

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION**

CLAIM NO. BVIHCM2024/0081

BETWEEN:

RANA AL-AGGAD

Applicant for Liquidation/Respondent

and

AICO INTERNATIONAL E.C.

(a dissolved company formerly incorporated in the Kingdom of Bahrain)

Respondent for Liquidation

and

(1) TAREK AL AGGAD

(2) TALAL AL-AGGAD

(3) AGGAD INTERNATIONAL INVESTMENT COMPANY LIMITED

Applicants for Set Aside

AND

CLAIM NO. BVIHCM2024/0112

BETWEEN:

AICO INTERNATIONAL E.C.

**(a dissolved company formerly incorporated in the Kingdom of Bahrain acting by its Provisional
Liquidator, Mr. Aaron Gardner)**

Claimant/Respondent

and

AGGAD INTERNATIONAL INVESTMENT COMPANY LIMITED

Defendant/Applicant

Appearances:

Mr. Robert Weekes, KC, with him Ms. Rowena Page, Mr. Daniel Mitchell, Ms. Laure-Astrid Wigglesworth and Ms. Fay O'Halloran for Ms. Rana Al-Aggad and Mr. Aaron Gardner in his capacity as Provisional Liquidator of AICO International E.C.

Mr. Alexander Gunning, KC, with him Mr. Robert Amey, Mr. James Petkovic and Ms. Isobel McNaught for Mr. Tarek Al Aggad, Mr. Talal Al-Aggad and Aggad International Investment Company Limited

Mr. Robert Nader as Conflict Counsel for Mr. Aaron Gardner in his capacity as Provisional Liquidator of AICO International E.C.

Mr. Vadims Bovtramovics on a watching brief for Arab Palestinian Investment Company Limited

2025: January 29, 30; February 3; April 2; October 7.

JUDGMENT

[1] **Wallbank J. (Ag.):** This is the Judgment on:

- (1) an application made on 29th April 2024 to set aside/terminate the appointment of the provisional liquidator made *ex parte* on 7th March 2024 and dismiss an application for the appointment of a liquidator (the 'Set Aside Application'); and
- (2) an application to discharge a notification injunction obtained by the provisional liquidator *ex parte* on 11th March 2024 (the 'Discharge Application').

[2] In practical terms, the matters before the Court include a further three applications:

- (1) An application by Rana Al-Aggad for the appointment of a liquidator over AICO International E.C., by an Amended Originating Application filed on 19th November 2024;
- (2) Rana Al-Aggad's application filed on 20th March 2024 to continue a provisional liquidation order in respect of AICO International E.C.;
- (3) The application filed on 20th March 2024 by AICO International E.C to continue the notification injunction against Aggad International Investment Company Limited.

1. Introduction

1.1 **Dramatis personae**

[3] In terms of the main *dramatis personae*:

- (1) The main protagonist in these Territory of the Virgin Islands ('BVI') proceedings on the one side is Ms. Rana Al-Aggad ('Rana'), who is a Saudi citizen now resident in Canada;
- (2) On the other side, the main protagonist is Mr. Tarek Al-Aggad ('Tarek'), who is resident in Jordan. Tarek is an applicant in the Set Aside Application.
- (3) Mr. Talal Al-Aggad ('Talal') is another applicant in the Set Aside Application. He is resident in Saudi Arabia;
- (4) Ms. Lama Al-Aggad ('Lama') is resident in Saudi Arabia;
- (5) Rana, Tarek, Talal and Lama are siblings ('the Siblings'). They are the children of Mr. Omar Al-Aggad ('Omar'), who passed away on 31st January 2018, and his wife Malak Murad ('Mrs. Murad'), who passed away on 8th February 2022.

[4] In this Judgment I will refer to these ladies and gentlemen by their first names for sake of clarity and I intend no disrespect thereby.

[5] A number of companies also require introduction:

- (1) AICO International E.C. ('AICO Bahrain') was incorporated in Bahrain in 1994 and was dissolved on 24th May 2021. AICO Bahrain is the Respondent to the Liquidation Application. AICO Bahrain was put into provisional liquidation by an order of this Court dated 7th March 2024, with the Provisional Liquidator being Mr. Aaron Gardner (the 'Provisional Liquidator');
- (2) Omar Abdul Fattah Al-Aggad and Partners ('AICO Saudi') was incorporated in Saudi Arabia in 1975;
- (3) Aggad International Investment Company Limited ('AIIC') was incorporated in the Territory of the Virgin Islands ('BVI'), and is a Defendant to a claim brought by the Provisional Liquidator. AIIC is an Applicant in the Set Aside Application;
- (4) Arab Palestinian Investment Company Limited ('APIC') is incorporated in the BVI and its shares are traded on the Palestinian Stock Exchange.

1.2 **Rana's basic contentions**

- [6] In these proceedings Rana contends that she, her late mother Mrs. Murad and AICO Bahrain have been the victims of a serious fraud committed by (principally) Tarek, Talal and AIIC. Tarek is the sole shareholder and director of AIIC.
- [7] AICO Bahrain was a holding company owned by the Al-Aggad family: the shareholders were Omar, Mrs. Murad and their four children.
- [8] AICO Bahrain's most important asset was a very valuable shareholding in APIC (the 'APIC Shares').
- [9] Rana's evidence is that, according to AIIC, the APIC Shares were originally owned by AICO Bahrain.¹ Rana's same evidence states that, again according to AIIC, on 15th January 2008, AICO Bahrain transferred 156,635 APIC Shares to Tarek and that over the subsequent years up to 17th September 2020, Tarek increased his shareholding, so that by 17th September 2020, he purportedly held around 19.4 million shares in APIC.
- [10] Rana contends, however, that the APIC Shares held by Tarek remained beneficially owned by AICO Bahrain. Tarek denies this. This is a major point of contention between the parties.
- [11] Rana's evidence is that AIIC has explained that the APIC Shares continued to be shown as assets of AICO Bahrain in AICO Bahrain's Audited Financial Statements (for 2016), 'because by doing so AICO Bahrain's apparent asset position would be improved, thereby improving its ability to obtain financing from lender banks.'² Rana contends that this explanation is entirely false.
- [12] Rana contends that the alleged fraud was perpetrated as follows. First, her other Siblings put AICO Bahrain into liquidation without Rana or her mother's knowledge or consent; then, during AICO Bahrain's liquidation, Tarek transferred the APIC Shares to AIIC for no consideration. The final step was to dissolve AICO Bahrain, again without Rana's or Mrs. Murad's knowledge or consent.
- [13] Rana contends that there is no evidence that any proper liquidation process was ever conducted in respect of AICO Bahrain. None of its assets were ever distributed to Rana or her mother, despite them being shareholders and that the liquidation was a solvent liquidation.

¹ First Affidavit of Rana Al-Aggad paragraph 29.

² First Affidavit of Rana Al-Aggad paragraph 30.

- [14] Rana claims that this is not an isolated fraud. She contends that her Siblings have also over many years sought by other means to defraud her and her late mother. This has led to proceedings by her mother in Saudi Arabia.
- [15] Rana has also brought proceedings against her Siblings in the Commercial Court in England in respect of an alleged fraud involving the family's Saudi Arabian holding company, AICO Saudi.
- [16] Rana maintains that she did not discover the fraud involving AICO Bahrain for many years. Upon doing so, she first brought a personal claim in fraud against AIC.
- [17] To support that claim, Rana applied to this Court *ex parte* for a freezing order. That application was granted by an order dated 12th October 2023 (the 'Freezing Order'). AIC subsequently agreed to the continuation of the Freezing Order until trial or further order. AIC filed a Defence to the claim.
- [18] On 23rd February 2024, Rana filed an Originating Application in this Court seeking the appointment of a liquidator over AICO Bahrain (the 'Liquidation Application').
- [19] Rana also applied *ex parte* to this Court for the appointment of a provisional liquidator, Mr. Gardner, over AICO Bahrain. This Court acceded to that application, by an Order dated 7th March 2024 (the 'PL Order').
- [20] Mr. Gardner then immediately issued proceedings on AICO Bahrain's behalf against AIC seeking, in particular, proprietary relief against AIC.
- [21] He also applied *ex parte* for a notification injunction against AIC in respect of such APIC Shares which remain under its control. This Court acceded to that application *ex parte*, by an Order dated 11th March 2024 (the 'Notification Injunction').

1.3 The Set Aside Applicants' basic contentions

- [22] AIC, Tarek and Talal ('the Set Aside Applicants') seek to set aside the PL Order and discharge the Notification Injunction. They also seek dismissal of the Liquidation Application.
- [23] The Set Aside Applicants recognize that both applications overlap. So, if the Set Aside Applicants lose their arguments that the liquidation application should be dismissed, the Court would necessarily have been persuaded that Rana has a good arguable case for proprietary relief.

[24] Equally, if the Set Aside Applications fail, Rana contends (uncontroversially) that her application for the appointment of a liquidator over AICO Bahrain, by an Amended Originating Application filed on 19th November 2024 should succeed. The same applies to Rana's application filed on 20th March 2024 to continue the PL Order in respect of the AICO Bahrain and the application filed on 20th March 2024 by AICO Bahrain to continue the Notification Injunction against AIIC.

1.4 Principal issues identified by Set Aside Applicants

[25] The Set Aside Applicants identify the following main considerations for their application to set aside the appointment of a provisional liquidator and to dismiss the application to appoint a liquidator over AICO Bahrain:

- (1) Does Rana have standing to apply to this Court for a liquidator over AICO Bahrain? They contend that Rana does not.
- (2) Does AICO Bahrain have a connection with the BVI as required by section 163(1) of BVI Insolvency Act 2003 ('IA 2003') and as provided for at section 163(2)? They contend AICO Bahrain does not.
- (3) Ought the Court to exercise its discretion to order a liquidation of AICO Bahrain? They contend the Court should not.
- (4) Whether the provisional liquidation and notification injunction orders obtained by Rana should be set aside for breach of her duty of full and frank disclosure. They say they should.
- (5) Whether the requirements of justice and convenience are satisfied in respect of the notification injunction. They say they are not.

[26] The Set Aside Applicants contend that, in essence as an over-arching theme, this is a dispute between shareholders of AICO Bahrain, with Rana, as a minority shareholder complaining that her rights have been trampled on by the majority, and that Rana is seeking to use the foreign company liquidation route to by-pass the usual step of pursuing an unfair prejudice action and obtaining an order that it is just and equitable for the underlying company to be wound up.

1.5 Rana's opposition to the set aside applications

[27] Rana and AICO Bahrain (through Mr. Gardner) oppose AIIC, Tarek and Talal's applications. Rana says that Mr. Gardner should now be appointed as liquidator over AICO Bahrain, so he can

conduct a lawful and proper liquidation of AICO Bahrain (which, she submits, appears never to have been done) and recover that company's assets and distribute them properly, including to Rana.

1.6 Rana's grounds for liquidation of AICO Bahrain

- [28] Rana's Liquidation Application is based upon the following grounds. For present purposes, the following recital, given by Rana, is not to be taken as any finding of fact; these are Rana's stated grounds for the Liquidation Application.
- [29] AICO Bahrain was incorporated as a company under the laws of the Kingdom of Bahrain on 31st December 1994. It was put into liquidation in or around **August 2018** and dissolved in or around **May 2021**. Its former registered office was in the Kingdom of Bahrain.
- [30] Rana was a member of AICO Bahrain prior to its dissolution. She inherited shares in the company upon the passing of her father, Omar, who died intestate on **31st January 2018** (i.e. prior to AICO Bahrain's liquidation and dissolution) whilst, Rana claims, he was domiciled in Quebec in Canada.
- [31] At the time of AICO Bahrain's liquidation and dissolution, she also remained the registered owner of 8,000 shares that she had previously owned in AICO Bahrain, notwithstanding that she had agreed to transfer those shares under an agreement executed in 2009 (the '2009 Agreement').
- [32] Mrs. Murad was also a shareholder in AICO Bahrain prior to its dissolution. Mrs. Murad died intestate in Quebec in Canada on 8th February 2022 (i.e. after the company's dissolution). Rana claims that she is a beneficiary of the estate of her mother Mrs. Murad. Rana has been appointed as an administrator of the estates of Omar and Mrs. Murad in the BVI pursuant to letters of administration *ad colligenda bona* granted by the BVI Court on 12th October 2023.
- [33] Rana recounts³ that on 12th June 2018, Tarek sent her an email attaching proxy forms which he asked Rana and their mother to sign, so as to vote to approve (i) financial statements of AICO Bahrain for 2015 and 2016 (which were not provided); and (ii) AICO Bahrain's liquidation. The proxy forms included forms for Rana and Mrs. Murad to sign as heirs to Omar's 52% shareholding in the company and forms for Rana to sign as an 8% shareholder (apparently despite the 2009

³ First Affidavit of Rana Al-Aggad paragraph 48.

Agreement). Rana contends that neither Mrs. Murad nor she understood at the time why it was being proposed that AICO Bahrain would be liquidated and they declined to sign those forms.

- [34] At an extraordinary general meeting of AICO Bahrain on 27th August 2018, Tarek, Talal and Lama, as members of AICO Bahrain, voted to put that company into liquidation and to appoint a liquidator over it. The liquidator was an individual who was an employee of AICO Saudi. Thus, in or around August 2018, AICO Bahrain was placed into a voluntary and solvent liquidation process in the Kingdom of Bahrain.
- [35] Rana claims that, wrongfully and in breach of Bahraini law, neither she nor Mrs. Murad were given notice of that extraordinary general meeting.
- [36] Moreover, Rana claims that in breach of the laws of Bahrain, neither Mrs. Murad nor she received notice of a members' meeting upon the conclusion of the liquidation of AICO Bahrain. Rana gives evidence⁴ that she had believed AICO Bahrain had been dissolved on or around 31st December 2019; however, in early September 2023 she obtained a copy of 4th May 2021 issue of the newspaper *Al-Khaleej News*, which contained a notice of completion of the liquidation of AICO Bahrain indicating that the liquidation was not completed until in or around May 2021.
- [37] Rana claims that under Bahraini law and AICO Bahrain's Articles of Association, the remaining assets of the company after payment of any debts should have been distributed to its members (including Rana) either *in specie* or alternatively in cash following their sale. That, however, did not happen.
- [38] Rana claims that up to 17th September 2020, AICO Bahrain was the **beneficial owner** of (amongst other assets) 20,713,829 APIC Shares. The **registered owner** of those shares at that time was Tarek. Rana claims that he was holding them on trust for AICO Bahrain.
- [39] The continuing beneficial ownership by AICO Bahrain of the APIC Shares is fundamental to Rana's claim for relief against AICO Bahrain and, in turn, to relief sought on behalf of AICO Bahrain by its Provisional Liquidator.

⁴ First Affidavit of Rana Al-Aggad paragraph 60.

- [40] On 17th September 2020, Tarek transferred 19,425,218 APIC Shares (that Rana claims were beneficially owned by AICO Bahrain) to AIIC (the 'Transfer'), a company owned and controlled by Tarek. At that time, Tarek was the sole *de jure* director and sole member of AIIC.
- [41] Rana claims this Transfer was made without the knowledge or consent of Rana or Mrs. Murad.
- [42] Rana's evidence is that whilst AIIC has claimed that AIIC provided consideration for the Transfer, a notice published by the Palestine Stock Exchange recorded that it had been made for no consideration.⁵
- [43] Rana claims that this Transfer was in breach of the laws of Bahrain and AICO Bahrain's Articles of Association.
- [44] Rana claims that in addition to the Transfer, there have been other instances during the course of or after AICO Bahrain's liquidation where Tarek and Talal have transferred valuable APIC shares to other vehicles owned and/or controlled by either or both of them:
- (1) In October 2018, Tarek as Chairman of APIC transferred approximately 500,000 APIC shares to 'Gulf Taleed Commercial Services Co.', a Saudi Arabian company owned and/or controlled by him and/or Talal;
 - (2) In two transactions in July 2021, Tarek (as sole registered director of AIIC) transferred 2.9 million APIC shares from AIIC to another company owned and/or controlled by him and/or Talal known as 'Gulf Taleed International Company Ltd'; and
 - (3) On 26th January 2022, the Palestine Stock Exchange, on which shares in APIC were listed at all material times, issued a declaration of insider trading which stated that AIIC had sold 1.7 million of its shares in APIC. The declaration of insider trading did not indicate the name of the third party to which or whom AIIC has sold or transferred those APIC shares.
- [45] Rana's case is that in or around the end of 2020, she became aware of a public announcement from the Palestine Stock Exchange confirming that Tarek had transferred 19,425,218 APIC Shares to AIIC. Since Rana understood AICO Bahrain was the beneficial owner of the APIC Shares, she began looking for documents concerning AICO Bahrain to confirm this understanding. At that time, she says she was not aware that the company had been put into liquidation. Upon further

⁵ First Affidavit of Rana Al-Aggad paragraph 59.

investigation, Rana discovered that AICO Bahrain had been put into liquidation and had also been dissolved.

