All documents of the bank must be dated and blank spaces properly filled in print or clear legible handwriting…";*
>
> *"In case a single document is on multiple pages, at least initials should be obtained on each page with a full signature at the designated place usually on the last page"; and*
>
> *"The source or constitutional documents, such as; memorandum and articles, resolutions or power of attorney should explicitly state the authority to obtain facilities from a bank along with the name(s) of authorized signatories for signing of facility related documents"; and "In the absence of explicit authority, resolutions or POA should be obtained, preferably on the Bank's standard formats. An authority/document to open and operate an account is not sufficient to obtain credit facilities".*

36. DIB's Debt Capital Markets Department ("**DCMD**") is part of its Investment Banking business. It has an advisory, rather than a lending, role. Mr Sadiq Raza Muhammad, a Senior Vice President in the DCMD since 2014, advises DIB about Sukuk instruments, which are used to raise Shari'a compliant finance.

DIB's Evidence of Fact

37. According to its pleaded case, DIB relies on the intentions of its five witnesses from the CBD, Mr Ali, Mr Nasser, Mr Qazi, Mr Al Hussaini and Mr Patel, in support of its case as to DIB's intention about what Insurance Receivables were to be assigned. It also called evidence from Mr Muhammad about the Sukuk. It put in evidence a witness statement of Mr Tahir Chaudhary, who has since 2014 been head of its Corporate Credit Department: he was not cross-examined.

38. I accept that all the witnesses of fact were honest, but the evidence of the witnesses from the CBD was not entirely reliable or helpful. Firstly, unsurprisingly, they often had little or no

detailed recollection of the events about which they gave evidence, some of which happened more than ten years ago. Secondly, much of the evidence of the witnesses from DIB's CBD concerned their subjective intentions and thinking about the arrangements with the NMC Group or internal exchanges within DIB, but, as a matter of UAE law, these are irrelevant to questions of contractual construction and contractual intention (except if and in so far as they might be indirect evidence of exchanges between the contracting parties). Thirdly, Mr Qazi, Mr Al Hussaini and Mr Patel were clearly anxious to minimise their part in arranging the facilities and their responsibility for mistakes that have occurred. They had convinced themselves, as I am prepared to accept, that, once a FAL for the facilities was agreed, the CBD had no real part in checking how the arrangements were implemented, but contemporary documents indicate otherwise. As is often the case in commercial cases, especially where, as here, many communications are made by email, the documentary record is generally more important than the oral evidence.

Evidence that was not called

39. Each party invited me to draw inferences from the failure of the other to call witnesses. Each cited *Wisniewski v Central Manchester Health Authority,* [1998] PIQR 324 for the propositions formulated by Brooke LJ, and *Royal Mail Group Ltd v Efobi*, [2021] UKCS 33 for Lord Leggatt's view (at paragraph 41) that "*ordinary rationality*" should be used to decide whether to draw such inferences.

40. For its part, DIB invites me to draw inferences from the failure of the NGCs to call evidence from Mr Abin Santha, who apparently had the position of "*Manager – Group Receivables"* in the NMC Group 2016 and is now a *"Senior Manager – Group Receivables*". It is said that he could have given evidence about various matters, including information about (i) Insurance Receivables and projected future receivables, which was provided to DIB during the negotiation of facilities in 2018; (ii) notices of assignments sent to insurance companies in 2018 and acknowledgments received from them; (iil) the establishment in 2019 of so-called "*virtual accounts*" to receive payments of Insurance Receivables to DIB; and (iv) the role of NMCH with regard to treasury management for the NMC Group as a whole. I see no reason to think that Mr Sarther's evidence would have assisted about the first three questions. I refer later in my judgment to the role of NMCH in managing treasury matters for its subsidiaries.

41. The NGCs point out that no witness from the CAD or Dar Al Sharia gave evidence, and submit that this lends support to their argument that there was no mistake in the drafting of the ARAs. They also invite an inference about the key considerations that led DIB to grant the relevant facilities from its failure to call anyone on the Board of Directors or the BCIC. I shall refer to these arguments, to the extent necessary, later in my judgment.

The NMC Group

42. The NMC Group was founded in 1975 in Abu Dhabi by Dr B R Shetty as a family business. When DIB first had dealings with it in 2004, it consisted of New Medical Centre (Establishment), a sole proprietorship, owned by Dr Shetty and Mr Abdulla Mazrouei. It owned four hospitals and two or three pharmacies. By 2012, it had expanded to operating six hospitals, two clinics and about ten pharmacies in various Emirates. Thereafter, it continued rapidly to expand in the UAE and elsewhere.

43. Although the Group comprised different legal entities, its banking affairs were managed through a single treasury team based in Abu Dhabi. Between 2004 and 2009, DIB extended facilities to the NMC Group, always dealing with it through the Abu Dhabi treasury team.

44. Many of the NMC Group's patients were insured for private health care. A large part of the Group's income was from payments under medical insurance arrangements, made either directly with the insurers or through third party administrators (or "**TPAs**"), companies that are licensed to carry on insurance claims administration (according to the definition in the Abu Dhabi Department of Health's Healthcare Insurers Manual (the "**Manual**")): in this judgment, I use the term "**Insurance Companies**" to include both TPAs and actual insurers, sometimes referred to as "*Insurance Providers*" or "*IPs*". When operating companies in the NMC Group provided an insured patient with medical services or supplies such as pharmaceuticals, they would invoice the patient's Insurance Company through an electronic platform, and the issued invoice gives rise to an "*Insurance Receivable*".

45. In 2011, the NMC Group apparently faced some financial difficulties, and it defaulted under its facilities with DIB. On 17 March 2011, there was a meeting between Mr Manghat, who had become the Group's Chief Financial Officer, and DIB, represented by Mr Qazi and Mr Tariq Basheer, who was in the CBD and then an Assistant Vice President of DIB. There was discussion about whether DIB might advance "*Insurance Receivable backed*" finance. DIB was also told at the meeting of the NMC Group's plans for a private placement, designed to raise further finance. At about this time, new investors acquired a 70% interest in the Group, Dr Shetty retaining a 30% share and Mr Mazrouei selling his entire interest.

46. Structural changes were made, and the Group was re-organised under a new holding company in the UAE, NMCH, originally incorporated in Dubai. NMCH was initially owned by Dr Shetty and two other shareholders, Mr Khaleefa Butti and Mr Saeed Butti. In 2012, NMC Health plc, an English company, which was registered on the London Stock Exchange, acquired NMCH, and finance was raised through an initial public offering ("**IPO**"). For this purpose, on 2 April 2012 NMC Health plc issued a prospectus (the "**IPO Prospectus**").

47. NMCH remained the holding company for the operating subsidiaries. It did not itself provide healthcare for patients, either by way of services or supplies: that was done through the subsidiaries. The subsidiaries in the UAE, unlike NMCH, were licensed for this purpose with one of the UAE Health Regulatory Authorities.

48. DIB continued to provide the NMC Group with facilities, including facilities supported by insurance receivables, until 2020. The senior management of the Group that engaged with DIB over this period included: Dr Shetty, who was the Chief Executive Officer of the NMC Group from 20 July 2011 to 8 March 2017 and the non-executive Joint Chairman from 8 March 2017 to 16 February 2020; Mr Prasanth Manghat, who was the Group's Chief Financial Officer from 2009 to November 2014, its Deputy Chief Executive Officer from November 2014 to 7 March 2017 and its Chief Executive Officer from 8 March 2017 to 26 February 2020; Mr Prashanth Shenoy, who was the Group's Chief Financial Officer from 1 September 2017 to 24 March 2020; and Mr Suresh Kumar, who was the Deputy Chief Financial Officer from 16 November 2016 to 26 February 2020.

The Fraud

49. In 2020 it was discovered that the NMC Group had incurred large amounts of debt that had not been disclosed in its financial statements. This came to light after Muddy Waters Capital LLP, a New York investment firm, published in December 2019 a report in which it raised questions about the Group's consolidated accounts, referring to "*red flags*" raising "*serious doubts about the company's financial statements*" and concerns about "*fraudulent asset values and theft of company assets*". The evidence in this trial is that the NMC Group's consolidated accounts, published for each year to 31 December and audited by Ernst &

Young, failed to disclose debts of annually increasing amounts from some US$ 240 million for the year ended 31 December 2012 to over US$ 3.8 billion for the year ended 31 December 2018. As at 30 June 2019, the true indebtedness was some US$ 6.2 billion, and the reported debt was some US$ 2.1 billion. No debt to DIB was ever disclosed in the financial statements.

50. The NGC Claimants plead that the NMC Group was the victim of a very substantial fraud, which involved it in incurring the undisclosed debt, and I am satisfied of that on the evidence, in particular the unchallenged evidence of Mr Jones. It is also pleaded that undisclosed monies from the fraud were "*applied, at least in part, for the benefit of the NMC Group's former principal shareholders (being Dr BR Shetty, Saeed Mohamed Butti Mohamed Alqebaisi and Khaleefa Butti Omair Yousif Almuhairi) and certain members of the former management team*". It is not necessary for the purpose of these proceedings to determine that allegation, and, since I did not hear evidence from or on behalf of any of those said to have benefitted from the fraud, I say no more about it.

51. As a result of the fraud, NMC plc, NMCH and its subsidiaries were insolvent, and went into administration, as I have described.

Insurance Receivables

52. I come back to the Insurance Receivables paid to the operating companies in the NMC Group. The NGCs explained the regime by reference to a Manual issued by the Abu Dhabi Department of Health (the "**DoH")**, and there was no suggestion that other regimes in the UAE are materially different. Further, although, as the NGCs submitted and I accept, NMC Group subsidiaries provided healthcare facilities outside the UAE under healthcare insurance arrangements, DIB did not submit that this affects anything that I am to decide.

53. The term "*Healthcare Provider*" is widely defined, and includes "*Government or private healthcare Facilities comprising Hospitals, Medical Centres, Clinics, Laboratories, Diagnostic Centres, pharmacies and other organizations and other actors that are licensed to provide healthcare services*" in Abu Dhabi. Healthcare Providers that are not authorised by the DoH are restricted from providing healthcare services for reimbursement under the Health Insurance Scheme, which is established and regulated by law: Healthcare Providers must be authorised by the DOH before they may contract with authorised Insurance Companies to provide healthcare for reimbursement under it. Further, contracts between Insurance Companies and Healthcare Providers must be in the form of a Standard Provider Contract, which is defined as "*A uniform contract issued by DOH governing the agreement between an Insurer and a Healthcare Provider setting out the terms and conditions pursuant to which the Healthcare Provider will provide healthcare services to Insured Persons in return for payment by the Insurer in accordance with the Health Insurance Scheme*". Under the Standard Provider Contract, authorised Healthcare Providers provide healthcare services, and are entitled to make claims that generate insurance receivables, and the Insurance Companies pay the Healthcare Providers for "*complete and accurate claims*".

54. It appeared at the start of the trial that there were differences between the parties about the effect of this regime and which companies in the NGC Group were entitled to insurance payments under it. However, DIB has accepted, for the purpose of these proceedings, and that it is no longer in dispute between the NGCs and DIB, that all the NGCs were entitled to Insurance Receivables from the Insurer Defendants. I also understand it to be common ground (and if it be in dispute, I find) that NMCH is not, and was not at any material time, licensed to provide medical services and that it did not do so; and therefore that it was not

entitled to claim Insurance Receivables. While in fact Insurance Receivables were paid into NMCH's Amanat Account with DIB, it had no rights against the Insurance Companies.

The 2012 Facilities

55. By a credit proposal dated 5 February 2012, the signatories to which included Mr Qazi and Mr Ali, the CBD presented a proposal for new facilities for NMCH for a total amount of AED 250 million, including (i) an Ijara facility of AED 200 million with a five-year term, the purpose of which was said to be for NMCH to use it for "*CAPEX Investments including building and leasehold improvements, purchase of machinery, equipment etc for new projects/ improvements to existing healthcare infrastructure*", and (ii) a revolving credit facility ("**RCF**"). The Executive Summary in the credit proposal described the "*Repayment Sources*", and the "*Primary*" source was stated in these terms: "*Assigned Insurance Receivables from designated Insurance Providers/Cashflows of the company/group*". The proposed security included corporate guarantees from ten subsidiaries in the NMC Group, and "*Perfected Assignment Agreement with NMCH related to Insurance Receivables … and duly confirmed by Insurance Providers/TPAs*". It specified that receivables from Abu Dhabi National Insurance Company ("**ADNIC**") and NAS, a TPA, were to be assigned to DIB. The proposal included a table that set out a "*snapshot of annual billings (as provided by NMCH management)*" of the Insurance Companies from whom the largest total amounts had been claimed between 2009 and 30 June 2011. The figures in the table were for the NMC Group as a whole, and they were not broken down between NMC subsidiaries. The table showed that, apart from Daman (sc. Daman National Health Insurance Company), whose receivables were said already to be assigned to Standard Chartered Bank, the largest amounts in the first half of 2011 were invoiced to NAS and ADNIC, and it was noted that the billings to them represented about 21% of the total billing for patients.

56. In the credit proposal, the Executive Summary of the terms suggested for the proposed term facility also included this: "*Separate Amanat account to be opened under NMCH for receipt of Insurance Receivables for NMCH and other subsidiaries from Insurance Providers/TPAs*", an Amanat account being an account in name of the customer but controlled by the bank. There was also to be an "*Accounts Pledge over Amanat Accounts held with DIB*". Mr Qazi explained that the proposal was that funds would flow into a collection (or Amanat) account, and DIB would have a discretion to release to NMCH any funds in the account that were in excess of what was required to discharge the monthly repayments.

57. The CBD's proposal was considered by the CCD, who recommended a term loan facility of AED 150 million, rather than AED 200 million, and total facilities of AED 200 million. On 7 March 2012, the MCC adopted the CCD's recommendation, commenting "*Capex facility is against irrevocable assignment of insurance receivables/ proceeds from ADNIC and NAS to customer account with DIB in addition to other terms, conditions and covenants*". The BCIC, and then the full DIB Board, accepted the MCC's recommendation.

58. Accordingly, on 25 March 2012, CAD prepared a FAL and term sheet, and it was accepted by Dr Shetty on behalf of NMCH. The terms included requirements for security by way of a "*Perfected Assignment Agreement*", together with "*Notice of Assignment*" to ADNIC and NAS and "*Written Confirmation*" from them, and for a separate Amanat account to be opened "*under*" NMCH for receipt of Insurance Receivables "*for* [NMCH] and other subsidiaries".

59. In May 2012, Mr Manghat asked DIB to consider having the term facility secured only by receivables from NAS, explaining that they were sufficient to provide the required coverage.

On 22 May 2012, Mr Kumar provided to DIB details of the payments made to the NMC Group by NAS between 1 March 2012 and 25 March 2012.

60. CBD did not have authority to agree to this proposed change, but it was agreed by the Board on 5 July 2012. On 8 July 2012, Mr Basheer sent to DIB's CAD an email setting out the documentation for the facility. The list of documents included "*Assignment of Receivables Agreement*", and Mr Basheer commented, "*As discussed, please note that after this agreement, we need schedule 2 … to be implemented separately by printing the same on [NMCH] letterhead and get each page duly signed by NMCH's and NAS's representative(s)*".

61. The executed Assignment of Receivables Agreement (or "**2012 ARA**") for this facility was dated 22 July 2012. The parties to the ARA were said to be DIB, NMCH and "*The entities*", which were listed in Schedule 3 to the 2012 ARA and referred to as the "*Assigning Entities*". Schedule 3 listed seven NMC Group operating companies, which were subsidiaries of NMCH. They included none of the NGCs.

62. The 2012 ARA was signed by Mr Qazi on behalf of DIB and by Dr Shetty, who signed it eight times, separately on behalf of NMCH and each of the Assigning Entities, being described in each case as "*Managing Director*". It was also stamped by DIB, NMCH and all the Assigning Entities other, for some reason that is obscure but unimportant, than by an entity referred to as NMC Pharmacy. Each page of the document was initialed, which was DIB's practice to ensure and evidence that each page was genuine.

63. Schedule A was headed "*Additional Receivables*" and contained a note in square brackets, which read "[*describe here by listing additional or renewed Receivable Contracts*]": it was left blank but was included in the executed document and initialed as the other pages were.

64. By clause 2 of the 2012 ARA, NMCH (but not the Assigning Entities) covenanted that it would make payment of what was due under the facilities as required by the transaction documentation, referred to as the "*Secured Liabilities*". By clause 3, the Assigning Entities (but not NMCH) assigned the "*Assigned Rights*" to DIB "*as continuing security for the payment and discharge in full of the Secured Liabilities (including NMCH's covenant to pay under clause 2), which assignment is hereby accepted by DIB*". Clause 4 said that the assignment was made and the security under the 2012 ARA was created "*as a continuing security to secure the payment and discharge in full of the Secured Liabilities … in favour of DIB … as an absolute assignment; and … free from any Security Interest (other than arising in favour of DIB under this Agreement*".

65. Schedule 1 to the 2012 ARA set out a list of seven "*Receivables Contracts*" entered into by NAS with each of the seven "*Assigning Entities*". Schedule 2, to which Mr Basheer had referred in his email of 8 July 2012, was a Notice of Assignment from NMCH to NAS, which was signed by NMCH and also NAS under the words "*Agreed and Acknowledged*". It was, according to Mr Al Hussaini, in a form that had in the past been acceptable to insurance companies and the Abu Dhabi Health Authorities. In paragraph 1 of the Notice, NMCH stated that it was giving notice of assignment to DIB of all rights under the seven identified contracts "*for and on behalf of*" five of the seven Assigning Entities: that is likely, I think, to be a mistake, and in any case is insignificant.

66. Mr Al Hussaini accepted that it was important for DIB to confirm that those signing the documentation on behalf of companies in the NMC Group had authority to do so. On 31 May 2012, he had sent an email to the NMC Group requesting documents relating to the corporate guarantors, including their memoranda and articles of association, shareholders resolutions

and "*no objection*" certificates: those companies included six of the seven assignors listed in schedule 3 to the 2012 ARA. Further, before the 2012 ARA was signed, DIB had received under cover of emails from the NMC Group "*Shareholder Resolution from all the subsidiaries &* [power of attorney for NMCH]". Mr Al Hussaini was charged within the CBD with reviewing the documentation, which was then provided with the CAD, with a view to the CAD deciding whether it satisfactorily established the authority of the signatories to execute the documentation on behalf of those for whom they were signing.

67. The term facility was drawn down between 22 August 2012 and 20 March 2013. It was renewed from time to time, and was repaid in full by 20 March 2018.

The 2015 Facilities

68. In 2013, DIB agreed to provide these further facilities to the NMC Group:

    a. on 17 January 2013, it granted NMCH a Murabaha facility for AED 100 million for 120 days for the purpose of financing local purchases of pharmaceuticals; and

    b. on 18 September 2013, DIB renewed NMCH's banking facilities with an increased overall limit of AED 125 million for revolving work capital.

69. In 2014, NMCH wanted to raise US$ 750 million by way of a US$ 400 million term loan and an RCF of US$ 350 million, and Mr Manghat asked DIB to participate. The CBD recommended that DIB should do so, and the CCD, the MMC and the BCIC supported the recommendation, subject to certain conditions. The DIB Board gave its approval, subject to conditions and a limit on participation.

70. On 11 November 2014, Mr Qazi and Mr Basheer met Mr Manghat, who was by then the NMC Group's Deputy Executive Officer. Mr Manghat thought that DIB would not be able to participate with Islamic finance in the syndicated facility, and asked that instead DIB consider providing a bilateral facility of US$ 200 million for the purpose of refinancing existing borrowings from DIB, general corporate purposes and a new acquisition. In response, on 16 December 2014, Mr Basheer sent to the NMC Group an indicative term sheet for discussion. The NMC Group asked that the facility be provided to Specialty, and DIB found this acceptable.

71. On 21 December 2014, Mr Al Hussaini produced a credit proposal for facilities of US$ 220 million in total, comprising a US$ 100 million Murabaha term facility with a tenor of five years and a US$ 120 million RCF for three years. The customer was said to be NMCH. The purpose of the term facility was described as "*for general corporate requirements and to reduce any of its existing liabilities*". The purpose of the RCF was described as "*acquisitions related to the Borrower's core business and for entities within the Gulf Cooperation Council*".

72. It was said that the term facility would be supported by "*Perfected Assignment Agreement with [NMCH] and/or its subsidiaries (as applicable) related to Assignment of Insurance Facilities from the following six IPs/IPAs*", a formula that was adopted by DIB in later documents. The six Insurance Companies identified were AXA, ALICO, Neuron, Pentacare Medical Services LLC ("**Pentacare**"), Al Dhafra Insurance Co PSC ("**Al Dhafra**") and NAS: I shall refer to these as the "**2015 Insurance Companies".** As in the case of the 2012 Facility, it was to be a requirement of the term facility that the Insurance Receivables paid into the Amanat account should be sufficient to cover a minimum debt service ratio of 1.4% of the monthly repayment.

73. As for the RCF, the credit proposal said that it was to be supported by "*Assignment of Insurance Company receivables from UAE based entities (to be identified and acceptable to DIB) and their proceeds in an amount covering at least 1.4% of the debt service amount …*".

74. On 4 January 2015, the CBD's proposal was recommended by the CCD, who observed that "*the risk profile of the proposed facility is lower than earlier approved syndicated facility",* and identified as one of the main improvements that the term facility was to be secured by the assignments of receivables from the 2015 Insurance Companies, and the RCF by assignments *of "Insurance Receivables from UAE based entities.*" The proposal was approved by DIB's Board on 28 January 2015.

75. DIB issued a FAL dated 9 February 2015 and addressed to Specialty, together with a term sheet for the facility. The term sheet stated that the security for the facility was to include "*Perfected Assignment Agreement with [NMCH] and/or its subsidiaries (as applicable) related to Assignment of Insurance Receivables*" from the 2015 Insurance Companies. The FAL was countersigned on behalf of Specialty and NMCH to signify their acceptance of it and the terms.

76. On 29 January 2015, Mr Qazi had written to the RMD identifying documents required for the transaction, including an ARA. He pointed out that Dar Al Sharia had already provided documentation for facilities, including "*assignment of receivable agreement and Notice of assignment & acknowledgment for similar insurance receivable backed Ijara'a facility*", and attached to his email (inter alia) a version of the 2012 ARA: some details in the body of the agreement were left blank, but the names of the assignors and their contracts with NAS were set out in the schedules. Mr Qazi asked that the RMD consider using the documents, with amendments, and recommended that they be reviewed by in-house counsel. On 3 February 2015, Dar Al Sharia wrote to the CAD and the CBD that they would provide a draft ARA and other draft documentation, but that it could only confirm Shari'a compliance and not other aspects of the transaction.

77. On 8 February 2015, the CAD sent comments on the drafts to Dar Al Sharia and the CBD, observing that the ARA would need to be completed with the details of the relevant insurance companies and their contracts, and of the assignors. The CBD had already asked the NMC Group for agreements with the 2015 Insurance Companies by an email of 25 January 2015. On 9 February 2015, Dar Al Sharia wrote to the CBD about information required for the ARA: "*Since you may have all the required information, we would suggest that you may provide the relevant information in the documents as appropriate and as advised by* [the CAD]". On 11 February 2015, Mr Kumar sent DIB a spreadsheet setting out details of the NMC Group's service provider contracts with the 2015 Insurance Companies, identifying the operating subsidiaries who were party to them. DIB was provided with copies of the insurance contracts, which were in the Standard Provider Contract form, and they were reviewed by DIB: Mr Patel identified that the signature page was missing from one of NAS's contracts. Mr Patel prepared a further, more detailed, spreadsheet with details of the service provider contracts, and he sent it to Mr Al Hussaini.

78. Mr Patel was asked in cross-examination whether he was required to gather the information for the ARA, but he would not accept that he had any responsibility for doing this, and insisted that the ARA was to be completed by Dar Al Sharia: "*This is not my part to fill in the information*". The documentary evidence shows that he and the CBD were more involved than he would accept.

79. On 17 February 2015, the documentation for the facilities was signed, including an MMA to which the parties were DIB and Specialty. Schedule 9 to the MMA listed security for the facility, including "*Perfected Assignment Agreement with* [NMCH] *and/or its subsidiaries (as applicable) related to Assignment of Insurance Receivables*". The documentation also included an ARA (the "**February 2015 ARA**"), the parties to which were DIB, Specialty and (as in the 2012 ARA) "*The entities*", which were listed in Schedule 3 to the February 2015 ARA and referred to as the "*Assigning Entities*". Schedule 3 listed NMCH and seventeen NMC Group operating subsidiaries, including Specialty. They included two of the NGCs: New Medical Centre Pharmacy Ltd ("**NMC Pharmacy 1**"), the Seventeenth Claimant; and NMC Royal Family Medical Centre Ltd ("**NMC RFMC**"), the Twenty-Second Claimant.

80. It is not surprising that the seventeen subsidiaries were listed in Schedule 3: in an email of 11 February 2015, Dar Al Sharia had asked the CAD to indicate the "*entities who are currently entitled to receive the insurance receivables from the insurance companies*". On the face of it, the inclusion of NMCH is rather strange in that it did not receive payments from the 2015 Insurance Companies (or any insurers): further, NMCH had not been an assignor in the 2012 arrangements. The explanation is that on 11 February 2015, the CBD had emailed Dar Al Sharia to suggest that NMCH should be party to the ARA because Insurance Receivables were to be "*assigned to the* [NMCH] *collection account*". While legally that might not require that NMCH be included as an assignor, Mr Mushtique Mahmud of Dar Al Sharia responded that NMCH "*shall be a party to the* [ARA] *with obligation to assign the insurance receivables to Amanat/ Collection Account*".

81. The February 2015 ARA was signed by Mr Qazi on behalf of DIB and by Dr Shetty, who signed the agreement nineteen times, twice on behalf of Specialty (presumably because Specialty was both the Borrower and an Assigning Entity) and once on behalf of NMCH and each of the other Assigning Entities. It was expressly stated for which companies his signatures were added, and he was described in each case as signing in his capacity as "*CEO*": Mr Patel added those descriptions when the executed documents were returned to DIB by the NMCH Group. There were company stamps beside each signature.

82. The structure of the February 2015 ARA was largely similar to that of the 2012 ARA. By clause 2, Specialty covenanted that it would make payment of the "*Secured Liabilities*", the sums due under the facilities as required by the transaction documentation. By clause 3, the Assigning Entities assigned the "*Assigned Rights*" to DIB "*as continuing security for the payment and discharge in full of the Secured Liabilities (including* [Speciality's] *covenant to pay under clause 2), which assignment is accepted by DIB*". Clause 4 said that assignment was made and the security under the February 2015 ARA was created "*as a continuing security to secure the payment and discharge in full of the Secured Liabilities … in favour of DIB … as an absolute assignment; and … free from any Security Interest (other than arising in favour of DIB under this Agreement*".

83. Schedule 1 to the February 2015 ARA set out a list of "*Receivable Contracts*" entered into by the seven "*Assigning Entities*" with each of the six Insurance Companies whose receivables were to secure the term facility. Schedule 2 was a draft Notice of Assignment from Specialty to NAS, which was to be signed by Specialty and also NAS under the words "*Agreed and Acknowledged*". However, unlike the 2012 ARA, the notice in Schedule 2 was not signed by Specialty and NAS. In paragraph 1 of the draft Notice, it was said that Specialty gave the Notice "*for and on behalf of the below-mentioned entities*", but the draft did not identify the entities.

84. Like the 2012 Facility, the ARA included a Schedule A headed "*Additional Receivables*", with the same note, and again this page was left blank and was included and initialed when the document was executed.