- [46] Moreover, in or around May/June 2023, Rana says she discovered that the APIC Shares which had been transferred to AIIC were those which she claims had belonged to AICO Bahrain, and some of which she claims should have been distributed to her and Mrs. Murad (as members of AICO Bahrain) in the course of a proper and lawful liquidation (or alternatively the value of some of those shares should have been distributed to them in cash).
- [47] On 17th August 2023, Rana commenced personal proceedings in the BVI Court under claim number BVIHC (COM) 2023/0150 against AIIC, claiming damages for unlawful means conspiracy and/or restitution for unjust enrichment (the 'Damages Claim').
- [48] In summary, in the Damages Claim, Rana claims that AIIC, together with Tarek and Talal, have conspired to defraud her and Mrs. Murad by depriving them of their shares in AICO Bahrain and their value, by means of its liquidation and subsequent dissolution in the Kingdom of Bahrain and by the transfer of assets in the course of that liquidation or alternatively that AIIC has been unjustly enriched thereby.
- [49] By the Freezing Order dated 12th October 2023, AIIC was restrained from dealing with or dissipating its assets up to the value of US\$11,725,078.80. The Freezing Order was continued by consent by an Order made on 6th November 2023. The Freezing Order freezes AIIC's assets up to the value of Rana's personal claim against AIIC (plus sums allowed in respect of interest and costs). The Freezing Order does not however provide any proprietary relief, nor does it freeze any sum equivalent to the full value of the APIC shares that were transferred to AIIC on 17th September 2020 or the full amount of the dividends in APIC shares and cash that ought to have been received by AIIC since the date of that transfer.
- [50] Rana contends that if a liquidator were appointed to AICO Bahrain, he or she would (with sanction of this Court) be entitled to bring proprietary and personal claims against AIIC for the recovery of the APIC Shares that were unlawfully transferred to AIIC and/or damages or equitable compensation or restitution equivalent to their value (as well as various associated dividends or their value). A liquidator would also be able to seek to recover any other property of AICO Bahrain which it owned prior to its dissolution that ought to have been distributed in the course of a proper and lawful liquidation. A liquidator would be able and entitled to conduct such a liquidation.

[51] Rana believes that:

- (1) If a liquidator (or provisional liquidator) were appointed in respect of AICO Bahrain, then:
 - a. There would (at least) be a serious issue to be tried on the merits as to whether AICO Bahrain was the beneficial owner of the APIC shares transferred to AIC;
 - b. The balance of convenience would be in favour of granting proprietary injunctive relief against AIC. This is notwithstanding the fact that, in the Damages Claim, it has been said on AIC's behalf in correspondence that it does not intend to sell or dissipate the shares it has received (a statement which Rana does not accept); and
 - c. It would be just and convenient to grant and continue such an injunction.
- (2) Further or alternatively, if a liquidator (or provisional liquidator) were appointed in respect of AICO Bahrain, then:
 - a. The company would have a good arguable claim that it is entitled to damages or equitable compensation or restitution in respect of the APIC Shares transferred to it on 17th September 2020;
 - b. There is a real risk that, unless otherwise restrained, AIC will dissipate or incur some or all of its assets that are not already preserved under the existing Freezing Order, including some of the APIC Shares transferred to it on 17th September 2020. This is notwithstanding what has been said on AIC's behalf in correspondence (and which Rana does not accept); and
 - c. It would be just and convenient to make and continue a further freezing order against AIC.

1.7 Tarek and Talal's fundamental disagreement with Rana's case

[52] Tarek and Talal submit that there are, fundamentally, two problems with Rana's case:

- (1) Tarek never held the APIC Shares on trust for AICO Bahrain. There is no reference to such a trust in any document prior to this litigation, and both the contemporaneous documents (including a Share Transfer Certificate⁶ dated 15th January 2008 recording a

⁶ See Hearing Bundle 3 D at page 2226.

transfer from AICO Bahrain to Tarek of the APIC Shares, 'including all rights and obligations related to those shares', a document the authenticity of which Rana challenges) and Rana's own previous behaviour (including her conduct of litigation in England) are inconsistent with such a trust existing. Rana has given no account of why, when, how, or on what terms the alleged trust ('the Alleged Trust') was created, and expert evidence of foreign law indicates that such a trust cannot exist under the laws that would potentially apply to it. Rana has not said where she thinks the trust was created, where it was administered from, or what law governs it. In short, there is no serious issue to be tried.

- (2) Separately, even if Rana's allegation of a trust of the APIC Shares could be made out (which it cannot), there are various further reasons why the BVI court cannot or should not accede to the Liquidation Application (and if the court does not accede to the Liquidation Application, then the Provisional Liquidator's Claim also falls away). To highlight just a few of them:
- a. Rana does not have standing to apply for winding up;
 - b. AICO Bahrain was incorporated in Bahrain, and if it is to be liquidated, this should be under the supervision of the Bahrain court, not the BVI court (indeed, AICO Bahrain has already undergone a liquidation process in Bahrain);
 - c. AICO Bahrain has no creditors, and all of its members (apart from Rana) oppose a liquidation;
 - d. even if Rana did have standing, the Liquidation Application is not being pursued for a proper purpose; and
 - e. Rana's applications to appoint the Provisional Liquidator and notification injunction application were coloured by a serious failure to give full and frank disclosure – including of matters that evidence a clear conflict between her and the Provisional Liquidator. Even if it were not for the substantive weaknesses of the Liquidation Application and the Provisional Liquidator's Claim, the failure to give full and frank disclosure would merit dismissal of the Liquidation Application (and necessarily the Provisional Liquidator's Claim) and the Discharge Application.

[53] Before considering these matters more closely, it warrants observation that the disputes which these applications have given rise to are extremely complicated. Superficially, but nonetheless

tellingly, the 'skeleton' argument filed on behalf of Rana and AICO Bahrain ran to 115 pages and the 'skeleton' argument filed on behalf of AIIIC, Tarek and Talal ran to 90 pages. The latter proposed two days of pre-reading, including of 13 affidavits and 12 expert reports on foreign law, viz. 3 reports on Bahrain law, 3 reports on Palestinian law, 2 reports on Jordanian law and 4 reports on Canadian law. The hearing bundles run to 10 volumes, some with several sub-volumes. Difficult legal and factual issues arise at various levels. To add extra complexity, some of Rana's evidence has been given within the confines of a confidentiality club. There are also issues concerning lateness of some evidence. Of necessity, in applying the Court's limited resources, especially time, it will be necessary for me to cut through much of the detail and concentrate upon what I apprehend to be the decisive points. Inevitably one, more than one, or all the parties will be dissatisfied that I have not given what they consider to be due weight to their arguments. That is unfortunate but unavoidable.

- [54] It also warrants observing that this case finds itself as part of an emerging trend. Increasingly our courts are having to deal with loose forms of arrangements in which legal or registered ownership is separated from beneficial ownership. I could simply have referred to these as 'trusts', but often their whole point is that they are not express trusts. This often makes it difficult to deal with them. A frequently encountered example is that of a nominee arrangement, where, typically, another family member or trusted employee of an underlying beneficial owner is the registered or legal owner of valuable assets with nothing written to record the nominee arrangement. This is part of the increasing ingenuity of financially well-endowed individuals to pretend that they do not own assets. The problem here is essentially the opposite, in that the primary alleged wrongdoer (Tarek) is not denying ownership of the asset in question but positively asserts it, and it is the claimant (Rana) who is arguing for the existence of a trust arrangement.

1.8 Rana's case concept of a 'trust'

- [55] We have seen that AIIIC, Tarek and Talal take the line that Tarek never held the APIC Shares on trust for AICO Bahrain. They are correct that there is no documentary evidence referring to such a trust. Rana, for her part, does not say that there is. Instead, she points to the following:

- (1) She claims that the APIC Shares were beneficially owned by AICO Bahrain at all material times prior to its dissolution. In his evidence in opposition to the Liquidation Application, Tarek alleges that the APIC Shares were transferred to him personally as a 'sign of goodwill' by Omar in 2008.⁷
- (2) Rana maintains that this allegation is false. She contends it is directly contradicted by a substantial body of contemporaneous documentary evidence, much of which stems from Tarek and/or Talal themselves. She submits it is also inherently improbable, in particular given the time at which the transaction took place, the value of the APIC Shares, and the state of the relations between Tarek and his father at the time. Nor is it supported by any evidence from Talal, notwithstanding that (a) he was a director of AICO Bahrain; and (b) on the face of contemporaneous documents, Talal continued to treat the APIC Shares as an asset of AICO Bahrain for very many years after execution of the share transfer that Tarek now relies upon in support of his claim to the shares.
- (3) On 14th March 2017, Talal wrote, under an AICO letterhead, to Tarek, with copy to Rana, expressly in respect of the APIC Shares. He stated:

‘This is in reference to the Aggad Investment Company’s (17,102.739) seventeen million one hundred two thousand seven hundred thirty-nine shares in the Arab Palestinian Investment Company (APIC), **which are registered in your personal name on behalf of the company**’⁸ (my emphasis added).

Talal there requested Tarek to transfer 878,571 APIC shares to Rana, or such person as she designated. This request was actioned by Tarek: he signed a declaration confirming Rana’s beneficial ownership and in December 2018, 878,571 of the shares were transferred to Rana’s designated recipient.⁹ Rana understands the reference to ‘Aggad Investment Company’ to be to AICO Bahrain.

- (4) On 25th April 2017, Tarek emailed Mr. Khaled Baradei, CFO of APIC, with the subject line ‘Dividend share **for shares in my name**’¹⁰ (my emphasis added). Rana observes that the subject line itself is significant (‘in my name’, not ‘my shares’), and is extremely strong contemporaneous evidence that Tarek was holding those shares, not personally, but for AICO Bahrain’s benefit. Mr. Baradei appears to have sent Tarek minutes of the relevant

⁷ Second Affidavit of Tarek Omar Aggad at paragraph 49.

⁸ See Hearing Bundle 3 A at page 540.

⁹ See Hearing Bundle 3D pages 2249 – 2253 and First Affidavit of Rana Al-Aggad paragraph 33(h).

¹⁰ See Hearing Bundle 3 A at page 546.

meeting, following which Tarek responded by copying, for the first time, both Mr. Jamal Loubani (AICO Bahrain's finance manager) and Talal, and stating:

"given that aico share in cash profit is US\$1,068,000

1. Credit my personal account with US\$700k and update my balance and send to me
2. Transfer to aico in cash 368,000 US\$..."

(5) The above transaction was formally recorded in a journal voucher dated 4th May 2017.¹¹ The voucher has a debit entry in the sum of US\$2,822,678.48 'Accounts Payables/Mr Tarek Omar Aggad', followed by a credit entry in the equivalent sum entitled 'Due to AICO International E.C.' The explanation given for the transaction reads 'Remaining of APIC Shares Dividends for the Year 2016 Transferred to Mr. Tarek Aggad account as per attached'. The calculation below the explanation sets out the total dividend sum of US\$1.068m, deducts the \$315,519 paid to AICO Bahrain, and multiplies the balance by 3.75 to convert the figure into Saudi Riyals and yield a balance figure of SR.2,822,678.48. It is this sum that is recorded to be 'due to AICO International'. Rana gives evidence¹² that the instructions given to Mr. Loubani to prepare this document came from Talal.

(6) In legal proceedings brought by Mrs. Murad against Tarek, Talal and Lama in Saudi Arabia, each of them positively asserted that **AICO Bahrain** was the beneficial owner of the APIC Shares. Mrs. Murad had argued that AICO Saudi was the true owner of the shares. The judgment of the Saudi Court records under 'Facts' that:

'...the Circuit asked the Defendants [Tarek, Talal, and Lama] through the powers of attorney about his defenses. He replied: I submit my defenses as follows....The owner of these shares is AICO International Bahrain and not [AICO Saudi]...'

Under 'Reasons' the Saudi Court records that 'the attorney of the Defendants claimed that the owner of these shares is AICO International Bahrain...'.¹³ Now, in these proceedings in a different court, Tarek and Talal seek to advance a wholly contradictory position: alleging that the APIC Shares were owned by Tarek at that time.

¹¹ See Hearing Bundle 3 A at page 549.

¹² Second Affidavit of Rana Al-Aggad at paragraph 41(d).

¹³ Hearing Bundle 3C page 1595.

- (7) Since the transfer of the APIC Shares from Tarek to AIIC, numerous cash dividends received by AIIC on the APIC Shares have, immediately upon receipt by AIIC, been distributed and shared among the Siblings as if they were dividends declared in AICO Bahrain. The payments have been in exactly the same proportions.¹⁴ The only omission is as regards payments to Rana. Tarek denies that these distributions reflected the Siblings' shares in AICO Bahrain and suggests it was done 'in accordance with our shareholding interest in AICO Saudi'.¹⁵ Rana contends that this does not make sense: on Tarek's case (a) the APIC Shares were beneficially owned by him (not AICO Saudi, nor by Talal and Lama); and (b) since their transfer in September 2020 they have been beneficially owned by AIIC (a company of which is he the sole registered shareholder).
- (8) In relation to internal financial accounts for the AICO group of companies (the 'AICO Group'):
- a. AICO Group's internal accounts for 2014, seemingly prepared by Jamal Loubani, list the APIC Shares as forming part of AICO Bahrain's 'Investment in Affiliates'.¹⁶
 - b. AICO Group's internal accounts for 2015 list the APIC Shares as forming part of AICO Bahrain's 'Investment in Affiliates'.¹⁷ They also list the dividends received on the shares as part of AICO Bahrain's investment income.¹⁸
 - c. AICO Group's internal accounts for 2016 do similarly.¹⁹
- (9) AICO Bahrain's audited financial statements for 2011 and 2012 record the APIC Shares as an asset. The statements were audited by Ernst & Young.²⁰
- (10) Audited consolidated financial statements for AICO Bahrain and AICO Saudi for 2012 and 2013 also record the APIC Shares as an asset and were audited by Ernst & Young.²¹
- (11) Audited financial statements for AICO Bahrain, signed by Talal, record the APIC shares as an asset (both audited by Ernst & Young):
- a. The 2015 financial statements list the APIC Shares under 'Investment in Associates', specifying that AICO Bahrain's ownership amounted to 26.98% of

¹⁴ Second Affidavit of Rana Al-Aggad at paragraph 54.

¹⁵ Second Affidavit of Tarek Omar Aggad at paragraph 193.

¹⁶ Hearing Bundle 3A pages 551, 556.

¹⁷ Hearing Bundle 3A pages 574, 579.

¹⁸ Hearing Bundle 3A page 585.

¹⁹ Hearing Bundle 3A pages 589, 594.

²⁰ Hearing Bundle 3C page 1588 (for 2011) and page 1661 (for 2012).

²¹ Hearing Bundle 3D pages 2271, 2293.

APIC.²² They were signed personally by both Talal (as then-President of AICO Bahrain) and Jamal Loubani, its finance manager.²³

b. The 2016 financial statements list the APIC Shares as an asset AICO Bahrain at page 15 of the statements. At page 13 the auditors list the amounts due to/from APIC, including a reference to 'dividends paid' by APIC to AICO Bahrain over the year.²⁴ Rana contends it must be presumed, given the audited nature of the statements, that Ernst & Young saw evidence of these dividends to justify their inclusion in the statements. The 2016 financial statements were similarly signed by Talal. He signed on **1st April 2018**, some three months after Omar's death in January 2018.

(12) APIC's own Reports, refer to 'Aggad Investment Company' as a 'major shareholder'. Such a reference is made in: 2008; 2009; 2011; 2012; 2013; 2014; 2017; 2018; 2019; and 2020. The latter two years, at least, post-dated Omar's death. The term 'Aggad Investment Company' was used interchangeably by the Al-Aggad family to mean AICO Saudi, AICO Bahrain, or the two companies combined.²⁵

(13) Tarek has sought to explain away the inclusion of this reference in documents that he signed off (as chairman of APIC) by suggesting that the reference to Aggad Investment Company was to AICO Saudi, not AICO Bahrain. Rana contends that this is incorrect:

- (a) according to Tarek's own documents, AICO Saudi owned no shares in APIC as at 31st January 2008 and 28th May 2009.²⁶ The reference to Al-Aggad Investment Company being a 'major shareholder' in the APIC Report for (at least) 2008 cannot therefore have been referring to AICO Saudi; and
- (b) as at 2017, AICO Saudi owned just 1.20% of the shares in APIC.²⁷ Such a shareholding cannot sensibly be described as 'major'. AICO Bahrain, by contrast, held 24.44% that year.²⁸

²² Hearing Bundle 3A page 493.

²³ Hearing Bundle 3A page 498.

²⁴ Hearing Bundle 3A page 532.

²⁵ Second Affidavit of Rana Al-Aggad at paragraph 50.

²⁶ Hearing Bundle 3E at page 4008.

²⁷ Hearing Bundle 3D at page 2254.

²⁸ Second Affidavit of Rana Al-Aggad at paragraph 51.

- (14) As regards AICO Bahrain's accounts and financial statements, AIIIC and Tarek have sought to explain away the inclusion of the APIC Shares as assets of AICO Bahrain by blaming the Siblings' father, Omar, and suggesting that Omar wished to swell the appearance of AICO Bahrain's balance sheet by including the shares after their transfer to Tarek in order to improve AICO Bahrain's creditworthiness and obtain financing from lender banks.²⁹ Rana denies this is the case³⁰ and has given numerous examples where such an explanation is not consistent with the contemporaneous documents, statements made in correspondence by Tarek or the chronology.
- (15) AIIIC and Tarek have also sought to cast doubt upon AICO Bahrain accounting documents by asserting that 2016 audited accounts of AICO Bahrain incorrectly included (i) some parcels of land in Lebanon, which he says had previously been sold by Omar; and (ii) some land in Jordan, which Tarek says that he beneficially owned. Rana submitted that Tarek's apparent objective here is to seek to suggest that, if those accounts did incorrectly refer to such land, the accounts might also have wrongly included an entirely different asset: the APIC Shares. However, Rana submits, this is plainly a non-sequitur. If it were assumed *arguendo* that the accounts incorrectly included some land (and Rana disputes this on the facts), it would not follow that the professional auditors also wrongly recorded the company as owning the APIC Shares.

[56] In summary, what we appear to have on Rana's case, is that the APIC Shares were registered in Tarek's name from 2008. There appears to be considerable documentation, including financial records of AICO Bahrain audited by a highly reputable firm of international auditors, Ernst & Young, covering several years, and an array of other documentation, which treated the APIC Shares as an asset of AICO Bahrain. We also have Tarek, Talal and Lama's assertion in Saudi legal proceedings that the APIC Shares were beneficially owned by AICO Bahrain. The documentation indicates that this was the position at least until Tarek transferred the APIC Shares to AIIIC on 17th September 2020.

[57] Rana submits that this arrangement, wherein the beneficial and legal ownership in the APIC Shares was different, was a trust arrangement.

²⁹ First Affidavit of Tarek Omar Aggad at paragraph 64(g); Second Affidavit of Tarek Omar Aggad at footnote 4; Defence in BVIHCOM2023/0150 Rana Al-Aggad v AIIIC, paragraph 10(b)(iii).

³⁰ First Affidavit of Rana Al-Aggad at paragraph 32.

[58] Rana contends in the Damages Claim that the relevant trust was governed by BVI law. Rana nevertheless adduced Bahraini law evidence for the purposes of her *ex parte* application for a freezing order in the Damages Claim and also her *ex parte* application for appointment of the Provisional Liquidator. She contends that such evidence shows (amongst other things) that a trust relationship could have arisen under Bahraini law.

1.9 Tarek's position

[59] Tarek's position warrants further mention. His perspective, in summary, is the following.

[60] The Siblings' parents had sought to ensure that each of their children should have roughly equal benefit from their financial estates in their old age and upon their death. Each of the Siblings would have a business. In Lama's case, it would be a ladies' wellness centre. For Rana, it would be a confectionary business. Rana's business was not sufficiently successful so as to be self-sustaining. Rana's business was supported, *inter alia*, by loans from AICO Saudi and a number of such loans were written off. Tarek's perspective is that Rana received significant preferential treatment from her parents over that given to the other Siblings. As at around December 2007, the total financial support to Rana and her business stood at approximately US\$ 61 million.

[61] Tarek recounts that his relationship with Rana has broken down, as had Rana's relationship with Talal somewhat earlier. Tarek accuses Rana of waging a false campaign of vexatious litigation against him, Talal, Lama, and their business interests.

[62] That said, Tarek recounts that over the years, there had been various discussions and proposals to work out an amical and more equitable apportionment of financial interests between the Siblings.

[63] One of these became reflected in an agreement reached in 2009 (the '2009 Agreement'). Tarek explained in his evidence³¹ that, in essence, this was designed to ensure *inter alia* that each of the Siblings would receive a monthly payment of US\$20,000, the loans to Rana for her confectionary business would be written off in return for Rana accepting that she would not inherit any shares in AICO Saudi or AICO Bahrain, and that Tarek, Talal and Lama would be recognized as the sole heirs to those shares.

³¹ Third Affidavit of Tarek Omar Aggad at paragraph 45.

[64] Tarek points to another agreement, this time between Mrs. Murad and the Siblings, in March 2017 (the '2017 Agreement'). To cut a long and complex story short, this involved a transfer from Tarek to Rana of 878,571 APIC shares in return for her foregoing any right to inheritance of Mrs. Murad's retained shares in a company called AICO Jersey and in an English real estate property called Round Oak. Rana maintains that these APIC shares were beneficially owned by AICO Bahrain. Tarek's version is that this transfer of APIC shares to Rana in December 2018 was made in lieu of cash, which he did not have, as part of the arrangement for Rana to be bought out of her future inheritance in AICO Jersey and Round Oak.

[65] Tarek contended that Rana's version makes no sense, as follows:³²

"It would not have made sense to do that by using the APIC shares if those were owned beneficially by AICO Bahrain, because Rana stood to inherit shares in AICO Bahrain on Mrs. Murad's death. Indeed, I have no doubt that Rana would have strongly objected to being paid out for foregoing her entitlement to inherit Mrs. Murad's share of Round Oak by way of an asset that Rana would, in time, have benefited from in terms of her inheriting AICO Bahrain shares on our parents passing."

[66] He clarified this explanation by observing:³³

"she could not, in good conscience, have accepted the APIC shares if she truly believed that they were held by me on trust for AICO Bahrain."

[67] Tarek further recounted that in April 2017, a dividend transaction was effected which saw some 931,818 APIC shares, representing some 1.3% of APIC's issued share capital which were held in Tarek's name, settled upon an express trust by Tarek for Rana's benefit.

[68] This arrangement was documented with a short deed in the following terms:

"To Whom It May Concern

I, the undersigned, Tarek Omar Abdul Fattah Aggad, hereby declare, of my own free legal volition, that 931,818 shares (nine hundred thirty-one thousand eight hundred eighteen shares) of the total shares owned by me and registered in my name in the Arab Palestinian Investment Company (APIC), which is registered in the British Virgin Islands under registration number (128626) and in the Register of the Companies Controller in Palestine as a foreign company under number (562801563) and the shares of which are listed for trading on the Palestine Securities Exchange (ISIN# PS4010112960), are registered in trust in my name and that ownership thereof in statutory and Sharia law belongs to my sister, Rana Omar Abdul Fattah Aggad. She is deemed to hold the sole right to dispose of those shares and receive any cash and/or in-kind dividends and/or any additional shares

³² Third Affidavit of Tarek Omar Aggad at paragraph 141.

³³ Third Affidavit of Tarek Omar Aggad at paragraph 148 (c).

distributed as dividends in respect of those shares now and/or in the future. She also has the sole right to sell those shares and receive any cash or in-kind proceeds arising from the sale of those shares now and/or in the future. The declarant herein, of his own free legal volition

Tarek Omar Abdul Fattah Aggad ...”

[69] Tarek makes three main points about this Trust:

- (1) If he had been holding the APIC Shares on trust for AICO Bahrain, such a trust could have been documented in similar terms, but it was not.
- (2) The trust deed does not declare that Tarek was holding shares on behalf of AICO Bahrain.
- (3) The trust deed scheduled to it a table prepared by APIC’s CFO showing the beneficial ownership of all the shares.

[70] Tarek sent Rana this trust deed with schedule on 27th April 2017. Rana did not take issue with either at the time. She claims that “[t]here was absolutely no reason at the time for me to insist on such clarification in a context where I knew that [Tarek] was holding the APIC shares in trust for AICO”.³⁴ Tarek observes:

“That explanation seems at odds with Rana's position that she had not trusted me for some time and is even less credible when, several months later, Rana became a shareholder in AICO Bahrain, but failed ever to demand some proof that I held assets belonging to AICO Bahrain.”³⁵

[71] It should be observed that this trust deed had a genesis in correspondence. This included a letter dated 14th March 2017, that, as already mentioned, Talal wrote to Tarek on AICO headed paper as follows:

"Peace be upon you and Allah's mercy and blessings... This is in reference to the Aggad Investment Company's (17,102,739 shares) seventeen million one hundred two thousand seven hundred thirty-nine shares in the Arab Palestinian Investment Company (APIC), which are registered in your personal name on behalf of the company. Please transfer ownership of (878,571 shares) eight hundred seventy-eight thousand five hundred seventy-one shares into the name of Rana Omar Al Aggad or any other party she designated."

[72] It warrants observation that:

³⁴ Third Affidavit of Tarek Omar Aggad at paragraph 162.

³⁵ Third Affidavit of Tarek Omar Aggad at paragraph 162.

- (1) Being put on company letterheaded notepaper, this communication was clearly intended to be a formal communication; and
- (2) Tarek does not appear to have contradicted the statement that he (Tarek) was holding the APIC shares 'on behalf of the company'.

[73] On 26th April 2017, Tarek sent the following email to Mr. Khaled Baradei, CFO of APIC:³⁶

"This is for your information and records,

1-

The shares are to be held in My name on behalf of rana

2- can you please do the same as we did with Unipal and draft a letter from me to rana certifying that as of 15/3 these share are in fact held by me on her behalf and neither myself nor my heirs have anything to do with them"

[74] The trust deed was that letter.

[75] Whilst Tarek denies that he held the APIC Shares on trust for AICO Bahrain and claims that he was both their legal and beneficial owner, it can be observed that he did not explain what was meant that he was holding them on behalf of AICO Bahrain.

[76] Nor did he explain why his holding APIC Shares on Rana's behalf should be treated as him holding those shares on trust, but not his holding APIC Shares on behalf of AICO Bahrain.

[77] Instead, Tarek proffered the following explanation:³⁷

"... Rana places heavy reliance upon some historic accounting records, which appear to show the relevant shares as an asset of AICO Bahrain. However, those accounts contain no reference to a trust, and in any event contain so many other glaring inaccuracies that no reliance can be placed on them, see paragraphs 81 et seq. It was common, for example, for assets owned by me and other family members personally to appear (wrongly) on the balance sheet of AICO Bahrain. My late father inappropriately took this approach in order to improve AICO Bahrain's creditworthiness with banks, as I explained in my previous affidavit."

[78] Moreover, in AIC's Defence to Rana's Claim against Tarek's company AIC in the Damages Claim, AIC pleaded the following:³⁸

³⁶ Hearing Bundle 3D at pages 2249-2250.

³⁷ Second Affidavit of Tarek Omar Aggad at paragraph 19 footnote 4.

³⁸ At paragraph 10 b (iii).

“Notwithstanding the fact that the shares referred to in sub-paragraphs 10.b.i and 10.b.ii above were held by Tarek Al-Aggad in his own right, [Omar] determined that AICO Bahrain would continue to incorrectly list in its reported accounts that it held these shares in APIC. This was because by doing so AICO Bahrain’s apparent asset position would be improved, thereby improving its ability to obtain financing from lender banks.”

[79] Tarek signed a Statement of Truth in respect of AIC’s Defence on 20th December 2023.

[80] It can also be observed that this account, by Tarek and AIC, which cast responsibility upon his late father Omar for falsely continuing to include the APIC Shares as an asset of AICO Bahrain, does not explain why it was that:

- (1) Talal made reference in March 2017 to Tarek holding APIC Shares ‘on behalf of ‘the company’ (which Rana reasonably postulates is probably AICO Bahrain); and
- (2) Talal saw fit to sign AICO Bahrain’s audited financial statements for 2016, showing the APIC Shares as an asset of AICO Bahrain, on **1st April 2018**, some three months after Omar’s death in January 2018 (i.e., at a time when Omar was no longer there to insist upon maintenance of a false pretense of the type asserted by Tarek and AIC);
- (3) APIC’s own financial Reports continued to refer to ‘Aggad Investment Company’ as a ‘major shareholder’ for 2018, 2019 and 2020, a period post-dating Omar’s death;
- (4) AICO Bahrain’s auditors, Ernst & Young, consistently audited AICO Bahrain’s financial statements for years showing the APIC Shares as an asset of AICO Bahrain, suggesting either chronic negligence and/or omission on Ernst & Young’s part, or that that highly reputable firm of international auditors and accountants were party to Omar’s alleged false pretense.

[81] Ultimately, when contemplating Tarek’s position, what we appear to be left with is a choice between two falsehoods - either that:

- (1) Tarek was not holding APIC Shares on behalf of AICO Bahrain (i.e., Tarek is lying that he owns/owned the APIC Shares beneficially); or that
- (2) Omar, Ernst & Young, and all other directors, officers and staff of AICO Bahrain and APIC responsible for preparing audited financial statements and reports were lying that the APIC Shares were an asset of AICO Bahrain.

[82] Whilst this Court cannot, in the procedural context of the application currently before it, determine which of these two scenarios, and possibly others, is the true position, it can be safely stated that it

is not prepossessing for Tarek to contend that Ernst & Young, as AICO Bahrain's auditors, together with what is likely to have been a considerable number of other persons, were all in collusion, in seeking to perpetrate a large-scale fraud upon various banks and potential lending institutions. That is an ambitious argument, which, on the face of it, carries a lower probability than the documented position that Rana relies upon, that Tarek was holding the APIC Shares on behalf of AICO Bahrain. It may, however, be true.

- [83] Tarek's argument in this regard is, to my mind, not sufficiently strong to render Rana's position unlikely.
- [84] We are also left with Tarek seemingly being content to be treated as holding APIC Shares in his name on behalf of Rana, and to do so as holding them 'on trust', but, without pointing to any meaningful distinction, not being content to be treated as holding APIC Shares on trust for AICO Bahrain, where there is documentary evidence that it was understood at least between Tarek and Talal that he held APIC Shares in his name on behalf of a company that appears to be AICO Bahrain.
- [85] There is also contradiction against Tarek's current narrative in the judgment of the Saudi court which I have already alluded to, the Commercial Court of Riyadh, 20th Commercial Circuit, judgment no. 437458632 dated 28th December 2021.³⁹ In those proceedings, which were brought by Mrs. Murad against Tarek, Talal and Lama, **each of these Siblings positively asserted that AICO Bahrain was the beneficial owner of the APIC Shares.** Mrs. Murad had argued that **AICO Saudi** was the true owner of the shares. The Siblings contended that the beneficial owner was not AICO Saudi (and not Tarek or AIC) but AICO Bahrain. The judgment of the Saudi Court records that at a hearing conducted on 23rd December 2021:
- “...the Circuit asked the Defendants through the powers of attorney about his defenses. He replied I submit my defenses as follows: 1- The Plaintiff confirmed in her claim that the shares which the Plaintiff alleges are owned by Al-Aggad Company are nominally registered in the name of Tarek Al-Aggad. Therefore, the claim is premature. The Plaintiff must prove the Company's ownership first, and then claim their value. 2- **The owner of these shares is AICO International Bahrain** and not Omar Abdulfattah Al-Aggad & Partners Ltd. (AICO).” (Emphasis added.)

³⁹ Hearing Bundle 3C at page 1595.

- [86] This would suggest that Tarek and the other Set Aside Applicants before this Court are changing their position to suit their interests from time to time and forum to forum.
- [87] Where this also leaves us is that, in my respectful judgment, on the facts, there is a good arguable case that up to the Transfer on 17th September 2020, Tarek had been holding the APIC Shares in his name on behalf of AICO Bahrain.
- [88] But that is not the end of the matter. As the Set Aside Applicants argued, at this stage Rana must satisfy the Court that her allegation that Tarek held the APIC Shares on trust for AICO Bahrain has (at least) a real prospect of success,⁴⁰ or, as Rana's side put it, that there is a 'reasonable possibility of success'⁴¹ or that there is a potential claim which requires further investigation by a liquidator.⁴²
- [89] The Set Aside Applicants however argue that what they call 'the Alleged Trust' is a contrivance on the part of Rana. They contend that:
- (1) Rana is unable to provide even the most basic particulars of the Alleged Trust;
 - (2) Rana has not provided a coherent explanation for the existence of the Alleged Trust;
 - (3) Rana has produced no instrument in writing recording the Alleged Trust;
 - (4) The concept of a 'trust' as understood in BVI law does not exist under the laws of either Palestine or Jordan, which are the only two systems of law that might plausibly have governed whatever arrangement is said to have led to a trust being created;
 - (5) There is contemporaneous documentary evidence which positively contradicts the existence of the Alleged Trust, which outweighs the material upon which Rana relies; and
 - (6) Rana's own previous conduct is inconsistent with the existence of the Alleged Trust.
- [90] Pausing here, in terms of basic analysis under English law, it can be seen that at least two of the 'three certainties' for the existence of a trust are reasonably apparent. The three certainties are certainty of the Settlor's intention, certainty of subject matter and certainty of object.⁴³ The subject matter of the alleged Trust is the APIC Shares, and the object would appear to be AICO Bahrain as beneficiary. The Settlor's intention (i.e. AICO Bahrain's putative intention in settling the APIC Shares on trust in Tarek's name) is not directly spoken to in documentary evidence presently

⁴⁰ Re OJSC Ank Yugraneft v Sibir Energy PLC [2010] BCC 475 at paragraphs [21] and [42] (Christopher Clarke J.).

⁴¹ Re Allobrogia Steamship Corp [1978] 3 All ER 423, 430.

⁴² Re Latreefers Inc [2001] BCC 174 at paragraph [36] (Morritt LJ).

⁴³ Cf. Lord Langdale MR in Knight v Knight (1840) 3 Beav 148.

before the Court. But that does not end the inquiry. It is well established that where documentary evidence of intention is not available, a court can look at all of the circumstances, including the words used by and the conduct of the parties to determine whether there was an intention to create a trust.⁴⁴

[91] It therefore does not appear to me to be fatal that Rana cannot provide more particulars for the Alleged Trust than she already has, nor an explanation for its existence, nor a trust instrument.

[92] As to the contemporaneous documentary evidence, as we have seen, this includes strong references to Tarek holding the APIC Shares on behalf of AICO Bahrain, even though a cogent, plausible, reason why AICO Bahrain should have entered into such an arrangement is not yet apparent.