85. There is in evidence a notice of assignment from NMCH and Specialty, dated 10 March 2015 and addressed to NAS. It identifies the subsidiaries with whom NAS had "*Network Agreements*", all of whom had signed the February 2015 ARA.

86. In March 2015, according to Mr Qazi's evidence, the February 2015 ARA was revised, and two pages of it were replaced with new versions, initialled, apparently, by Dr Shetty. Mr Qazi explained the reason for the change to prevent the NMC Group having to pay DIB excessive commission: notices of assignment were not sent out by the NMC Group to the Insurers until 10 March 2015 and acknowledgments were not received by DIB until later in March 2015. The facility was therefore not drawn down until 30 March 2015. Under the February 2015 arrangements, an administrative fee was to be changed by DIB for the facility by reference to unused and uncancelled facilities from 17 February 2015. The arrangements of March 2015 were designed to relieve the NMC Group of the administrative fee until the notices were sent out. Mr Qazi described such amendments as routine practice when there were delays of this kind, and Mr Al Hussaini confirmed this. Although the March 2015 version of the ARA was not disclosed by DIB until shortly before the trial, and Mr Qazi's evidence about it was challenged in cross-examination, I accept his explanation.

87. In the event, the NMC Group did not use the RCF available under the February 2015 arrangements, and asked DIB whether it might be switched into a term loan for financing the construction of a new hospital. On 6 July 2015, DIB requested information in order to assess this proposal, including "*Projections with the 6 existing insurance providers and any new providers that can be assigned to cover the installments, under*" the proposed and existing facilities. On 22 July 2015, Mr Kumar sent DIB a table setting out such projections of receivables, and this was replaced on 19 August 2015 with a further version.

88. On 18 August 2015, the CBD made a credit proposal to change RCF to an Ijara term loan of US$ 120 million. It was supported by the CCD, and the MCC, and Board approval was given on 27 September 2015.

89. DIB sent a FAL dated 20 September 2015 and addressed to Specialty, together with a term sheet, which, like the term sheet of February 2015, included as required security "*Perfected Assignment Agreement with [NCH] and/or its subsidiaries (as applicable) related to Assignment of Insurance Receivables*" from the 2015 Insurance Companies.

90. The change was documented in an "*Amendment to the Assignment of Receivables Agreement*" dated 22 September 2015, and made between DIB, Specialty and "*The Entities*" listed on its execution page, the companies that had been listed in Schedule 3 to the February 2015 ARA. It was expressed to be an amendment of the agreement of 17 February 2015, rather than the March 2015 version of it. Its purpose, set out in a recital, was to extend the scope of the February 2015 ARA to include the new facility. Like the February 2015 ARA, the Amendment was signed by Mr Qazi and nineteen times by Dr Shetty, and company stamps were added against each signature.

91. The credit proposal had included a table of actual and projected receivables from the 2015 Insurance Companies from 2014 to 2020. It referred to subsidiaries recently acquired by the NMC Group, explaining that the amounts for 2015 did not include collections from them, but that: "*For FY 2016, the projected figures includes [sic] insurance collections from new assets*

acquired (Dr Sunny's Healthcare Group, Americare, Provita)". Nevertheless, the Amendment to the Assignment did not introduce the new subsidiaries as assignors, and their Insurance Receivables were not assigned to DIB to support the 2015 facilities.

92. However, in fact, DIB received into the Amanat account not only monies that represented Insurance Receivables that had been assigned to them, but other monies. Thus, for example:

    a. in November 2016, payments into the account were received from NGI, which was not a designated Insurance Company under the 2015 ARA;

    b. from at least 19 December 2016, monies were received from the Dr Sunny Healthcare Group, and from 26 December 2016 from Grand Hamad Pharmacy Ltd ("**Grand Hamad**"), the Seventh Claimant; and.

    c. on 25 December 2016, NMCH paid AED 11 million into the Amanat account.

The Negotiations for the 2018 Facilities

93. On 30 July 2017, DIB agreed to increase NMCH's RCF to AED 215 million by granting a new Murabaha facility of AED 90 million with a tenor of six months.

94. On 19 December 2017, Mr Qazi and Mr Al Hussain had a meeting with Mr Manghat and Mr Shenoy. Mr Manghat said that the NMC Group had invested some US$ 150 million in the Kingdom of Saudi Arabia ("**KSA**"), and asked whether DIB could finance 80% to 90% of the investment, which had been funded from its cashflow. It was explained that the Group was looking for financing with a tenor of 7 to 8 years and a grace period of a year or a year and a half. Mr Qazi responded that DIB did not generally finance assets outside the UAE, but that DIB could consider a new facility on the basis of "*the existing receivables currently assigned to DIB*" (as it is recorded in DIB's Call Report of the meeting), and that DIB would require as security assets within the UAE to a value of 125% of the new finance. He said that a facility of US $350 million might be proposed for the purpose of refinancing the existing term facility of about US$ 160 million and to finance the investment in the KSA. There was discussion of a facility supported by the assignment of Insurance Receivables from twelve Insurance Companies, the 2015 Insurance Companies and six others, but Mr Qazi agreed that there was no discussion about what further Insurance Receivables might be assigned, nor about which subsidiaries might provide them.

95. Mr Al Hussaini gave evidence that he understood from the discussion at the meeting that agreement had been reached in principle for a facility that would be "*structured (from a Sharia perspective) against assets located in the UAE with the source of the repayment being from the assignment of insurance receivables generated from NMC Group's operations in the UAE, in the same way as was the case with the prior facilities in 2012 and 2015*".

96. On 26 December 2017, Mr Al Hussaini sent to Mr Shenoy, Mr Kumar and Mr Udayakumar Nair of the NMC Group an email in which he asked for information (inter alia) about assets in the UAE to a value of US$ 320 million, observing that DIB already held assets to support existing facilities of NMCH and Specialty, and that "*an additional assigned insurance inflows for AED 9 million per month*" would be required. He asked that "*top unencumbered insurance inflows for AED 9 m per month*" be identified, together with details of past receipts and projections for the next six years. He explained in his evidence that this information was required to *"test what cashflows would be needed in order to meet the required [*debt service coverage ratio]".

97. On 11 January 2018, Mr Al Hussaini sent the NMC Group an indicative term sheet for a facility of US$ 350 million, comprising a US$ 250 million Ijara term facility and a US$ 100 million Murabaha facility. The term sheet was headed "*USD 350 Million Insurance Receivables Backed Term Facility*". It said that both facilities were to be supported with "*the Perfected Assignment of Insurance Receivables for 6 [Insurance Companies] currently assigned to NMCH Amanat Account along with additional Assignment of Insurance Receivables (to be identified) with total additional monthly inflows of AED 9.0M*". The required assignment was described under the heading "*Security*" by the formula that had been adopted in 2015: "*Perfected Assignment Agreement with [NMCH] and/or its subsidiaries (as applicable) related to Assignment of Insurance Receivables from [the 2015 Insurance Companies]*" with "[*a]dditions IPs/TPAs (to be identified) with total additional monthly inflows of AED 9.0M*". The indicative term sheet did not further specify what additional receivables might be assigned, or which subsidiaries were to assign receivables (if any). When Mr Nair responded on 13 January 2018 with comments on the term sheet, he did not make any material observation about the proposal that the facilities be supported by the assignments of Insurance Receivables, including those already assigned as security for the 2015 facilities.

98. On 17 January 2018, Mr Nasser and Mr Al Hussaini had a meeting with Mr Manghat. According to Mr Al Hussaini, Mr Ali also attended, but Mr Ali was unsure whether or not he was there and had no recollection of the meeting. In a pre-meeting briefing note for Mr Nasser, Mr Al Hussaini wrote that the proposed facilities would be supported by the existing assignments of Insurance Receivables from the 2015 Insurance Companies and from further insurance companies who were to provide "*additional monthly inflows of AED 9 million*", but again the security was not defined more precisely. Mr Nasser's evidence was that there was no discussion at the meeting about which NMC Group subsidiaries might assign their interests in Insurance Receivables, and I accept that.

99. There was a further meeting on 25 January 2018, when Mr Qazi, Mr Al Hussaini and Mr Patel met Mr Shenoy. Mr Hussaini said that they "*ran through the terms and conditions of the proposed facility to make sure that DIB and the NMC Group were on the same page*", but there is no evidence that they discussed anything significant about the proposed assignment.

100. In late January and early February 2018, there were exchanges between the NMC Group and DIB about the Insurance Receivables being paid by the 2015 Insurance Companies and also by Al Buhaira, SAICO, Mednet, Healthnet, Globemed and MSH. In particular, on 5 February 2018, Mr Raj sent Mr Al Hussaini and Mr Patel details of the actual receipts from them for the year 2017 and anticipated receipts projected for the year 2018 to 2025. I infer that these were the receipts for the whole of the NMC Group, and I accept that they were so presented by Mr Raj and so understood by DIB.

The Credit Proposal for the 2018 Facilities

101. On 22 February 2018, the CBD made a credit proposal (the "**Credit Proposal**") for two Murabaha term facilities for NMCH and Specialty in an aggregate amount of US$ 350 million:

    a. a facility for US$ 230 million "*to refinance their existing assets of 6 Hospitals for an amount up to 80% of the net book value and for a tenor of 7 years* …". The purpose of this facility was stated to be "*their General Corporate Requirement as well as to settle their existing Term facilities with DIB under*" NMCH and Specialty, which then had about US$108.7 outstanding; and

b. a facility "*to refinance up to 80% or USD 120 million (whichever is the lower) of the acquisition price/consideration/CAPEX to acquire 5 Hospitals/Clinic in Kingdom of Saudi Arabia*" for repayment in seven years.

It stated that both facilities "*will be repaid from insurance receivables from 6 Insurance Providers (IP)/ Third Party Administrators (TPA) currently assigned to NMCH Amanat Account along with additional new assignment of Insurance Inflows from 6 new IPs/TPAs with total minimum coverage of 1.4x*", identifying the six new Insurance Companies as SAICO, Al Buhaira, Mednet, NGI, GlobeMed and MSH. It included a table of receipts for 2017 and projected receipts for the six existing and six new proposed insurers, under the explanation, "*NMC has provided us with the 2017 actual figures along with projection figures of insurance receivables (existing and proposed) for next 8 years (up to 2025) which reflect adequate [debt service coverage ratio] over the financing tenor* ...".

102. In this judgment, I shall refer to the 2015 Insurance Companies and proposed additional ones as the "**Twelve Insurers**". They include ten of the twelve Insurer Defendants. Claims have not been brought against Pentacare because it is in liquidation. According to the NGCs, the last of the Twelve Insurers, Al Dhafra, is not a defendant because receivables from it were released as security by an agreement of 17 September 2019: the credit proposal for the agreement, dated 1 September 2019, explained that Al Dhafra "*will route their inflows through [NAS] and will be treated as TPA*". It also listed Aetna and DIC, the other two of the Insurer Defendants, as Insurance Companies whose Insurance Receivables were to be assigned, together with the remaining other Insurer Defendants.

The CCU had two particular concerns about the Credit Proposal: neither was to do with the proposed assignment of Insurance Receivables. With regard to the proposed US$ 230 million facility, while the CCU agreed to the facilities being increased overall, it considered that the existing 2015 facilities should continue until their maturity, rather than be refinanced. As for the proposed US$ 120 million facility, the CCU was concerned about funds being deployed for expansion in the KSA rather than the UAE. Accordingly, it did not support the proposed US$ 120 million facility. Nevertheless, on 19 March 2018, the MCC recommended that the proposal of the CBD be approved. The MCC's recommendation was endorsed by the BCIC and on 3 April 2018 the Credit Proposal was approved by DIB's Board.

The Facility Agreement Letter and the Term Sheet for the 2018 Facilities

103. On 20 March 2018, the CBD asked the CAD to provide a term sheet for the facilities, and on 22 March 2018 the CAD sent a draft. Mr Qazi returned a version of it marked up with his comments. A final version was then prepared by the CAD. On 25 March 2018, DIB sent the NMC Group a FAL, which was also prepared by the CAD, signed by Mr Qazi and Mr Muhammed Arif Sultan of DIB's Syndicate Agency Unit, and addressed to NMCH, Specialty and NMC Saudi Arabia Healthcare LLC ("**NMC KSA**"), an operating subsidiary of NMCH incorporated in KSA. (DIB's policies allowed the FAL to be issued for a facility approved by BCIC, in anticipation of Board approval). The FAL confirmed the agreement of DIB to provide the facilities on the terms set out in the attached term sheet. Dr Shetty signed the letter separately on behalf of the three addressees, signifying acceptance of all the contents, terms and conditions of the letter.

104. The term sheet identified Specialty and NMC KSA as the "*Obligor*", and identified NMCH as "*Co Obligor*". It identified NMCH and twelve of its subsidiaries as Guarantors. It included a definition of "*subsidiary*" in terms of direct or indirect ownership or control of more than 50% of the voting capital.

105. With regard to Security, the term sheet stated as follows:

> *"Both Facilities will be secured by the following securities:*
>
> *1. Perfected Assignment Agreement with [NMCH] and/or its subsidiaries (as applicable) related to Assignment of Insurance Receivables from the following* [IPs and TPAs*]:*
>
> [The Twelve Insurers were listed]
>
> *2. Pledge over the Amanat Account … which will be the Collection Account for the Insurance Receivables. Monthly repayment of both the facilities will be debited from the NMCH Amanat Account.*
>
> *3. Corporate Guarantees from below each entities covering entire facilities amount* [and there followed a list of NMCH, Specialty and eleven other subsidiaries of NMCH]*.*
>
> *4. Negative Pledge for entire facility amount from* [identified] *entities assets in favor of DIB ….*
>
> *5. Promissory Note covering entire facility amount.*
>
> *6. A Debit Authorization from* [NMCH] *authorizing DIB to debit* [NMCH's] *Amanat Account towards settlement of the monthly installment repayment under* [the facilities*].*
>
> *7. All Risk Insurance policy covering the assets [that were to be the subject of the negative pledge] in favor of DIB …".*

106. The term sheet also specified covenants that were to be provided in support of the facilities, including these:

> *1. "Undertaking from NMCH that the Agreement with the [Twelve Insurers] will remain in force during the tenor of the facility and until the entire facility with DIB has been repaid fully";*
>
> *2. "Joint Undertaking from NMCH and subsidiaries/obligor to maintain a Monthly Average Cash Coverage of 1.4x to cover monthly repayments …"; and*
>
> *3. "Joint Undertaking from NMCH and subsidiaries to cover any shortfalls in facility repayments or maintenance of average monthly cash coverage of 1.4x from their own sources … and/or by addition of assignment of new Insurance Receivables from additional [Insurance Companies] acceptable to DIB".*

At the trial, these undertakings were referred to as the Insurance Agreement Undertaking, the Maintenance Undertaking and the Shortfall Undertaking respectively.

107. It was DIB's case that the FAL had contractual effect as between itself and NMCH, Specialty and NMC KSA, (but not other subsidiaries of NMCH, including the companies that were to be guarantors and the NMGs). As the NGCs pointed out, this appears to be inconsistent with this statement at the head of the term sheet: "*The facility along with terms & conditions as set out in the document … is subject to final Sharia approval, DIB Board of Directors Approval, any regulatory approvals, and satisfactory financing legal documentation to the satisfaction of* [DIB]". Under the law of ADGM, the FAL would not be contractually binding: the question is governed by UAE law, but there was no expert evidence about this and so it is to be

presumed that UAE law is the same as that of ADGM, the *lex fori*. I do not think that it matters whether the countersigned FAL was contractually binding on any of the parties to these dealings, but if it does, I would conclude that DIB has not proved that the FAL was contractual.

The Drafting of the Documentation for the 2018 Facilities

108. The documents for the proposed facilities were drafted by Dar Al Sharia, rather than the CAD. Mr Qazi explained that, firstly, the CAD was busy and the matter was urgent (indeed, on 1 April 2018, Mr Qazi wrote to Dar Al Sharia asking them to "*treat this matter as most urgent, otherwise we will be forced to engage external legal counsel*"); and secondly, the nature of the facilities meant that DIB's standard templates were of limited use, and Dar Al Sharia's contribution to ensure compliance with principles of Shari'a was particularly important.

109. On 4 April 2018, Dar Al Sharia sent draft documents, including draft ARAs for each of the two facilities to the CBD and the RMD for their "*review and confirmation*". The draft ARAs included an Annexure A, which was headed "*Additional Assignor. Name of the Entities*", but which was left blank. The execution pages provided for signatures on behalf of NMCH and DIB, and had a note: *"[Provide other executing additional Assignors*]". By email of 5 April 2018, the CAD responded that it had no comments on the drafts. Mr Al Hussaini responded in an email of 9 April 2018 with his comments, in particular about the MMAs. He made no comment about the draft ARAs.

110. On 11 April 2018, Dar Al Sharia sent further drafts of the documentation for the facilities to the CBD and CAD, writing that, "*These have been drafted from a Sharia perspective so please satisfy yourself from all other perspective before circulation/ execution*". On 11 April 2018, the CAD replied that it had no comments (with qualifications irrelevant for present purposes), and Mr Al Hussaini wrote to Dar Al Sharia that he had checked revised documents and "*found them alright*". He asked that the documents be released "*at the earliest possible*" because the "*clients*" hoped to receive them that day. On 12 April 2012, the CAD asked the CBD to obtain details about the Obligors and Guarantors: the documentation was drafted on the basis that they would execute agreements. The CAD did not ask for any details about the NGCs or other companies in the NMC Group. In my judgment, this indicates that it did not expect any of the agreements to be executed by them or on their behalf.

111. Later on 12 April 2018, Mr Al Hussaini took the documentation to the NMC Group for execution, having sent them an email shortly before doing so. In the email, he told the NMC Group that he would not bring a hard copy of some of the documents because more details were required before they could be completed: with regard to the Maintenance Undertakings and the Shortfall Undertakings, he asked the NMC Group to complete the draft undertakings with "*the exact legal name of all NMCH's subsidiaries*". His evidence was that the CAD requested that he do so, and I accept that. When he took the documentation to the NMC Group, it included hard copies of the ARAs: I infer that they were considered ready for execution without changes or further information about who was to be party to them.

112. The documents were returned to DIB after being executed by Mr Manghat and Dr Shetty. There is no evidence about when and how they were executed by them, nor about when they were returned to DIB and whether they were all returned at the same time. After the documents were returned to DIB, they were executed by Mr Qazi.

113. Mr Qazi, Mr Al Hussain and Mr Patel said that they gave the contractual documents no more than a cursory review. Although Mr Qazi execute the MMAs and ARAs, and Mr Al Hussaini and Mr Patel initialled each page of them, they insisted that it was the responsibility of the

CAD and Dar Al Sharia to ensure that the documentation corresponded with the commercial terms that had been agreed and duly approved in accordance with DIB's procedures. However, Mr Ali said in evidence that "*if they've initialed that, it means that they've read the documentation*". I accept Mr Patel's evidence about whether he reviewed the documents, but in my judgment, Mr Qazi and Mr Al Hussain paid more attention to them than they acknowledged. I do not say that they were being dishonest in their evidence: they might well have convinced themselves of the account that they gave. However, in his email of 9 April 2018, Mr Al Hussaini said that the CBD had "*received the entire set of documents provided to you earlier (i.e. Transaction Documents, Security Documents & Fee Letters) and below is our feedback*". He set out quite detailed comments on the MMAs: for example, that they included a negative pledge over six hospitals and a restriction on disposal of assets for them; and he questioned who needed to sign the promissory note. He said in cross-examination that his comments were the product of a review "*from commercial aspect*", such as "*the profit rate, the financial covenant*". Whatever he meant by that, his review was clearly quite thorough. When Mr Qazi was asked in cross-examination about the email of 9 April 2018 and a witness statement of Mr Muhammad Khalid of the CAD served in the Arbitration, he was constrained to accept that the CBD would have checked that the commercial terms agreed in the FAL and the term sheet had been captured in the draft contracts. He also accepted that CAD asked CBD to provide information where more was needed.

The Dates and Signatories of the 2018 Facilities Documents

114. The two facilities were documented separately, those for the facility for US$ 230 million (the "**Specialty facility**") being executed with the date of 26 April 2018 (so far as they were dated at all: for example, on the first page of the Specialty ARA, the space for the date is left blank), and the documents for the US$ 120 million (the "**KSA facility**") being executed with the date of 30 April 2018. The facilities were drawn down on 26 April 2018 and 30 April 2018 respectively. The evidence does not explain why the documentation was apparently completed at different times, and why, presumably as a result, there were different drawdown dates.

115. The contractual documentation for each facility comprised the following: an MMA; an ARA; an APAA; a Maintenance Undertaking Letter; a Shortfall Undertaking Letter; an Insurance Agreement Undertaking Letter; a Negative Pledge; a Debit Authorisation Letter; a Promissory Note; a Murabaha Investment Agency Agreement ("**MIAA**"); and a Corporate Guarantee. I shall consider below the MMAs, the ARAs and the Undertaking Letters. I need not consider the specific terms of the other contractual documents: neither the NGCs nor DIB relied on them. It suffices to say that, by the APAAs, NMCH pledged to DIB the Amanat account and any credit balance in it and assigned any interest that it had in the account and any credit balance; by the Negative Pledges, NMCH and six specified subsidiaries, all Original Guarantors, pledged not to dispose of certain assets or otherwise deal with them in breach of the pledge; by the Debit Authorisation Letters, NMCH "*irrevocably and unconditionally authorize[d] and instruct[ed] [DIB] to debit the [Amanat account] towards settlement of payments in relation to the ... Facility*"; the promissory notes were provided by the Obligors for the full amount of their respective facilities; by the MIAAs, NMCH, the Obligor (Specialty or KSA, as the case might be) and the other Original Guarantors appointed DIB as their Investment Agent in respect of Murabaha documents and for specified purposes; and the Corporate Guarantee was given to DIB by the Original Guarantors.

116. I observe that the Corporate Guarantees were executed by only twelve of the Original Guarantors: they were not signed on behalf of Specialty, although Specialty was said to be a

party to it. At least for the KSA facility, a separate guarantee was executed by Specialty. This curiosity was not explained by the evidence, but neither party relied on it.

117. The Specialty MMA was signed on the execution page by Mr Qazi and Mr Muhammad Khalid of the CAD for DIB. It was signed on behalf of Specialty by Mr Manghat and Mr Shenoy. They also signed twice for NMCH, because it was named both an a "*Co-Obligor*" and as an "*Original Guarantor*", and they signed separately for eleven of the other twelve Original Guarantors. Dr Shetty alone signed for Pro Vita: he had been appointed as its Manager under its Amended and Restated Memorandum of Association dated 9 February 2016. I infer that Mr Manghat and Mr Shenoy were not authorised to act for Pro Vita. There are company stamps against all the signatures in its name.

118. The Specialty ARA was signed also signed on the Execution Page by Mr Qazi and Mr Khalid for DIB. The only other signatory was Mr Manghat, who signed against the words "*Assignor Signed for and on behalf of* [NMCH]". Underneath these words, the page stated "(*Provide other executing additional Assignors as required*"), but there were no further signatures. The signature page was stamped by DIB and NMCH.

119. The KSA MMA was executed on the signature page for DIB by Mr Qazi and Mr Sultan. It was signed by Dr Shetty once on behalf of NMC KSA, twice on behalf of NMCH, as Co-Obligor and an Original Guarantor, and separately on behalf of other Original Guarantors. Each company stamped the document against the signature in its name.

120. The KSA ARA was similarly signed on the Execution Page by Mr Qazi and Mr Sultan. The only other signatory was Dr Shetty, who signed against the words "*Assignor Signed for and on behalf of* [NMCH]". As with the Specialty ARA, underneath these words, the page stated "(*Provide other executing additional Assignors as required*"), but no further parties executed the ARA. It was stamped by DIB and NMCH.

121. As I have said, Mr Al Hussaini and Mr Patel initialled every page of both the MMAs and both the ARAs (including, I note, the blank Annexure A pages, to which I refer below) and Mr Shakeel Ahamed of the CAD also initialled each page of the KSA facility documents. This was DIB's practice to guard against forgeries: they were not executing any of the agreements.

Evidence provided to DIB of Authority to Sign Documentation on behalf of NMC Companies

122. In February 2015, the CBD had, with the assistance of the NMC Group, prepared a spreadsheet in order to identify what contracts NMC subsidiaries had with the 2015 Insurance Companies. No comparable exercise was conducted in 2018, and corresponding information was not collected by DIB before the 2018 facilities documentation was executed, nor indeed thereafter.

123. According to Mr Patel's evidence, after a FAL was signed, the usual practice was for the customer to inform DIB who was to sign the contractual documentation on its behalf, and then, as instructed by the CAD, the CBD would collect evidence of the proposed signatory's or signatories' authority to do so. At about the time that the FAL was agreed and thereafter, the NMC Group provided to DIB various powers of attorney. Thus:

    a. on 22 March 2018, Mr Nair sent to the CBD by email a power of attorney dated 5 November 2017 whereby Pro Vita appointed two persons to act for it, a Mr Alashri Abdulmohsen Hamad A and a Mr M R Davis; and

b. on 23 March 2018, Mr Nair send the CBD by email three powers of attorney. By one dated 9 August 2017, Dr Shetty, as attorney for NMCH, authorised Mr Manghat to act for NMCH. By the second power of attorney; which was dated 7 November 2017, Mr Manghat, Mr Hani Buttikhi, Mr Shenoy and Mr Kumar were appointed attorneys for seven Dubai companies, including five of the Original Guarantors and two NGCs. The third, also dated 7 November 2017, authorised Mr Manghat, Mr Hani Buttikhi, Mr Shenoy and Mr Kumar to act for fifteen Abu Dhabi companies, including Specialty, and other Original Guarantors of the Specialty facility, and also three NGCs. Both powers of attorney authorised the attorneys to act alone for some purposes and to act jointly with another attorney for others. DIB was also sent a power of attorney dated 21 February 2014 by which NMCH appointed Dr Shetty its attorney.

124. On 19 April 2018, Mr Kumar sent CBD by email copies of the same four powers of attorney already sent on 23 March 2018. It was not explained why DIB was sent the same powers of attorney twice, but it was not suggested that that is relevant to anything that I have to decide.

125. As the NGCs submitted, the powers of attorney that were sent to DIB evidence the authority of Mr Manghat or of Mr Manghat and Mr Shenoy acting jointly to enter into the contracts for the Specialty facility on behalf of Specialty, NMCH and the other eleven Original Guarantors: that is to say, the NMC Companies expressed to be parties to the MMA, the ARA and the other contracts. I infer that they were sent to DIB for that reason. As for the power of attorney of 21 February 2014, I would suppose that this was sent to evidence Dr Shetty's authority to empower Mr Manghat to act on NMCH's behalf. The powers of attorney did not provide evidence that Mr Manghat, or that Mr Manghat and Mr Shenoy together, might act on behalf of most of the NGCs: in so far as they referred to five of the NGCs, I infer that was incidental to the purpose for which they were provided to DIB.

126. As far as appears from the material before me, DIB was not sent evidence about Dr Shetty's authority to act for NMC companies, including Pro Vita, for whom he executed the ARA and the Corporate Guarantee for the Specialty facility. There was no evidence about the reason for this, but it might well be that DIB was satisfied about his authority to act for at least some NMC companies because it already had evidence from previous dealings with the NMC Group.