[93] As to Rana's alleged previous inconsistent conduct or positions, it is obviously convenient to Tarek and the other Siblings to focus upon Rana, but this ignores their own previous words and conduct which strongly propounds precisely that which they now seek to deny: that AICO Bahrain in truth owned the APIC Shares although held by Tarek in his name.

2. 'Trusts' under potentially applicable laws

[94] This brings us onto a major area of dispute before this Court: whether or not the concept of a trust exists under a system of law which might have governed the Alleged Trust.

[95] Predictably, Rana puts forward expert evidence that it does and the Set Aside Applicants put forward expert evidence that it does not.

[96] Before considering the competing positions, it is apt to recall that the trust deed for Tarek's holding APIC Shares on trust for Rana pronounced that 'that ownership thereof in statutory and Sharia law belongs to my sister, Rana'. The trust deed does not identify what 'statutory...law' governed the trust – nor indeed the governing law itself. That said, Tarek was manifestly content to treat this trust as valid and effective both under Sharia law and under 'statutory law', whatever the latter may have been. Pointedly, however, Tarek and the other Set Aside Applicants now, when it serves them, strongly oppose any suggestion that the Alleged Trust we are presently concerned with would be recognized by law.

⁴⁴ Cf. *Paul v Constance* [1976] EWCA Civ. 2 ; *Re Vandervell's Trusts (No 2)* [1974] EWCA Civ 7.

- [97] The Set Aside Applicants acknowledge that according to the conflict of law rules of the BVI, absent an express choice of law, the validity of a trust is governed by the law with which the Alleged Trust is most closely connected.⁴⁵ They recognize that ascertaining this involves reference in particular to four factors: (a) the place of administration of the trust designated by the settlor; (b) the situs of the assets of the trust; (c) the place of residence or business of the trustee; and (d) the objects of the trust and the places where they are to be fulfilled.
- [98] The Set Aside Applicants submit that Jordan is the ‘obvious candidate’ as the place from which Tarek has supposedly been administering the Alleged Trust, because Tarek resides there. Alternatively, they suggest Palestine, on the basis that the APIC Shares are listed on the Palestine Stock Exchange, with Palestinian Securities Law and the Listing Regulations providing for ownership in accordance with the records of the Exchange, and with APIC conducting business in Palestine.
- [99] The Set Aside Applicants submit that the situs of the APIC Shares, which is the BVI, should be given little weight, since they are moveable, citing **Dicey** at Rule 180, paragraph 29-022 and **Underhill and Hayton on The Law Relating to Trusts and Trustees**⁴⁶ at paragraph 104.145.
- [100] Rana disagrees. She contends that the trust on which Tarek held the shares is not clearly connected with any jurisdiction and has connections to many: AICO Bahrain was a Bahraini company; its Chairman, Omar, lived in Saudi Arabia; Tarek claims to have been resident in Jordan; and APIC was a BVI company. She contends that Palestine can at least be disregarded here: APIC shares were not listed on the Palestine Exchange until 2014.
- [101] Rana argues that the fact that APIC is a BVI company, and that its shares are deemed to be located here⁴⁷ is a factor of some weight and provides a constant. The *situs* of the shares has never changed and was a principal point of continuity in the arrangements. Rana therefore avers that the law of the trust on which Tarek held the shares was BVI law.
- [102] Rana accepts, however, that arguments may be made each way and that the question of what law governs the trust is a triable issue.

⁴⁵ Dicey, Morris & Collins on The Conflict of Laws (16th edn., Sweet & Maxwell 2025) (‘Dicey’) Rule 180.

⁴⁶ (20th edn., Lexis Nexis 2022).

⁴⁷ Per section 245 BVI Business Companies Act and its predecessor (section 116 of the International Business Companies Act 1984).

- [103] Concerning the Set Aside Applicants' espousal of Jordanian or Palestinian law, Rana observes that this is inconsistent with the position taken by Tarek, on behalf of AIC, in its Defence to the Damages Claim that 'the law which would govern any such alleged trust, including its existence, would be foreign (Bahraini) law'.⁴⁸ The 'alleged trust' in question was the Alleged Trust on which Tarek held the APIC Shares for AICO Bahrain. That Defence was signed by Tarek.
- [104] In terms of what these foreign laws provide, the Set Aside Applicants submit that the concept of a trust (as understood in BVI law) does not exist under the laws of Jordan.⁴⁹ Both Jordanian law experts Mr. Sharaiha and Dr. Masa'deh acknowledge that other arrangements exist that are somewhat like a trust. But they are not the same as a trust and do not have the same attributes as a trust (e.g. priority in bankruptcy).
- [105] The Set Aside Applicants argue that the concept of a trust does not exist under the law of Bahrain or Saudi Arabia.⁵⁰
- [106] They contend that there is an apparent dispute between Mr. Alhadi Mashal (the Set Aside Applicants' Palestine law expert) and Dr. Mutaz Qafisheh (Rana's Palestine law expert) as to whether trusts exist under the law of Palestine. Dr. Mashal is clear that they do not. Dr. Qafisheh's evidence in this respect is predicated upon the concept of trusts having originated under the Ottoman Mecelle,⁵¹ but that, say the Set Aside Applicants, is not right. Indeed, the High Court of Palestine (during the period of the British Mandate regime) recognised that the doctrine of private trusts had not existed under Ottoman law.⁵² The Set Aside Applicants say the passages of the Civil Code to which Dr. Qafisheh refers simply reflect the position in relation to deposits, i.e. the same concept that is agreed to exist between the Jordanian law experts.
- [107] Rana contends that what is clear is that even if a court were to conclude that the governing law of the trust was Bahraini, Palestinian or Jordanian, a trust relationship (or a relationship akin to a trust

⁴⁸ Defence at paragraph 10(a).

⁴⁹ See the Report of Mr. Firas Sharaiha report at paragraph 3.1 and the Report of Dr. Ahmad Masa'deh at paragraph 3.10.

⁵⁰ *Akers v Samba Financial Group* [2017] AC 424 at paragraph [21] (Lord Mance JSC).

⁵¹ First Report of Dr. Qafisheh at paragraph 24; *Dhir v Flutter Entertainment PLC* [2021] EWHC 1510 (QB) at [143]-[149] (Griffiths J.).

⁵² See the second report of Mr. Mashal at paragraphs 13-20 and *Eliash v The Director of Land*, H.C. 77/31, 1 PLR 735.

relationship) would still (a) have existed and (b) have provided AICO Bahrain with rights and entitlements as against Tarek, including for return of the shares:

- (1) Bahraini law recognizes the concept of a 'true' owner and a 'simulant' owner, with the latter holding the relevant property for the benefit of the former.⁵³ Rana's evidence to this effect is not challenged.
- (2) The notion of trust exists in Palestine, and has been codified and addressed in various provisions of the law.⁵⁴
- (3) As to Jordanian law: Jordanian law includes concepts that are close in substance to the common law concept of trust: endowment (or '*Al Waqf*'); deposit; and trust (or '*Al Amaneh*').⁵⁵ Of these, deposit and trust are relevant to the present dispute. A 'deposit' is a contractual arrangement which can be made in respect of shares.⁵⁶ A 'trust' is related to and includes the concept of a deposit but includes circumstances where no contract exists.⁵⁷

[108] Rana submits it is therefore apparent that:

- (1) Concepts akin to trust arrangements are recognized by (and codified in) Jordanian law; and
- (2) Beneficial owners' rights under those arrangements are enforceable by the grant of proprietary relief or compensation/damages, whether against the original trustee or against a third party recipient.

[109] At the hearing, a considerable amount of time was taken up with argument over the parties' respective positions, with the Set Aside Applicants seeking to persuade this Court of the absence of trust concepts under these foreign laws.

[110] In the end, I am persuaded that Rana's overall assessment is to be preferred. That is because those foreign laws appear to have shown themselves sufficiently flexible to apply substantive justice to a variety of different situations where the holder of assets is not their beneficial or true

⁵³ See the First Report of Mr. Yusuf Altajar at paragraph 20.

⁵⁴ First Report of Dr. Qafisheh at paragraph 30.

⁵⁵ Report of Dr. Masa'Deh at paragraph 3.13.

⁵⁶ Report of Dr. Masa'Deh at paragraph 3.16-3.18.

⁵⁷ Report of Dr. Masa'Deh at paragraph 3.20.

owner. I am not persuaded that the courts of Bahrain, Jordan, or Palestine would pronounce themselves incapable of vindicating the rights of a beneficial owner of assets held by and/or dealt with someone who is not their beneficial owner.

- [111] Primarily, though, I am not persuaded that BVI law as the law governing the Alleged Trust can be discounted: the APIC Shares were/are the issued share capital of a BVI incorporated company, and they appear at all times to have been situated in the BVI. Such shares are bundles of rights governed by BVI law. Being situated in the BVI, it is at least arguable that BVI law applies to whether, and on what basis, ownership in those bundles of rights has changed hands. That is arguably all the more so in circumstances where there is no evidence that Tarek acquired the APIC Shares by purchasing them on the Palestine Stock Exchange. Rather, it appears that AICO Bahrain transferred the APIC Shares directly to Tarek. Since the APIC Shares were/are situated in the BVI, that transfer, conceptually at least, took place in the BVI. If, as Rana alleges, AICO Bahrain settled those shares on trust for itself with Tarek being the trustee when it effected that transfer in the BVI, it is not immediately apparent why BVI law should not apply to such a trust. The fact that APIC's place of operation was/is Palestine, and that APIC shares are traded on the Palestine Stock Exchange, does not appear to be relevant to this.
- [112] Arguments in a similar vein are plausible for the application of law of whichever jurisdiction it is in which the affairs of AICO Bahrain itself as a company are in fact administered. This does not appear to be Palestine. There is a difference between administration of the affairs and business of AICO Bahrain and administration of the affairs and business of APIC. Whilst APIC's operational affairs might be administered in Palestine, that does not mean that AICO Bahrain's business and affairs are being administered in Palestine.
- [113] In relation to Palestine law, the Set Aside Applicants' Palestine law expert, Mr. Mashal, made mention of the fact that the Palestine Securities Law, by Article 82, contemplated that shares or other securities could be owned indirectly as well as directly.⁵⁸ Indirect ownership is what appears to be the case here, with Tarek apparently holding APIC Shares on behalf of AICO Bahrain.

⁵⁸ Report of Mr. Mashal dated 27th November 2024 at paragraph 77.

- [114] Furthermore, Mr. Mashal made mention of the fact that the Palestine Stock Exchange Securities Trading Regulations make provision, at Article 33, for member companies (i.e. brokerage firms) to maintain records of the ‘real beneficial owner of the account’.⁵⁹
- [115] These details make a point that under Palestine law, it is clearly contemplated that the registered owner of shares is not necessarily their beneficial owner. It would be wrong to conclude that Palestine law only recognizes legal ownership of shares and thus excludes the possibility of a trust arrangement on that basis. That appears to be far too narrow an interpretation.
- [116] These details also indicate that Palestinian law is sufficiently flexible to enable rights to be vindicated in real-world situations, such as where shares are held by one person for the benefit of another, whether or not the label of a ‘trust’ is applied to it.
- [117] The Set Aside Applicants seek to make much of the fact that Tarek’s holding APIC Shares was not recorded on the Palestine Stock Exchange as being for the benefit of AICO Bahrain. But that does not answer the question whether they should have been, and it also does not answer the question whether such an omission means that under Palestinian law the rights of a beneficial owner can nonetheless be vindicated.
- [118] I am thus inclined to see the Set Aside Applicants’ arguments against the recognition of ‘trusts’ under Bahrain, Jordan and Palestine law as too restrictive, with Rana’s experts postulating a more flexible view which, in my respectful judgment, strikes a more likely balance.

3. ‘Standing’

- [119] At the hearing of the Set Aside Application, the issue of whether Rana has standing to apply for the appointment of a liquidator over AICO Bahrain was particularly contentious. The Set Aside Applicants had been content not to take a point on Rana’s standing to apply for the appointment of a Provisional Liquidator, but they reserved their right to dispute her standing to apply for the appointment of a Liquidator, i.e. to apply for AICO Bahrain to be wound up. The Set Aside Applicants argued (correctly) that if Rana has no standing to apply for appointment of a liquidator, the appointment of the Provisional Liquidator, and any other interim relief accorded in support thereof, necessarily falls away.

⁵⁹ Report of Mr. Mashal dated 27th November 2024 at paragraph 36.

[120] Before considering the parties' competing contentions, it warrants recalling that Rana invokes section 163 of the Insolvency Act⁶⁰ ('IA 2003') as the statutory basis for the appointment by the BVI Court over AICO Bahrain as a foreign company.

[121] Section 163 confers discretion upon this Court to make such an appointment. The section materially provides:

“163. (1) The Court may, on application by a person specified in section 162(2), appoint a liquidator of a foreign company under section 159(1) if the Court is satisfied that the company has a connection with the Virgin Islands and

...

(b) the Court is of the opinion that it is just and equitable that a liquidator should be appointed;

...

(d) the company is dissolved or has otherwise ceased to exist under or by virtue of the laws of the country in which it was last registered;

...”

[122] Rana submits that the requirements of section 163 are satisfied since (i) AICO Bahrain is dissolved or has otherwise ceased to exist, as required by s.163(1)(d) of IA 2003; and (ii) there is the requisite connection to the BVI, as required by s.163(1).

[123] Section 163 stipulates the category of persons who can apply for relief under that section. Section 163(1) does so simply by stipulating that this is to be 'a person specified in section 162(2)'.

[124] These include, at section 162(2)(c), 'a member'.

[125] Section 162 provides for the appointment of a liquidator over a company by the Court. Section 163 provides for the appointment of a liquidator over a 'foreign company'.

[126] As we will see, the parties disagree over the meaning of 'a member'. Rana argued that the term 'a member' has an identical meaning for both sections 163 and 162. The Set Aside Applicants dispute this.

[127] To explain her standing, Rana cited the following in her Amended Originating Application for the appointment of a liquidator filed on 19th November 2024:

⁶⁰ No.5 of 2003.

- “2. The Applicant was a member of AICO Bahrain prior to its dissolution. She inherited shares in the company upon the passing of her father, Omar Al Aggad, who died intestate on 31 January 2018 whilst she claims he was domiciled in Quebec in Canada. At the time of its liquidation and dissolution she also remained the registered owner of 8,000 shares that she had previously owned in the company, notwithstanding that she agreed to transfer those shares under an agreement executed in 2009.
3. The Applicant also claims that she is a beneficiary of the estate of her mother (Mrs Murad). The Applicant has been appointed as an administrator of that estate (and her father’s estate) in the BVI pursuant to letters of administration *ad colligenda bona* granted by the BVI Court on 12 October 2023. Mrs Murad was also a shareholder in the company prior to its dissolution. Mrs Murad died intestate in Quebec in Canada after the company’s dissolution.”

[128] Thus, at the hearing of the present application, Rana argued that she had and has standing to apply for the appointment of a liquidator over AICO Bahrain on three bases:

- (1) she is a ‘member’ of AICO Bahrain because she inherited some 4,000 AICO Bahrain shares upon the death of her father, Omar, with Quebecois law governing the inheritance;
- (2) she remains registered as the owner of 8,000 AICO Bahrain shares allotted to her by her father upon that company’s incorporation, although she gave up those shares pursuant to the 2009 Agreement; and
- (3) she was appointed by this Court as *administratrix ad colligenda bona* over Omar’s estate in this jurisdiction.

[129] We will take each of these three contentions in turn.

3.1 The ‘4,000 shares’

[130] Omar died in Quebec, Canada, on 31st January 2018. Amongst the assets which comprised Omar’s estate, there was a quantity of shares in AICO Bahrain. Of these, Rana stands to inherit a certain number. This much appears to be uncontroversial. Rana contends that the quantity of shares she should inherit is some 4,000, under Quebecois law, being the law of the jurisdiction where, Rana maintains, Omar was domiciled at the time of his death.

[131] There is a subsidiary dispute over which law should apply to this inheritance. Rana contends that it is the law of Quebec, Canada. The Set Aside Applicants contend that Sharia law is the alternative candidate.

[132] Rana argues that the applicable law is not Sharia law, but if it is, the 4,000 shares would be treated under Sharia law as automatically vesting in her upon Omar's death. Such a proposition of Sharia law does not appear to be contested by the Set Aside Applicants. Rather, they contend that for procedural reasons it is not open to Rana to rely upon Sharia law here, because she has adopted positions in Canada that Quebec law applies.

[133] Rana has adduced expert evidence of Quebecois law that pursuant to Article 625 of the Civil Code of Quebec ('CCQ'), Omar's estate vested immediately in his heirs upon his death. Rana relies upon a report of a Quebec Attorney-at-Law, Me. Amanda Emanuele, dated 28th July 2023, which states in terms:

"An estate of a deceased vests immediately to the heirs by the death of the deceased subject to the provisions on liquidation of succession".

[134] Me. Emanuele cites Article 625 of the CCQ:

"Article 625 Seisin of heir. The heirs are seized, by the death of the deceased or by the event which gives effect to a legacy, of the patrimony of the deceased, subject to the provisions on the liquidation of succession."

[135] Rana observes that Tarek's company AIIIC has taken a position in Quebec legal proceedings that there is another Article of the CCQ, Article 884, which is of the effect that it is only upon 'partition' that a share in an estate vests in an heir, and such 'partition' has not yet occurred. But, says Rana, the Set Aside Applicants do not make such an argument in the present proceedings and they would have needed to adduce expert evidence to that effect, which they have not done.

[136] Rana argues that the effect of Quebec law is that it suffices for her to come within the definition of 'member' for the purposes of section 163 of IA 2003.

[137] Rana adverts to the definition of 'member' at section 2 of IA 2003:

"'member', in relation to a company, includes

(a) ...; and

(b) a person to whom shares in a company have been transferred or transmitted by law, even though that person is not a member of the company within the meaning of the Companies Act;"

[138] It is uncontroversial between the parties that a member of a company within the meaning of the Companies Act is a registered member or shareholder only.

[139] Rana contends that she falls squarely within the meaning of ‘member’ in section 2(b) of IA 2003 in respect of the 4,000 shares, because they have been transmitted to her by law, in accordance with Quebecois law.

[140] The Set Aside Applicants disagree. They point out that the definition of ‘member’ in section 2 of the 2003 Act is expressly stated to be with reference to ‘a company’, and section 2 defines ‘a company’ as follows:

“‘company’ has the meaning specified in section 3”.

[141] Section 3 provides:

“(1) Unless this Act expressly provides otherwise, ‘company’ means

(a) a company incorporated under the Companies Act;

(b) an international business company incorporated or continued under the International Business Companies Act; or

(c) a company within the meaning specified in section 3(1) of the BVI Business Companies Act 2004.”

[142] In short, section 3 defines ‘company’ as a form of BVI corporation, not a foreign company. The Set Aside Applicants argue that AICO Bahrain was not a company as defined by section 3. That being so, Rana was not a member within the definition in section 2 of IA 2003. However, the Set Aside Applicants argue further that the definition of member in section 2 is not exhaustive (because it specifies what the concept of member ‘includes’) and section 162(2) contemplates that it might extend to (undefined) members of a foreign company as well.

[143] The Set Aside Applicants thus beg the question: what type of member of a foreign company might be included within section 2. They answer this by submitting that there are three requirements that should apply in this respect:

- (1) the applicant must have a sufficient interest in the relevant shares to warrant its intervention, relying upon *dicta* of Lord Slynn in the Privy Council case of **Deloitte & Touche A.G. v Johnson**,⁶¹ of Needham J in **Kelly v Mawson**,⁶² and of Chadwick J in **Bell**

⁶¹ [1999] 1 WLR 1605 at 1611A-D.

⁶² (1982) 6 ACLR 667 at 673-4 (Needham J.).

Group Finance (Pty) Ltd (in liq.) v Bell Group (UK) Holdings Ltd.⁶³ Most pertinently, the *dicta* of Lord Slynn in **Deloitte & Touche A.G. v Johnson** are the following:

“In their Lordships' opinion two different kinds of case must be distinguished when considering the question of a party's standing to make an application to the court. The first occurs when the court is asked to exercise a power conferred on it by statute. In such a case the court must examine the statute to see whether it identifies the category of person who may make the application. This goes to the jurisdiction of the court, for the court has no jurisdiction to exercise a statutory power except on the application of a person qualified by the statute to make it. **The second is more general. Where the court is asked to exercise a statutory power or its inherent jurisdiction, it will act only on the application of a party with a sufficient interest to make it. This is not a matter of jurisdiction. It is a matter of judicial restraint.** Orders made by the court are coercive. Every order of the court affects the freedom of action of the party against whom it is made and sometimes (as in the present case) of other parties as well. It is, therefore, incumbent on the court to consider not only whether it has jurisdiction to make the order but whether the applicant is a proper person to invoke the jurisdiction.” (Emphasis added.)

- (2) mere beneficial ownership of shares is insufficient; and
- (3) the applicant must have a liability to contribute to the assets of the company.

[144] In respect of their second point, that mere beneficial ownership of shares is insufficient, the Set Aside Applicants argued that this was the position prior to IA 2003, relying upon the decision of Henderson J in the Cayman Islands Grand Court in **Hannoun v R Ltd**.⁶⁴

“A winding-up petition may be presented by a company itself or by a creditor or contributory of the company ... It is accepted that Mr. Hannoun is not a creditor nor is he a contributory. The trustee is a contributory and would have standing itself to issue a petition if it chose to do so. It is well established that where a trustee is the legal owner of shares in a company, a beneficiary of the trust is not a contributory of that company ...”

[145] Similarly, say the Set Aside Applicants, in **Kelly v Mawson**,⁶⁵ Needham J held that ‘[b]eing unregistered, the beneficiaries are unable to petition the court for a winding up order’.

[146] They contend that the position is not altered (as Rana claims) by the terms of section 2 of IA 2003, which provides that a member includes ‘a person to whom shares in a company have been transferred or transmitted by law’, since (as noted above) this provision applies only to a

⁶³ [1996] BCC 505.

⁶⁴ 2009 CILR 124 [3]-[4] and [8].

⁶⁵ (1982) 6 ACLR 667, 673.

'company', which is defined in section 3 of IA2003 as a company incorporated or continued under either the Companies Act 1885 or the BVI Business Companies Act. The relevant definition of member also goes on to refer to 'a member of the company within the meaning of the Companies Act', which makes no sense if one is dealing with a foreign company.

- [147] The Set Aside Applicants submit that in any event, a mere beneficial owner would not be a person to whom shares had been transferred or transmitted by law. That was confirmed by Joseph-Olivetti J in **Maxymych v Global Convertible Megatrend Ltd**.⁶⁶
- [148] In respect of the Set Aside Applicants' third point, that an applicant must have a liability to contribute to the assets of the company, they contend the following.
- [149] As a matter of English law, a member of a foreign company cannot make a liquidation application unless that member has an outstanding liability to contribute to the assets of the company. That is reflected in **Palmer's Company Law**⁶⁷ at paragraph 15.659 which makes clear that the category of persons entitled to apply for liquidation of a foreign company 'does not include a member (or alleged member) of an unregistered company who has no actual liability to contribute'.
- [150] Accordingly, English law distinguishes between applications by fully-paid-up members of domestic companies (referred to in the UK Insolvency Act as "registered companies"), and those of foreign companies (referred to in the UK Insolvency Act as "unregistered companies"). The position was explained and confirmed by Vinelott J in **Re Welsh Highland Railway Light Railway Co**.⁶⁸ (referring to the relevant sections of the UK Companies Act 1985):

"In the case of a registered company a member holding fully paid shares in a company limited by shares is brought within the definition of a contributory in s.507(1) of the 1985 Act by s.502(1), notwithstanding that by virtue of s.502(2)(d), 246 he cannot be required to contribute to the payment of the company's debts and liabilities. However, in the case of an unregistered company, only a person who is liable to pay or contribute to the payment of any debt or liability of the company or to contribute to the payment of any sum for the adjustment of the rights of members amongst themselves or to pay or contribute to the payment of the costs and expenses of the winding up, is to be deemed to be a contributory (see s.671(1) of the 1985 Act)."

⁶⁶ [2006] ECSCJ No. 187, BVI Claim No. 246 of 2006 (delivered 5th December 2006) at paragraph [52]-[53] Joseph-Olivetti J.).

⁶⁷ Volume 4, Chapter 15.6 Winding Up in Scotland (Sweet & Maxwell, 2020 revision).

⁶⁸ [1993] BCLC 338, 353.

- [151] Prior to the enactment of IA 2003, the winding up of foreign companies in the BVI was governed by the Companies Act 1885, section 231 of which was in almost identical terms to section 671 of the UK Companies Act 1985 (and the equivalent sections in previous UK Companies Acts dating back to the 19th century). Accordingly, prior to IA 2003, the law in the BVI on this point was the same as English law, as described by Vinelott J in **Re Welsh Highland Railway Light Railway Co.**
- [152] Were it intended by IA 2003 to change the long-standing rule identified by Vinelott J, the legislature would need to use clear words (see **Al-Thani v Al-Thani**⁶⁹). However, it is not evident that the legislature did intend to change the law on this point when enacting IA 2003. On the contrary, there are clear indications in the text of IA 2003 that ‘member’ means something different in the case of a foreign company, that BVI law will more readily allow the liquidation of a BVI company at the behest of members than a foreign company, and that section 163 of IA 2003 was never intended to be used to wind up a solvent foreign company at the behest of a member who has fallen out with the other members. Section 163 IA 2003 is concerned with the liquidation of insolvent foreign companies rather than solvent foreign companies. This is fortified by section 163(2), which refers expressly to a benefit to ‘creditors’ as a possible justification for a liquidation order, but says nothing about benefit to members. This is because the legislature intended to permit members who had a liability to contribute to apply for the liquidation of an insolvent foreign company but never intended section 163 to be used by the member of a solvent foreign company who had no liability to contribute, but who had fallen out with the other shareholders.
- [153] The Set Aside Applicants observe further that the question who is a member of a foreign incorporated company is a matter of foreign law. Foreign companies may not have a register of members, they may not issue shares (or there may be some instrument called a ‘share’ which gives no right to participate in the management of the company, and which only confers a right to a dividend), they may have a concept of ‘membership’ which is wholly alien to the types of membership known to BVI companies law. They urge that the correct way to understand the word ‘member’ in the context of a foreign company is, in accordance with longstanding authority, as a person who has an outstanding liability to contribute in that capacity in a winding up.

⁶⁹ [2024] UKPC 35 at paragraph [49] (Lord Hodge).

- [154] In respect of Rana's arguments that under Quebec law or Sharia law the 4,000 shares vested automatically in Rana upon Omar's death, the Set Aside Applicants argued, in sum, as follows.
- [155] All the Canadian material shows is that the estate of Rana's parents was undivided and that it might be that Rana jointly with her siblings was effectively in the position of a joint executor. Learned Counsel for the Set Aside Applicants contended that was the only way in which Rana's position in these proceedings could be reconciled with that taken by her in a different jurisdiction.
- [156] The Set Aside Applicants submitted further that Rana treats herself currently as jointly holding all 24,000 shares comprised in Omar's estate, which would not enable her to rely upon her ownership of 4,000 shares to say that she is a 'member' of AICO Bahrain.
- [157] The Set Aside Applicants apply the principles, as they see them, to the facts of this case as follows.
- [158] First, Rana's case that she inherited 4,000 shares under Quebecois law is inconsistent with the position that she has taken elsewhere and insufficient in any event: In Quebec Rana has asserted that the assets of her parents are still undivided and under the umbrella of her father's estate. On her *ex parte* application, however, she asserted that under Quebecois law 'the estate of a deceased person vests immediately in his heirs'. It is not open to Rana (at least without discontinuing the proceedings in Quebec) to run in these proceedings a case on Quebec law that is diametrically opposed to the position that she has taken in Quebec. That would be a flagrant abuse of the process of this Court.
- [159] Moreover, Rana asserted, in reliance on **Hollington on Shareholders' Rights**,⁷⁰ that 'the typical case of a person to whom shares have been transmitted by operation of law is 'a person entitled to shares upon the death or bankruptcy of a shareholder''. The passage from **Hollington** upon which Rana relied is based upon the Scottish decision of the Court of Session (Inner House, Second Division) in which the executor of the estate was the petitioner and treated as having standing because the executor had the same rights as the deceased would have had if he had remained in life. It is not authority for the proposition that those that stand to benefit from an estate have standing.

⁷⁰ (10th edn., Sweet & Maxwell 2023) at [9-05].

[160] If and to the extent that Rana had any interest in AICO Bahrain shares, it was merely an interest in the due administration of the estate. It did not create even a beneficial interest in any shares that might have fallen into that estate. As a matter of BVI law, equity does not create a beneficial interest in the assets of an executor during the administration of an estate (see **Commissioner of Stamp Duties (Queensland) v Livingston**⁷¹ at 707F-708C). Even if it did, a beneficial interest would be insufficient to constitute Rana a member.

3.2. Rana's submissions on standing in respect of the 4,000 shares

[161] Rana takes issue with these arguments.

[162] Rana contends that there is no rule of English law that that an applicant must have a liability to contribute to the assets of the company. Learned Counsel Mr. Weekes KC, for Rana, explained her position thus:

“So what's happened, we venture to suggest, is that AIC and Tarek have scoured the textbooks to try to find some argument they can make in relation to standing. They have alighted upon half a sentence in Palmer's and a footnote referring to a single case from Mr Justice Vinelott, and they said: this a rule as a matter of English law because we found a reference to it in one textbook. Not in the other textbooks, not in insolvency textbooks, they found a reference in a company law textbook in a section of a textbook dealing with winding-up in Scotland. And they come before your Lordship, and said: this is what English law has always provided, and the BVI legislature must have intended to effect what we found in half a sentence in Palmer's -- in a single obiter dictum of Mr Justice Vinelott. ... My Lord, it's obiter and it's wrong. ... And the Hong Kong court also we discovered this morning ... the Hong Kong court expressly identified the fact that it's obiter and refused to follow it, and referred to the bit in Palmer's giving it really short shrift.”⁷²

[163] The Hong Kong case referred to was **In re Greater Beijing Region Expressways Limited**.⁷³ On page 8 of that judgment, the learned Judge decided that Vinelott J's *dictum* had been *obiter*, and had not considered statutory provisions in any depth, so he declined to follow it.

[164] Mr. Weekes, KC, argued that when the BVI Legislature enacted IA 2003, it decided not to adopt the concept of contributories in this context. It did not follow what the English Insolvency Act 1986 provided but simply used the term 'member'. He argued that it is completely clear in the 2003 Act

⁷¹ [1965] AC 694 (Viscount Radcliffe).

⁷² Transcript of 3rd February 2025 at page 55.

⁷³ HCCW399/1999 dated 21st June 2000 (Le Pichon J.)

that the persons who have standing are members, not contributories to unpaid shares. IA 2003 says nothing about applicants being required to be contributories to unpaid shares.

- [165] He also argued that the relevance of being a contributory in a winding-up is that in an insolvent liquidation there will not be a surplus, so a member generally does not have a legitimate interest in the outcome, unless he or she has a liability to contribute to the assets of the company. But that does not apply here, because we are dealing with a solvent liquidation. In a solvent liquidation a member has an obvious interest in the surplus. The liability of the member to contribute to a shortfall in assets is irrelevant because there will be a surplus.
- [166] Mr. Weekes, KC, further contended that it is completely clear from IA 2003 that the same regime that applies to BVI companies applies to foreign companies and the same definition of 'member' applies to the member of a foreign company as it does to a BVI company.
- [167] He bases this proposition on the fact that section 163 of IA 2003 provides that an application to wind up a foreign company may be made 'by a person specified in section 162(2)'. Such a person is expressed to include a 'member'. For an application under section 162, a 'member' of a 'company' is defined as section 2(1) as including 'a person to whom shares in a company have been transferred or transmitted by law, even though that person is not a member of the company within the meaning of the Companies Act'. Whilst the Set Aside Applicants stress that a 'company' is defined by section 3(1) as referring to a BVI company only and not to a foreign company, Rana, through Mr. Weekes, KC, relies upon the fact that section 2 is prefaced by the words 'unless the context otherwise requires'. Thus, Mr. Weekes, KC, sees in these words a meaning that in the context of foreign companies, precisely the same category of persons can apply for the winding up of a foreign company as can do so for a BVI company.
- [168] Mr. Weekes, KC, contends that Rana plainly is a person to whom shares in a foreign company, AICO Bahrain, have been transferred or transmitted by Quebec law, even though she is not a member of the company within the meaning of the Companies Act.
- [169] Mr. Weekes, KC, urged that Rana's evidence from Me. Emanuele that the 4,000 shares in Omar's estate vested in her automatically upon Omar's death would have required the Set Aside Applicants to adduce evidence of Quebec law if they wished to say that that law was of a different effect, something they did not do. Thus, Rana's evidence in this regard stands uncontradicted by contrary evidence.

3.3 Discussion on standing in respect of the 4,000 shares

- [170] I have come to the conclusion that Rana has the better of the argument in relation to standing on the basis of her interest in the 4,000 shares, even though there is a flaw in it in relation to her interpretation of IA 2003, which I will identify.
- [171] Rana's evidence of Quebec law in these BVI proceedings is uncontradicted by evidence of Quebec law to the contrary. Quebec law is to the effect that the 4,000 vested in her automatically upon Omar's death. The alternative applicable law, Sharia law, appears to have the same effect.
- [172] The Set Aside Applicants attack her position on the basis that she has adopted a different rationale in legal proceedings in Quebec proceedings, and that this Court should not permit her to present an inconsistent position here. Whilst I can see the force in this point (indeed, both sides have variously adopted inconsistent positions), this Court is moved by two things: evidence and BVI law. Positions taken by litigants in overseas proceedings are not necessarily definitive. They may also not reflect the actual law. Had the Set Aside Applicants disagreed with the effect of Quebec law, they had the opportunity to adduce expert evidence of Quebec law, but did not. The evidence of Quebec law presented to this Court (which, in this jurisdiction, stands as evidence of fact) is that Rana is a person to whom the 4,000 shares have been transferred or transmitted by Quebec law. Since this evidence stands unchallenged, I accept it.
- [173] I also accept the unopposed submission of Rana, that Sharia law would be to the same effect.
- [174] Thus, I am satisfied that the 4,000 shares vested automatically by operation of law in Rana upon Omar's death. She may, pending partition, have jointly held all 24,000 of Omar's shares in AICO Bahrain, and thus not have a sufficient interest in those that would ultimately devolve to her Siblings (i.e. 20,000 of them), but there is no reason to suppose that in respect of her portion, of 4,000 shares, she did not have a sufficient interest in them to qualify her and the Court to use them as the basis for an application to appoint a liquidator over AICO Bahrain. There is no allegation that she held those 4,000 for anyone's benefit other than her own.
- [175] In relation to interpretation and application of IA 2003, I disagree with the Set Aside Applicants' submission that section 163 of IA 2003 is intended to apply to winding up of insolvent companies, if they mean thereby that only insolvent companies can be wound up under it. Section 163(1)(b)

permits winding up on the just and equitable ground. Section 163(1)(c) permits winding up where the Court is of the opinion that to do so is in the public interest. There is no anterior requirement for insolvency under those heads.