127. Mr Patel gave evidence that the powers of attorney were provided by Mr Kumar on 19 April 2018 in response to the CAD, through the CBD, making a request for "*the authority documents*": he said that the request was made in general terms, and that the CAD did not identify specific NMC companies for which it required such evidence. He and Mr Al Hussaini emphasised that it was for the CAD to decide whether DIB had proper evidence of the signatories' authority to act for the contracting parties. For example, Mr Patel said that "*generally*" the CAD told the CBD whether more evidence was required, and that it was the CAD's responsibility to review the documents that were provided. I accept that it was ultimately for the CAD to decide whether DIB had sufficient evidence of authority. However, I also conclude that Mr Al Hussaini and Mr Patel examined what the NMC Group provided with more care than they acknowledged in cross-examination. On 29 April 2018, Mr Patel sent an email to the NMC Group asking for "*POA to Dr B R Shetty to sign credit facility documentation on behalf of NMC Saudi entities*": in his witness statement provided for the Arbitration, he explained that he and Mr Al Hussaini "*briefly looked at the power of attorney provided by NMC Group in relation to NMC Saudi*" and noticed that it did not include Dr Shetty as an authorised attorney; and therefore "*on our own initiative*" sought further evidence. When cross-examined, Mr Patel said that he sent the email of 29 April 2018 at the CAD's direction, but, in view of his Arbitration statement, I cannot accept that: it is an example of the

CBD witnesses minimising their role in documenting the facilities. I also reject the evidence of Mr Al Hussaini in cross-examination that he requested that DIB be sent powers of attorney "*that cover all the parties in the agreement, including the assignors*", and that he assumed that "*all the subsidiaries should be there in the PoAs provided, subsidiaries that have an assignment*". If Mr Al Hussaini thought about it at all, he would have realised that the NMC Group had not provided evidence about who might act for the NGCs. I cannot accept that he assumed that there was any such evidence.

The Terms of the Master Murabaha Agreements

128. The MMAs were stated to be governed by English law and included an arbitration agreement. For the sake of simplicity, I refer below to the terms of the Specialty MMA, but those of the KSA MMA are similar.

129. Under clause 2 of the MMA, DIB agreed to provide the facility to Specialty, and Specialty agreed to apply all proceeds under the facility to specified purposes. Under clauses 6.1 and 6.2, Specialty agreed to make monthly payments to reduce the sums outstanding under the facility. By clause 15.16, DIB might cancel the facility and accelerate the payment of the outstanding amount in the event of default by way, inter alia, of the Specialty failing to make a payment on the due date.

130. The nature of the facility being a Murabaha agreement, Specialty, as the "*Purchaser*", might use it by delivering to DIB a Notice of Request to Purchase. Clause 3 of the MMA provided that Specialty might not deliver a Notice of Request to Purchase unless DIB had given notice that conditions precedent set out in Schedule 2 to the MMA had been satisfied or waived. The conditions included:

    a. the execution of all Security Documents, which included "*Perfected Assignment Agreement with* [NMCH] *and/or its subsidiaries (as applicable) related to the Assignment of Insurance Receivables*" from the Twelve Insurers; and

    b. evidence that Notices of Assignment had been served as required by the ARAs, and that Acknowledgments had been obtained.

131. By clause 13 of the MMAs, the Purchaser and NMCH agreed to ensure that "*insurance receivables*" from the Twelve Insurers received into the Amanat account would, at a minimum, provide cover of 1.4 times the monthly payments contemplated under the MMA. Schedule 10 also provided that, "*In each monthly period,* [NMCH/Specialty] *will ensure that the monthly insurance Receivables flows* (from the [Twelve Insurers]) *in the Amanat Account will provide a coverage ratio of minimum of 1.4X the monthly payment under the Facility*".

132. To this end, Specialty and NMCH irrevocably covenanted to provide (inter alia) "*Instruction from NMCH*/[Specialty] *to* [the Twelve Insurers] *to transfer all due insurance receivables to their Amanat Account with* [DIB]*, until such time till* [DIB] *confirms full payment of its facilities*". Monies received into the Amanat account were to be retained until they were equal to the amount of the next monthly repayment, and this amount was then to be blocked by DIB and used to pay the monthly repayment on the due date. Any excess "*may be released*" to NMCH's current account with DIB.

133. By clause 6.4 of the MMA, in order to effect and secure the payment obligations, Specialty and NMCH agreed to provide Security Documents as specified in Schedule 10. As well as a "*Perfected Assignment Agreement with* [NMCH] *and/or its subsidiaries (as applicable) related to the Assignment of Insurance Receivables*" from the Twelve Insurers, they included:

a. a "*Pledge over the Amanat Account … which will be the Collection Account for the insurance receivables. Monthly payment of the facility to be debited from NMHC Amanat Account*"; and

b. a Debit Authorisation from NMCH authorising DIB to debit the Amanat account towards settlement of the monthly payments.

134. By clause 10.1, the "*Original Guarantors*" jointly and severally guaranteed "*punctual performance by* [Specialty] *of all* [its] *obligations under*" (inter alia) the MMA. Clause 18 provided that "*the Purchaser*" was to provide additional guarantors if any of its subsidiaries had sufficient assets, profits or revenue to become a "*Material Subsidiary*" as defined in the MMA. The Purchaser was Specialty, and so, on its face, clause 18 contemplated subsidiaries of Specialty being additional guarantors, but the intention was, presumably, to refer to subsidiaries of NMCH: there was a drafting mistake.

135. Before leaving the MMAs, I mention clause 16, which provides that "*any term of any Murabaha Document may be amended or waived only with the consent of the Obligors* [sc. Specialty and NMCH] *and the Majority Participants* [as defined in the MIAA] *and any such amendment or waiver will be binding on all parties*". The effect of this is that any waiver or amendment would require the agreement of all the Parties to the ARA, that is to say DIB, NMCH, Specialty or NMC KSA (as the case might be) and the Original Guarantors. The NGCs do not, they told me, rely on that provision, and in the event they did not need to do so because, as I shall explain, DIB abandoned its arguments of waiver, acceptance and estoppel.

The Terms of the Assignment of Receivables Agreements

136. The issues in these proceedings between the NGC Claimants and DIB about the meaning and effect of the 2018 ARAs include (i) whether they purported, on their true construction, to assign the NGCs' interests in Insurance Receivables (as DIB contends) or whether they assigned only the interests of NMCH in Insurance Receivables (as the NGCs contend); (ii) about whether (as DIB contends and the NGCs deny) the NGCs were party to the ARAs; and (iii) whether, if the NGCs are correct in disputing that the ARAs purported to assign their interests in Insurance Receivables, or in denying that they are party to the ARAs, the ARAs can be rectified (under either the UAE Civil Code or ADGM law) so as to include the NGCs as parties or so that the ARAs assign the interests of the NGCs in Insurance Receivables. Again, the ARAs for the two facilities are similar, and I summarise their terms by reference to the ARA for the Specialty facility.

137. The front sheet to the ARA described it as "*Assignment of Receivables Agreement between* [NMCH] *(as Assignor) and* [DIB] *(as Assignee)*". The document itself stated that it was an assignment between NMCH and DIB "*each a Party and together the Parties*". Clause 2 of the ARA was headed "*Assignor's Covenant to Pay*", but headings were included for ease of reference only and do not affect the interpretation of the agreement: it reads, "*The Assignor shall pay each of the Secured Liabilities when due in accordance with its terms*", the Secured Liabilities being defined to mean the principal sum of up to US$ 230 million and "*all present and future obligations and liabilities … of the Assignor in any of its capacities under any Transaction Document*", and "*Transaction Document*" being defined as "*the transaction documents executed on or about the date of this Agreement and made between* [DIB] *and the Assignor*".

138. By clause 3.1 of the ARA, "*the Assignor*" undertook to "*assign to* [DIB]*, the Assigned Receivables, including any amounts agreed to be paid by an Insurance Provider to commute further liability under such Assigned Receivables* …"; to "*give notice to the Insurance Provider to this Assignment*" in a form attached to the ARA; and to "*procure an acknowledgement from such Insurance Provider*" in a form attached to the ARA or "*in form and substance acceptable to* [DIB]". The expression "*Insurance Provider*" was defined, and it meant the Twelve Insurers. "*Assigned Receivables*" was defined as "*all the Assignor's right and interest (but none of its obligations) which the Assignor may have in respect of the insurance receivable from the Insurance Providers*". Clause 3.3 provided that, at the end of the "*Security Period*" (that is to say, when the liabilities were fully repaid and discharged), DIB should do everything required to re-assign the Assigned Receivables and release the Assignor from any further performance of the ARA.

139. Clause 4.1 reads as follows: "*The Assignor shall, promptly on request of the Assignee, …do, execute, acknowledge, deliver, record, file and register, any such further acts, deeds, conveyances, encumbrance, assignments, legal opinions, government approvals,, termination statements,, notices of transfer, certificates, assurances and other instruments as the Assignee may reasonably require from time to time in order to: … carry out more effectively the purposes of the Agreement* …".

140. By clause 5.2, "*The Assignor*" was to "*hold the Relevant Receivables on behalf of, and to the order of,* [DIB]".

141. By clause 6.2, it was provided that "*The Assignor represents that he is the sole legal owner of the Secured Assets* [which term was defined to mean the Assigned Receivables] ….". By clause 6.3, it was provided that "*The Assignor represent*[ed] *that … it ha[d] the power to enter into, perform and comply with its obligations under this Agreement and to create the security described herein*". By clause 6.4, "*The Assignor*" warranted that there was no other "*Encumbrance over any of the Secured Assets apart from those created by this Agreement and other Transaction Documents*". Clause 6.6 placed obligations on the "*Assignor*" with regard to the Insurance Receivables, including obligations not to create any encumbrance over them or to sell them and promptly to pursue any remedies available to it in respect of any breach in relation to them.

142. Clause 7.1 of the ARA provided that "*the security created by this Agreement shall not be enforced prior to the occurrence of an Event of Default. Following the occurrence of an Event of Default,* [DIB] *shall be entitled, without giving prior notice to the Assignor or obtaining consent from the Assignor (but at the cost of the Assignor) in the name of the Assignor or on behalf of* [NMCH] *to exercise, subject to applicable law, all the Rights of Assignor in relation to the Secured Assets*". The expression "*Secured Assets*" was defined to mean the Assigned Receivables.

143. By clause 10 of the ARA, "*the Assignor*" authorised DIB at any time to set-off the monies standing to the credit of the Amanat account towards payment and discharge of the amounts owed by "*the Assignor*" to DIB under the "*Transaction Documents*".

144. Clause 14 stated the governing law provision: "*This Agreement is governed by and shall be construed in accordance with the laws of the Emirate of Dubai and the applicable federal laws of the United Arab Emirates … and the principles of Sharia …. In case of any conflict between the Applicable Law and the principles of Sharia, the principles of Sharia will prevail*". It also provided that the Courts of the Emirate of Dubai should have exclusive jurisdiction with

regard to any dispute arising out of or in connection with it (subject to a right enjoyed only by DIB to take proceedings in other courts).

145. Schedule 1 to the ARA specified the form of the notices to be given to insurers. There were blank spaces for the addressee and the date. The heading to the notice was designed to specify a contract between an NMC Group company and the insurer (which was referred to as the "*Contract*"), and the form stated that NMCH thereby gave notice to the addressee that "*we have assigned by way of security pursuant to an Assignment of Receivables … all our right, title and interest (but not the obligations) in and to the Contract to* [DIB]". It went on to state that NMCH thereby irrevocably authorised the addressee "*to make all payments as from the date of this notice in respect of the Contract to*" a specified account at DIB. It also stated that "*This notice and acknowledgment shall be governed by and construed in accordance with the laws of the Emirate of Dubai and applicable federal laws of the*" UAE. It requested the addressee to sign an attached form of acknowledgement and return it to DIB, giving DIB's address. There was a line for the signature, under which is the word "[*ASSIGNOR*]".

146. Schedule 1 also included the "*Form of Notice of Acknowledgement*". It was addressed to DIB. It was designed to be completed with the names of the parties to, and the date of, a specific contract. (The form provided for a date in 2017, but that was clearly a drafting mistake.)

147. The ARA included a page headed "*Annexure A Additional Assignors*", and it contemplated that there might be additional parties by way of assignors there who identified in its Annexure A. Annexure A was left blank.

The Undertakings

148. The Maintenance Undertakings, the Shortfall Undertakings and the Insurance Agreement Undertakings were also similar for the two facilities.

149. The Maintenance Undertaking Letter and the Shortfall Undertaking Letter for the Specialty facility were signed by Mr Manghat, Mr Shenoy and Dr Shetty above the words "*NMC Healthcare LLC*", and initialed by Mr Manghat and Mr Al Hussaini. The Insurance Agreement Letter for the Specialty facility was signed by only Mr Manghat, again above "*NMC Healthcare LLC*". Mr Manghat and Mr Al Hussaini initialed it. The Specialty Maintenance Undertaking was dated 26 April 2018, but the Specialty Shortfall Undertaking and the Insurance Agreement Undertaking were undated.

150. For the KSA facility, the Maintenance Undertaking Letter, the Shortfall Undertaking Letter and the Insurance Agreement Letter were all signed by Dr Shetty above "*NMC Healthcare LLC*", and he and Mr Al Hussaini initialed them. All were dated 30 April 2018.

151. All the Letters were stamped by DIB and NMCH, but by no other company in the NMC Group, and Mr Patel put his initial in the DIB stamps.

152. The Maintenance Undertakings were undertakings "*to maintain a monthly average cash coverage of 1.4 times to cover monthly payments under the Facility … and in case of any shortfalls … the amounts standing to the credit of the* [Amanat] *Account shall be utilized to meet the shortfall* ….": and "*to promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as* [DIB] *may reasonably specify and in such form as* [DIB] *may reasonably require to effect the transaction contemplated by this undertaking* ..".

153. The Shortfall Undertakings were undertakings to "*cover any shortfall in the payments or maintenance of average monthly cash coverage of 1.4 times from our own sources and authorizing* [DIB] *to debit the* [Amanat] *Account (or any other account now or at any time (and from time to time) opened, owned, held or maintained at any bank or financial institution in any jurisdiction … and all money from time to time standing to any credit of such account for this purpose and/or by the addition of new insurance receivables from additional Insurance Providers/Third Party Administrators acceptable to* [DIB]"; and (in a provision like that in the Maintenance Undertakings) "*to promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as* [DIB] *may reasonably specify and in such form as* [DIB] *may reasonably require to effect the transaction contemplated by this undertaking* ..".

154. The Insurance Undertakings contained an undertaking that the agreements with the Twelve Insurers would remain in force until the facility had been fully repaid and they include the same undertaking as the Maintenance Undertakings and the Shortfall Undertakings to execute documents and otherwise act as DIB might reasonably require.

155. DIB argued that the Maintenance Undertakings and the Specialty Undertakings were "*addressed to DIB by, and signed by numerous companies in the NMC Group, including* [most of the NGCs]". The basis for this contention is that each of these four undertakings is stated at its head to be from NMCH, and under NMCH there are listed over one hundred of NMCH's wholly-owned or partly-owned subsidiaries in the UAE and elsewhere. Further, at the end of each of these undertakings, under the signature block for NMCH, is another line, in appearance a line for a signature, over the same long list of companies. Unsurprisingly, most of the NGCs were included in the list, but Eve Fertility Center Ltd ("**Eve Fertility**"), the Fourth Claimant, was acquired by the Group only later in 2018, and was not included. It is not entirely clear whether the list included the New Medical Centre Pharmacy Ltd ("**NMC Pharmacy 2**"), the Eighteenth Claimant: the NGCs plead that it was omitted, but it is difficult to know because different subsidiaries in the Group used similar names. There is no apparent reason that NMC Pharmacy 2 might be omitted, and on balance I consider that it must have been included under some name.

156. The Insurance Agreement Undertakings are different: they do not have a list of subsidiaries or refer to subsidiaries, and they do not indicate that there might be any signatory other than NMCH.

157. The long list of companies comprised all, or practically all, of the subsidiaries of NMCH that were listed in the Group's consolidated financial statements for the year ended 31 December 2017. The explanation appears to be this: in the email that Mr Al Hussaini sent to the NMC Group on 12 April 2018 before bringing them the documents for execution, he wrote that he would not be bring hard copies of the Maintenance Undertakings or the Shortfall Undertakings, explaining that "*I have attached soft copy and need you to fill the exact name of all NMCH's subsidiaries*". In turn, this no doubt reflected the requirements in the term sheet that the Maintenance Undertaking be a "*Joint Undertaking from NMCH Subsidiaries/obligor*" and the Shortfall Undertaking be "*Joint Undertaking by NMCH and subsidiaries*" (whereas the Insurance Agreement Undertaking was required from NMCH alone).

Notices and Acknowledgements

158. On 13 April 2018, Mr Al Hussaini had sent an email to Mr Nair, asking him to "*Initiate the process of Notices and Acknowledgment from IPs/TPAs*". By 23 April 2018, CBD had received twelve Notices in the form specified in the ARAs, addressed one to each of the

Twelve Insurers. They were all signed by Mr Manghat above the name of NMCH, and they were undated. They purported to give notice of an assignment made between NMCH and DIB, and to instruct the addressee to pay Insurance Receivables into the Amanat account. It is DIB's case, as I understand it, that a single notice to each of the Twelve Insurers served as notice under both the ARAs: the Notices did not state the date of the assignment, although the form of Notice contemplated that they should do so.

159. Each Notice was headed by reference to an Agreement said to have been made between NMCH and the Insurance Company to which it was addressed, and stated its date. However, according to the NGCs, only two of them, NMC Pharmacy 1 and NMC RFMC (the two NGCs which were parties to the February 2015 ARA) were beneficiaries under a corresponding contract, and in most cases no contract with a NGC corresponding to the description in the headings has been identified.

160. Mr Patel sent the Notices to the CAD under cover of an "*Inter Office Memo*" dated 23 April 2018. According to his evidence, which I accept, he did not check them before doing so. Although it was a condition precedent to the drawdown of the facilities that DIB should have received the Notices and it was the CAD's role to check that all conditions precedent had been satisfied, Mr Patel's Memo simply asked the CAD to lodge the Notices in safe custody. The CAD raised no concerns about them. DIB relied on the NMC Group to send the Notices to the Insurance Companies, but its witnesses did not know whether they had been sent.

161. There are also in evidence what purport to be Acknowledgments signed by the Twelve Insurers. They too are in the form specified in the ARAs. They are undated, addressed to DIB and headed by reference to the same agreements with the Insurance Company as the corresponding Notices. They stated that the Insurance Company had received notice "*from the Assignor dated* [ ]", but in no case was the date of the Notice given.

162. It was a condition precedent to the drawdown that the Acknowledgments, as well as the Notices, should have been received by DIB, but on 23 April 2018 CBD made a credit proposal that DIB allow a "[*t]emporary deferral up to 30 days from 1st drawdown*" of the facilities for the Acknowledgments to be provided, The reason for the request was said to be the "*urgency of the drawdown*", and the request was granted. It was said in the proposal that the Acknowledgments were "*expected to be received within 2-3 weeks time*" and that "*Client representative is constantly chasing with respective IPs/TPAs for execution of these acknowledgment and has assured us to provide us within a maximum period of 30 days*". However, there was no evidence about exchanges with the NMC Group about this.

163. I should mention the terms of the Credit Assessment of 24 April 2018 that supported this proposal: it was observed that the facilities were "*against certain set of securities which includes mainly the assignment of insurance receivables from 12* [Insurance Companies] *being the main source of facility repayment. It's worth to mention that out of the 12* [Insurance Companies], *6 are already existing* [Insurance Companies], *the inflow from the existing 6* [Insurance Companies] *is sufficient to meet facility instalment and maintain 1.40x coverage as presented in CBD original credit proposal*". The CBD had set out details of the actual and projected receivables from the 2015 Insurance Companies.

164. DIB did not receive Acknowledgments within thirty days of drawdown. In an email of 9 July 2018 to Mr Nair, Mr Al Hussaini observed that the Acknowledgments were to have been received by thirty days after the first drawdown on 26 April 2018, and asked when this requirement would be met. Mr Nair sent an internal email to others in the NMC Group, copied

to Mr Al Hussaini, "*Please arrange the same on a priority basis*", and Mr Al Hussaini said in his evidence that this showed that he was "*taking the requirement seriously*".

165. By an email to the NMC Group of 17 September 2018, Mr Patel set out a table of "*company wise insurance inflow projection at the time of proposing*" the facilities, and said that DIB was not receiving sufficient insurance receivables from the Twelve Insurers. He pointed out that "*the submission date for acknowledgment of Notice of assignment has already been lapsed*". He asked that the NMC Group provide them. Mr Kumar replied on 15 November 2018 and promised to ensure that the insurance receivables would be "*routed to the DIB Amanat account*", but asked that the requirement for Acknowledgements be waived: the email does not give a reason for this request.

166. There is no record of a reply to the request for a waiver. However, on 23 June 2019, Mr Patel wrote to the NMC Group that DIB had received only four Acknowledgments and that eight were outstanding, describing this as a "*breach of security*" and asking for it to be justified. In reply, Mr Nair, while accepting that "[*t]echnically, the Bank may not have received the acknowledgment*", said that the insurance monies were "*flowing through the DIB Amanat account*".

167. In the credit proposal of 1 September 2019 relating to an annual review of the NMC Group's facilities, in which, as I have said, Aetna and DIC were listed as the Insurance Companies whose Insurance Receivables were to be assigned, CBD proposed that the outstanding Acknowledgments, including, it seems, Acknowledgments from Aetna and DIC, be "*obtained on a best effort basis*". That proposal was approved. According to an email sent within DIB's RMD on 2 March 2020, "*notices/Acknowledgments*" for Aetna and DIC were "*still pending*".

168. In support of its proof of debt in the administrations, DIB submitted what purport to be Acknowledgments by the Twelve Insurers, but not by Aetna or DIC. They were presented, together with the Notices to the Twelve Insurers, under cover of Mr Patel's Inter Office Memo of 23 April 2018, but clearly they had not then been received by DIB. Mr Patel's evidence was that he is "*not now able to recollect exactly when they were received*". Mr Nasser said that he understood that they were "*all eventually received*", but did not explain the basis of his understanding.

169. DIB pleads that "*the Notices were sent to each of the Twelve Insurers and that each of the Twelve Insurers sent an Acknowledgments*" in the form specified in the ARAs. In its opening submissions, the NGCs pointed out that a number of the Insurance Defendants have disputed receiving Notices or providing Acknowledgments. I need not set out all of documents on which the NGCs relied, and the following examples suffice:

    a. In an email of 16 June 2020, a Senior Manager of NGI said wrote that "*As per our records, in 2018 NMC did not send us any official notification of Assignment of Receivables Agreement in favor of* [DIB] *nor did we execute any form of Acknowledgment …*".

    b. In proceedings in the Dubai Courts brought against it by DIB, SAICO asserted that the Acknowledgment in its name was a forgery. The Court gave judgment on DIB's claim without, as I was told, deciding whether it was.

    c. In proceedings that DIB brought against it in the Dubai Courts, Al Buhaira has challenged as forgeries the Notice to it and its purported Acknowledgment.

d. In its defence in these proceedings, MSH pleads that it never received a Notice, and it paid Insurance Receivables into various bank accounts, as specified in instructions from NMC Companies; and that it never signed an Acknowledgment and its purported Acknowledgment is forged.

170. As I have said, the Insurer Defendants did not take part in the trial, and did not give evidence about the Notices and Acknowledgments. I do not need to decide whether or not the Acknowledgments were forgeries, and I make no finding about that. It suffices to conclude that, in my judgment, DIB has not proved its pleaded case that Notices were sent by the NMC Group to the Twelve Insurers (nor, if it be alleged, to Aetna and DIC), nor has it proved that the Twelve Insurers provided Acknowledgments.

The Sukuk

171. On 21 November 2018, the NMC Group raised US$ 400 million by issuing a Sukuk instrument on the London Stock Exchange International Securities Market. Pursuant to an engagement letter of 25 October 2018, DIB was one of nine financial institutions who were appointed as a Joint Lead Manager ("**JLM**") for the Sukuk. Under the terms of an agreement recorded in a letter of 22 October 2018, DIB was to receive a management and selling commission of some US$ 200,000, being 0.05% of the nominal Sukuk amount.

172. Within DIB, Mr Muhammad provided the NMC Group with these services. Since 2014, Mr Muhammad has been a Senior Vice President in the DCMD, and specialises in Sukuk instruments. In 2018, he formally reported to Mr Ali of CBD, but his work in the DCMD was separate from the general work of the CBD.

173. On 21 May 2018, Mr Shenoy had sent Mr Muhammed an email: he explained that the NMC Group was looking to raise finance on the debt capital markets by issuing a Sukuk of US$ 350 million to US$ 500 million, and that the Global Coordinators were HSBC Bank plc ("**HSBC**") and Standard Chartered Bank ("**SCB**"). There was an opportunity for DIB to participate as a JLM, and on 22 May 2018, the CBD put up a credit proposal seeking approval for DIB to act as a JLM and to invest up to US $50 million or 10% of the issue of the proposed Sukuk. It set out the facilities that DIB had extended to NMC Group companies, including the recent 2018 facilities. Mr Muhammad signed the credit proposal, but, according to his evidence, he did not review most of it: his contribution was limited, he said, to checking the description of the proposed Sukuk. This might seem surprising since he signed the whole proposal, but his evidence is corroborated in that he initialed only the page giving details of the Sukuk, and I accept it. The credit proposal was supported the MCC and the BICC, and was approved by the Board on 18 June 2018.

174. On 25 October 2018, NMCH entered into an engagement letter with DIB and eight other financial institutions, setting out the terms on which they were engaged to act as JLMs. They were to be severally responsible for specified services, including "*assist*[ing] *with an analysis on the business and assets of* [NMCH]", "*act*[ing] *as joint lead manager and joint bookrunners*", and "*coordinat*[ing] *the marketing, roadshow and book-building process*" for the issue and offer of the Sukuk.

175. NMC plc and NMCH issued an Offering Circular dated 20 November 2018, over the names of HSBC and SCB as Joint Global Coordinators, ten banks including DIB as JLMs, and two other banks as Co-Managers. It was a document of some 200 pages, and it included these statements:

a. Under the heading "*Liquidity and Capital Resources, Overview*", that the NMC Group "*typically funds the working capital requirements of its healthcare business entirely from operational cash flow*";

b. Under the heading "*Cash from financing activities*", that net cash from its financing activities was US$ 470.3 million, and "*almost entirely reflected the proceeds received from the issue of a convertible bond coupled with net drawdown of term loans under the Group's syndicated loan facility*"; and

c. Again under the heading "*Indebtedness*", that the Group's indebtedness comprised "*working capital facilities, drawing under its syndicated loan facilities and certain short-term revolving loans*".

176. There is no dispute that these statements misrepresented the NMC Group's financial position in that they presented the Group as funding the working capital requirements of the healthcare business from its operational receipts, whereas it had used loan facilities from DIB; the Group's net drawdowns were not almost wholly by way of the proceeds from the bond and syndicated loans; and the circular omitted mention of the Group's non-syndicated loans from DIB. Accordingly, these statements were inconsistent with information known within DIB.

DIB's knowledge of the Fraud in the NMC Group

177. In its pleaded case before the trial, the NGCs alleged that DIB was or ought to have been aware of the fraud in the NMC Group, and that "*it is to be inferred that from at least October 2018 DIB must have known (alternatively ought to have known) that the NMC's financial accounts and financial statements were misstated*" in that they did not record and report the debts to DIB. In support of this allegation, they pleaded, inter alia, that "*The due diligence and investment processes for the Specialty Facility and the KSA Facility of April 2018 and the 2018 Sukuk finalized between May and 21 November 2018 should have put DIB on notice that the NMC Group was misstating its financial position in its consolidated accounts (and* [Specialty] *misstating its position in* [its] *non-consolidated accounts). Moreover, the Offering Circular that DIB helped prepare for the 2018 Sukuk was irreconcilable with DIB's own knowledge as to the financial position of the NMC Group (and given its long relationship with the NMC Group, DIB was in a different position from the other financial institutions that helped prepare that document)*".

178. In its written opening, the NGCs said that "*from at least October 2018, DIB must have known, alternatively it ought to have known, that the NMC Group's consolidated accounts and financial statements were misstated*" in that they failed to disclose the Group's indebtedness, including all its debts to DIB. It was said that the knowledge of the fraud was relevant (inter alia) to the NGCs' argument that, under UAE law, fraud vitiates a transaction, and to their argument that, under article 106 of the UAE Civil Code, DIB is not entitled to assert rights over the Insurance Receivables.

179. In their oral submissions at the start of the trial, the NGCs abandoned the allegation that DIB had actual knowledge of the fraud, stating that no allegations of "*personal dishonesty*" were being made against individuals at DIB and the "*The focus is very much on the 'ought to have known' aspect*". Later in the opening, it was explained that no allegation was being made of DIB "*deliberately avoiding looking because of an apprehension of what one would see if one did*". Further, it was accepted that the principle that "*fraud vitiates all*" is not engaged by "*a failure to act as a reasonable person would have done*", and that more than that was required

by UAE law, so as to engage considerations of "*moral and social considerations to prevent people departing from the path of good conduct*": in an attempt to encapsulate this concept, a formulation of "*gross lack of care which is objectionable*" was advanced.

180. When the witnesses from DIB were cross-examined, no allegation of dishonesty or actual knowledge of the fraud was put to them. Various allegations were put to them that, had they acted with the ordinary care or as a competent and reasonable banker, they would have seen that the NMC Group was not reporting all its debt and specifically was not reporting its facilities with DIB, and that they "*ought*" to have noticed other discrepancies in documents. It was put to Mr Muhammad that it would have been "*prudent*" when promoting the Sukuk to have "*cross-checked*" the Offering Circular by reference to DIB's lending, that he "*ought to have known from reading the credit proposal"* about the NMC Group's reliance on borrowings from DIB to fund working capital requirements, and that he *"ought to have known that the NMC Group was under-reporting its debts*".

181. After the witnesses of fact and Professor Amr had concluded their evidence and in the course of Mr Al Aidarous' cross-examination, the NGCs put before the Court draft proposed amendments of their pleadings. The allegation of actual knowledge of the fraud was formally abandoned, and the NGCs still pleaded that DIB ought to have known from "*at least October 2018*" that the Group's consolidated accounts and financial statements did not record and report DIB's facilities. However, when it was suggested that this position was illogical in that it was said to support an argument that in April 2018 NMCH did not have ostensible authority to assign the NGCs' assets, the NGCs reviewed the draft pleading, and shortly before closing submissions they applied for permission to amend so as to advance a case that DIB ought to have known about the Group's misreporting of debt from "*at least April 2012*". In support of that, they alleged that in three respects DIB acted with "*an objectionable gross lack of care*":

    a. with regard to its failure to recognise inconsistencies between what was said in the IPO Prospectus and its knowledge of its own lending;

    b. with regard to its failure to recognise an inconsistency between a note in the 2013 half-yearly report of NMC plc and its knowledge of its own lending; and

    c. with regard to its failure to notice that Ernst & Young, as the NMC Group auditors, had not requested balance confirmations from DIB for any financial year from 31 December 2012 to 31 December 2018, which was described as "*highly irregular*".

    They still alleged that the due diligence and investment processes for the April 2018 facilities should have put DIB on notice that the NMC Group was misstating its financial position, but that allegation was abandoned in closing submissions. They also pursued their allegation about the Sukuk offering, and although this was not expressly stated in the pleading, this was understood to be a similar allegation of "*gross lack of care which was objectionable*".

182. It was not suggested to any of DIB's witnesses that their conduct or failings in this or any regard reached this level of incompetence.

183. I do not accept that Mr Qazi or anyone within DIB is to be criticised for not reading or studying the IPO prospectus in sufficient detail to pick up that statements in it did not reflect DIB's arrangements with the NMC Group. Firstly, DIB was entitled to proceed on the basis that the Prospectus had been produced by professional advisers. Secondly, it was under no obligation to study it more than it chose to do for its own purposes.

184. The complaint about the half-year report to 30 June 2013 was pleaded by the NGCs only after the evidence of fact had been concluded, although Mr Qazi was asked about it in cross-examination. The focus of the criticism of DIB is a note about term loans that read "*In addition to the JP Morgan loan facility, term loans also include other short term revolving loans which get drawn down and repaid over the period*": it did not refer to the 2012 term loan facility provided by DIB. Under it, NMCH had some AED 130 million (approximately US$ 35 million) outstanding at 30 June 2013, whereas the note indicated that there was non-syndicated term debt of only some US$ 10 million.

185. DIB acknowledges this discrepancy. However, Mr Qazi explained that the CBD would not have studied the report, which DIB had only for confirming Shari'a compliance. Although the NGCs drew attention to markings on the report that suggested someone had taken note of the term loans figure, this is too slender a basis for rejecting Mr Qazi's evidence about this, and I accept it. I reject this criticism of DIB.

186. DIB accepts that it was not asked by Ernst & Young to provide balance confirmations for 2012 or for any year thereafter, and it did not do so. DIB's internal arrangements were that such requests, if made, were handled by the CCU. Of course, auditors routinely request such information from banks, and, as Mr Qazi confirmed, the practice was familiar to DIB. There is, however, no evidential basis that it is conventional for banks to keep a check on what requests they receive and to take note if they have not received a request from the auditors of customers. There is therefore no proper evidence to support the NGCs' contention that DIB ought to have noticed that it had not received requests in relation to the NMC Group.

187. As I have said, I accept Mr Muhammad's evidence that he did not read the credit proposal of 22 May 2022 through before signing it. As I see it, the question whether he is to be criticised for not doing so depends upon how responsibility for the proposal was divided within DIB between the various signatories. Especially given that Mr Muhammad identified what he had checked by his initial, I do not criticise him in that regard. As for the criticism that he did not identify that the Offering Circular included misrepresentations, as Mr Muhammad explained in his evidence, DIB had received a letter of comfort from Ernst & Young dated 21 November 2018 that confirming the financial information in it. Mr Mohammad's evidence was that DIB's role as JLM did not require it to "*look beyond* [Ernst & Young's] *audited financial statements and Comfort Letter and interrogate the financial data*". Again, there is no proper basis for me to reject his evidence about what is conventionally expected of a JLM, or to accept this criticism him, or DIB.

188. Finally, the NGCs submitted that DIB appears to have "*dropped its guard*" because of what it, or its employees, understood about the de facto ownership of the NMC Group. There is no evidence that anyone in DIB was so influenced: the suggestion is pure speculation, and I reject it.

The Principle that Fraud Vitiates transactions and Article 106

a. Introduction

189. The NGCs rely on these criticisms of DIB in support of arguments that DIB is not "*entitled to assert (and could not properly exercise) the existence of rights said to arise out of the assignments of receivables to it*" because to do so would:

a. be contrary to a principle of UAE law that fraud vitiates transactions; or

b. would amount to an abuse of rights under article 106(2) of the UAE Civil Code.

190. I have rejected the factual basis for these arguments, and so I shall deal with them only briefly. The NGCs' first difficulty is that, with the parties' agreement, the only potentially relevant expert evidence permitted by the Court was directed only to the position if there is actual knowledge of a fraud: "*If Party A knows of, and facilitates, a fraud on Party B, is Party A allowed to assert or exercise rights arising (or said to arise) under or in respect of an assignment of receivables to it by Party B*"?; and the agreed issue went on to refer to the principle that fraud vitiates transactions, and article 106(2). There is no expert evidence permitted by the Court that supports the case that the NGCs pursued.

b. Fraud Vitiates Transactions

191. The principle that "*fraud vitiates transactions*" or "*fraud vitiates all*" is not found in the UAE Civil Code, but Professor Amr agreed that it has been recognised by the *Federal Supreme Court in Case no 524 of 2000 (18 April 2000)*, a case concerning fraudulent misrepresentation. Professor Amr considered that the principle applies only in cases of fraudulent misrepresentation or trickery. Mr Al Aidarous considered that it has wider application, but his evidence did not suggest that it has any application in circumstances remotely comparable to those with which I am concerned. He accepted that all the cases that he cited involved dishonest conduct (albeit not always fraudulent misrepresentation). In cross-examination, he said that the principle would also be engaged if a person deliberately failed to make inquiries. In his re-examination, he went further and said that a person who "*ought to be aware*" of another's fraud would be considered "*some sort of accomplice*" and the principle would "*always*" be engaged. This was not suggested to Professor Amr when he was cross-examined, no authority or scholarly writing was adduced in support of this view, and I am unable to accept it. Even if I accepted the criticisms of DIB that were pursued by the NGCs, I would reject this argument.

c. Article 106 of the UAE Civil Code

192. Article 106(2) provides as follows:

> *"The exercise of a right shall be unlawful:*
>
> *(a) if there is an intentional infringement [*of another's rights*];*
>
> *(b) if the interests which such exercise of rights is designed to bring about are contrary to the rules of the Islamic shari'a, the law, public order, or morals;*
>
> *(c) if the interests desired are disproportionate to the harm that will be suffered by others; or*
>
> *(d) if it exceeds the bounds of custom and practice".*

193. By the end of the trial, the NGCs relied only on article 106(2)(c), but I do not accept that article 106(2)(c) has any application on the facts of this case. Professor Amr's evidence that article 106 is concerned with abuse of rights was not challenged. Further, his evidence was that it is concerned with cases of "*an intention to harm for no justifiable reason*", or maliciously. Although Mr Al Aidarous said that he was not sure whether malice in this sense is always required, it appears to me that Professor Amr's view is powerfully supported by authority of the *Abu Dhabi Court of Cassation in Case no 55 of 2016 (16 January 2017*): "*It is established in the text of Articles 104 and 106 of* [the UAE Civil Code] *that the legislator has established the principle of non-liability for damages that arise in the legitimate use of right and has defined four criteria for the unlawful use of the right, which is certified by the description of arbitrariness, to the effect that the abuse of right is available only if one of the cases*

mentioned in article 106 of the said law is fulfilled. And all of them are based on being tainted with maliciousness and bad faith and only intended to harm the other party".

194. I accept Professor Amr's evidence, and I reject the NGCs' argument based on article 106.

The Interpretation of the ARAs

a. The Parties' contentions

195. The NGCs contend that, on their proper construction in accordance with UAE law, the ARAs assign only rights and interests of NMCH in Insurance Receivables. They argue that the Assignor is NMCH and only NMCH, because, while the form of agreement allowed the expression "*Assignor*" to include other parties if any were identified in Annexure A, in fact the Annexure was left blank: no other Assignors were included. Further, the execution page of the ARAs provided signature boxes only for NMCH and DIB, and the agreements were executed only by DIB and, in the case of the Specialty ARA, by Mr Manghat "*for and on behalf of NMC Healthcare LLC",* and, in the case of the KSA ARA, by Dr Shetty *"for and on behalf of NMC Healthcare LLC*".

196. The NGCs go on to submit that, in fact, NMCH had no rights to, or interest in, any Insurance Receivables from any of the Twelve Insurers, and that, therefore, the subject matter of the ARAs does not exist, and that under UAE law this means that the ARAs are void.

197. DIB refutes the NGCs' interpretation of the ARAs, and argues that it does not reflect the mutual intention of the parties. It submits that that Annexure A obviously was left blank in error, and that it was another error that there were not additional signature blocks for the NGCs and other relevant NMC Group companies on the execution page, which had the note "(Provide other executing additional Assignors as required)". It argued that the facts that (i) the Twelve Insurers were identified in schedule 2 of the ARAs, and (ii) the term "*Assigned Receivable*" was defined by reference thereto, show that the parties intended the ARAs to bring about the assignment of Insurance Receivables payable by the Twelve Insurers. This is confirmed, it is said, by the obligations on the "*Assignor*" in clause 6, which must have been intended as obligations by the NMC companies with rights to Insurance Receivables.

198. I observe that, if there are the mistakes in the ARAs as DIB contends, they would not be the only examples in the documentation of drafting errors or failures to include dates or other information. As I see it, this lends some support for DIB's submission.

199. DIB submits that, in interpreting the ARAs, the Court should have regard not only to the words of the ARAs themselves, but to evidence outside the ARAs about what the parties intended, including evidence about (i) related transaction documents, and the nature of the transaction of which the ARAs were part; (ii) the parties' previous dealings; (iii) the negotiations leading to the ARAs; and (iv) the parties post-contractual conduct.

200. DIB also argues that the parties are to be taken to have shared an intention that their contract should be effective; that, on the NGCs' interpretation, the ARAs would be futile; and that the Court should adopt an interpretation that gives it commercial sense. Professor Amr confirmed that, like English and ADGM law, UAE law recognises a "*validation*" principle whereby, if there are two possible interpretations of a contract, one of which would render it ineffective and the other of which would give it effect, the latter interpretation should be adopted.

b. The UAE Civil Code

201. The UAE Civil Code includes (at articles 29 to 70) a chapter dealing with "*Jurisprudential maxims and rules of interpretation*", and (at articles 257 to 266) a chapter dealing with the construction of contracts. Professor Amr explained that the "*overarching framework and principles for construing contracts*" are in articles 257, 258 and 265. Article 257 provides, in the words of the agreed translation, that the "*basic principle in contracts is the consent of the contracting parties and that which they have obligated themselves to the contract*". Article 258 reads as follows: *"(1) The criterion in [the construction of] contracts is intentions and meanings and not words and form. (2) The basic principle [presumption] is that words have their true meaning and a word may not be construed figuratively unless it is impossible to give its true meaning*". Article 265 provides that: *"(1) If the wording of a contract is clear, it may not be departed from by way of interpretation to ascertain the intention of the parties. (2) If there is scope for interpretation of the contract, an enquiry shall be made into the mutual intentions of the parties without stopping at the literal meaning of the words, and guidance may be sought in so doing from the nature of the transaction, and the trust and confidence which should exist between the parties in accordance with the custom current in dealings*".

202. The NGCs cited article 266(1): "*A doubt shall be interpreted in favour of the obligor*".

203. I should also refer to article 262: "*The absolute applies absolutely unless there is evidence, whether textual or indicative, restricting it*."

204. There is a difference between the parties about when UAE law considers that "*the wording of a contract is clear*", so that its interpretation is governed by article 265(1): Mr Al Aidarous and Professor Amr had differing opinions. According to Mr Al Aidarous, this is decided by examining the words of the contract as a whole, and if the wording of the contract, taken as a whole, makes clear what the parties intended, a court will not look beyond the wording of the contract to interpret it. It will only look outside the contract to ascertain the meaning of intention of the parties if that is not clear from the wording of the contract or if the wording is illogical or would lead to an illogical result. Otherwise, the intention expressed in the contract is taken to state the parties' intention. On the other hand, Professor Amr's view is that, if evidence shows that the wording of the contract does not reflect the "*overt*" intention of the parties, then the contract is not "*clear*" for the purposes of article 265. By "*overt*" intention, Professor Amr was referring to the intention expressed by a party, not his private intention or thoughts. His evidence was that, "*where there is ambiguity and contradiction between the parties' intentions and the wording of the agreement, the UAE courts must go beyond the literal or normal meaning of the words by examining the parties' intention*": the clarity required by article 265(1), he said, means *"the clarity by which the words capture the parties' intentions not just the wording itself*". In his closing submissions, Mr McQuater expressed the difference between the experts as follows: "*per Mr Al Aidarous, the question is whether the contract is linguistically clear read as a whole, and per Prof Amr whether it clearly reflects the joint intention of the parties in the circumstances in which the contract was concluded*".

205. It appeared from the expert reports that there was also a difference between the experts about whether, in cases where article 265(1) does not apply and there is scope for interpretation of the contract so that article 265(2) applies, guidance as to its meaning is available only from the two considerations mentioned in article 265(2), or whether account can also be taken of other considerations. It appeared that Mr Al Aidarous took the former view, and Professor Amr took the latter view. The NGCs made it clear in closing submissions, that they accept that, in an article 265(2) case, a court can have regard to other considerations.

206. Neither party argued that the "*covert*" or internal or subjective intentions of the parties are relevant under UAE law to questions of contractual interpretation, and it was agreed that, when a court is concerned to determine the parties' intentions, what matters is their overt intentions expressed in what passed between them. When he was cross-examined, Professor Amr appeared to adopt a different view: he said, for example, "*since three, four decade now, … the* [UAE] *courts rely on the covert intention when interpreting the contracts*"; and he appeared to rely on article 258 as support for that view. I could not accept that evidence, and in its closing submissions, DIB did not invite me to do so. This part of his evidence in cross-examination was also inconsistent with Professor Amr's own report, where he cited the Commentary: "*In Islamic jurisprudence, the criterion for the interpretation of a contract is the overt rather than the covert intention. Interpretation of a contract relies on ascertaining the words and expressions in the contract and deducing the overt meanings from them, and* [not] *going beyond the overt meaning to other meanings, being meanings represented by the covert intention. Covert intentions have no status*"; and Professor Amr's report continued, "*For avoidance of doubt, 'overt intention' means the parties' actual intentions as expressed, not the intentions of the parties as would be understood by a reasonable person in the position of the parties*". (It is common ground that, in the Whelan translation, the word "*not*" is omitted before "*going beyond the overt meaning*".) Professor Amr's answers in cross-examination are puzzling: it might be that he misunderstood the questions that he was being asked. Whatever the explanation, there is common ground that UAE law, if concerned to look beyond the wording of the contract to find the parties' joint intention, is concerned only with their overt intention.

c. *Article 265 of the UAE Civil Code*

207. The starting point for Mr Al Aidarous is that, on its face, article 265 provides for a two-stage approach to contractual interpretation: the first question is whether the wording of the contract is clear, and if it is and it does not lead to an obviously absurd, or, as Mr Al Aidarous put it, "*illogical*", meaning of the contract, article 265(2) does not come into play. Of course, it is for the court to decide on the facts of each case whether the wording is clear and whether a result is absurd or illogical, but I reject DIB's suggestion that any difficulty in defining "*where the line* [is] *to be drawn*" is a cogent reason to reject Mr Al Aidarous' opinion.

208. DIB suggested that article 265(1) provides for a "*presumption*": that "*you start by presuming the words mean what they say*", but if there is evidence of a different common intention, "*you can move to sub-article (2)?*". Although at one point in his cross-examination Mr Al Aidarous was willing to go along with that suggestion, I did not understand him to accept that article 265(1) merely provides for a rebuttable presumption: it is apparent from his evidence as a whole that he considered that, if the words are clear and absent an illogical or absurd result, there is, in effect, an irrebuttable presumption that the contractual wording expresses the parties' intentions. Otherwise, article 265(1) is reduced to a provision of vanishingly little significance: it seems unlikely that the legislator intended that. It would also give little, if any, role for the provision in article 197 of the UAE Civil Code that allows mistakes "*in a writing*" to be corrected: "*A mere mistake in an account or in a writing shall not affect the contract, and it shall simply be rectified*".

209. The Commentary, referring to what it calls the "*first rule*" under article 265, by which it means article 265(1), states, "… *the person making the interpretation stops at the expressions contained in the contract and gives them an objective analysis in order to extract the correct meanings. These meanings are regarded as the intention of the contracting parties*". This provides clear support for Mr Al Aidarous' opinion. I cannot reconcile it with Professor Amr's alternative interpretation of article 265(1): that article 265(1) applies only when the wording

of the contract clearly reflects the joint intention of the parties. If that were so, the purpose in every case would be to ascertain the parties' overt intention from an examination of the whole of the available evidence.

210. It was suggested that the passage of the Commentary cited by Mr Al Aidarous is an articulation of the distinction between overt and covert intention. While the Commentary refers to this, I accept Mr Al Aidarous' view that it goes further. It was also suggested on behalf of DIB that, properly understood, the Commentary supports Professor Amr's view that article 265(1) requires a court to look at all the circumstances to decide whether the wording of a contract is clear, because it continues as follows: "*These rules do not mean that regard is had to the covert intention. The meaning is that the criterion is the intentions and meanings to be derived from expressions and forms of words used or by objective indicators and material signs*". As I understand these sentences, they do not support Professor Amr's opinion, but lend further support to Mr Al Aidarous: they mean that the criterion is either (in an article 265(1) case) the expressions and forms of words, or (in an article 265(2) case) objective indicators and material signs. The conjunction "*or*" shows that "*objective indicators and material signs*" are not the criterion in every case.

211. The experts cited two authoritative scholastic works about this question. The NGCs cite a passage from Voluntary *Sources of Obligations in Emirati Civil Transaction Law, Contract and Unilateral Act by Professor Dr Al-Shehabu Ibrahim El-Sharkawy (2nd Ed, 2021)*, a work cited in Professor Amr's report for another purpose. The passage on which the NGCs rely reads as follows: "*The interpreter shall consider the formulas mentioned about in the contract and analyse them objectively in order to the [sic] extract acceptable meanings from them. They consider these opinions to be the will of the contracting parties. If the meaning is unclear, the intention of the parties shall be clarified, as we shown in the forthcoming hypothesis*", which concerns article 265(2). Professor Amr seemed to question the translation of this passage when he was cross-examined, but it had been agreed between the parties, and I have no reason to doubt it. The authority is inconsistent with Professor Amr's view, and supports that of Mr Al Aidarous.

212. Professor Amr cited in support of his opinion observations of El-Sanhouri in Al Waseet about article 150 of the Egyptian Civil Code, which has the same wording as article 265 of the UAE Civil Code and from which article 265 derives. Although there was some controversy about which of two rival translations should be preferred, I can see no significant difference between them. I am content to refer to that preferred by Professor Amr: *"... the judge may find it necessary to interpret the obvious statement – however obvious and smooth it may be – even if it is not confusable or ambiguous. This is because the clarity of the wording is different from the clarity of the intention. As such, the wording may be clear in itself, while the circumstances indicate that the two parties misused this clear word, so they intended a certain meaning, but expressed it in a term that does not match this meaning but clearly indicates another one*". Thus, DIB submits, the wording of a contract will not be taken to be "*clear*" if it does not reflect what "*the circumstances*" indicate to be the parties' intention.

213. The NGCs' first response was to draw attention to a footnote in El-Sanhouri's text which refers to cases in the Egyptian Court of Cassation in which, as I read the footnote, there was inconsistency within the contracts themselves. It was said that, therefore, properly understood, El-Sanhouri was writing about such cases, and saying that in those circumstances a court will investigate the intention of the parties manifested outside the contractual wording. I am not persuaded by that submission: the footnote cannot have been intended so to restrict the wording of the text.

214. Mr Al Aidarous did not accept that this view of El-Sanhouri represents the law of the UAE. DIB submitted that this evidence damaged his credibility as an impartial expert because in his report he had cited the Al-Waseet, including the passage I have set out above. I reject that criticism: in his report, Mr Al Aidarous cited the passage in support of his view that article 265 calls for a two-stage approach, the first stage of which is to ask whether the wording of the contract is clear. Having cited the passage, Mr Al Aidarous went on to say, "*The above should not be misunderstood*", and he explained that it is permissible to depart from the words of a contract to interpret it where there is ambiguity in the wording of the contract taken as a whole. Mr Al Aidarous' oral evidence was consistent with his report.

215. When he was cross-examined, Mr Al Aidarous explained his view that, whereas the "*driving force*" of the civil legal tradition adopted by Egyptian law is to discover the "*ultimate intention of the parties*", the approach of UAE law is rather different in that the intention of the parties is taken to be recorded in the written contract, and "*You cannot depart from the wording totally*". Despite the respect paid to the writings of El-Sanhouri in the UAE, as elsewhere, I am persuaded by Mr Al Aidarous' evidence and I accept his opinion about this.

216. I return to the Commentary. DIB submitted that, since it was published in 1987 and pre-dates case law cited by Professor Amr, the UAE Courts would prefer to follow the decisions of the Appellate Courts. As I have already said, I conclude that the UAE Courts have more regard for the Commentary than Professor Amr acknowledged. However, I must now consider the authorities to which Professor Amr refers.

217. DIB particularly relied on a decision of the *Federal Supreme Court in Case No 135 of 21 (21 November 2000)*. There was an issue about the translation of this authority, but it was resolved during final submissions, and I use a translation made by Professor Amr, which the NGCs accepted is to be preferred. DIB argued that the important passage of the judgment is this: "*The key consideration in the characterisation of the contract is the realities and the joint intent of the parties and, even if it is accepted that it is not permitted to deviate from a clear wording of the contract, what is meant here is the clarity of the intent not the words. Accordingly if the parties to the contract did not choose the words which express their true intention or if their clear expressions were surrounded by circumstances that would likely denote another meaning, the judge is obliged to intervene to interpret the contract in a way which is closest to the intentions of the parties to the contract and is more reflective of what they wanted*".

218. The NGCs submit that this decision is about a contract in which the wording was not clear because of internal inconsistencies, and in this passage the Federal Supreme Court is referring to the position when, therefore, the parties' intention is ascertained in accordance with article 265(2), not article 265(1). DIB rightly cautioned against adopting the common law methodology of exploring the facts of the case to ascertain a *ratio decidendi*, and regarding the statement of principle pronounced by the Court as *obiter*. That said, it is informative to have in mind that the decision of the Court was that the appeal be allowed because the judgment under appeal had interpreted a term of the contract in isolation and, ignoring other wording, had failed to interpret the contract as a whole. I am persuaded by the NGCs' submission. I do not consider the judgment inconsistent with Mr Al Aidarous' view or that it clearly endorses that of Professor Amr.

219. The other judgment that DIB specifically cited in its closing submissions is a decision of *the Dubai Court of Cassation in Case no 389 of 2001 (3 February 2002)*, in which the Court said that article 265(1) means that "*the judge is bound by the clear wording of the contract, which may not be departed from by way of interpretation to ascertain the intention of the parties. If*

clarity means the clarity of intention not the words, but according to principles, words truly reflect the intention. The judge should, if he desires to interpret the statement according to a different meaning other than the apparent meaning, clarify his judgment the acceptable reasons justifying this behaviour. Whereas the requirements of the aforementioned article are of the enforceable rules as the violation thereof is considered as violation of the law as this results in misrepresentation and distortion of the contract's clear statement. Accordingly, the trial judge's interpretation of the contract - in this regard - shall be controlled by the Court of Cassation. It is established that, when interpreting a contract, it is required to - along with the aforementioned – examine the entire contract's statement and not a particular statement therein and to take into account the good faith in contracting and the circumstances of executing the contract". It is apparent that much of this passage of the judgment reflects the writing of El-Sanhouri. It was cited by Mr Al Aidarous in his report, and the emphasis that a judge should respect the wording of the contract as a whole when ascertaining the intention of the parties is, of course, entirely consistent with his views. DIB, however, emphasises the statement that the "*circumstances of executing the contract*" should also be examined. It is not entirely clear what is included in this expression: one possibility is that the point being made is that the court is concerned with the parties' intention at the time they made the contract: this is a point made the judgment of *the Egyptian Court of Cassation in Cassation Appeal no 205 of 17 (1 December 1949)*, which was cited by Professor Amr. If so, the judgment would be consistent with Mr Al Aidarous' view. On any view, the judgment does not suggest that the Court will take into account negotiations, past dealings or post-contractual conduct, and to that extent, it cannot be said to support DIB's position about article 265(1). I find this judgment difficult to understand, but accept that the expression "*circumstances of the execution of the contract*", taken in isolation, suggests that the enquiry is not confined to the limits of the contract itself, which would be inconsistent with Mr Al Aidarous' evidence.