- [176] I agree with the Set Aside Applicants that the applicant must have a sufficient interest in the relevant shares to be able apply to wind up a company, because otherwise the doctrine of judicial restraint⁷⁴ would entail that the Court should not accede to the application. This is not strictly a matter of standing of an applicant, but of when the court will or will not be moved by an application on account of the degree of interest an applicant has in the relief sought. In other words, this entails a fact-sensitive judgment on the part of the Court in the exercise of its discretion. It thus cannot be stated as a hard and fast rule that a Court must always entertain an application for the appointment of a liquidator over a company on the part of a member, as it may be that the member has insufficient interest in applying for such relief.
- [177] I agree with the Set Aside Applicants that mere beneficial ownership of shares is insufficient in the context of section 162 of IA 2003, following **Maxymych v Global Convertible Megatrend** ⁷⁵at [52]-[53]. However, in light of the automatic vesting of the 4,000 shares in Rana on Omar's death under both Quebec and Sharia law, Rana was not a mere beneficial owner of those shares. She was someone to whom shares in a BVI company have been transferred or transmitted by law.
- [178] Both sides accept that IA 2003 adopts a broader concept of membership of a BVI incorporated company than does the Companies Act.⁷⁶ This is a well settled difference between the two sets of legislation. It is clear that section 162 of IA 2003 treats a person to whom shares in a BVI company have been transferred or transmitted by law as a member, even though that person is not a member of the company within the meaning of the Companies Act. Such a person has standing to apply for the appointment of a liquidator over a BVI company.
- [179] The analysis in **Maxymych v Global Convertible Megatrend** also proceeded on the basis that a person to whom shares in a BVI company have been transferred or transmitted by law would

⁷⁴ Cf dicta of Lord Slynn in *Deloitte & Touche AG v Johnson* [1999] 1 WLR 1605 at 1611A-D.

⁷⁵ BVI CLAIM NO. 246 OF 2006 (delivered 5th December 2006) (Joseph-Olivetti J.).

⁷⁶ See also BVIHC MAP2023/0017 *Floreat Real Estate Limited v XYZ* (unreported, delivered 3rd May 2024 at paragraph [107] (Farara JA (Ag.)).

qualify him or her to apply for the appointment of a liquidator under section 162 of IA 2003; it was because the claimant there was not such a person, but a mere beneficial owner, that he did not attain to the requisite qualification. He could not bring himself within the definition of 'member'.

- [180] The position is not so clear with regard to a foreign company. I agree with the Set Aside Applicants that IA 2003 reserves a specific definition to 'member' of a BVI company which is not extended to a foreign company. That much is clear. Rana would have this difference wiped out by the provision in section 163 which states that an application under section 163 may be made 'by a person specified in section 162(2)'. Rana contends that this means the same persons can apply under section 163 as under section 162, thus somebody to whom shares in a foreign company have been transferred or transmitted by law even though that person might not be a registered shareholder.
- [181] In my respectful judgment, Rana's reasoning here goes too far. The same type of person is as listed in section 162; that is to say, for present purposes, a 'member' of the foreign company. But this still leaves us with the distinction drawn between the definition of 'member' for winding up BVI companies, and the absence of a definition of 'member' for winding up foreign companies.
- [182] I accept (as both sides do) that IA 2003 contemplates a broader concept of 'member' than the more restrictive Companies Act legislation. There is no reason to suppose that IA 2003 is intended to be broad when it comes to BVI companies but narrow for foreign companies. Indeed, IA 2003 contains no restrictions on definition of 'member' for foreign companies at all.
- [183] This omission, it seems to me, was probably deliberate, although I have not had the benefit of the preparatory documents behind the legislation. It would make sense if this were so. Reference to the rights of a 'member' of a foreign company is an acknowledgment that foreign companies are generally hybrid creatures of statute and contract, like BVI companies are, and not simply creatures of contract, as are unregistered companies. As a matter of strict English Common Law logic, it is correct to treat foreign companies in the same way as domestic unregistered companies. But this ignores the reality that companies incorporated overseas are subject to foreign statutory and regulatory laws and rules, which, in a real sense in that overseas jurisdiction, are matters of law and not mere private agreement. Thus, IA 2003 does not continue to treat foreign companies as if they are unregistered companies, but as incorporated companies, albeit overseas. The 'omission' to define a 'member' of a foreign company leaves it open for the foreign law to supply the definition.

- [184] Where this takes us, in my respectful judgment, is that unless there is reason to treat the definition of ‘member’ of a foreign company as more restrictive than for BVI companies for the purposes of an application under section 163 of IA 2003, the BVI Court can, and should, apply the same definition to a member of a foreign company as applies to a BVI company.
- [185] I note, in passing (i.e. *obiter*, because this point was not the subject of argument before me), that this interpretation of sections 163 and 162 of IA 2003 appears to align with the principle that where foreign law applies, but no, or insufficient, evidence of foreign law has been adduced, the content of the foreign law is generally to be presumed to be the same as domestic law.⁷⁷
- [186] In practical terms, the effect of this interpretation, in my respectful judgment, is that it would be for the Set Aside Applicants to show that a more restrictive definition should apply. The type of reason that immediately comes to mind would be evidence of the foreign law which governs AICO Bahrain and in particular of the definition(s) it applies to the concept of member under that law. Here, that would presumably be Bahrain law. If Bahrain law applies a more restrictive definition of ‘member’ than the broad concept contemplated by section 162, (e.g. if it excludes persons to whom shares in a Bahrain company have been transferred or transmitted by law but who is not a registered member) I would be reluctant to let an applicant take advantage of the broader BVI position. It would be unattractive to allow an applicant to obtain from this Court orders that he or she would have no standing to apply for under Bahrain law. That could encourage forum shopping. But, despite the opportunity to do so, the Set Aside Applicants have not taken me to any evidence of Bahrain law that a more restrictive definition of ‘member’ applies there.
- [187] Instead, the Set Aside Applicants ran an argument that Rana would have to be a ‘contributory’, under what they urged is a long-standing rule of English law equally applicable here.
- [188] I am not persuaded that there is a rule of English law that Rana would have to be not just a ‘member’ but also a contributory, in the sense of a member who has an outstanding liability to contribute to the assets of the company in the event of its insolvent winding up.

⁷⁷ Dicey, Morris & Collins on The Conflict of Laws (16th edn., Sweet & Maxwell 2025) at paragraph 3R-001.

- [189] First, in circumstances where the liquidation of AICO Bahrain would be a solvent liquidation, it would be irrelevant for Rana to have to be such a contributory. In a solvent liquidation, a member has an obvious interest in the surplus.
- [190] Secondly, the text of IA 2003 does not disclose any requirement for an applicant for the winding up of a foreign company to be a contributory in the sense identified.
- [191] Thirdly, the *dicta* of Vinelott J. in **Re Welsh Highland Railway Light Railway Co.**, upon which the Set Aside Applicants rely, were clearly *obiter*. The report of that case indicates that these were merely part of Vinelott J.'s interpretation of section 671(1) of the United Kingdom's 1985 Companies Act. I agree with the First Instance Court of Hong Kong in **In re Greater Beijing Region Expressways Limited**⁷⁸ on this and that Vinelott J had not considered statutory provisions in any depth.
- [192] Fourthly, if indeed there were a longstanding rule of English law as submitted by the Set Aside Applicants, one would expect it to be cited and followed as part of the *ratio* of reported cases (not just mentioned in an isolated *obiter dictum*), and to feature in English law practitioners' textbooks (not just as 'half a sentence' in a textbook dealing with winding up in Scotland), but it has not.
- [193] Fifthly, in circumstances where IA 2003 appears to provide (or at least to seek to provide) a codified scheme, it is an unattractive proposition to contend that historic rules relating to a perceived need to be a contributory should be implied into the statute. I am more inclined to interpret IA 2003 as meaning what it says on its face, unless there is clear reason to suppose that it should not be read in such a way.
- [194] Thus, I am not persuaded that there is any need for Rana to have been a contributory with an outstanding liability to contribute to the assets of AICO Bahrain in the event of its insolvent winding up.
- [195] Where this leaves us is that, in my respectful judgment, this Court should assume that the same definition of 'member' should in this case apply under section 163 of IA 2003 as under section 162. On that score, Rana qualifies as a member of AICO Bahrain.

⁷⁸ HCCW399/1999 dated 21st June 2000 (Le Pichon J.).

[196] I am thus satisfied that Rana has standing to apply under section 163 of IA 2003 for the appointment of a liquidator over AICO Bahrain and that she has a sufficient interest in doing so to be able to move the Court to determine such an application.

[197] That being the case, I do not need to address the alternative grounds for standing that Rana invokes, namely that she continues to be a member by virtue of 8,000 shares that are registered in her name, and that she holds letters of administration *ad colligenda bona* on behalf of the estates of her late parents. Since these bases were contentious, I will address these, albeit somewhat more briefly.

3.4 The 8,000 shares

[198] Upon AICO Bahrain's incorporation, Omar allotted Rana 8,000 shares in that company. Rana remains registered as the owner of those shares. This is despite the fact that she had entered into the 2009 Agreement, which provided that she agreed to give up those shares, in consideration for, *inter alia*, payments to be made to her.

[199] Rana relies upon **Maxymych v Global Convertible Megatrend**⁷⁹ as authority that the definition of member under IA 2003 includes someone who is registered as a member of a foreign company. Rana says that on this basis she clearly is still a member of AICO Bahrain, because she is still registered as the owner of the 8,000 shares. That, she submits, is sufficient to give her standing as a member under section 163 of IA 2003.

[200] Mr. Weekes, KC, for Rana, submitted that Rana did not give up those shares and that they were not re-registered.

[201] Nor, he contended, is there any reason to believe that she holds those shares on trust. But, even if she was a trustee, that would still be sufficient, Mr. Weekes, KC, submitted, for her to have standing.

[202] The Set Aside Applicants disagree. They highlight the fact that Rana, in her evidence, and Mr. Weekes, KC, on her behalf, have consistently represented that she gave up her interest in the 8,000 shares pursuant to the 2009 Agreement. The Set Aside Applicants contend that Rana thus

⁷⁹ [2006] ECSCJ No. 187, BVI Claim No. 246 of 2006 (delivered 5th December 2006) at paragraph [44] (Joseph-Olivetti J.).

holds those shares for the benefit of her Siblings under the 2009 Agreement, on something that is akin to a bare trust.

- [203] The Set Aside Applicants contend that Rana therefore does not have sufficient interest in the 8,000 shares to apply for the appointment of a liquidator, in circumstances where the persons for whose benefit she holds the 8,000 shares – her Siblings - all oppose such an application. The Set Aside Applicants rely upon *dicta* of Needham J in **Kelly v Mawson**⁸⁰ that:

“The third defendant is registered as a shareholder and it is able to lodge a petition. **That legal right, being a part of the property which it holds on trust for the plaintiffs, must be exercised at the direction of the plaintiffs provided a proper indemnity is offered.**” (Emphasis added.)

- [204] Rana disagrees, stressing that the Court retains discretion to allow an application to proceed. The Set Aside Applicants do not entirely disagree with this but contend that it would be wrong to view such discretion as being at large. They point out that in **Bell Group Finance (Pty) Ltd (in liq.) v Bell Group (UK) Holdings Ltd**⁸¹ Chadwick J observed:

“A petition presented by a creditor who holds the debt as bare trustee for another – who himself opposes the petition – is likely to fail on that ground alone.”

- [205] In other words, whilst the Court retains discretion, a bare trustee for another, who opposes a winding up petition, would generally not be permitted to present a winding up petition.
- [206] Another way of putting it would be to say that Rana cannot sensibly be allowed to have it both ways: on the one hand to have given up her interest in the 8,000 (as she has said she has) but at the same time to rely upon those shares to apply for the appointment of a liquidator over AICO Bahrain, in her own interest, contrary to the express wishes of those for whom she holds those shares.
- [207] I am persuaded that although Rana is formally a member of AICO Bahrain by reason of continuing to be registered as the owner of the 8,000 shares, she has not demonstrated a sufficient personal interest in these shares to move the Court to entertain an application to appoint a liquidator in that capacity.

3.5 Rana as *Administratrix ad Colligenda Bona*

⁸⁰ (1982) 6 ACLR 667 at 673-4 (Needham J.).

⁸¹ [1996] BCC 505.

- [208] Rana meets objections that she has no personal interest in AICO Bahrain's liquidation (based upon the 8,000 shares) by observing that she is not the only person with such an interest: she says her mother, Mrs. Murad, also had an interest in AICO Bahrain's liquidation and that, after Mrs. Murad's death, her estate continues to do so.
- [209] Rana argues that she was granted letters of administration '*ad colligenda bona*' by this Court, which entitle her to act on behalf of Omar's and Mrs. Murad's estates, because those estates therefore vest in her. Mr. Weekes, KC, for Rana, argues that she thus has standing to apply for appointment of a liquidator over AICO Bahrain on behalf of at least Mrs. Murad.
- [210] The Set Aside Applicants disagree. They point out that the letters of administration were granted on conventional terms as an emergency grant pursuant to Section 47 of the **Eastern Caribbean Supreme Court Non-Contentious Probate Administration of Estates Rules 2017** and under those rules the administrator's power is limited to collecting, getting in and receiving the estates and doing such acts as may be necessary for its preservation. The Set Aside Applicants observe that this is reflected in the grants themselves.
- [211] They argue that applying for appointment of a liquidator is not one of the powers. They observe further, that when Rana applied *ex parte* for the grants, she represented that they would be limited to allowing her to apply for freezing order relief.
- [212] I agree with the Set Aside Applicants in this regard.
- [213] Consequently, the only basis upon which I find that Rana has standing to apply under section 163 of IA 2003 for the appointment of a liquidator over AICO Bahrain is that 4,000 shares in that company vested automatically in her upon Omar's death, under Quebec law, or alternatively under Sharia law.

4. Whether AICO Bahrain has assets within the BVI

- [214] The next fundamental issue concerns whether AICO Bahrain has (or rather, had, prior to its dissolution) assets within this jurisdiction.
- [215] Section 163(1) materially provides:
- “163. (1) The Court may, on application by a person specified in section 162(2), appoint a liquidator of a foreign company under section 159(1) **if the Court is satisfied that the company has a connection with the Virgin Islands** ... (Emphasis added.).

[216] Section 163(2) provides:

“For the purposes of subsection (1), a foreign company has a connection with the Virgin Islands only if

(a) it has or appears to have assets in the Virgin Islands;

(b) it is carrying on, or has carried on, business in the Virgin Islands; or

(c) there is a reasonable prospect that the appointment of a liquidator of the company under this Part will benefit the creditors of the company.”

[217] Connection with the BVI is thus a threshold requirement that must be fulfilled before the Court can move to exercise its discretion for the appointment of a liquidator.

[218] Rana submits that AICO Bahrain satisfies the connection requirement, because it has or appears to have the APIC Shares, being the shares in a BVI company, with the situs of those shares being deemed to be the BVI.

[219] The Set Aside Applicants accepts this much. But they say that is not the end of the matter.

[220] They contend that Rana’s case centrally pivots on an allegation that there was a trust, with Tarek holding the APIC Shares on Trust for AICO Bahrain. The Set Aside Applicants contend that that allegation stands no prospect of success.

[221] In short, the Set Aside Applicants rely upon the fact that there is no written trust deed, there are no particulars of the alleged trust, and that the only instrument (the Share Transfer Certificate⁸² dated 15th January 2008) is contrary to there being a trust deed. They also point to a number of other documents, including from APIC (including its Chief Financial Officer), which record Tarek’s ownership of the APIC Shares. They submitted further that there is no logical basis for AICO Bahrain, as an offshore investment vehicle, to have set up a trust in which Tarek would be holding things on trust for AICO Bahrain. Moreover, they argue that there is no potentially applicable law for the alleged trust.

⁸² Hearing Bundle 3D at page 2226.

[222] The Set Aside Applicants also point out that Rana's Alleged Trust case discloses a fundamental problem, in that it runs diametrically counter to an agreement for transfer of 878,571 APIC Shares from Tarek to Rana. A second step in relation to that transaction was that Tarek settled an express trust in favour of Rana in respect of those shares. A third step was that in December 2018 Tarek transferred those shares to Rana absolutely. The Set Aside Applicants submit that this presents a conceptual problem for Rana, because if the shares belonged to AICO Bahrain (as she now says), then Tarek was not in a position to be transferring them personally to Rana. The Set Aside Applicants argue that this presents Rana with an inherent conflict between herself and the Provisional Liquidator, because he would then have a claim against her to recover those shares from her for the benefit of AICO Bahrain. The Set Aside Applicants argue that this is a fundamental inconsistency with Rana's case.