220. I shall comment only briefly on other authorities cited by Professor Amr. I do not consider that they provide significant support for his view, and DIB placed less emphasis on them:

a. First, the *Federal Supreme Court decision in Case no 435 of 21 (12 June 2001)*: this was, as the NGCs submitted, a case about whether a contract was concluded and not about its interpretation. Similarly, another *Federal Supreme Court decision in Case no 153 of 23 (10 November 2002)*, which Professor Amr cited, was about whether a purported contract was forged, and said nothing about contractual interpretation.

b. Next, the *Federal Supreme Court decision in Case no 52 of 29 (30 September 2009)*: to my mind, this only decides that a court should not interpret a contract by relying "*on one phrase against others*", but by taking "*all the meanings of all the phrases and in a cumulative manner*".

c. Professor Amr cited a case of the *Egyptian Court of Cassation, Cassation Appeal no 205 of 17 (1 December 1949)*. It did not concern an issue of contractual interpretation, but whether a purported contract was sham.

d. Finally, a judgment of the Dubai Court of Cassation in Case no 137 of 23 (10 January 2004): it said that a court is entitled to interpret contracts as "it deems more consistent with the intentions of the contracting parties" only if the "texts of the instrument in question bear the meaning that the court inferred therefrom. Otherwise, the interpretation would be deemed to have deviated from the apparent connotation of such texts". Thus far, the Court gave article 265(1) the effect that Mr Al Aidarous understands it to have. The judgment continued, according to the report, "If there is a basis for interpretation of the contract, the court shall, according to Article 265(1) of the [Civil

Code] identify the common intention of the contacting parties without settling for the literal meaning of the words, being guided by the nature of the dealing between the parties and the presumed trust and honesty between them, bearing in mind that the doubt should be interpreted in favor of the debtor, and that a word shall have its absolute meaning without limitation unless it is limited by an express provision or tacitly, as stipulated under Articles 262 and 265(2) of the [Civil Code]". On the face of it, the Court was saying that article 265(1) allowed a court to be guided by considerations other than the words of the contract, but the language used is that of article 265(2). It appears to me that there must be an error in the report and that the reference to article 265(1) should be to article 265(2), and, when Professor Amr was asked about this, he agreed that there is a "typo" in the report, or an "editing problem within the judgment itself". It follows that the judgment supports Mr Al Aidarous' opinion, rather than that of Professor Amr.

221. For their part, the NGCs submit that Mr Al Aidarous' views are supported by another decision of the *Federal Supreme Court, in Case No 202 of 13 (10 March 1992*). It was a case in which the wording of a contract was clear but led to what, having regard to considerations external to the contract, was a surprising, if not an unreasonable, result. The Court, however, made clear that, if the wording of the contract has a clear meaning, it is determinative of the parties' intentions: "*The Judge is required to rely on the clear wording of the parties to the contract as they are. The Judge may not, under the pretext of interpretation, depart from the clear meaning of such wording to another meaning. Even though what is meant by clarity is clarity of the intention and not the words, the general principle is that words express the true intention* [of the parties]". I agree with the NGCs' submission, and consider this decision inconsistent with the views of Professor Amr.

222. I prefer the view of Mr Al Aidarous about the meaning in article 265(1) of "*If the wording of the contract is clear*" and when it is permissible to look outside the contract to ascertain the intention of the parties. To my mind, it fits better with the structure of the Civil Code, and it is supported by the weight of scholastic and judicial authority.

d. *What is "the contract" within the meaning of article 265(1)?*

223. I raised a question at the hearing whether, in a case such as this in which the parties give effect to their arrangements through several inter-related contractual documents, article 265(1) is concerned with the wording of an individual document, or whether the court should consider the suite of documents to be the "*contract*". I did not think it self-evident that (as the parties appeared to assume) the ARAs were to be interpreted in isolation, not least because they make express reference to other contractual documents. (Thus, clause 1.2.1 provides: "*Capitalised terms defined in the Transaction Documents have, unless expressly defined in this Agreement, the same meaning in this Agreement*", the term "*Transaction Documents*" being, as I have said, documents executed on or about the same date of the ARAs and made between DIB and the "*Assignor*". Further, clause 1.2.2 of the ARAs reads, "*The provisions of Clause 1.2 (Construction) of the Transaction Documents apply to this Agreement as though they were set out in full in this Agreement, except that references to this Agreement will be construed as references to this Agreement*", apparently referring to clause 1.2 of the MMAs, which is headed "Construction".)

224. The experts' reports do not deal with this question, and Professor Amr did not give oral evidence about inter-related agreements. However, it was briefly explored with Mr Al Aidarous in cross-examination, and I accept his evidence. He said that it is permissible, when interpreting a contract, to consider a contemporaneous and related contract, at least if it is

between the same parties. He also said that it is permissible to take account definitions in another contract, if, as in this case, a contract refers to them. More generally, he agreed that a court will look at a related contract if "*this helps you to understand the meaning of the contract*". Although this limited evidence did not fully explain when regard may be had to a related contract, I conclude that, in this case, it is proper to consider the contemporaneous contractual documents in order to decide whether the wording of the ARAs is clear, and if so what it is.

The Meaning of the Assignment of Receivables Agreements

225. Adopting, as I do, the NGCs' interpretation of article 265(1), I consider the wording of the ARAs clear. Under them, NMCH undertook to assign to DIB all such right and interest (if any) as it had in respect of Insurance Receivables payable by any of the Twelve Insurers. DIB's challenge to this interpretation was based on NMCH having no such rights or interests, but that fact is extraneous to the ARAs, and under article 265(1), it is to be disregarded.

226. In my judgment, nothing in the related agreements displaces this meaning of the ARAs, or makes it unclear. I add two observations. First, the MMAs, when specifying the security, adopted the familiar formula: "*Perfected Assignment Agreement with* [NMCH] *and/or its subsidiaries (as applicable) related to the Assignment of Insurance Receivables*" from the Twelve Insurers. It does not further clarify which subsidiaries were to have their Insurance Receivables assigned; indeed, the formula itself (in particular, "*as applicable*") suggests that not all the subsidiaries were to be assignors; and, more importantly for present purposes, the formula itself (in particular "*and/or*") is consistent with the assignment being made only by NMCH of its own rights and interests.

227. Secondly, DIB placed some reliance on the lists of subsidiaries with the Maintenance Undertakings and the Shortfall Undertakings, but I cannot see how they might affect the proper interpretation of the ARAs or make their meaning unclear.

The Intention of the Parties to the Assignment of Receivables Agreements

228. If these conclusions are right, it is not necessary to decide whether other evidence shows that the parties to the ARAs had a joint intention that was different from that expressed in the contractual wording. However, I shall examine this question.

229. DIB pleads that "*the NMC Group and DIB acted on the shared understanding that all of the receivables owed by the Twelve Insurers to companies in the NMC Group would be assigned to DIB*"; and that "*The common intention of [NMCH] and DIB was that all Receivables which were or might become due from the Twelve Insurers to [NMCH] or any of its subsidiaries would be assigned by the* [ARAs] *and the Notices*".

230. As for the intention of NMC Group companies as to the assignment of Insurance Receivables, DIB pleads that it relies on the intention of the following: Dr Shetty, Mr Manghat, Mr Shenoy, Mr Suresh Kumar, Mr Nair, Mr Paraveen Kumar, who is described as "*Assistant Manager – Treasury & Operations*", and Mr Raj, a Treasury Analyst. None of them gave evidence: their intentions can only be inferred from the documentary evidence of exchanges with DIB or evidence from DIB's witnesses about oral exchanges. (The NGCs criticised DIB for referring to the understanding of the NMC Group, pointing out that a Group is not a legal entity and cannot have an understanding or intention. Without dismissing the point, I shall nevertheless use the term Group where it is convenient.)

231. With regard to its own intention, DIB pleads that it relies on the intentions of Mr Ali, Mr Nasser, Mr Qazi, Mr Al Hussaini and Mr Patel, because, it is said, they were "*involved in the negotiation and execution*" of the MMAs, the ARAs and the APAAs. This pleading is not fully supported by DIB's own evidence. Mr Qazi and Mr Al Hussaini were involved in negotiating the arrangements recorded in the FAL and term sheet: they distanced themselves from any involvement with, or even detailed knowledge of, the terms of the MMAs, the ARAs or the APAAs, but, as I have said, I consider that they were more involved than they acknowledged. Although he was at the meeting on 25 January 2018, Mr Patel denied being involved in negotiations, and I accept that he had no significant role. Mr Nasser said that he had a "*strategic role*": he met Mr Manghat on 19 January 2018. Mr Ali said that "*maybe*" he had "*very brief*" communications with Dr Shetty about the 2018 facilities, and that he "*may*" have attended the meeting on 17 January 2018, but had no recollection of any discussions. As for executing the documents, Mr Qazi signed contractual documents for DIB; Mr Al Hussaini and Mr Patel initialed the pages of documents, but did not execute any of them; and Mr Ali and Mr Nasser were not involved at all. None of these witnesses drafted the ARAs or the other contractual documents: the CAD and Dar Al Sharia did so, and were responsible for deciding upon contractual terms to implement the arrangements with the NMC Group.

232. The issue is whether the intention of the parties to the ARAs was that subsidiaries of NMCH should be assignors, as DIB contends. The formula in the Term Sheet and in schedule 10 of the MMAs, following the wording that had been used in 2015, "*Perfected Assignment Agreement with* [NMCH] *and/or its subsidiaries (as applicable) related to the Assignment of insurance receivables from* [the Twelve Insurers]", indicates that it was not planned that all of NMCH's subsidiaries would necessarily be party to the assignments. This invites the question which subsidiaries (if any) were intended to be assignors: during the trial, DIB put forward different, and sometimes inconsistent, answers to this question.

233. In its written opening, DIB said that the "*applicable*" subsidiaries were "*all those with contracts with the Twelve Insurers*". However, in its oral opening, it said that the intention was that the "*Assignors*" should include not only all those subsidiaries of NMCH which had a relationship with one or more the Twelve Insurers when the ARAs were concluded: it also included any other subsidiary that later entered into a contract with one or more of the Twelve Insurers, and also any company later acquired by the NMCH that had a contract with one or more of the Twelve Insurers.

234. Further, a question arose about whether the parties intended that only UAE subsidiaries should assign their Insurance Receivables. No doubt, most of the Insurance Receivables were paid to UAE companies, but the NGCs showed that this was not always the case, using the example that one of the Twelve Insurers, SAICO, a Bahraini company, had a contract with an Omani subsidiary of the NMC Group. Whatever was in the minds of those acting for DIB, nothing in the evidence suggested that the NMC Group shared an understanding that the arrangements would draw a distinction between UAE subsidiaries and others.

235. The evidence of DIB's witnesses did not clarify the position. Mr Ali said in his witness statement that the common intention was to assign Insurance Receivables payable to UAE operating subsidiaries, and in cross-examination he said that this was because DIB "*relied on the UAE operations of the Group*". He insisted in his oral evidence that it was intended that subsidiaries acquired after the ARAs were made should assign their Insurance Receivables, recognising that this would involve an "*addendum*" to the ARAs. His evidence was that the "*basic premise of our approval has always been the assignment of receivables from all the subsidiaries flowing through the designated insurance providers...That has always been the premise and condition of our facility*". It detracted from his evidence about

what subsidiaries were covered that, as he said in cross-examination, he thought that all the subsidiaries of NMCH were parties to the arrangements for the 2012 and 2015 facilities.

236. Mr Nasser gave no significant evidence about what assignments he expected to provide security for the facility. When asked about an email to him from Mr Al Hussaini dated 16 January 2018 which referred to security by way of "*Perfected Assignment Agreement with* [NMCH] *and/or its subsidiaries (as applicable) related to Assignments of Insurance Receivables from* [Insurance Companies]", he said that he understood that the subsidiaries that were to assign would be identified later.

237. Mr Qazi said in his witness statement that he believed that the ARAs assigned all Insurance Receivables payable to the "*entire NMC Group*" by the Twelve Insurers. In cross-examination, however, he said that he had intended the assignment arrangements should be the same as in 2015, and that it was intended to cover the subsidiaries "*within the UAE*". On the other hand, he also said that "*it should have been*" that the ARAs related to Insurance Receivables paid to specified subsidiaries under specified contracts, and that they should have included every company that was a subsidiary of the NMC Group in April 2018.

238. Mr Al Hussaini said that the ARAs were intended to include as assignors all the subsidiaries with contracts with one or more of the Twelve Insurers provided that they were in the UAE, because the Twelve Insurers were, as he understood, UAE insurers with their operations in the UAE. However, he also believed that the arrangements were to be similar to those for the 2015 facility. When he was asked in cross-examination about the Insurance Receivables of subsidiaries acquired shortly before the September 2015 facility (which were not assigned), he said that "*there should be a provision somewhere in the agreement that covers any new acquisition* ...".

239. Mr Patel gave no relevant evidence about the intention of the parties to the ARAs. In his witness statement, he said that he understood that the same arrangements were to be put in place as for the 2012 and 2015 facilities, but in cross-examination he distanced himself from having any involvement with the terms of the arrangements and presented himself as doing only as instructed by others.

240. I have summarised the evidence given by DIB's witnesses about their understanding of the intended purpose of the ARAs. It is not directly relevant to determining the mutual intention for the purpose of article 265 of the UAE Civil Code: that depends upon the "*overt*" intention expressed in exchanges between the parties. However, DIB submitted that their understanding is to be taken as evidence of what passed between the parties. I am not persuaded of that: there is no good reason to think that their various understandings resulted from exchanges with the NMC Group. But if it did, I would conclude that this evidence does not suggest that the parties formed any fixed intention or understanding about which subsidiaries were to assign their Insurance Receivables, and, if anything, it indicates that there was none.

241. In closing submissions, Mr McQuater argued that "*some supposed uncertainty in the outer boundaries of the commercial bargain*" was not relevant to whether the NGCs were to be assignors, and that this does not detract from DIB's case because under UAE law a contract is sufficiently complete and certain if the parties are agreed on the *'basic elements'*". It sufficed, he contended, to show that, whichever subsidiaries were intended to make assignments under the ARAs, they included the NGCs. In support of its argument, DIB relied on articles 129 and 141 of the UAE Civil Code, that provide that a contact requires agreements on the "*basic elements*" (or the "*basic elements of the obligation and the other*

lawful conditions that the parties regard as basis"); and (by article 141(2)) that "*if the parties agree on the basic elements of the obligation and remainder of the lawful conditions that both parties regard as basic and they reserve matters of details to be agreed upon afterwards but they do not stipulate that the contract shall not be concluded in the event of absence of agreement upon such matters, the contract shall be deemed to have been made, and if a dispute arises as to the matters which have not been agreed upon, the judge shall adjudicate thereon in accordance with the nature of the transaction and the provisions of the law*".

242. I cannot accept this argument. It is difficult to conceive of an element of a contract that would be more "*basic*", or more important to a putative contracting party, than whether he was in fact party to it. If DIB's witnesses, whose intentions are relied upon by DIB, were themselves uncertain about which companies were to be assignors, they cannot, in my judgment, have shared with the NMC Group a mutual intention that displaces the contractual wording of the ARAs.

243. Next, DIB sought support for its case from the Credit Proposal. The Credit Proposal is itself an internal document, but DIB argued that it would have reflected discussions with the NMC Group: indeed, DIB described as "*a critical document in evidencing the intention of the parties*". I am not persuaded that it provides any such evidence of any relevance: the purpose of the Credit Proposal was to enable DIB to decide whether to offer facilities to the NMC Group, and if so on what terms. It did not purport simply to set out arrangements that had been reached with the NMC Group. In some respects, of course, the Credit Proposal reflected exchanges with the NMC Group, but the written exchanges are in evidence, and there was no evidence of significant oral exchanges. For example, in so far as the Credit Proposal contemplates that the facilities would be repaid from payments into the Amanat account of assigned Insurance Receivables from the Twelve Insurers, that is shown by the parties' earlier written exchanges and by the subsequent FAL and term sheet.

244. I come to what passed between DIB and the NMC Group before the 2018 facilities were granted. First, DIB argued that the dealings in 2012 and 2015 support its contention that the NMC Group's operating subsidiaries were intended to be assignors under the 2018 ARAs. On the face of it, there is attraction in this point: after all, the Call Report for the meeting of 19 December 2017 and the Indicative Term Sheet sent on 11 January 2018 refer to the security of assigned receivables in terms that suggest that the existing arrangements with the 2015 Insurance Companies were to be continued and expanded to include other insurers.

245. On closer scrutiny, the attraction of the argument is, to my mind, if not specious, at least oversimplified. Under the arrangements for the 2012 and 2015 facilities, DIB did not take an assignment of all Insurance Receivables payable to all subsidiaries in the NMC Group. As for 2012, Mr Qazi gave evidence that it was intended that all the "*insurance flows … generated by the NMC Group*" would be assigned, and that all the subsidiaries of NMCH that were paid Insurance Receivables assigned them, the only other subsidiaries being a trading company called New Medical Center Trading LLC and an Information Technology Company called Reliance Information Technology LLC. However, the 2012 ARA did not bind all of the Group's other operating subsidiaries, as two examples sufficiently show: the schedule in the ARA did not include Bait Al Shifaa, nor did it include BR Suites FZ LLC, which was acquired by the NMC Group on 1 July 2012, shortly before the ARA was executed. I cannot tell from the documentary the reason for this, nor was there cogent witness evidence.

246. In 2015, again Bait Al Shifaa was not an assignor under either the February or the March arrangement, and in September 2015 DIB did not require an assignment from new subsidiaries that NMCH had acquired, even though they were to be in receipt of Insurance

Receivables, as DIB knew from the information sent on 22 July 2015 and as was clear from the credit proposal of 18 August 2015. Moreover, by the end of 2016, if not earlier, monies were being paid into the Amanat account that did not represent Insurance Receivables assigned to DIB.

247. In 2012 and 2015, the parties had gone to trouble to ensure that the subsidiaries who were to assign their Insurance Receivables were specifically identified and made parties to the ARAs. Assignors were not party to the arrangements through a general understanding that assignments of their Insurance Receivables would be required and so implicitly made subject to the contracts. In 2018, DIB did not seek, and the NMC Group did not supply, detailed information as previously: I cannot accept that the parties are, nevertheless, to be taken to have intended that the arrangements should be similar.

248. The exchanges in 2018, both before and after the FAL, were between DIB's CBD and the NMC Group's Treasury Management. DIB had no direct dealings with any subsidiary of NMCH. It was given information and projections about Insurance Receivables for the Group as a whole, in particular under cover of Mr Raj's email of 5 February 2018, and this, DIB argued, shows that the parties understood and intended that all the subsidiaries of the NMC Group, or alternatively all who were paid by any of the Twelve Insurers, should assign their Insurance Receivables. In response to this submission, the NGCs argued that DIB was interested in the Group receipts mainly so that it could see whether they were sufficient for the monthly repayments. Certainly, DIB was concerned that sufficient funds should be paid into the Amanat account, as is apparent from many references in the Credit Proposal: for example, in the box marked "*Request*", it was said, "*Both the above proposed Term Facilities will be repaid from insurance receivables from 6 [*Insurance Companies*] currently assigned to the NMCH Amanat Account along with additional new assignment of Insurance Inflows from 6 new* [Insurance Companies] ...".

249. The minutes of the meeting of 19 March 2018 evidence that the MCC too was interested in this: they record that NMCH "*and/or its subsidiaries (as applicable*)" were to ensure that the "*monthly Insurance Receivables flows in the Amanat account*" would provide the requisite coverage ratio: they did not mention the proposed assignments. It was therefore suggested to Mr Ali in cross-examination that the MCC was concerned that the coverage ratio should be received, rather than whether the Insurance Receivables were assigned. Mr Ali replied that the MCC was considering proposed terms that included their assignment. This points to the difficulty with the NGCs' argument: the evidence showed that, in the 2018 negotiations, those involved at DIB assumed that all the payments into the Amanat account would be by way of assigned Insurance Receivables, even though other sums had been paid into it in the past. When the projection figures were presented as evidence that the inflows would be sufficient, they were therefore understood by DIB to represent the Insurance Receivables that would be available for assignment. What matters is whether the parties had the intention for which DIB contends, and not the relative importance to DIB of having the Insurance Receivables assigned and other terms of the facility,

250. However, the NGCs have another answer to DIB's argument that the information and projections about the Group's receipts evidence the parties' mutual intentions: they do not clarify DIB's case about what Insurance Receivables the parties intended to be assigned, and which subsidiaries were intended to be party to, or bound by, the ARAs: indeed, they are inconsistent with at least one version of DIB's case in that they did not distinguish between UAE and non-UAE receipts.

251. The FAL and term sheet confirm that it was intended that the security for the facilities would include an assignment of Insurance Receivables payable by the Twelve Insurers, using the same formula as had been adopted in indicative term sheet and the Credit Proposal: "*Perfected Assignment Agreement with NMCH and/or its subsidiaries* (as applicable) …". It did not indicate which companies in the NMC Group were to assign. (As the NGCs observed, the CBD apparently recognised this: Mr Qazi said, "*maybe some of these subsidiaries may not have the relationship with these twelve specific insurance companies or the TPAs*"; Mr Nasser said, "*the understanding is that we will later on … identify the subsidiaries*". However, this evidences only their subjective understanding, and is not relevant to discerning a mutual intention.)

252. After the FAL was agreed, on 22 March 2018, 23 March 2018 and 19 April 2018, the NMC Group provided to DIB the powers of attorney relating to Pro Vita, Mr Manghat and Mr Shenoy. By 23 April 2018, it had sent DIB copies of the Notices. The powers of attorney support the NGCs' case that the NMC Group understood, and evinced to DIB its understanding, that the Obligors and the Original Guarantors were to be only NMC companies that were to execute and be parties to the contractual documents. The Notices are consistent with the assignments being made only by NMCH. Neither the powers of attorney nor the Notices suggest that any subsidiary was to be party to the ARAs or to make assignments. It was the CAD's responsibility to review them, and, as I have concluded, the CBD reviewed at least the powers of attorney. There is no evidence that DIB raised any relevant concerns about either the powers of attorney or the Notices, either with the NMC Group or internally.

253. I have already referred to the contract documents other than the ARAs themselves. I do not consider that they support DIB's case about a mutual intention. I add only that, if regard may be had to the term sheet, it provides a further reason that the Maintenance Undertakings and the Shortfall Undertakings do not evidence an intention that the subsidiaries listed in the undertakings should all be Assignors: the term sheet states that those undertakings, in contrast to the assignments, were to be given by "*NMCH and subsidiaries*", without the qualification "(*as applicable*)".

254. Nor does the parties' conduct after the facilities were concluded provide further evidence of any significance about their intentions as to whose Insurance Receivables were to be assigned. The NGCs suggest that the lack of concern shown by DIB when the Acknowledgements were provided late or not at all is "*revealing of its intentions*". While it might be revealing about whether the DIB attached importance to the assignments so long as funds flowed into the Amanat account, it does not seem to me revealing as to what assignments were intended or which companies were intended to have been parties to the ARAs. The NGCs also pointed out that the Acknowledgments, whether or not genuine, were received by DIB without objection being raised, notwithstanding that they refer to specified contracts between NMCH and the Insurance Company. But, in this regard, they simply reflected the Notices that they purported to acknowledge.

255. In my judgment, when regard is had to all that passed between DIB and the NMC Group leading to, surrounding and following the execution of the ARAs, DIB has not established that the parties to the ARAs had a mutual intention that any subsidiaries, still less which subsidiaries, should be parties to them as Assignors. I accept that those working in the CBD expected that the contractual documentation would include provisions that secured the facilities (*inter alia*) by having Insurance Receivables from the Twelve Insurers assigned to DIB, but, once the Credit Proposal was approved, they did not consider themselves

responsible for the documentation of the facilities, beyond liaising between the NMC Group and the CAD and executing the documents prepared by other departments of DIB.

256. I am reinforced in my conclusion by the fact that DIB adduced no evidence from anyone from Dar Al Sharia or the CAD who was involved in drafting the documentation or in reviewing and checking it. It was not suggested that none of those involved was available to give evidence, and I accept the NGCs' argument that this invites the inference that they did not share the understanding of the ARAs that DIB alleges. For completeness, I add that I do not draw an inference from the failure of any member of the BCIC or the Board to give evidence; I would not have expected them to recall matters in sufficient detail to give relevant evidence.

257. I return to DIB's argument that it cannot have intended that only NMCH should assign its rights and interests because it had none, and so the assignments would be futile. First, the argument of futility overstates the position: NMCH was obliged under the ARAs, if requested by DIB, to provide further assignments and other documents reasonably required to carry out more effectively the purposes of the ARAs, and I would interpret that as requiring NMCH, if requested, to procure assignments from its subsidiaries, or at least to take reasonable steps to do so. Further, DIB's argument assumes that DIB was aware, and had in mind, that NMCH had no rights or interests in Insurance Receivables from the Twelve Insurers. I am not satisfied that it was so aware. When opening its case, DIB submitted that NMCH was "*named as a party to some of the insurance contracts*" and that "*on a proper construction there are some receivables due to NMCH*". Mr Ali gave evidence that DIB never relied on NMCH assigning Insurance Receivables because it did not have any, but he was remote from the negotiations. Mr Qazi said that in 2015 he knew that NMCH did not provide medical services, but that does not follow that he appreciated that it had no right to any payments from any insurance companies (for example, in consideration of it procuring that a subsidiary should provide services): when DIB was provided with a copies of the Standard Provider Contracts in 2015, they were apparently reviewed by Mr Patel, reporting to Mr Al Hussaini. In a letter of 24 March 2020 to NAS, Mr Qazi wrote that NAS was committed to paying into the Amanat account monies payable to NMCH. There is no evidence that anyone in Dar Al Sharia or the CAD understood that NMCH had no right or interest in Insurance Receivables, and none of the witnesses from DIB clearly stated that it understood that an agreement with NMCH would have no practical, legal or commercial effect.

258. In any event, even if DIB had the intention that it pleads, I do not accept that it has shown a mutual intention shared by the NMC Group. When it agreed to the terms of the FAL, the Group accepted that the facilities were to be secured by way of an assignment of Insurance Receivables from the Twelve Insurers. Its natural expectation was that DIB would let it know its requirements in this regard (whether through the contractual documentation that it was to draft or otherwise), and the Group perhaps implicitly recognised that it would have to comply with DIB's reasonable requirements. When the NMC Group learned of DIB's apparent requirements about the parties to the ARAs, it might have found them more modest than it had expected. But DIB has not persuaded me that, when they executed the ARAs and the other contractual documentation, Mr Manghat or Dr Shetty or any company in the NMC Group intended that the facilities should be granted on different terms from those presented by DIB, or that they understood that there were parties to the ARAs other than the stated parties; still less am I persuaded that Dr Shetty or Mr Manghat or any company in the NMC Group shared an intention with DIB about which further companies were expected to assign their rights and interests.

259. The NGCs made two other points about the intention that the parties are said to have had. The first concerns that Standard Provider Contract: it includes, at clause 13.1, a provision

about assignment: "*Assignment: having regard to licensure requirements, the Provider/IC may subcontract but may not assign any of its rights and obligations under this Agreement to any other person or entity without the prior written consent of the other party*". The NGCs say that this clause prevents a Healthcare Provider from validly assigning its rights to Insurance Receivables without the written consent of the Insurance Company; and that DIB, having been provided with copies of these contracts in 2015, should have known this. The Notices and Acknowledgements, required in 2015 as a condition precedent to drawdown, would have satisfied this requirement. Indeed, Mr Al Hussaini acknowledged in cross-examination that he knew that the Notices were in a specific form acceptable to insurers and UAE health authorities.

260. I see force in the NGCs' submission that, if DIB was intending to enter into assignment of Insurance Receivables paid to Healthcare Providers under this form of contract, it would have been concerned to ensure that it received the Acknowledgments. However, I am not prepared to rely on this point in reaching my decision: although I asked during parties' opening submissions whether any reliance was placed on the restriction on assignment in clause 13.1, it was not explored with the witnesses of fact, nor was there relevant expert evidence: the Standard Provider Contract is governed by UAE law. The meaning and effect of the restriction on assignment might arise in other proceedings: it is better left until it can be explored more fully.

261. The NGCs' other point was that, before and after the ARAs were executed, two of the NGCs, Al Zahra Pvt. Hospital Company Ltd ("**Al Zahra**"), the Second Claimant, and Fakih IVF Fertility Centre LLC ("**Fakih IVF FC**"), the Fifth Claimant, assigned Insurance Receivables payable by some of the Twelve Insurers to Noor Bank PJSC ("**Noor**"), which became a subsidiary of DIB in January 2020. Mr Manghat signed notices in respect of at least one of these assignments. The NGCs submit that, assuming that Mr Manghat and the subsidiaries were acting honestly, they cannot have intended to assign the same receivables to both Noor and DIB, and so cannot have intended that Al Zahra and Fakih IVF FC assigned Insurance Receivables from these Insurance Companies to DIB. However, Mr Qazi said that he was not aware of the assignments to Noor in April 2018 or at any time before DIB acquired Noor, and there is no reason to think that anyone else at DIB was aware of them. Whatever any covert intentions in the NMC Group, the assignments to Noor are not evidence of any overt intention of the parties to the ARAs, and I disregard them.

262. Even if I had adopted Professor Amr's approach to article 265, I would not have concluded that, on their proper interpretation, the ARAs assigned any rights or interests of any of the NGCs.

Article 210

263. Under article 210 of the UAE Civil Code, "*A void contract is one which is unlawful in its essence and form, in that its essential elements or subject matter or purpose or its form as laid down by law for the making of a contract are imperfect, and such contract shall be of no effect, and no approval thereof shall be operative*". Mr Al Aidarous explained in his report that, under article 129, one of the "*essentials for the making of a contract*" is that "*the essential subject matter of the contract must be something which is possible and defined or capable of being define and permissible to be dealt with*". Article 201 is also relevant: "*If the subject matter is inherently impossible at the time the contract is made, the contract shall be void*". The Commentary on this article states, "*If the subject matter is impossible in itself [inherently impossible] i.e. absolutely impossible, at the time the contract was made, then the subject matter is non-existent in fact, and the contract will have no existence*". In his report, Professor

Amr said that "*The existence (or future existence) of the subject matter of a contract is an intrinsic element in establishing a contract*", and explained that assignments and pledges, like other contracts, must have their subject matter specified, and that the specification can be of present or future subject matter. (There is a specific article about pledges: article 1458 provides that the pledgor "*must be the owner of the property pledged and be competent to make dispositions over it*".)

264. The NGCs submit that the subject matter of the ARAs was NMCH's interests in the Insurance Receivables (or, to track the exact definition of "*Assigned Receivables*" in the ARAs, "*in respect of*" the Insurance Receivables). Their argument is that the subject matter did not exist, and does not exist, because NMCH was never entitled to Insurance Receivables from any of the Twelve Insurers. I agree with the argument thus far: as I have said, I have concluded that NMCH had no rights or interest in Insurance Receivables, and could not have been entitled to any because it was not licensed by the relevant authorities as a Healthcare Provider. Might NMCH, at some time after the ARAs were concluded, conceivably have become an authorised Healthcare Provider, and so become entitled to (and acquire rights and interests in respect of) Insurance Receivables from one or more of the Twelve Insurers? DIB did not so contend, and, on reflection, I consider it unrealistic. First, NMCH was a holding company, and it is far-fetched to suppose that it might become an operating company of this kind. Secondly, and more importantly, the ARAs are about the assignment of Insurance Receivables from specific insurers under contracts that were intended to be identified in the Notices and Acknowledgments before drawdown. As I see it, anything that might (as a remote possibility) become payable to NMCH under new arrangements could not properly be described as the subject matter of the ARAs.

265. DIB's main response on this part of the NGCs' case is that, if on their true construction the ARAs did not assign to it the NGCs' rights and interests in Insurance Receivables, then this was the result of mistake and the ARAs are to be rectified, either under article 197 of the UAE Civil Code or under the equitable jurisdiction of the ADGM Court. I next come to those arguments, and, for reasons that I shall explain, I reject them. I therefore accept the NGCs' argument that the ARAs lacked an essential element by way of its subject matter, and that they are void.

Article 197

266. Articles 193 to 198 are concerned with mistake in contracts. DIB pleads in support of its argument articles 193, 197 and 198 of the UAE Civil Code. Those articles provide as follows:

a. Article 193: "*No regard shall be had for any mistake save in so far as it is contained in the wording of the contract or demonstrated by the surrounding circumstances and conditions, or the nature of things, or custom*".

b. Article 197: "*A mere mistake in an account or in a writing shall not affect the contract, and it shall simply be rectified*".

c. Article 198: "*A person who has made a mistake may not rely on it in a manner inconsistent with the dictates of good faith*".

267. Professor Amr said in his report that article 197 applies where "*there has been an error in putting what the parties actually agreed in writing, and it must be one that is obvious to the counterparty to the contract*". Although he does not specifically say so, I take Professor Amr to mean that, in order to rectify a contract under article 197, the Court must not only be satisfied that the contract mis-stated what the parties had agreed, but also be satisfied as to

what was agreed: a court cannot correct a contract without knowing what correction should be made.

268. Professor Amr also explained that, "[w]*hile the scope of article 197 is limited to the power to rectify a mere mistake – i.e. a clerical error – it can apply even if the clerical error is a material or a substantive one*". This is illustrated by the decision of the *Abu Dhabi Court of Cassation in Case No 280 of 2012 (10 March 2013)*. The case concerned a contract that stated that a lessee was obliged to construct a commercial building on the land that it had leased. It was successfully argued that there was a mistake in the contract, which should have stated that the lessor was so obliged. The Court, applying article 197, upheld the decision that "*the matter is related to a mere miswriting that does not affect the Contract, and must be corrected* ". Although Mr Al Aidarous had said in his expert report that article 197 does not allow a "*material mistake*" to be corrected, and that the article deals with "*a trivial and obvious mistake within a contract*", when asked about this authority, he acknowledged that article 197 allows correction of a significant mistake: he said that, in his report, he had intended to convey that it is not concerned with mistakes between parties in reaching agreement, but in recording their agreement in writing.

269. Professor Amr also said that there is no reason that article 197 should not correct a mistake in a written document if it omits a party to the agreement. Mr Al Aidarous said that it would be contrary to the doctrine of privity of contract to add a party to it, but, as I see it, there was no real issue here. Article 197 cannot record in a contractual document that a person was party to it if he was not party to the underlying agreement, and I do not understand Prof Amr to suggest otherwise, and accept his evidence.

270. However, I reject DIB's argument that the ARAs are to be rectified under article 197. First, I am not persuaded that, as a result of a mistake (or mistakes), the ARAs did not record an agreement reached between DIB and NMCH (or any other company in the NMC Group). If anything can be characterised as a mistake on the part of DIB, it was the failure of Dar Al Sharia and the CAD to appreciate that Insurance Receivables payable to subsidiaries were to be assigned and a mistake on the part of the CBD in not noticing or correcting that failure. However that might be, I am not persuaded that any such mistake was shared by the NMC Group companies, or those acting for them.

271. Secondly, it is common ground, as I understand it, that UAE law does not permit rectification under article 197 of mistakes that are covered by articles 194 or 195 of the UAE Civil Code. Under article 194 of the UAE Civil Code, "*If there is a mistake as to the identity of the contract or as to one of the conditions of the concluding thereof or as to the subject matter of the contract, the contract shall be void*". Article 195 provides, "*A contracting party shall have the right to cancel the contract if he has made a mistake in a desired matter such as a characteristic of the subject matter of the contract or the identity of the other contracting party or as a characteristic of such person*". In my judgment, if there was a mistake in the ARAs, it was by way of a mistake as to their subject matter, or, at the least, a characteristic of their subject matter.

Rectification under the law of ADGM

272. DIB argues that, if the ARAs did not reflect the intention of the parties and this cannot be rectified under article 197, then it can be rectified under the law of the ADGM, applying principles of English law, notwithstanding that the ARAs are governed by UAE law. It brings a counterclaim for relief by way of rectification of the ARAs by "*the inclusion of the* [NGCs] as

Additional Assignors in Annexure A" and "*the insertion of the names of the* [NGCs] *in the signature block*".

273. DIB submits that the question whether the ARAs can be so rectified is determined by ADGM law as the *lex fori*. It cites two Australian decisions: *National Commercial Bank v Wimborne, (1978) 5 BPR 11958 (NSW) 41* and *United States Surgical Corp v Hospital Products International Pty Ltd, [1982] 2 NSWLR 766*. Neither was a case about rectification. Both concerned claims in breach of fiduciary duties. The *National Commercial Bank* judgment states only in general terms that the Court can exercise its jurisdiction as *lex fori* to determine claims for equitable rights and remedies arising from a transaction notwithstanding the parties' agreement that their contractual rights be governed by a different law. In the latter case, McLelland J expressed the view that, if a company incorporated and resident in New South Wales "*was guilty of conduct in New South Wales that according to equitable principles administered in New South Wales was fraudulent or otherwise unconscionable, then that might well be a sufficient justification for this Court to apply those principles in granting relief*", a tentative statement on facts far removed from those of this case. While, of course, rectification is an equitable remedy, in my judgment, the facts of both cases are too far removed from a claim for rectification for either to assist DIB.

274. I reject DIB's submission about the governing law. No judicial authority was cited that directly decides what law governs claims for rectification, but I would respectfully adopt the views of Prof Adrian Briggs in The Conflict of Laws (4th Ed) (2019): having observed that the interpretation of a contract depends on the *lex contractus*, he says "*The correction or rectification of a contract must surely be considered to be an aspect of interpretation of the contract. If it were to be suggested that there is a difference between the interpretation of what the contract says, and the alteration of what the contract says, the sensible response is that these are all part of the single and indivisible task of interpreting the agreement that the parties actually made*".

275. Further, even if ADGM law governs the claim for rectification, as a matter of discretion, I would refuse to exercise my discretion to grant the relief where the parties had agreed that differences between them should be governed by the law of the UAE.

276. However that might be, given my findings of fact, these questions do not arise. Under English and ADGM law, DIB would have a claim for rectification only if it had established either that a written contract failed to give effect to a prior concluded contract or that, when they executed the document, the parties had a common intention in respect of a particular matter which, by mistake, the document did not accurately record: see *FSHC Group Holdings Ltd v GLAS Trust Corpn Ltd, [2019] EWCA Civ 1361 at para 176 per Leggatt LJ*. It has not done so.

Article 632 of the UAE Civil Code

277. Before going further, I shall refer to an issue that would arise only if DIB is correct about the proper meaning of the ARAs. The NGCs submitted that, in those circumstances, the ARAs would be invalid under article 632 of the Civil Code in so far as they relate to future receivables. They do not say that they are invalid with regard to receivables in existence at the time that the ARAs were executed (but that is of no practical consequence).

278. Article 632 provides that, "*Neither a promise to make a gift nor a gift of future property shall be valid*". A gift is defined in article 614: *"(1) A gift is the conferring of ownership of property or a proprietary right on another person during the period of the lifetime of the owner, without consideration. (2) It shall be permissible for the donor, while still intending to make a voluntary*

disposition, to make it a condition that the donee should perform a specified obligation, and such obligation shall be regarded as consideration".

279. At the start of the trial, the NGCs pleaded only that the ARAs would, on DIB's interpretation of them, be gifts with regard to future receivables because they were "*not parties to, nor debtors in respect of the* [MMAs]". DIB's response in its opening submissions was that the NGCs were parties to the ARAs, one of the "*Transaction Documents*" under which it provided the facilities.

280. When Professor Amr was cross-examined, it became apparent, to my mind, that the NGCs were developing a more refined case about whether the ARAs were gifts than was indicated in their simple pleading. I suggested that they consider whether their pleading was adequate. The NGCs applied for permission to amend their pleading so as to allege that, with regard to future receivables, the ARAs would amount to a gift within the definition of article 614(1) of the UAE Civil Code because no consideration was provided under the ARAs for the assignments of them, or alternatively so as to rely on article 614(2) on the grounds that, if DIB did provide consideration, it was "*disproportionate to the rights given*" by the NGCs. DIB opposed the application. In a ruling given before Mr Al Aidarous gave evidence, I refused the NGCs' permission to amend so as to rely on article 614(2): no such case had been advanced either in the pleadings before trial nor in the NGCs' written or oral openings, and it had not been explored in Professor Amr's evidence. I permitted the amendment about article 614(1): it alleged that, under the ARAs on DIB's interpretation of them, the NGCs disposed of their Insurance Receivables without consideration because DIB provided no consideration "*pursuant to the terms of the* [ARAs]", and further because, if regard might be had to the MMAs (which the NGCs dispute), the lending under them "*would not amount to consideration in circumstances where the* [NGCs] *have no legal right to compel DIB to provide the lending pursuant to the agreement*".

281. DIB put forward three responses to this argument. First, it disputes that the consideration required by article 614 has to be specified in the contract itself, and submits that the facilities provided under the transaction comprising the ARAs, the MMAs and other agreements would be good consideration for assignments by the NGCs. Given that this issue arises only on the basis that the meaning of the ARAs is to be determined in accordance with article 265(2), I accept the first stage of this argument. However, as Mr Al Aidarous explained, and I accept, article 614(1) requires consideration by way of an exchange of promises for value between the contracting parties, such that the parties have enforceable rights against each other. DIB did not promise the facilities to the NGCs, and the promised facilities would not be consideration for assignments by them.

282. DIB's second argument is based on the evidence of Professor Amr that there can be a gift only if it comes from a donor who intends to donate. He cited El-Sanhouri's observations about article 486 of the Egyptian Civil Code: *"It is not sufficient to constitute a donation for the donor to dispose of his money for no consideration, but there needs to exist in addition to this a moral element of giving, which is the intent to donate (animus donandi, intention liberale*)". In Professor Amr's opinion, the same intention to donate is required by UAE law. Mr Al Aidarous disagreed, pointing out that article 486 of the Egyptian Civil Code, while broadly corresponding to article 614, does not fully track its wording: in his view, UAE law, with its greater focus on the overt, rather than the covert, does not require an *animus donandi* in order for there to be a gift within the meaning of article 614. The wording of article 614 does not indicate that a gift requires a subjective intention to give, I found Mr Al Aidarous' evidence about this persuasive, and I prefer it to Professor Amr's.

283. DIB's third argument was that the ARAs included reciprocal promises, and therefore there was consideration for the assignments. It referred to DIB's promises in clause 3.3 to re-assign the receivables, and in clause 7.1 not to enforce against the receivables before an Event of Default. The NGCs complained that this argument was not pleaded and was not foreshadowed in DIB's opening. That is so: it was a late response to the NGCs' late amendment of their pleading. It is not open to the NGCs to complain about the timing.

284. Because the issue arose late in the proceedings, I am not assisted by expert evidence as to whether, under UAE law, reciprocal promises of this kind constitute consideration. It is for the NGCs to establish that the ARAs were gifts in so far as they were concerned with future receivables, and in my judgment they have not done so. If the question were crucial to my overall decision, I might well have invited further argument and possibly further evidence about it, but it is not. I therefore simply conclude that the NGCs' have failed to prove that, on the DIB's interpretation of them, the assignments of future receivables under the ARAs would be invalid under article 632.

Agency

a. Introduction

285. Whatever the proper interpretation of the ARAs, the rights and interests of the NGCs in Insurance Receivables could not have been assigned to DIB under the ARAs unless either they were parties to them when they were made, or the ARAs later become binding upon them by ratification or some similar principle of UAE law. Subject to one qualification, DIB submitted that the NGCs were party to the ARAs when they were made, arguing that:

    a. NMCH had actual authority to execute the ARAs not only on its own behalf but also on behalf of the other companies whose Insurance Receivables were to be assigned;

    b. Mr Manghat (in the case of the Specialty ARA) or Dr Shetty (in the case of the KSA ARA) had actual authority to execute the ARAs on behalf of all the companies whose Insurance Receivables were to be assigned, including the NGCs; and

    c. If Mr Manghat or Dr Shetty did not have such actual authority, they had ostensible authority to execute the ARAs on behalf of all the companies whose Insurance Receivables were to be assigned, including the NGCs.

286. There is no dispute that these questions are governed by UAE law. It is, nevertheless, convenient to use the common law terms of actual authority and ostensible authority to refer to the broadly comparable concepts in UAE law, without suggesting an exact correspondence.

287. The qualification concerns the Eve Fertility. When the ARAs were concluded at the end of April 2018, although the NMC Group had entered into a Sale and Purchase Agreement dated 20 February 2018 in respect of the Eve Fertility Center, then a sole establishment under the law of Sharjah, the company was established only after the ARAs were concluded, its Memorandum and Articles of Association being dated 14 May 2018. DIB does not contend that Eve Fertility was party to the ARAs when they were concluded, but it contends that it later ratified and accepted them.

b. The Requirements for Agency: UAE law

288. The UAE Civil Code has a chapter that deals specifically with Agency at articles 924 to 961. Mr Al Aidarous gave evidence, which I accept, that it reflects a conservative approach adopted by UAE law to construing the scope of an agency. For example, article 927(2) provides that "*If* [an agency] *is special* [sc. is restricted to one or more specified matters], *the agent may carry out only those matters those matters specified in it, and things necessarily incidental to such matters required by the nature of the dealings delegated, or prevailing by custom*"); and article 928 provides that "*If the agency is granted by general words with no clear indication as to the intended purpose of it, then the agent will only be authorised to carry out administrative acts, and to hold property*". Article 929 provides that "[*a]ny act which is not an administrative act or the holding of property requires the grant of a special agency specifying the kind of act and the dispositions appurtenant to the agency*".

289. However, my starting point is in the section of the UAE Civil Code that deals with "*Proxy in Contracting*", articles 149 to 156. Article 149 provides that "*A contract may be made by a person on his own behalf and it may also be made by proxy unless the law stipulates otherwise*". Article 150(1) provides that "*Proxy in contracting may be contractual or legal*", that is to say arising by operation of law. Article 150(2) sets limits on an agent's authority: "*The deed of proxy issued by a person acting on his own behalf shall specify the powers of the proxy if the proxy is contractual, and the law shall specify such powers if the proxy is legal*".

290. Articles 153 and 154 should be read together: article 153 provides, "*If the proxy makes a contract within the limits of his proxy [*authority*] in the name of the principal, the provisions of such contract and the rights (obligations) arising therefrom shall devolve on the principal*"; and article 154 provides, "*If the person making the contract does not declare at the time the contract is made that he is contracting in his capacity as proxy, the effect of the contract will not attach to the principal either as creditor or debtor unless it is conclusively presumed that the person with whom the proxy contracted knew of the existence of the proxy or if it was a matter of indifference for him whether he was contracting with the principal or the proxy*". Accordingly, as Mr Al Aidarous explained, an agent does not have to disclose his agency in the contract itself. However, if he does not do so, article 154 applies, and so generally, as both experts agreed, the contract is not binding on the principal, unless the case falls within one of the two exceptions in article 154, namely: (i) if the other contracting party was aware that he was dealing with a proxy of a principal, and (ii) if it was irrelevant to the other contracting party whether or not he was dealing with a proxy.

291. Article 153 stipulates what Mr McQuater called a "*formal requirement*" that the agent, or proxy, act "*in the name* of" the principal. Professor Amr's evidence was that article 153 does not require an express declaration by the agent of his agency, and the declaration may be *"construed from the circumstances surrounding the conclusion of the contract*". This expression comes from the judgment of the *Dubai Court of Cassation's judgment in Case No 280 of 2008 (16 June 2009)*, which Professor Amr cited, but I agree with the NGCs' submission that the Court was referring to the first exception in article 154. It is necessary to cite the judgment at some length to show the context: "*It is also established that the representative is to disclose, in the contract he enters into and the actions he takes on behalf of his principal and in his name, the name of the latter considering that it is the principal rather than the representative who is deemed to be the contracting party and to whom all its effects accrue. Hence, he directly obtains all the rights and undertakes all the obligations arising therefrom. However, if the representative initiates contracting in his personal name despite the establishment of his representation, the effects of the contract shall, in this case, accrue*

to the principal – based on the established principle regarding the effects of representation if the contracting with the representative knows or is supposed to know that there is a proxy. Besides, the proclamation by the representative of his status when contracting or acting in the name of the principal may be explicit and could be implicitly construed from the circumstances and such interpretation is within the court's discretionary powers as long as it has established its judgment on sound reasonings derived from the case documents and sufficient to rule other the matter". I accept the NGCs' submission that Professor Amr's opinion is not supported by the authority on which he relies, and that, unless the agent expressly declares his agency, article 153 does not apply. Otherwise, article 154, if not entirely redundant, would have little real scope. If there is an implicit declaration sufficient to inform the agent of the agency, then it falls within the first exception in article 154.

292. The NGCs argued that, on the facts of this case, two other provisions of UAE law restrict the application of articles 153 and 154: article 935 of the UAE Civil Code and article 83(2) of the Companies Law. As Mr Al Aidarous confirmed, in cases falling within these articles, their specific requirements must be satisfied in order to establish an agent's authority, and resort cannot be had to the general rules of articles 153 and 154 of the UAE Civil Code: this is an application of the principle of statutory interpretation that the specific restricts the general.

293. Article 935 of the UAE Civil Code, which provides that "*Contracts involving gifts, loans, pledges, deposits, qard loans, companies/partnerships, mudaraba, or composition of disputes after denial, made by the agent shall not be valid unless made in the name of the principal*". The requirement in this article that such contracts be made in the name of the principal reflects the wording of article 153: the experts were agreed that, if a contract falls within article 935, actual authority cannot be established by satisfying one of the exceptions in article 154: article 153 must be satisfied.

294. The NGCs contended that the ARAs are covered by article 935 because: (i) they are properly to be characterised as pledges (rather than absolute assignments), or alternatively (ii), if (as DIB submits) they are by way of absolute assignments, then they are to be characterised as contracts involving gifts. As for the latter argument, I have already decided that the NGCs have not shown that the ARAs involve gifts. The question whether the ARAs are contracts involving pledges was not explored when the experts gave evidence, and neither party made submissions about it. I therefore told the parties that I would not be able to decide this issue in my judgment, and that I would later invite further argument, if necessary. Neither party objected.

295. I therefore come to article 83(2) of the Companies Law, and here both the proper translation and its effect is in issue. DIB submitted that it is properly translated as follows: "*Unless the company's manager appointment contract* [Memorandum of Association] *or internal regulations limits the powers granted to the Manager, he shall be empowered to exercise full powers in management of the Company, and his acts shall be binding on the company, provided that any such acts shall be accompanied by an indication of his capacity*". The NGCs contended that the article is better translated with the word "*statement*" (rather than indication) in the last phrase. The reason that the translation matters is because of a difference between Professor Amr and Mr Al Aidarous about what is required in order for article 83(2) to be satisfied. Professor Amr's view was that article 83(2) stipulates a requirement similar to that in article 153, and if the requirements of article 153 are satisfied, then article 83(2) will also be satisfied. Thus, DIB submitted that the effect of article 83(2) is simply to exclude agency under article 154, but it does not affect the requirements for agency under article 153. Mr Al Aidarous' view is that article 83(2) is more demanding than article

153: that article 83(2) requires not only that the agent expressly declare that he is acting for the principal, but that the declaration should "*accompany*" the act.

296. TLS provided helpful insight into the meaning of article 83(2), and the issue about translation. It explained that the Arabic word, in transliteration *"bayan*", which DIB would render "*indication*" and the NGCs would render "*statement*", can mean "*statement, indication or proof/evidence, depending on the context*". It preferred the translation of "*evidence/ proof*" in the context of article 83(2), pointing out that a different word, transliterated "*mubbayyanah*", is used in article 83(1) when referring to acts of a company's board. The note continues with regard to the acts of a manager, "*the fact something must accompany/ be attached to his actions suggests that both his "actions" and the "bayan" entail tangible documents, (like a form, contract, order, letter for the 'action', and a written statement, articles of association, or contract appointing the manager for the 'bayan'"*). I find that reasoning persuasive, and it supports Mr Al Aidarous' opinion. I prefer the evidence of Mr Al Aidarous to that of Professor Amr.

297. It was suggested by Mr McQuater that the interpretation of article 83(2) preferred by the NGCs is inconsistent with article 23 of the UAE Companies Law: "*The Company shall be bound by any act or thing carried out by the person authorized to manage the Company in the ordinary course of such management. The Company shall be bound be any act of any of its employees or agents who are authorized to act on behalf of the Company, where such authority has been relied on by a third party dealing with the Company*". I do not accept that: on any interpretation, the last clause of article 83(2) is not about what powers the manager has, but how he is to exercise them effectively.

298. Mr Al Aidarous also said that the express declaration must be in writing, and this view is supported by the observations of TLS. He gave evidence, which I accept, that in his many years of practice, a manager would disclose a written authority whenever he was acting for the company. I do not need to decide whether there is an absolute statutory requirement that the manager provide "*bayan*" in writing. I am persuaded by Mr Al Aidarous' evidence that under article 83(2) the manager's disclosure or evidence of his authority must be sufficiently clear and formal to comply with the usual practice for contracts of the kind in question; and that evidence of authority to sign a banking document such as the ARAs requires a written statement of authority. Indeed, this was required by DIB's own procedures.

c. Were the Formal Requirements Met?

299. Before coming to whether NMCH, Mr Manghat and Dr Shetty had authority to act for the NGCs, I shall consider the NGCs' argument that, whether or not they had authority, they did not satisfy the "*formal requirements*" for acting on behalf of the NGCs. Leaving aside their arguments based on article 935, they say, firstly, that they did not make any declaration sufficient for the purposes of article 83(2) of the Companies Law, and indeed did not do so even on Professor Amr's generous interpretation of the requirements of that article. Secondly, they say that the requirements of article 153 were not met, and neither of the exceptions in article 154 is available to DIB.

300. In the ARAs themselves, Mr Manghat and Dr Shetty are stated expressly to be executing the contracts on behalf of NMCH, and there is no indication that they were doing so on behalf of any other principal, nor that, in entering into the ARAs, NMCH was acting on behalf of anyone other than itself. There is no declaration in the ARAs that any of them is acting as agent for any of the NGCs, and they did not enter into them in the name of any of the NGCs. Nor was there any other written statement to that effect, nor evidence of an oral declaration made by

or on behalf of NMCH, Mr Manghat or Dr Shetty. On the basis of Mr Al Aidarous' evidence about the requirements of UAE law, that is the end of the matter: the formal requirements for the exercise of agency were not satisfied.

301. I also conclude that there was no implicit declaration by any of NMCH, Mr Manghat or Dr Shetty that they were acting for subsidiaries of NMCH. On the contrary, if regard is had to the circumstances in which the ARAs were executed, the fact that the Corporate Guarantees were expressly signed separately by each of the Original Guarantors shows that the signatories were executing the documents on the basis that they stated expressly on whose behalf they were acting.