[223] The Set Aside Applicants accept that AICO Bahrain's audited accounts record that the APIC Shares are assets of AICO Bahrain. But, they say, those accounts also contain glaring errors, in that they continued to show AICO Bahrain as owning certain pieces of land in the Middle East when that was not the case. The Set Aside Applicants thereby suggest that the accounts – and of necessity the auditors – could also have been mistaken about AICO Bahrain's continuing ownership (or not, as they contend) of the APIC Shares.

[224] The Set Aside Applicants say that what has happened is that Rana is selectively using parts of documents, without placing them in their broader context and that this does not come close to establishing that there was a trust. They submit that there is no basis for the asserted claim against AIC, and, consequently, there is no asset in the BVI to give AICO Bahrain the necessary connection to justify the BVI Court ordering the appointment of a liquidator over AICO Bahrain.

4.1 Discussion on connection with the BVI – assets within the jurisdiction

[225] I remind myself that section 163(2)(a) of IA 2003 provides that the requirement for a connection with the BVI is satisfied where the foreign company 'has or appears to have assets in the Virgin Islands'.

- [226] There is no requirement for the Court to determine that the foreign company does have assets in the BVI; it suffices that the company 'appears' to have such assets here.
- [227] The bottom line, in the present case, is that accounts of AICO Bahrain, audited by Ernst & Young, record AICO Bahrain as beneficially owing the APIC Shares for years after their transfer to Tarek. The Set Aside Applicants seek to raise doubt about the accuracy of these audited documents, and, by implication, of the audits themselves, by calling attention to what they said were glaring errors in them concerning ownership of land in the Middle East. Quite some considerable time was taken up in the hearing before me to argue over the treatment of that land. But even if the Set Aside Applicants are right that this land was erroneously included (on which I make no finding), it would be a non-sequitur to suggest that the financial statements recording the continuing ownership of APIC Shares are therefore also likely to be wrong. The two types of asset – APIC Shares and land in the Middle East – are unrelated. The most an error in relation to such land would do is to raise the possibility that other errors might be contained in the audited statements. That could conceivably be the case. But that does not detract from the fact that the audited accounts – audited by an internationally well-known and reputable firm of accountants – show that AICO Bahrain beneficially owns the APIC Shares.
- [228] There is another problem with the Set Aside Applicants' suggestion that the audited accounts of AICO Bahrain incorrectly show that company owns the APIC Shares. The Set Aside Applicants themselves proffer the explanation that Omar wanted them to include the APIC Shares to swell the apparent value of AICO Bahrain. That explanation (if it is true) entails **deliberate** inclusion of those assets in the accounts when they should not have been, not inclusion by error or mistake.
- [229] Where this leaves us is that AICO Bahrain's audited accounts show that AICO Bahrain appears to have assets in the BVI.
- [230] The Set Aside Applicants raise an array of other documents and arguments to countervail such an appearance. But one category of evidence was not placed before this Court: evidence from the auditors themselves to explain their treatment of AICO Bahrain's continuing APIC Shares ownership position. We are simply left with what is said in the audited accounts.

[231] We are also left with the Set Aside Applicants' unattractive proffered explanation that Omar had wanted to continue showing the APIC Shares as an asset of AICO Bahrain to swell its value in the eyes of potential corporate finance providers. Whilst possible, it seems scarcely plausible that the Ernst & Young auditors would be supine yes-men, sacrificing their professional integrity and reputation to pander to the fraudulent whims of their client's principal. It warrants observing, furthermore, that this explanation, which inherently detracts the reputations of Omar (conveniently after his death, when he can no longer correct the position), of clearly numerous financial staff involved in drawing up the accounts, and of Ernst & Young, appears to be unsupported by any documentary evidence. It is merely Tarek's and Talal's say-so. The Set Aside Applicants do not allege that Ernst & Young were corrupt or negligent, they merely suggest it by a side-wind. Ernst & Young's position is particularly important, because in principle at least they would have been independent (as they themselves state⁸³), which cannot necessarily be said for anyone else involved with the AICO Group in this matter, including the staff (including the CFO) of APIC, since Tarek was the chairman of APIC at the material times. The Set Aside Applicants do not allege that Ernst & Young were not independent.

[232] I have already explained that Rana does have a good arguable case that Tarek held the APIC Shares on trust for AICO Bahrain. The extremely short point, though, is that, based upon audited accounts, AICO Bahrain appears to have owned the beneficial interest in the APIC Shares prior to its dissolution. Irrespective of whether that may in fact be wrong, that is what appears. It is enough to satisfy the test laid down by section 163(2).

[233] At that point in time (i.e. AICO Bahrain's dissolution), the APIC Shares were worth approximately US\$60 million.

[234] Rana argues that the proprietary and personal claims which the Provisional Liquidator would bring on behalf of AICO Bahrain against AIIC also appear to be assets within the jurisdiction. This is a logical extension of AICO Bahrain appearing to have assets in the BVI in the form of the APIC Shares.

⁸³ Hearing Bundle 3A page 518.

[235] Rana additionally points out that AIC does not dispute that AICO Bahrain has a good arguable case to ownership of the APIC Shares. I accept these points support Rana's contention that the requirements of section 163(2)(a) are satisfied.

5. Discretion

[236] Both sides accept that section 163 of IA 2003 confers a discretion upon the Court to appoint a liquidator over a foreign company, where the threshold requirements have been satisfied. The section provides that the Court 'may' then do so.

[237] The section itself does not stipulate how the discretion should be exercised.

[238] The Set Aside Applicants contend that there are four factors of particular relevance to the exercise of the Court's discretion:

- (1) Availability of another jurisdiction;
- (2) Absence of any benefit to creditors;
- (3) Opposition of the majority of members;
- (4) Collateral purpose.

5.1 Availability of another jurisdiction

[239] The Set Aside Applicants observe that if the local law of a foreign dissolved corporation provides a remedy, then the case is not one in which the BVI court should intervene, following **Banque des Marchands de Moscou (Koupetschesky) (in liq) v Kindersley**:⁸⁴

"As a matter of general principle, our courts would not assume, and Parliament should not be taken to have intended to confer, jurisdiction over matters which naturally and properly lie within the competence of the courts of other countries. ... Prima facie, if the local law of the dissolved foreign corporation provided for the due administration of all the property and assets of the corporation wherever situate among the persons properly entitled to

⁸⁴ [1951] Ch 112 at 125-126 (Lord Evershed MR).

participate therein, the case would not be one for interference by the machinery of the English courts.”

- [240] The Set Aside Applicants contend that there is a scheme in Bahrain for undoing the dissolution of a company, with Bahrain law providing for a statutory remedy. Rana appears to accept this, although her Bahrain law expert considers that such an application is unprecedented.
- [241] The Set Aside Applicants observe further that at the *ex parte* hearing stage, the only real reason advanced by Rana for proceeding in the BVI was that in the BVI it is possible to apply on an *ex parte* basis. That, say the Set Aside Applicants, is an inadmissible reason.

5.2 Absence of benefit to creditors

- [242] The Set Aside Applicants argue that the liquidation process that is being proposed here is not for the benefit of any creditors of AICO Bahrain -- no creditors have been identified by the provisional liquidator despite being in position for nearly a year. One would not expect there to be any creditors because AICO Bahrain was solvent on its liquidation.
- [243] They argue that the Court should therefore not exercise its power to wind up a foreign company, following *dicta* of Megarry J. in **re Compania Merabello San Nicholas S.A.**⁸⁵ They argue that in the absence of any benefit for creditors, Rana’s application is in essence an application to wind up AICO Bahrain on the just and equitable ground, but without a trial of allegations of impropriety which normally precedes such a determination, i.e. a winding up on the just and equitable ground by the back door.

5.3 Opposition of the majority of members

- [244] The Set Aside Applicants submit that the Court should bear in mind that liquidation is a class remedy, but the majority of members (Tarek, Talal and Lama) here are opposed to it.

⁸⁵ [1973] 1 Ch. 75 at 91G to 92F.

[245] Moreover, the Set Aside Applicants point out that there is no allegation of fraud against Lama, and no allegation that Talal or Lama benefit from the wrongdoing alleged against Tarek.

[246] Tarek is the person who is being accused by Rana, and the Set Aside Applicants say it is thus not fair to exclude the views of Talal and Lama on the basis that they have been corrupted by self-interest.

[247] The Set Aside Applicants and Lama contend that the proposed liquidation would be wasteful of costs and expense, in circumstances where the company's assets would end up being distributed to them anyway but depleted by substantial liquidators' and legal fees – including to the benefit of Rana's third-party litigation funder.

5.4 Collateral purpose

[248] The Set Aside Applicants argue that the proceedings are being brought for a collateral purpose, namely as a route for securing funding Rana's other legal proceedings.

5.5 Rana's position on discretion

[249] Rana takes a somewhat different approach to discretion. She submits there are a number of important factors to be taken into account.

[250] The first is that the legal test that applies here is that it is only necessary to show there is a realistic possibility of some benefit to one member coming from winding up. Rana submits this is a 'very low threshold', below that of summary judgment, at the level of a good arguable case or serious issue to be tried. Rana, in this regard, relies upon **in re Compania Merabello San Nicholas S.A.**,⁸⁶ **Re Allobrogia Steamship Corporation**⁸⁷ and **In re A company No 00359 of 1987** ('the **Okeanos**')⁸⁸. The Set Aside Applicants take issue with this being 'a very low threshold' and urge

⁸⁶ [1973] 1 Ch. 75.

⁸⁷ [1978] 3 All ER 423 at 430 (Slade J.).

⁸⁸ [1988] 1 Ch. 210 at 227 (Peter Gibson J.).

that where, essentially, the Court is being invited to wind up the company on the just and equitable ground, that requires the Court to undertake a thorough investigation.

- [251] Rana supports her argument on the low threshold requirement by drawing an analogy with the standard applicable to injunction cases, where the evidence before the Court is on affidavits only, without a trial.
- [252] She also submits that it would be sufficient if she alone were to benefit from a liquidation of AICO Bahrain, but she contends that she was not the sole victim of the fraud; Mrs. Murad, who was another member of AICO Bahrain, was also a victim of it. Her estate would benefit from the winding up of AICO Bahrain and Rana is entitled to act on the estate's behalf in this jurisdiction in order to collect in the assets.
- [253] Rana also urges that it is sufficient that a potential claim be identified which requires further investigation by the liquidator, relying upon the English Court of Appeal case of **Re Latreefers Incorporated**⁸⁹ and also the English High Court case of **Flame SA v. Primera Maritime (Hellas) Limited**.⁹⁰
- [254] The second main factor Rana alludes to is the strength of the evidence that the APIC Shares were fraudulently misappropriated, by Tarek with the assistance of Talal, to the detriment of AICO Bahrain, Rana, and also Mrs. Murad. Rana submits that such evidence is very strong and contemporaneous.
- [255] By the same token, Rana says it follows that there are substantial grounds to believe that when in these proceedings Tarek says that he was the beneficial owner of the shares in APIC at all material times, that he is misleading and lying to the Court. Mr. Weekes, KC, took me to contemporaneous correspondence from Tarek to Omar in November 2008, after Tarek had, on his own case now, become (on 15th January 2008) the beneficial owner of the APIC Shares. In that correspondence, Tarek represented that he did not own any personal assets other than 6% of AICO Bahrain, living

⁸⁹ [2001] BCC 174 at paragraph [36] (Morritt LJ).

⁹⁰ [2010] EWHC 2063 (Ch) at paragraph 27 (Sir Andrew Morritt C).

in an apartment whilst his other Siblings owned their own houses. Rana observes that this is inconsistent with Tarek beneficially and legally owing APIC Shares then worth some US\$16 million.

[256] The third factor Rana adverts to is to consider the quality of the evidence that the APIC Shares were held on trust. Rana says that there is, again, very strong contemporaneous evidence for this. Rana submits that there is not just a good arguable case that the APIC shares were beneficially owned by AICO Bahrain; there is, in fact, an extremely strong documentary case to that effect.

[257] The fourth factor Rana stresses is that Jordanian or Palestinian law evidence is not relevant at this stage of the proceedings at least, because at this stage it is not appropriate to hold a mini-trial of merits for any claim a liquidator might bring. That, says Rana, is an answer to a submission made by the Set Aside Applicants that this Court should rule now, in the context of the matters presently before it, that the applicable law is Palestinian or Jordanian law, and that those laws do not include the concept of a trust or of a proprietary remedy.

[258] Rana submits that it would be premature for this Court to determine which law is the applicable law now, and that that would be an issue for the eventual trial of the liquidator's claim on behalf of AICO Bahrain. Rana submits that there is no basis now to determine that issue, because there has not as yet been any disclosure of documents from AICO Bahrain, Tarek, Talal or AIIC in relation to such a claim. Such disclosure, which Rana postulates should exist, would or could show the intentions of the settlor of the trust arrangement, including which law applies to it.

[259] Rana submits that this is a case which cries out for the appointment of an independent officeholder to investigate what happened to AICO Bahrain's assets, to recover them and to distribute them to those who are entitled to them.

[260] She points out that an order for the appointment of a liquidator is resisted by the very individuals (Tarek and Talal) and the company, AIIC, who would appear to be responsible for committing the fraud and dissipating the assets of AICO Bahrain.

[261] Rana contends that Lama should not be treated as a neutral outsider, but rather as someone who has benefited from the fraud perpetrated by Tarek, with Talal's assistance. The benefit Rana

identifies is that in 2023, Tarek, Talal and Lama received dividends from APIC in the same proportion as their shareholdings in AICO Bahrain (whilst Rana received nothing). Lama also voted for the liquidation of AICO Bahrain. Thus, contends Rana, Tarek, Talal, and Lama's opinion as to whether a liquidator should be appointed should be given little or no weight.

[262] In this regard, Rana relies upon the English case of **Re Hawkwing PLC**:⁹¹

"Where the majority of creditors oppose a winding up petition or administration application the Court will be astute to enquire into the views of the majority and to consider whether they are commercially well-founded."

[263] Moreover, Rana relies also upon the English High Court case of **Re Demaglass Holdings Ltd**,⁹² where Justice Neuberger, as he then was, stated:

"It is not enough if the majority of creditors oppose the making of a winding up order in the normal case. The court must also be satisfied that they have good reason for refusing to wind up the company."

[264] Rana contends that Bahrain is not a forum that is available to her. For factual reasons ventilated in a confidential, closed, session, Rana cannot travel to Bahrain to conduct proceedings there; nor is it open to her to conduct Bahrain legal proceedings remotely; nor can she, in her personal circumstances, provide a Power of Attorney to another for that person to conduct proceedings in Bahrain on her behalf.

5.6 Discussion on discretion

[265] In my respectful judgment, Rana has the better of the argument on discretion.

[266] I accept her submission and evidence that she cannot conduct legal proceedings in Bahrain.

[267] The Set Aside Applicants argue that the Court should only exercise its discretion to appoint a liquidator over a foreign company if there would be a benefit to the company's creditors, and if, as with AICO Bahrain, there are no creditors, the Court should not exercise its discretion. There are

⁹¹ [2023] BCC 556 at paragraph [73] (ICC Judge Barber).

⁹² [2001] 2 BCLC 633 at paragraph [23] (Neuberger J.).

flaws in this argument. The first is basic. The terms of IA 2003 do not in terms limit the Court's discretion to appoint liquidators over foreign companies to cases where the company is insolvent, or where it has creditors. A second, and indeed major and far-reaching flaw, is that a technical argument such as this ignores that the Court is concerned to use its discretion to serve the interests of justice. In the temporal legal sphere, the 'interests of justice' simply means rendering unto others what is due to them according to law. That includes facilitating the investigation and, if appropriate, the remedying of what appears on the evidence to have been a high value and serious fraud on at least two members of the foreign company (Rana and Mrs. Murad). Sight must not be lost of the interests of justice, which is the Court's overarching concern.

[268] This overarching concern also applies to the Set Aside Applicants' argument that the Court should dismiss the liquidation application because the majority shareholders (Tarek, Talal and Lama) oppose the liquidation. In this case, the Court is not simply concerned with the merits, prudence, or reasonableness of a commercial decision taken by shareholders. It is concerned with an alleged serious fraud, which the majority shareholders appear to have perpetrated, assisted, and/or benefited from, and which, for obvious reasons, they do not want investigated and undone.

[269] I am persuaded by Rana's evidence that Tarek is not the only one implicated in the alleged fraud – Talal appears to have assisted Tarek in perpetrating it, and Lama did not only vote for AICO Bahrain's original liquidation, she has derived subsequent financial benefit from it through dividends from APIC in the proportion of her shareholding in AICO Bahrain. So, it comes as no surprise that Tarek, Talal and Lama oppose Rana's application for the appointment of a liquidator: they have a strong self-interest in opposing this. It would be wrong of this Court to accord greater weight to the wishes of those who have perpetrated an alleged fraud, and who have derived benefit from it, than to the wishes of the putative victims of the alleged fraud. Administering justice is not an exercise in democracy; the will of the majority does not trump discernment of right and wrong, truth and falsehood, procedural fairness and substantive justice. I accept the authorities relied upon by Rana, which are to the effect that the views of persons in the position of Tarek, Talal and Lama should be accorded little or no weight.