302. What of the exceptions in article 154 (if, contrary to my other conclusions, DIB is entitled to rely on them)? It cannot be said that it was irrelevant to DIB whether they were dealing with an agent for the NGCs. Nor can it be said that it was "*aware*" that it was dealing with proxies for the NGCs when executing the ARAs: DIB had, as I have concluded, collected evidence that the signatories for the express parties to the contractual documents had the requisite authority, but it had not sought, nor received (except incidentally when receiving powers of attorney relating to Original Guarantors), evidence about the NGCs. Moreover, even if, contrary to my finding, the joint intention of the parties to the ARAs objectively determined was that the rights and interests of the NGCs in Insurance Receivables be assigned, there is no proper basis for concluding that Mr Manghat, Dr Shetty or, through them, NMCH, understood themselves to be acting for each of the NGCs or any of them, and so no basis for concluding that DIB was "*aware*" that it was dealing with them in that capacity.

d. Actual Authority: NMCH

303. This is a complete answer to DIB's contentions of actual authority, whether or not NMCH, Mr Manghat or Dr Shetty had authority to conclude the ARAs on behalf of the NGCs, but I shall consider these questions.

304. First, NMCH's authority. DIB rightly did not pursue its allegation that NMCH had authority to conclude the ARAs for the NGCs simply because it was their holding company: as Mr Al Aidarous confirmed, a holding company would not, without more, have authority so to act as its subsidiary's agent. DIB also pleads that NMCH had actual authority to act on behalf of the NGCs "*by virtue of its function as group treasurer, being authorised by the* [NGCs] *acting by their manager*", and that it relies on the following:

a. statements in the audited financial statements of NMCH that it had control over its subsidiaries;

b. statements in the notes audited financial statements of NMC Group subsidiaries, which include a statement in the Notes that "*The Company is managed by* [NMCH] …";

c. evidence that the "*group treasury function*" included a "*group receivables department*"; and

d. the NGCs' pleading that "[NMCH] *acted as the agent for the* [NGCs] *for the limited purpose of collecting purpose of collecting the proceeds of Receivables due to the* [NGCs]". This, DIB argues, is an "*admission that* [NMCH] *was authorised to carry out (and was held out as having) a group treasury function*". I observe that the NGCs' pleading also states, "*The agency to act on behalf of the* [NGCs*] in relation to the proceeds of Receivables was limited to that role*".

305. I do not consider that NMCH's financial statements assist DIB. The notes to the statements about the basis of consolidation include the unremarkable explanation that *"Generally there is a presumption that a majority of voting rights results in control. To support this presumption and when the Group has less than a majority of the voting or similar rights of an investee, the Group considers all relevant facts and circumstances in assessing whether it has power over an investee*...." . These statements have no bearing upon whether or for what purposes NMCH had authority to act as proxy or agent for the NGCs, and DIB offered no indication as to how they might do so.

306. DIB has not produced financial statements of any of the NGCs, but the financial statements of NMC Group subsidiaries that are in evidence all include in the notes a statement that "*The company is managed by* [NMCH]". DIB invites the inference that the NGCs' financial statements had similar notes, and I consider the inference justified in the absence of contrary evidence. However, there is no evidence of any formal or written appointment of NMCH as manager of any of its subsidiaries, and these general notes in the financial statements do not indicate what authority NMCH might have had to act for them. They do not assist DIB.

307. NMCH certainly exercised a management function for the Group, and that clearly included management of some financial and treasury activities. For example, it negotiated facilities for the Group, and made plans about which subsidiaries should take them out and which subsidiaries should guarantee them. I am also satisfied that there was a Group Receivables Department, which dealt with Insurance Receivables payable to NMCH's operating subsidiaries and arranged for payments, of unassigned as well as assigned monies, into its Amanat account.

308. DIB seemed to suggest that it would be a small step to infer from this that NMCH had authority to execute on behalf of its subsidiaries contractual documents relating to the Group's banking and other financial arrangements. I disagree: that is not how the Group operated. When subsidiaries were parties to the 2018 contracts, they executed the documents themselves, and this followed the pattern for the 2012 and 2015 facilities. Mr Al Hussaini confirmed this, saying that "*of course*" NMCH did not execute any agreement for its subsidiaries, and each signed for itself.

309. DIB had another argument: that the NGCs have not adduced evidence about the role of the Group Treasury Team, and specifically evidence about whether NMCH was authorised to make contracts to assign Insurance Receivables on behalf of its subsidiaries; and they have not explained why they have not done so. It submits that, on the face of it, such evidence could have been provided by Mr Santha. In 2018, he was involved in producing projections of inflows of Insurance Receivables and sending Notices and Acknowledgment forms, and later involved with the so-called "*virtual accounts*", to which I refer below. As I have said, there are circumstances in which an adverse inference may properly be drawn against a party who, without explanation, does not call a witness who could apparently provide significant evidence. DIB's argument was that I should draw an adverse inference from the NGCs' failure to adduce evidence from Mr Santha about the extent of NMCH's authority to deal with the Insurance Receivables of its subsidiaries.

310. I see force in this argument, but DIB pleaded that NMCH's actual authority to act for the NGCs is to be inferred from "*the evidence that the group treasury function included a group receivables department*" and "*lack of evidence that NGCs have adduced as to the limits of* [NMCH's] *authorisation*" only after the evidence was concluded. It applied for permission to amend after it had made its closing submissions, and the application was resisted. I permitted this amendment (although I refused other amendments for which DIB applied). In my ruling,

I said that, in assessing the evidence, I could make allowance for any disadvantage that the NGCs might face as a result of the point being pleaded late. This history detracts from DIB's argument about the NGCs failure to call evidence: arguments of this kind are obviously more powerful when they go to a point that is pleaded, or otherwise clearly set out, when evidence is being marshalled for trial.

311. In the end, I reject DIB's contention that NMCH had authority to enter into the ARAs on behalf of the NGCs. I am reinforced in this conclusion by the evidence of Mr Al Aidarous about the conservative approach of UAE law when construing the scope of an authority. It is for DIB to prove that its group treasury function had provided NMCH with specific and relevant authority, and, in my judgment, it has not done so.

e. Actual authority: Mr Manghat

312. DIB pleads that "*by virtue of their senior management positions within the NMC Group Mr Shetty and/or Mr Manghat had actual authority to act on behalf of the* [NGCs]". This contention was not developed in submissions, and I reject it. Even assuming that they had "*senior management positions*" in all the NGCs, that in itself would not have conferred authority on them to enter into the ARAs on behalf of the NGCs.

313. DIB also pleads that Mr Manghat had authority to execute the Specialty ARA on behalf of the NGCs because he was authorised to do so under powers of attorney, and in the case of three NGCs, Al Zabra, the, Eve Fertility, and Sunny Maysloon Specialty Medical Centre Limited ("**Sunny Maysloon**"), the Twenty-Ninth Claimant, under their memoranda of association, which gave him *"broad authorisation as* [manager]". As I said, the contention that Mr Manghat was actually authorised by Eve Fertility was abandoned by DIB.

314. In an amended pleading filed on 14 June 2023, after the trial hearing was concluded, DIB also included an allegation that, in the case of NGCs where Mr Manghat was not a manager, it is to be inferred that "*he was authorised by the* [NGCs] *acting by Mr Shetty*". That pleading was filed following an application for permission to amend the defence made by DIB after its closing submissions. By the application, it had sought to plead that Dr Shetty had delegated to Mr Manghat authority to act for the NGCs, and I refused permission to introduce that allegation. I consider that the allegation that Mr Manghat was authorised by Dr Shetty was part of the same plea, and I refused permission for it; and that it was wrongly included in the pleading filed on 14 June 2023. In any case, I would reject the argument: there is no proper basis for a finding that Dr Shetty intended to confer on Mr Manghat authority that he had been given by the NGCs. That inference would be inconsistent with the way in which the Corporate Guarantees were executed, after the NMC Group had provided DIB with evidence of the authority of the signatories.

315. The argument about Mr Manghat's actual authority depends upon the proper interpretation and effect of the powers of attorney and the three memoranda of association. The powers of attorney fall into two classes:

    a. The powers of attorney given by these NGCs: Al Zahra; Grand Hamad; Hamad Pharmacy Ltd ("**Hamad**"), the Eighth Claimant; NMC Royal Medical Centre Ltd ("**NMC RMC**") the Twelfth Claimant; NMC Pharmacy 1; NMC Pharmacy 2; New Sunny Medical Centre Ltd ("**NSMC"**), the Twenty- First Claimant; NMC RFMC; Sharjah Pharmacy Ltd ("**Sharjah Pharmacy**"), the Twenty-Fourth Claimant; Sunny Al Buhairah Medical Centre Ltd ("**Sunny Al Buhairah**"), the Twenty-Fifth Claimant; Sunny Al Nadha Medical Center Ltd ("**Sunny Al Nadha**"), the Twenty-Sixth Claimant;

Sunny Dental Centre Ltd, ("**Sunny Dental**"), the Twenty-Seventh Claimant; Sunny Halwan Specialty Medical Centre Ltd ("**Sunny Hailwan**"), the Twenty-Eighth Claimant; Sunny Maylsoon Specialty Medical Centre Ltd ("**Sunny Maysloon**"), the Twenty-Ninth Claimant; Sunny Medical Centre Ltd ("**Sunny MC**"), the Thirtieth Claimant; Sunny Sharqan Medical Centre Ltd ("**Sunny Sharqan**"), the Thirty-First Claimant; and Sunny Specialty Medical Centre Ltd ("**Sunny SMC** "), the Thirty-Second Claimant; and

b. The powers of attorney given by Fakih IVF FC and Fakih IVF Ltd ("**Fakih IVF**"), the Sixth Claimant.

316. The first class of powers of attorney authorised the attorneys, Mr Manghat, Mr Buttikhi, Mr Shenoy and Mr Kumar, to exercise some powers alone, and for other purposes two of them had to act jointly. DIB relies on these powers granted to a sole attorney:

a. *"[to] issue, sign, seal and execute on behalf of the Company any documents including without limitation contracts, agreements, … mortgages, assignments,…" (clause 4);*

b. *"[t]o sign and execute all documents, agreements and any kind of written Board/Shareholder Resolutions (including powers of attorney), including Director's Certificate, Declaration of whatever kind or nature on behalf of the Company in its capacity as shareholder or partner of any company and sign and execute any kind of agreements and memorandums whether before a notary public or otherwise"* (clause 10*); and*

c. *to do and/or execute without restriction all or any acts or things that may be required to enable the Company to carry on its business in the [UAE] or elsewhere and generally to do all such acts and things as fully and effectively to all intents and purpose as the Company itself could do"* (clause 13).

317. The joint powers were introduced with these words "*In addition to above, any two of the above said attorney are jointly authorised to do the following acts on behalf of the Company*", and the powers that followed included these:

a. "*[t]o represent the Company in its negotiations and dealings with any bank, financial institution or lending agency (within or outside the* [UAE]) *and to open, operate and close such bank accounts in the name of the Company as he may think fit, transact all kinds of banking operations … in connection with the business of the Company or its subsidiaries whether such bank accounts are in debit or credit, and draw, accept sign, endorse and otherwise deal with any Cheques and other instruments of whatsoever nature, including guarantees and indemnities*" (clause 1);

b. *"[t]o request and accept any required credit facilities …. and to sign all relevant documents (for the avoidance of doubt, this power incudes the ability … to offer third party and cross guarantees on behalf of the Company or its subsidiaries)*" (clause 2); and

c. *"[to] execute all security documents including cross corporate guarantees for any credit facilities and sign the necessary documents related to the credit facilities and other accounts of any bank, financial institution or lending agency (within or outside the [UAE])"* (clause 3); and

d. "[*t*]*o execute on behalf of the Company the possessory pledge and mortgages of buildings, machinery and other movables to secure credit facilities granted to the Company or its subsidiaries*" (clause 5).

318. The NGCs say that only the powers potentially relevant to the execution of the Specialty ARA are powers that may be exercised by two attorneys, and not by Mr Manghat alone. The ARA results from negotiations with a bank, and relates to the grant of credit facilities and security for the facilities, and such dealings are the subject of the joint powers. In response, DIB advanced two arguments: first, it said that the execution of the ARA is covered by the general wording of the powers that may be exercised alone, such as the power in clause 4 to execute assignments; and the joint powers, being expressly additional to the powers that might be exercised by a single attorney, are not to be taken to limit them. I reject that argument: the powers of attorney must be interpreted as a whole, and the general powers are limited by the specific joint powers to deal with banks and credit facilities. Mr Al Aidarous confirmed that UAE law has a principle of statutory construction that the specific restricts the general, and I understand that contracts are interpreted similarly.

319. DIB's second argument is pleaded as follows: "*Mr Manghat acted jointly with Mr Shenoy or Mr Kumar or both in that ... Mr Shenoy or Mr Kumar assented to Mr Manghat's signature*". In my judgment, DIB did not prove the factual basis for this argument, but in any event I cannot accept that the "*assent*" of another attorney to Mr Manghat executing the ARAs amounted to that other attorney exercising his own authority under the powers of attorney to act for the NGCs, or acting jointly with Mr Manghat to do so.

320. I come to the second class of powers of attorney. I do not propose to set out all of the ten provisions upon which DIB places reliance. In order to explain the issue between the parties, it suffices to refer to four of them, which seem to me most in point:

a. "*to purchase, exchange, surrender, give up, release, take on, lease, grant third property rights in, sell, transfer or otherwise acquire, hold, dispose of or deal in [property of any kind] or other assets .... belonging to [the Company] provided that the transfer and disposal of [the Company's property] does not involve an expenditure exceeding the amount of USD 5 million*" (clause 6);

b. "*to ... create, redeem, transfer or otherwise deal with any mortgage, charge, debenture, pledge or other security relating to any money borrowed by, or other liabilities (actual or contingent) of [the Company] or of any other person, firm or company the value of which is an amount in excess of USD 5 million [*sic]" (clause 12(b)); DIB did not dispute that in the last clause the word "*not*" is omitted in error in the English version – I do not know whether it is omitted in the parallel Arabic version.

c. "*to ... pledge, charge, assign, mortgage or otherwise transfer, hypothecate and deliver as security for all or any liabilities (actual or contingent) of [the Company] or of any other person, any one or more of monies standing to the credit of any account(s) ... from time to time, promissory notes, drafts, bills or other instruments for the payment of money, stocks, bonds, accounts, bills, receivable, or any other securities, goods, or property, real or personal, tangible or intangible, moveable or immoveable, ... now or at any time hereafter belonging to* [the Company] *up to (but not exceeding) the amount of USD 5 million*" (clause 12(c); and

d. "*to sign any document or enter into an agreement relating to any act or thing mentioned in this Power of Attorney, provided that the value of such document or agreement does*

not exceed the amount of USD 5 million, including (but not limited to) any document or agreement pursuant to which [the Company] will: ... (d) create or release any security interest, including mortgages, pledges, charges and assignments" (clause 21).

321. The NGCs say that these powers authorised Mr Manghat to deal with property with a value of property up to US$ 5 million, and to make assignments by way of security only subject to that limit; and that these powers were insufficient to authorise him to make an absolute assignment of Insurance Receivables without any limit on the value of the assigned property. DIB responds that the NGCs cannot rely on the limit of US$ 5 million without evidence that each of the relevant NGCs did in fact assign assets of more than US$5 million. I prefer the NGCs' submission about how the limit applies. The ARAs purported to assign future, as well as existing, Insurance Receivables, and it follows that the value of the assigned assets of any NGC potentially exceeded US$ 5 million. The parties would have needed to know when the ARAs were executed whether Mr Manghat had authority to act for the NGCs. It would make commercial nonsense if his authority depended upon what later proved to be the value of the assigned assets.

322. I therefore reject DIB's case that the various powers of attorney conferred relevant powers on Mr Manghat so as to give him actual authority to execute the Specialty ARA for NGCs. I come to the memoranda of association of Al Zahra and Sunny Maysloon, under which he and Dr Shetty were appointed as managers of the companies and which that are said by DIB to have given Mr Manghat authority to act for them.

323. First Al Zahra: the memorandum of association stated that the Shareholders had agreed that the management of the company should be undertaken by two representatives, to be known as the "*Company's Managers*", and that, unless replaced or someone was appointed in their place, the first Company's Managers were to be Dr Shetty and Mr Manghat. Each of the Managers had "*all the powers necessary for performing the Company's business in order to realise its objectives,*" and the Managers' powers, which each Manager might exercise individually, included these: a power to "*execute all securities documents including cross corporate guarantees for any credit facilities and sign any necessary documents related to the credit facilities and other accounts of any bank, financial institution or lending agency (within or outside the UAE)*"; and a power to "*perform all financial transactions of whatever type, to enter into and sign all bank applications, forms and/or documents of whatever type as may be required for banks, and/or financial institutions*,...".

324. The memorandum of association for Sunny Maysloon similarly provided that the management of the Company should be undertaken by two "*Company's Managers*", and that, unless replaced or someone was appointed in their place, the first Company's Managers were to be Dr Shetty and Mr Manghat. They had "*all powers and full authority to Manage, operate and represent the Company in all matters connected to the business of the Company or incidental thereto*" and (inter alia) these specific powers: a power to "*enter into and execute any lease, transfer, mortgage, pledge or other disposition of the property and assets of the company*"; and a power to "*open and close bank accounts In the name of the Company and to operate, to issue cheques, under their Sole or joint signatures; to borrow on behalf of the company with full responsibility and sign drawing instruments, guarantees and other charge documents required for bank facilities and to sell mortgage, pledge, assign Company stocks, receivables, assets as security to any bank, and financial institution, to purchase any business, asset or goods on credit*".

325. Notwithstanding the conservative approach of UAE law to interpreting the scope of agencies, as I interpret these memoranda of association, they would have authorised Mr Manghat to

execute the ARAs for Al Zahra and Sunny Maysloon, had he done so and satisfied the "formal" requirements for doing so. He did not have authority to do so for any others of the NGCs.

f. Actual authority: Dr Shetty

326. Dr Shetty was the manager (or a manager) of all the NGCs other than Fakih IVF FC, Fakih IVF and, at the time that the ARAs were executed, Eve Fertility. The memoranda of association of Sunny Halwan and of Sunny Sharqan were in the same terms as that for Sunny Maysloon. It therefore follows from my conclusions about Mr Manghat's authority that I also conclude that Dr Shetty had authority to execute the KSA ARA on behalf of Al Zahla, Sunny Maysloon, Sunny Halwan and Sunny Sharqan.

327. The memoranda of association of these NGCs were in similar terms: Grand Hamad, Hamad, NSMC, Sharjah Pharmacy, Sunny Al Buhairah, Sunny Al Nahda, Sunny Dental Centre, Sunny MC, and Sunny SMC. Under them, Dr Shetty was appointed "*Manager of the Company to manage the administrative, technical, financial and commercial business of the Company*", and given "*all the powers necessary for performing the Company's business in order to realise its objectives*", including these:

    a. the power to *"open, operate, manage and close accounts of all types with banks, to withdraw, deposit and transfer funds including to his own accounts, to sign, encash, and endorse cheques, bills of exchange, notes, payment notes and any other financial documents whatsoever in the name of the Company with the right to receive any amount/entitlements pertaining to the Company from any party whatsoever";*

    b. the power to *"receive any credit facilities including loans, overdraft, letters of guarantee, guarantees, cheques, bonds and discount facilities in the name of the Company against the securities that may be required by the bank(s), including those provided by way of charge or mortgage of any properties or assets, and to assign all and/or any part of the income of the Company, to assign and transfer rights, to enter into and sign all documents required for bank(s) as the Manager may consider proper";*

    c. the power to *"give instructions to bank(s) concerning issuance of letters of credit, guarantees and notes on the Company's account, to execute and sign applications, forms, documents and counter-guarantees"; and*

    d. the power to *"perform all financial transactions of whatever type, to enter into and sign all bank applications, forms and/or documents of whatever type as may be required for banks and/or financial institutions …".*

328. Another four NGCs had similarly worded memoranda of association: NMC RMC, NMC Pharmacy 1, NMC Pharmacy 2 and NMC RFMC. Dr Shetty was appointed Managing Director of these companies, and he was "*exclusively* [to] *manage [them]" and "have complete and unrestricted power for [their] management and administration*". His powers included these:

    a. the power to "*issue, sign, seal, and execute on behalf of the Company any document including contracts, agreements, sale deeds, share transfers, memorandum of understanding, conveyances, leases, mortgages, assignments, tenders, surrenders, releases, transfers, instruments, deeds, letters certificates, confirmations etc*";

b. the power to "[r]*epresent the Company in its negotiations and dealings with any bank or financial institution in the [*UAE*], and undertake any banking transaction or trade financing activities on behalf of the Company*";

c. the power to "*apply for credit facilities, loans, borrowings, give guarantees, create a lien, charge, mortgage, or encumbrance of any kind whatsoever over the assets, or on behalf, of the Company*"; and

d. a power in respect of "[a]*ny matter related to the financial affairs of the Company*".

329. As I interpret them, both forms of memorandum of association would have given Dr Shetty authority to execute the KSA ARA on behalf of these companies had he exercised it.

330. NMC Pharmacy 1 and NMC Pharmacy 2 also gave powers of attorney to Dr Shetty authorising him (inter alia) to *"[i]ssue, sign, seal and execute* [on their behalf*] any document including …. assignments …",* and to *"execute all security documents including cross corporate guarantees for any credit facilities and sign the necessary documents related to credit facilities and other accounts in the banks and financial institutions*". For this reason too, Dr Shetty would have had authority to execute the KSA ARAs on their behalf.

331. As for Fakih IVF FC and Fakih IVF, there is no evidence that Dr Shetty had any authority either under their memoranda of association or under any power of attorney to execute the KSA ARA for them, and I conclude that he had none. Leaving aside Eve Fertility, for the reason explained above, I conclude that he would have had authority to execute it for all the other NGCs had he done so and satisfied the formal requirements for doing so.

332. I add that, as with Mr Manghat, I would reject the pleaded case that (apparently regardless of the memoranda of association) Dr Shetty had authority to act for the NGCs because of his "senior management position".

g. Ostensible Authority

333. The UAE Civil Code does not provide for what the common law would call ostensible or apparent authority, but the experts agreed that a comparable concept is recognised by UAE law. The Federal Supreme Court explained the position *in Case No 180 of 19 (21 October 1998*): "*The following conditions are required to apply the provisions of the apparent authority: The first: that the representative is acting in the name of the Principal, but without an authorization. The second: That the third party dealing with the representative is acting in good faith and believes that the representative is a true representative of the Principal, regardless of the good faith of the representative. The third: That the Principal is acting in a manner that indicates it granting its authority to another (a representative) and reflecting such appearances which make it justifiable for the third party to believe that there is an authorization relationship between the principal and its representative*". Accordingly, Professor Amr identified three conditions that must be met before UAE law recognises ostensible authority: (i) "*acts (positive or negative) being carried out by a party purporting to be but actually not an agent"; (ii) "a bona fide third party dealing with the apparent agent"; and (iii) "conduct (act or omission) by the principal that leads the bona fide third party to assume the existence of actual authority*". Guidance about the third requirement is found in a passage of El-Sanhouri which Professor Amr cites: "*If the third party managed to prove such an external appearance [attributed to the principal and leading the third party to believe that the agent represents him] and proved also that he cannot be blamed for believing in such appearance, as he has taken the precautions that may be taken by ordinary persons in such*

circumstances when entering into contract with the Agent to make sure that such appearance reflects the reality, thus the third party has prove his good faith".

334. Article 23 of the UAE Companies Law sets out what Professor Amr described as a "*statutory form of apparent authority*": "*The Company shall be bound by any act or thing carried out by the person authorized to manage the Company in the ordinary course of such management. The Company shall also be bound by any act of any of its employees or agents who are authorized to act on behalf the Company, where such authority has been relied on by a third party dealing with the Company".* Article 25 of the Companies Law provides*: "(1) The Company shall not claim lack of liability towards those dealing with it on the ground that the body with authority to manage it was not duly appointed in accordance with the provisions of this Law or the Articles of Association of the Company, so long as the acts of such body are within the usual limits with respect to who is in the same position in companies that conduct the same kind of activity as the Company. (2) Protection of the person dealing with the company is conditional on him having good faith, and he shall not be deemed having good faith a person who knows or could have known because his relationship with the company, the deficiencies of any act of disposal or act which is held against the company*

335. DIB pleads that Mr Manghat and Dr Shetty had ostensible authority to act for the NGCs because of (i) "*the NMC Group's prior course of dealing with DIB*" and in particular their involvement in negotiating the 2012 and 2015 facilities, and in Dr Shetty's case, in executing earlier ARAs; and (ii) their "*involvement in the negotiation and execution of the Speciality and KSA Facilities*". The first difficulty facing this argument is that none of the NGCs were party to the 2012 arrangements, and only NMC Pharmacy 1 and NMC RFMC were party to the 2015 arrangements. Secondly, leaving aside cases where Mr Manghat or Dr Shetty had actual authority under the memoranda of association, DIB has not explained how, with regard to the negotiations for either the earlier or the 2018 facilities or in executing agreements, the NGCs indicated that Mr Manghat and Dr Shetty had their authority to execute the ARAs. After all, DIB's case is that their dealings were with the Group Treasury Team, rather than individual NGCs. Thirdly, DIB has not shown that it understood that Mr Manghat and Dr Shetty had authority to execute the ARAs for the NGCs: the department of DIB charged with deciding whether persons were duly authorised for this purpose was the CAD, and there is no reason to think that the CAD thought that the NGCs were parties to any of the contractual documentation. Fourthly, if the CAD, or any others in DIB, did think that the NGCs had conferred relevant authority on Mr Manghat or Dr Shetty other than under the memoranda of association, it was because DIB had not, as El-Sanhouri put it, "*taken the precautions that may be taken by ordinary persons in such circumstances when entering into contract with the Agent to make sure that such appearance reflects the reality*". It had had disregarded the Credit Policy Document and its own procedures for checking the contract documents, and in particular whether signatories were duly authorised.

336. I reject DIB's ostensible authority arguments.

Retrospective validation

a. Introduction

337. DIB also argued that, in so far as the ARAs were not validly executed on behalf of the NGCs, ARAs ratified them or accepted them as binding. These questions are also governed by UAE law. In its pleadings and opening submissions, DIB also advanced contentions based on principles of waiver, acceptance and estoppel, but did not pursue them in its final submissions.

b. UAE law

338. If a person purports to make a contract on behalf of another without authority, the contract is subject to the approval, or ratification, of the principal. If it is approved, the contract takes effect, but not otherwise: pending approval, the contract is said to be "*suspended*". The Commentary explains that "*A suspended contract is one that has been properly concluded and is valid because its essence is there and the conditions for the conclusion thereof and its validity are there, but it lacks one of the two powers, namely power over the subject matter of the contract or power to make that kind of disposition*". A void contract cannot be ratified.

339. Professor Amr identified two forms of ratification, described as "*ratification of authority*" and "*ratification of transaction*". Article 930 of the UAE Civil Code, in the section dealing with agency, explains ratification of authority: "*Subsequent affirmation of a disposition shall be treated as a prior grant of agency*". As for ratification of transaction, Professor Amr referred to article 213: "*A disposition shall be dependent for the effectiveness thereof upon the approval if it is made by a volunteer in respect of property belonging to another or by an owner in respect of property of his encumbered by a third party right or by a person lacking qualification in respect of his own property, where such transaction lies in the area between [*pure] *advantage and [*pure] *detriment or is made under duress, or if the law so provides*". In these cases, article 214 provides that, "*The right to grant or withhold approval to the contract shall be that of the owner or … such person to whom the law gives that power*".

340. Professor Amr explained that the only difference between the two forms of ratification is whether the intention is retrospectively to confer consent on the putative agent or whether the intention is to adopt the transaction (although the same conduct could do both in any particular case). In either case, the test as to whether there has been approval or affirmation is the same: indeed, articles 213 and 930 of the UAE Civil Code uses the same Arabic term, in transliteration, "*ijaza*".

341. A principal is taken to ratify the acts of a purported agent only if it is proved that his acts or words make clear this intention. This is illustrated by the judgment of the *Federal Supreme Court in Case No 163 of 2010 (16 June 2010)*, in which it was said that "*the attorney is obliged to execute the power of attorney within the limits thereof, and for affirmation of any acts performed beyond the said limits the principal must be fully aware that the fact being affirmed by him falls out of scope of the power of attorney and by affirming it he shall incur the consequence thereof, and the burden of proving affirmation lies on the party claiming it*".

342. There is no dispute that articles 132 and 215 apply to ratification of suspended contracts. Article 215 provides that *"(1) Approval may be by any act or word indicating the same expressly or by implication. (2) "Silence shall be taken to be approval if by custom it indicates approval*". Article 132 makes clear that no particular form of act or words is required in order for a party to give approval: "*An expression of intention may be made orally or in writing, and may be expressed in the past or present tense or in the imperative if the present time is intended or by such indication as is customary even by a person who is not dumb, or by an interchange of acts demonstrating the mutual consent or by adopting any other course in respect of which the circumstances leave no doubt that they demonstrate mutual consent*".

343. There was a difference between the experts about whether article 135 of the UAE Civil Code, which concerns acceptance by silence, applies to ratification, as well as when a contract is made. It reads as follows: *"(1) A person who remains silent shall not be deemed to have made an utterance, but silence in the face of need is [tantamount to] a statement and shall be regarded as an acceptance. (2) In particular, silence shall be deemed to be an acceptance*

if there has been a prior dealing between the contracting parties and the offer is related to such dealing or the offer will bring about a benefit to the person to whom it is made". A note in the Commentary explains the expression that is translated "*in case of need*", or "*haja*": it is said to refer to "*circumstances in which a statement is called for*". The effect of the article is explained by the Abu Dhabi Court of Cassation in *Case No 493 of 2013 (30 October 2013)*: "… *the expression of the will as it is verbally or in writing, it may be through an actual exchange indicating mutual consent, or by adopting any other course of action that the circumstances of the situation leave no doubt as to its indication of mutual consent*". The Dubai Court of Cassation used similar language in its judgment in *Case No 179 of 2013 (7 January 2014)*. Thus, before coming to the difference between the experts, it is to be noted that, where article 135 does apply, silence indicates assent only where it leaves no doubt for it.

344. Mr Al Aidarous's view is that article 135 applies only where the contracting parties are present at "*majlis al akhd*", coming together to contract. Professor Amr described *majlis al akhd* as an occasion when the parties negotiate an agreement (whether an original contract or an amendment). Mr Al Aidarous explained that, as the ancient concept of *majlis al akhd* has developed, the *"gathering*" might not be physical: it can be through remote communication, by telephone or a video-link, or even an email exchange. What is required for article 135 to come into play, he said, is a communicative relationship. Professor Amr disagreed: his view was that nothing in article 135 expressly requires *majlis al akhd*, and that its application cannot be so restricted by implication. He considered that the provisions in article 135 about when silence is deemed to be acceptance apply whether or not the parties are "*gathered*" to contract, whether physically or virtually in the manner described by Mr Al Aidarous, and that, therefore, they can apply so as to allow ratification by silence.

345. I prefer the evidence of Mr Al Aidarous. DIB submitted that his views were inconsistent: that there is no principled reason that article 132 should apply in the context of ratification, but not article 135. However, Mr Al Aidarous explained that article 135 is in a group of articles concerned with contracts being concluded between people who are present: thus, for example, article 137 provides that, *"If during the continuance of the session the parties turn their attention to matters other than the object of the contract, that shall be regarded as a turning away from the object*", amounting to a rejection of an offer. He also said that he regarded article 135(2) as providing an exception to general rule that silence does not have contractual effect, and therefore should be narrowly construed in accordance with article 30 of the UAE Civil Code: "*An exception [*to a general rule*] may not be used to draw analogies, nor may the interpretation [*of an exception*] be extended*". Most importantly, in my judgment, article 215 provides a specific rule about when silence is to be taken to be approval of a suspended contract: it prevails over the general provision of article 135.

The acts relied upon as validating the ARAs

346. DIB pleads that the NGCs must have been aware that DIB required the assignment of their Insurance Receivables as security for its facilities, and "[*i*]*f they had a valid objection to payments to the [Amanat] Account on the basis that the receivables had not been assigned, then it was incumbent on them to raise that objection because the parties were not conducting themselves in accordance with their agreements*". Its pleaded contention is that the NGCs raised no objection, and thereby implicitly agreed to the assignments or ratified them.

347. In the course of the trial, DIB advanced other contentions in support of this part of its case. They were not pleaded, but the NGCs took no point on that. Its arguments were these:

a. DIB relies on the email from Mr Patel of 17 September 2018, and argues that, if "*the common intention at the time of contracting had been to assign NMCH generated receivables (or only Notified Contracts) this would have been the time ...to challenge DIB's apparent understanding of the common agreement*", but in fact Mr Kumar replied to Mr Patel that Insurance Receivables would be paid into the Amanat account.

b. In 2019, the NMC Group asked that DIB set up a number of "*virtual accounts*" to channel money into the Amanat account. The purpose was to help monitor the payments from the various operating companies by having separate statements for each virtual account.

c. DIB also relied on correspondence with NAS about the purpose of the virtual accounts. In a letter to NAS of 28 April 2019, Mr Kumar wrote that NMCH "*is maintaining the 13 virtual accounts with DIB & all the funds credited to the virtual accounts then be credited to ... [A]manat account ... it won't affect the existing bank assignment* ...". He included a table, identifying many of the NGCs and allocating the funds from the Insurance Receivables of different NGCs to one of the virtual accounts.

348. I observe that DIB presented its arguments on the footing that the NGCs collectively ratified the ARAs, presumably together with other subsidiaries including the Original Guarantors. It did not attempt to distinguish between NMCH's subsidiaries. They are not said expressly to have ratified the ARAs. The argument turns on whether they, or any of them, did so by implication from conduct or inactivity. I reject DIB's argument that they did: none of arguments advanced by DIB identifies any word or act that indicates approval, and DIB did not contend that the NGCs' indicated approval by custom, so that their silence would fall within article 215. Further, even if I had concluded that article 135 does apply, I still would not accept that any of the matters on which DIB relies, or indeed all of them taken cumulatively, that "*the circumstances of the situation leave no doubt*" of an intention to ratify or approve.

349. First, the payments of the NGCs' Insurance Receivables: I do not accept that, by allowing them to be made, any of the NGCs made clear to DIB, or even indicated, that it accepted that its Insurance Receivables were, or should be, assigned to DIB. After all, before the 2018 facilities were arranged, unassigned funds from operating subsidiaries had been paid into the Amanat account. Further, when the Amanat account received payments, DIB was not provided with information that enabled it to identify which operating subsidiary that had been entitled to them.

350. There is no basis for thinking that any of the NGCs was party to the exchange between Mr Patel and Mr Kumar: it was between DIB and the NMC Group Treasury Team. In any case, it was not about what Insurance Receivables had been assigned. It was about how much was being paid into the Amanat account, and about the NMC Group's failure to provide Acknowledgments.

351. The request for virtual accounts cannot in itself be taken to indicate that the NGCs accepted or ratified the ARAs. It seems that DIB here relies upon correspondence arranging for them to be opened. Again, nothing suggests that any of the NGCs was party to the arrangements. The initial request for the virtual accounts was made by an email of 24 January 2019, with the subject heading of NMCH, and it came from Mr Kumar in his capacity of "*Assistant Manager – Treasury and Banking Operations, [NMCH]".* It led to a formal request from NMCH in a letter to DIB dated 24 April 2019 with the heading "*Our Amanat A/C* – [NMCH] …", in which NMCH asked that DIB issue a letter to *"to whom it may concern*" about the newly

opened accounts. DIB issued such a letter dated 25 April 2019, explaining that NMCH was maintaining the virtual accounts.

352. What of the letter to NAS of 28 April 2019? DIB submits that the expression "*existing bank assignment*" must refer to the 2018 ARAs. The NGCs dispute this: they suggest that it must refer to the 2015 arrangement, pointing out that the expression "*Assigning Entities*" (not "*Assignors*") used in the letter reflects the language of the 2015 arrangements and not that of the 2018 ARAs. They also say that there is no satisfactory evidence that NAS was ever made aware of the 2018 ARAs. I shall not engage with this issue: there are more convincing answers to this part of DIB's argument. The letter was from NMCH, and not from any of the NGCs, and it was not a letter to DIB, but to NAS. In any case, it did not contain an unequivocal statement, or unequivocal implication, that all the NGCs, or any particular NGC, accepted that particular Insurance Receivables were assigned.

Conclusion about parties to the ARAs

353. I conclude that none of the NGCs was party to the ARAs, and that the ARAs are not and never were binding upon any of them.

The NGCs' claim in respect of NAS Insurance Receivables

354. I come next to claims in unjust enrichment or restitution made by certain of the NGCs against DIB in respect of monies paid into the Amanat account from 27 September 2020, when they went into administration. I make two observations at the outset. First, although the NGCs limit their claim to moneys paid on or after 27 September 2020, they argue that they would also be entitled to sums paid before that date. Secondly, the NGCs plead a claim for an account in respect of the payments, and DIB responded that UAE law does not have a remedy of an account. I see nothing in that point: first, the *lex fori*, not the *lex causae*, determines what remedies are available; and secondly, even if the Court could not order an account, it would achieve the same end by ordering an inquiry. In any case, there is no evidence that UAE does not have a remedy of an account: it is therefore presumed that, in this respect, it does not differ from ADGM law.

355. The claim is made under articles 318, 319 and 324 of the UAE Civil Code. They read as follows:

a. Article 318: "*No person may take the property of another without lawful cause, and if he take it he must return it*";

b. Article 319: *"(1) Any person who acquires the property of other person without any disposition vesting ownership must return it if that property still exists, or its like or the value thereof if it no longer exists, unless the law otherwise provides* …".; and

c. Article 324: "*Whoever takes a thing without a claim of right must return it to its owner together with any profits or personal benefits it has produced, and the judge may compensate the owner of the right for any shortfall in the return of the yield on the part of the person who had taken the goods*".

356. Thus, as was observed by Mr Quest, who presented this part of the case for DIB, articles 318 and 324 are concerned with active taking of property by a defendant, and article 319(1) is to do with passive receipt.

357. There was no significant difference between Mr Al Aidarous and Professor Amr about the effect of these provisions: in summary, in order to establish their claim, the NGCs must show (i) that there was a transfer of value from them to DIB; (ii) that, as a result, they were impoverished; (iii) that, as a result of the transfer, DIB was enriched; and (iv) that there was no lawful or legitimate reason for the transfer.

358. The NGCs contend that, when payments from NAS were received into the Amanat account, they were the property of the company which had earned the receivable in question and was entitled to payment by NAS, and not the property of NMCH. They go on to submit that, by blocking the moneys in the Amanat account, and debiting the account in respect of them, DIB took the benefit of money to which they were entitled, and thereby took their property without lawful reason. The NGCs do not complain about DIB receiving the moneys from NAS to the credit of the Amanat account. The complaint is, apparently, about how it later dealt with funds in the account.

359. In response to the argument, DIB submits that:

a. if the Insurance Receivables were not assigned, then the payments made by NAS to DIB would not have discharged the NGCs' entitlement claim against NAS for payment, and so the NGC's property was not acquired by another. Moreover, the NGCs were not impoverished by the transfer; and

b. having received the payments into the Amanat account, DIB was entitled to deal with the funds in according with its mandate, and in particular the Debit Authorisation and, as DIB pleas, the APAAs.

360. I am persuaded by both of DIB's arguments. The NGCs submitted that it is nothing to the point that they might have a claim against NAS: "*their money*", they said, was taken without justification, and therefore they have a claim for its return under UAE law. However, the NGCs never had money in the hands of NAS, but a chose in action against it in respect of Insurance Receivables, and no "*money*" of the NGCs was taken by DIB. Nothing in Mr Al Aidarous' evidence answered this point.

361. The NGCs do not dispute the validity of the APAAs and the Debit Authorisation. By the APAAs, NMCH pledged the "*Pledged Assets*", which included the Amanat Account and any money or credit balance in it. By the Debit Authorisation, NMCH authorised DIB to debit monies from the Amanat account towards settlement of payments relating to the facilities.

362. As Mr Quest submitted, the nature of a bank account is (in UAE law, as in ADGM law) that it is a contractual arrangement between a bank and a customer. Article 390 of Federal Law No 50 of 2022, the Commercial Code, provides that a "*current* [bank] *account is a contract between two persons under which the rights and debts arising from their mutual relationship are converted into entries to be made in the account for which clearance shall be conducted, so that the final balance, upon the closure of the account, shall alone constitute a payable debt*".

363. The NGCs expressly plead that it is not their case that NMCH held money in the Amanat Account on trust for the NGCs. Their allegation that DIB knew or ought to have known that NMCH was not entitled to the proceeds of the payments into the Amanat Account was abandoned. They argued that, while NMCH was entitled to grant, and did grant, a pledge over *"monies in the* [Amanat] *Account that belonged to it*", and could and did authorise DIB to debit monies in the Amanat Account "*belonging to it",* it could not grant a pledge over, or authorise debits from, monies that did not "*belong to it*"; and that monies paid by NAS did not

belong to NMCH. They plead that this is because NMCH acted *"as the agent for the* [NGCs] *for the limited purpose of collecting the proceeds of the receivables due to the* [NGCs]", and the payments by Insurance Defendants into the Amanat Account "*continued to be the property of the* [NGCs], *even after they had been paid into the account in breach of* [NMCH's] *limited agency*".

364. The first problem facing this argument is that the NGCs adduced no persuasive evidence of the "*limited purpose*" of NMCH's agency that it asserts. In any case, I cannot accept that "*monies*" in the Amanat account "*continued"* to be the property of the NGCs: there never were, as a matter of legal analysis, *"monies*" in the account. A payment into the account contributed to the value of NMCH's chose in action against DIB, subject to the terms of the contract governing the account: it did not give any of the NGCs a claim against DIB, or affect DIB's right to deal with the credit balance in accordance with the contract governing the operation of the Amanat account. Moreover, the plea that monies "*continued"* to belong to the NGCs supposes that in some sense the NGCs had property in money (as opposed to a chose in action against NAS) before the payment into the Amanat account. In short, as DIB argues, I see no reason to suppose that DIB did not conduct the Amanat account in accordance with its contract with NMCH, and if it did not do so, its liability would be in contract to NMCH. As far as the NGCs are concerned, DIB acted with lawful cause with its conduct of the Amanat Account.

365. I reject DIB's claim against DIB in unjust enrichment or restitution.

The NGCs' claims for declaratory relief against DIB

366. The NGCs also claim declaratory relief against DIB to the effect that DIB holds "*no effective security*" over Insurance Receivables payable to them "*and/or their proceeds*". I should, in any event, have sought further submissions about the exact wording of any declarations, and in particular the meaning and effect of the words "*and/or their proceeds*" with regard to payments made by the Twelve Insurers into the Amanat account. However, DIB raises more fundamental objections to the claim for this relief. First, it refers to proceedings in the Courts of Dubai between it and Insurance Defendants, and submits that declarations "*risk impinging on the Dubai proceedings'*. It also says that the declarations would serve no useful purpose; there is ample authority, in this Court as well as in the English Courts, that the discretionary remedy of a declaration will not be granted unless it serves some useful purpose: see *Akfar Capital Ltd v Fikry, [2017] ADGMCFI 1* at para 30. Specifically, DIB questions whether the declarations would serve any useful purpose with regard to the Insurance Receivables payable or paid by those insurers against whom the NGCs have entered judgment in default, NAS, SAICO and Al Buhaira. (At the start of the trial, the NGCs pleaded that "*The declarations claimed are necessary in order for the Joint Administrators to discharge their functions under the Statutory Scheme*", but that plea was necessarily abandoned because the NGCs are no longer in administration.)

367. I do not have before me sufficient information about the proceedings in Dubai to assess the force of DIB's concern that declarations might impinge upon them in some objectionable way. I have considered whether I should refuse declarations because the NGCs have not explained sufficiently what useful purpose they would serve, but in all the circumstances, I consider it just to hear further submissions about whether any, and if so what, declaratory relief should be granted in light of this judgment.

The NGCs' claims against the Insurer Defendants

368. The NGCs also brought claims against the Insurance Defendants for orders for payments of Insurance Receivables and declaratory relief. They remain live against eight of the Insurer Defendants. I shall also invite further submissions about these claims, including submissions from any Insurer Defendants who wish to be heard.

Conclusion

369. I therefore conclude that the ARAs did not assign any rights or interests of the NGCs in Insurance Receivables. However, I reject their claim against DIB for restitution or unjust enrichment. I shall receive further submissions about their other claims. I dismiss DIB's counterclaim for rectification of the ARAs.

370. I invite the parties to seek to agree an order to give effect to my judgment, and directions for resolving outstanding and consequential questions.

371. I am grateful to the parties' representatives, and to both expert witnesses for their considerable assistance. I wish particularly to mention the help that I was given in dealing with the formidable documentation at the trial.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
25 July 2023

SCHEDULE 1

No.	Company	Registration No.
1.	**Al Zahra Pvt. Hospital Company LTD** including its branch Al Zahra Pvt. Hospital Company LTD – SHJ.BR, with license no. 16506 (formerly known as Al Zahra Pvt. Hospital Company Limited, with license no. 16506)	000004237
2.	**Bait Al Shifaa Pharmacy LTD** including its branches Bait Al Shifaa Pharmacy LLC Dubai Branch- Jafza, with commercial license no. 164999 and Bait Al Shifaa Pharmacy – Dubai Branch, with license no. 224351 (formerly known as Bait Al Shifaa Pharmacy (L C), with license no. 224351)	000004236
3.	**Eve Fertility Center LTD** including its branch Eve Fertility Center LTD – SHJ.BR, with license no. 539107 (formerly known as Eve Fertility Center L.L.C, with license no. 539107)	000004206
4.	**Fakih IVF Fertility Center LTD** including its branches Fakih IVF Fertility Center LLC – Branch 3, with license no. CN-1360709-3, and Fakih IVF Fertility Center LLC – Branch 4 with license no. CN-1360709-4 (formerly known as Fakih IVF Fertility Center L.L.C., with license no. CN-1360709)	000004224
5.	**Fakih IVF LTD** including its Dubai branch with license no. 666849 (formerly known as Fakih IVF L.L.C, with license no. 666849)	000004220
6.	**Grand Hamad Pharmacy LTD** including its branch Grand Hamad Pharmacy LTD, with license no. 607766 (formerly known as Grand Hamad Pharmacy LLC, with license no. 607766)	000004238
7.	**Hamad Pharmacy LTD** including its branch Hamad Pharmacy LTD, with license no. 118795 (formerly known as Hamad Pharmacy L.L.C, with license no. 118795)	000004209
8.	**N M C Provita International Medical Center LTD** including its branches N M C Provita International Medical Centre L.L.C. – Branch 1, with license no. CN-1194307-1, Provita International Medical Centre L.L.C. – Branch 2, with license no. CN-1194307-2, and N M C Provita International Medical Centre L.L.C. – Branch 3, with license no. CN-1194307-3 (formerly known as N M C Provita International Medical Center L.L.C., with license no. CN-1194307)	000004240

No.	Company	Registration No.
9.	**N M C Royal Hospital LTD** including its branches NMC Clinic (BR of NMC Royal Hospital LLC), with license no. 814785, NMC Polyclinic Branch of NMC Hospital LLC, with license no. 163880, NMC DIC Clinic and Pharmacy (BR of NMC Royal Hospital LLC), with license no. 860025, NMC Hospital (BR of NMC Royal Hospital LLC), with license no. 878386, and its Dubai branch with license no. 710432 (formerly known as N M C Royal Hospital L.L.C, with license no. 710432)	000004225
10.	**N M C Royal N M C Royal Hospital LTD** (formerly known as N M C Royal Hospital L.L.C., with license no. CN-2015786)	000004245
11.	**N M C Royal Medical Centre LTD** including its branches NMC Royal Medical Centre LLC – Branch (Shahama), with license no. CN-2912685, and NMC Royal Medical Centre LLC –Branch (Karama), with license no. CN-2895125, and NMC Royal Medical Centre LLC –Branch 1 (Abu Dhabi), with license no. CN-2150457-1 (formerly known as N M C Royal Medical Centre L.L.C., with license no. CN-2150457)	000004197
12.	**N M C Specialty Hospital LTD** (formerly known as NMC Specialty Hospital- LLC, with license no. CN-1026386)	000004217
13.	**NMC Healthcare LTD**, including its Dubai branch with license no. 610400 (formerly known as N.M.C Health Care (L.L.C), with license no. 610400)	000004210
14.	**N.M.C Specialty Hospital LTD** including its Dubai branch with license no. 562359 (formerly known as N M C Specialty Hospital (LLC), with license no. 562359)	000004241
15.	**New Medical Centre LTD** including its Dubai branch with license no. 127562 (formerly known as New Medical Centre L.L.C, with license no. 127562)	000004214
16.	**New Medical Centre LTD** including trading in Ras Al Khaimah as NMC Royal Dental Centre under license no. 38678, NMC Royal Medical Centre, under license no. 21518 and NMC Royal Pharmacy, under license no. 21669 and including its branches New Medical Centre Ajman LLC-BR, with license no. 95454, New Medical Centre L.L.C – Branch of Abu Dhabi 2, with license no. CN-1831682, New Medical Centre L.L.C.-Branch, with license no. 185190 and New Medical Centre LTD – SHJ.BR, with license no. 25954 (formerly known as New Medical Centre L L C, with license no. 25954)	000004216

No.	Company	Registration No.
17.	**New Medical Centre Pharmacy LTD** including its branch New Medical Centre Pharmacy – LLC – Al Ain – NMC – Branch 1, with license number CN-1135313-1 (formerly known as New Medical Centre Pharmacy - L.L.C – AlAin – NMC, with license no. CN-1135313)	000004253
18.	**New Medical Centre Pharmacy LTD** including its branches New Medical Centre Pharmacy/Branch, with license no. 96634, New Medical Centre Pharmacy LLC NMC Branch 1, with license no. 766270 and New Medical Centre Pharmacy LTD – SHJ.BR, with license no. 608411 (formerly known as New Medical Centre Pharmacy LLC– N.M.C, with license no. 608411)	000004255
19.	**New Medical Centre Specialty Hospital LTD** (formerly known as New Medical Centre Specialty Hospital LLC, with license no. CN-1135806)	000004228
20.	**New Pharmacy Company LTD** including its branches New Pharmacy Company WLL – Branch 1, with license no. CN-1029364-1, New Pharmacy Company WLL – Branch 2, with license no. CN-1029364-2, New Pharmacy Company WLL – Branch 4, with license no. CN-1029364-4, New Pharmacy Company WLL – Branch 6, with license no. CN-1029364-6, New Pharmacy Company WLL – Branch 7, with license no. CN-2914258, New Pharmacy Company WLL – Branch – (Shahama), with license no. CN-2936047, and New Pharmacy Company WLL – Branch 9, with license no. CN-2832792 (formerly known as New Pharmacy Company W L L, with license no. CN-1029364)	000004230
21.	**New Sunny Medical Centre LTD** including its branch New Sunny Medical Centre LTD – SHJ.BR, with license no. 556959 (formerly known as New Sunny Medical Centre LLC; N.M.C Medical Center L.L.C Shj. BR 2, with license no. 556959)	000004202
22.	**NMC Royal Family Medical Centre LTD** (formerly known as NMC Royal Family Medical Centre L.L.C., with license no. CN-1491505)	000004243
23.	**NMC Royal Women's Hospital LTD** including its branch Cooper Health Clinic 1 – Dubai Branch, with license no. 689748 (formerly known as NMC Royal Womens Hospital LL.C., with license no. CN-1532709)	000004235
24.	**Sharjah Pharmacy LTD** including its branch Sharjah Pharmacy LTD – SHJ.BR, with license no. 14966 (formerly known as Sharjah Pharmacy L.L.C, with license no. 14966)	000004239

No.	Company	Registration No.
25.	**Sunny Al Buhairah Medical Centre LTD** including its branch Sunny Al Buhairah Medical Centre LTD – SHJ.BR, with license no. 558052 (formerly known as N.M.C MEDICAL CENTER L.L.C SHJ.BR and Sunny Al Buhairah Medical Centre LLC, with license no. 558052)	000004199
26.	**Sunny Al Nahda Medical Centre LTD** including its branch Sunny Al Nahda Medical Centre LTD – SHJ.BR, with license no. 572409 (formerly known as N.M.C MEDICAL CENTER L.L.C SHJ.BR 4 and Sunny Al Nahda Medical Centre LLC, with license no. 572409)	000004232
27.	**Sunny Dental Centre LTD** including its branch Sunny Dental Centre LTD – SHJ.BR, with license no. 571311 (formerly known as N.M.C Dental Centre L.L.C and Sunny Dental Centre LLC, with license no. 571311)	000004198
28.	**Sunny Halwan Speciality Medical Centre LTD** including its branch Sunny Halwan Speciality Medical Centre LTD – SHJ.BR, with license no. 747560 (formerly known as Sunny Halwan Speciality Medical Centre LLC, with license no. 747560)	000004204
29.	**Sunny Maysloon Speciality Medical Centre LTD** including its branch Sunny Maysloon Speciality Medical Centre LTD – SHJ.BR, with license no. 751420 (formerly known as Sunny Maysloon Speciality Medical Centre L.L.C, with license no. 751420)	000004205
30.	**Sunny Medical Centre LTD** including its branch Sunny Medical Centre LTD – SHJ.BR, with license no. 212280 (formerly known as N.M.C MEDICAL CENTER L.L.C SHJ.BR 1 and Sunny Medical Centre LLC, with license no. 212280)	000004231
31.	**Sunny Sharqan Medical Centre LTD** including its branch Sunny Sharqan Medical Centre LTD – SHJ.BR, with license no. 744404 (formerly known as Sunny Sharqan Medical Centre L.L.C, with license no. 744404)	000004203
32.	**Sunny Specialty Medical Centre LTD** including its branch Sunny Specialty Medical Centre, with license no. 545893 (formerly known as N.M.C MEDICAL CENTER L.L.C SHJ.BR 3 and Sunny Speciality Medical Centre LL.C., with license no. 545893)	000004200

SCHEDULE 2

No.	Insurance Respondents/ Defendants
2.	Aetna Global Benefits (Middle East) LLC
3.	Dubai Insurance Company psc
4.	AXA Insurance (Gulf) B.S.C. (c)
5.	American Life Insurance Company – Alico
6.	Neuron LLC
7.	NAS Administration Services LLC
8.	Saudi Arabian Insurance Company B.S.C (C).
9.	Al Buhaira National Insurance Company
10.	MedNet UAE FZ LLC
11.	National General Insurance Co. (psc) –HealthNet
12.	GlobeMed Gulf Healthcare Solutions LLC
13.	Mobility Saint Honore International For Medical Insurance Claims Management L.L.C. (MSH)