- [270] Whilst I accept that the course of action proposed by Rana will involve considerable cost all round, at the same time, the interests of justice would not be served by allowing what appears to be a serious and high value fraud to remain un-investigated and unchallenged.
- [271] By the same token, I do not forget that before the liquidation of AICO Bahrain can meaningfully proceed, the liquidator will have to succeed with the claim on behalf of that company. Tarek, AIIC, and any other interested party will have a fair opportunity to persuade the Court, at a trial, of their case that the fraud Rana alleges did not occur.
- [272] Equally, the liquidator would be at liberty to bring claims against Rana (using legal practitioners different from those of Rana) to recover any APIC Shares, or their value, which Rana might have obtained contrary to the beneficial interest of AICO Bahrain.
- [273] I am not persuaded by the Set Aside Applicants' argument that Rana is pursuing her application for a collateral purpose, in order to secure funding for Rana's other legal proceedings. There is no direct evidence for this, nor, indeed, strong indirect evidence. Even if that might be her purpose, this does not detract from the fact that she appears to be a victim of a serious, high-value fraud, with a viable cause of action, which, in justice, she should be permitted to pursue. What she intends to do with any proceeds is, to my mind, beside the point.
- [274] I accept Rana's argument that it is premature to determine what law applies to the trust, or similar arrangement, that she alleges Tarek and/or AIIC hold the APIC Shares on for the benefit of AICO Bahrain. That is because it will be an issue for trial of a claim brought on behalf of AICO Bahrain by a liquidator, after disclosure. Documents then disclosed might reveal what that law is, obviating an inquiry into which jurisdiction the trust arrangement has its closest connection. Equally, such documents might reveal more precisely the nature of such a trust, or similar arrangement. The Set Aside Applicants have sought to fix the Court's attention upon looking for a 'trust' in the strict English law of trusts sense of that term, but it would in my respectful judgment be too tunnel-visioned to do that, in the international context of the matter before the Court. What, precisely, is the arrangement we are dealing with is something which warrants further investigation.

[275] For the reasons identified by Rana, I am satisfied that she crosses the threshold for invoking the Court's discretion under section 163 of IA 2003.

[276] The countervailing considerations thus far proffered by the Set Aside Applicants do not outweigh the interests of justice, which support Rana's case that the Court should exercise its discretion in her favour.

6. Full and Frank Disclosure and Fair Presentation

[277] In the Set Aside Applicants' Notice of Application, they relied upon three arguments that Rana had failed to give full and frank disclosure and a fair presentation at the *ex parte* hearing stage:

"a. Rana failed to reveal the deeply conflicted nature of her position with that of the Provisional Liquidator, and the law firm which represents both the Provisional Liquidator and Rana.

b. Rana's evidence about the beneficial ownership of the APIC shares is similarly misleading.

c. Rana's evidence about Lebanese and Jordanian land is also misleading."

[278] In their skeleton for this hearing, the Set Aside Applicants expanded the number of alleged breaches of Rana's duty to nine headline points, with several subsidiary points.

[279] At the hearing, the Set Aside Applicants did not advance all of these, but relied upon the following five heads:

(1) Rana presented herself as a member of AICO Bahrain on the basis that 4,000 shares- previously held by Omar and Mrs. Murad had vested in her. They complain that it was a framing of the case which was designed to persuade the court to intervene. Moreover, what was not made clear was any intention by Rana to change her position in this jurisdiction from that which she has taken in Quebec legal proceedings.

(2) There was a general failure on Rana's part to address the Court as to the difficulties facing Rana's claim as to the existence of the alleged trust, although she did bring to the Court's attention that Tarek and AIC deny the existence of such an alleged trust. Had Rana done so, the Court might have considered it to be a rather weak claim.

- (3) Rana failed to explain the inconsistency between her claim that Tarek was holding APIC Shares on trust for AICO Bahrain and her acquisition of some of those shares from Tarek pursuant to the 2017 Agreement. The Set Aside Applicants observe that this failure was compounded by Rana proffering an unworkable explanation for having done so and that she changed her story in this regard. They submit these shortcomings are directly relevant to the question whether the Alleged Trust exists at all.
- (4) Rana failed to draw the Court's attention to direct contemporaneous evidence from APIC's CFO that shows APIC was treating its shares as both legally and beneficially owned by Tarek, a failure exacerbated by Rana's concentration on preceding emails in an attempt to show that the opposite was true.
- (5) Rana gave a false account concerning certain Lebanese real estate, previously sold by Omar, for which the proceeds were passed to Rana, but which continued to be shown in AICO Bahrain's accounts as owned by that company. That failure was directly relevant to the issue whether the accounts are a reliable source of evidence for the existence of the alleged trust. Rana here was taking a diametrically opposite position in the BVI from her position on the matter in English legal proceedings.

[280] The parties were in agreement as to the relevant legal principles. The Set Aside Applicants summarised the principles as follows, applying *dicta* from the English High Court case of **Re OJSC Ank Yugraneft v Sibir Energy PLC**⁹³ as follows.

- (1) Applicants for provisional liquidation owe a duty of full and frank disclosure in the same way as an applicant for a freezing order.

⁹³ [2010] BCC 475 at paragraphs 67 to 75, 104, 107 to 108 (Christopher Clark J.).

- (2) Where it is sought to appoint a provisional liquidator who will then pursue further litigation, the applicant owes a duty to give full and frank disclosure of all matters relevant to that further litigation.
- (3) Where there has been a substantial breach of the duty of full and frank disclosure, the court strongly inclines towards setting aside the appointment of the provisional liquidator.
- (4) Furthermore, the court does not simply replace the (set aside) provisional liquidation order with a final liquidation order (even if such an order is otherwise justified), since that will allow the applicant to keep the advantage it obtained by the appointment of the provisional liquidator. Rather, the applicant is required to commence fresh proceedings.

[281] The Set Aside Applicants also rely upon the treatment of the principles in the ECSC Court of Appeal case of **Chia Hsing Wang v XY**.⁹⁴

[282] I pause here to note that the principles are well settled in this jurisdiction. They were enunciated in **Commercial Bank – Cameroun v Nixon Financial Group Limited**.⁹⁵

[283] I should add here that it must be recalled that there remains a balance to be struck. In paragraphs 62 – 63 of **Congentra Ag v Sixteen Thirteen Marine SA ('The Nicholas M')**,⁹⁶ the English High Court explained that the purpose of the rule is to deprive a wrongdoer of an advantage improperly obtained and to serve as a deterrent to others to ensure they comply with their duty of full and frank disclosure and fair presentation on an *ex parte* application. Even if there has been material non-disclosure, though, the court has a discretion whether or not to discharge an order obtained *ex parte* and whether or not to grant fresh injunctive relief. Discharge of an order is not automatic. It would only be in exceptional circumstances that the court would not discharge an order where there had been deliberate non-disclosure or misrepresentation. The overriding question for the court is what is in the interests of justice. In **Brink's Mat Ltd v Elcombe**,⁹⁷ the English Court of Appeal was

⁹⁴ BVIHCMA 2022/0055 (unreported, delivered 6th June 2023) at paragraph [219] (Farara JA (Ag.)).

⁹⁵ HCVAP 2011/005 (unreported, delivered 6th June 2011) at paragraph [17] (Bennett JA (Ag.)).

⁹⁶ [2008] EWHC 1615 (following *Brink's Mat Ltd v Elcombe* [1988] 2 Lloyd's Rep 602).

⁹⁷ [1988] 2 Lloyd's Rep 602.

prepared to continue the order on the basis that even if the additional information had been disclosed, the judge at the *ex parte* hearing would have made the same order on the same terms. Moreover, this judge-made rule should not be allowed, itself, to become an instrument of injustice.

[284] Moreover, as Rana observed, in **Mex Group Worldwide Ltd v. Ford**,⁹⁸ the English Court of Appeal endorsed the following *dictum*⁹⁹ of Toulson J (as he then was) in **Crown Resources AG v. Vinogradsky**.¹⁰⁰

“... where facts are material in the broad sense in which that expression is used, there are degrees of relevance and it is important to preserve a due sense of proportion. The overriding objectives apply here as in any matter in which the Court is required to exercise its discretion. ... I would add that the more complex the case, the more fertile is the ground for raising arguments about non-disclosure and the more important it is, in my view, that the judge should not lose sight of the wood for the trees. ... In applying the broad test of materiality, sensible limits have to be drawn. Otherwise there would be no limit to the points of prejudice which could be advanced under the guise of discretion.”

[285] The English Court of Appeal further observed:¹⁰¹

“121. In essence, if a subsequent court considers that an *ex parte* order has or may have been obtained in circumstances where important information should have been but was not disclosed to the judge, it may well set that order aside, but the failures must be material and any assessment of the alleged failures must be proportionate. Ultimately, in considering whether to discharge the order and/or to renew it, the court will always be guided by the interests of justice.”

6.1 Rana’s position on alleged material non-disclosure

[286] Rana took the following position in relation to alleged breach of her duty of full and frank disclosure and fair presentation:

- (1) This is not a case concerning material non-disclosure. The main thrust of this case has been to focus upon other disputed areas, and the bulk of the time and effort invested on both sides have been to concentrate upon those. The Set Aside Applicants have,

⁹⁸ [2024] EWCA Civ 959 at [120] (Coulson LJ).

⁹⁹ Unreported, 15th June 2001.

¹⁰⁰ Unreported, 15th June 2001.

¹⁰¹ [2024] EWCA Civ 959 at [121] (Coulson LJ).

however, brought along a fluid cloud of objections, in the opportunistic hope that they can derail the provisional liquidation and notification injunction applications through technical arguments. Their raising, initially, three material non-disclosure arguments (of a rather esoteric nature, Rana's learned Counsel suggested), expanding it in their skeleton argument to seven heads and reducing it to five in oral submissions, is of a piece with such an approach.

- (2) Alleged material non-disclosure should be seen in the context of an *ex parte* hearing which occupied the bulk of, in all, some three days, in which Rana's learned Counsel took great care to try to cover the material disclosure points.
- (3) In relation to the first of the original alleged material non-disclosures, which concerned an alleged conflict between Rana and the Provisional Liquidator, Rana submitted that it had been necessary that the same legal practitioners and counsel represent both Rana and the Provisional Liquidator. Otherwise, upon the Court making the order appointing the Provisional Liquidator, the proceedings would have had to be adjourned so that a new legal team could be instructed by him, in order to apply for a notification injunction. The delay and duplication of expense would have been wholly disproportionate, contrary to the overriding objective of the Civil Procedure Rules and unfair on both Rana and AICO Bahrain: which needed urgent interim relief to secure the APIC Shares. Rana argued moreover that if the Provisional Liquidator should identify a potential claim against her, which she acknowledged was and is possible, the Provisional Liquidator could instruct conflict counsel (which the Provisional Liquidator has since done).
- (4) In relation to the second original ground – that Rana's evidence about the beneficial ownership of the APIC shares is similarly misleading – Rana maintains that her position was supported by documentary evidence whilst, in contrast, Tarek's rests largely upon mere assertion.
- (5) In relation to the third original ground – that Rana's evidence about Middle Eastern land is also misleading – Rana argues that the evidential position regarding the land is both disputed and confusing. It is apparent that Rana and Tarek have different understandings not only what land formed part of the accounts but also what became of it. This, submitted Rana, is therefore precisely the kind of issue contemplated at paragraph [7](viii) of

Tugushev v. Orlov (No. 2),¹⁰² where the alleged non-disclosure rests on issues that will be in dispute in the action, in respect of which the court must be astute to avoid descending into a mini-trial on the merits.

- (6) Moreover, Rana urged that a sense of due proportion is required. She submitted that it appears that Tarek is seeking to suggest that his allegations about Middle Eastern land should somehow cast doubt on whether the audited accounts of AICO Bahrain were accurate, when they recorded that AICO Bahrain owned the APIC Shares. This, says Rana, is a non-sequitur. Moreover, Talal signed the 2015 and 2016 accounts himself, the latter of which were signed some months after Omar's death. Moreover, there is and was extensive contemporaneous evidence showing that Tarek held the APIC Shares on trust for Rana. This was addressed in Rana's affidavit evidence and in oral and written submissions. This is not a material matter; it is a peripheral and satellite complaint about one aspect of the extensive evidence against AIC.
- (7) Rana doubled down on her case that Tarek was holding the APIC Shares upon trust. She pointed to documentary evidence and correspondence, sent shortly after 15th January 2008 when AICO Bahrain supposedly transferred the APIC Shares to Tarek, which shows Tarek pressing for a redistribution of shares in AICO Bahrain to ensure the Siblings should each receive a more equitable share and alleviate that fact that Tarek claimed that without such a redistribution, he would be left 'literally penniless'. That evidence, submitted Rana, is incompatible with Tarek having taken the transfer of APIC Shares, worth approximately US\$16 million, as well as being tangible and tradable, for his own benefit, a short time earlier.
- (8) Rana also took the Court to annual reports for APIC for 2011, 2012 and 2016, which referred to 'Aggad Investment Company' as a 'major shareholder' of APIC. Rana pointed out that nowhere do such annual reports refer to Tarek as 'major shareholder', which is what he would be had he been the legal and beneficial owner of the APIC Shares. Rana observed that Tarek has claimed that Aggad Investment Company refers to AICO Saudi, but, Rana explained with reference to APIC's 2012 annual report, no mention of AICO Saudi is to be found therein.

¹⁰² [2019] EWHC 2031 (Comm) (Carr J.).

6.2 Discussion on alleged material non-disclosure/breach of duty of full and frank disclosure

- [287] The Set Aside Applicants' summary of the legal principles relating to material non-disclosure at an *ex parte* hearing did not advert to the need for the Court to maintain regard for the overall interests of justice and due proportion, mindful that the judge-made rule in this area of the law should not end up being used as an instrument of injustice.
- [288] Seen in the round, the Set Aside Applicants' complaints largely distil down to an allegation that Rana breached her duty of fair presentation. This is an all too easy, indeed facile, argument for any discharge applicant to make in a complex commercial matter. An *ex parte* hearing such as those before this Court, which covered some three days, cannot realistically or sensibly be required to turn into a marathon mini-trial, with Counsel for the applicant rehearsing all the arguments the respondent might think up, and giving all the emphasis that the respondent's Counsel might give the details. The reality is that respondents' Counsel is always better placed than the applicants' Counsel to run the respondent's defence. The Court must take care not to allow the rule to be taken to extremes. That is particularly so in a case such as this, which has seen each side presenting a seemingly endless procession of details and subsidiary complexities, only a small fraction of which has been included in this judgment.
- [289] Then, it would be naïve to suppose that in a complex commercial case such as this, all the facts will support one side across the entire material chronology. Part of the complexity of this matter is that various positions are arguable. Equally, both sides have changed their positions across jurisdictions and over time. The essence of a good arguable case is that a party may have a good arguable case, even though this may not necessarily have more than a 50% chance of success.
- [290] The Set Aside Applicants snatch at aspects of Rana's presentation to paint a picture of her as someone who is changing arguments for the sake of convenience. They seek to catch Rana out so that they can ride the opportunity to have the entire provisional liquidation order and notification injunction set aside, on the basis that she has slipped up on her presentation of some points. To my mind that would be using the rule as an instrument of injustice and to lose sight of the need to ensure the interests of justice will be served.

[291] The interests of justice here circulate around one, sole, central issue: did Tarek hold the APIC Shares for the benefit of AICO Bahrain. Rana has a library of contemporaneous documents, spanning a considerable period of time, which support such an interpretation. Such support is not, in its totality, direct, nor entirely crystal clear, nor entirely supportive of her position, but it does provide considerable support for Rana's interpretation. Tarek's explanation comes down to his father, Omar, wanting to show assets such as the APIC Shares as assets of AICO Bahrain in its financial statements (including its audited financial statements, audited by Ernst & Young) artificially to swell AICO Bahrain's creditworthiness. As I have explained, Tarek's explanation represents a tall order for the Court to believe. At this extremely early stage of proceedings, this story cannot be dismissed as incredible. The Court cannot discount that in the commercial context of the Middle East, and possibly its trading and other practices, such ambiguous ownership and benefit could be commonplace. That explanation of deliberate falsification also appears to be incompatible with the Set Aside Applicants' case that the audited financial statements erroneously (i.e. mistakenly) included the APIC Shares. At this stage of the proceedings, this Court cannot form a view of what the true position is.

[292] What we have therefore, is an apparent serious fraud case which cries out for further investigation. The investigation could go either way, nowhere, or in a completely different direction. It would be wrong, though, and contrary to the interests of justice, for an investigation to be stifled by reason of a technical breach of the duty of full and frank disclosure and fair presentation raised by the alleged perpetrator and his assistant against the alleged victim.

[293] Few of the Set Aside Applicants' complaints go to the core issue. They are generally peripheral. The closest they get is to cast doubt upon the accuracy of the audited financial statements because, say the Set Aside Applicants, they continued to contain real estate which had already been sold off, and part of the proceeds had been paid to Rana. Rana's learned Counsel correctly submitted that this was a non-sequitur, even if the financial statements did continue to show such land. I agree. Shares and land are different. Absent evidence from the auditors, we cannot know why the accounts show what they do. Evidence from the auditors is currently totally missing. This represents a gaping hole in the Set Aside Applicants' case. There may be explanations why land was included, which differs from why APIC Shares were included. The Set Aside Applicants have

suggested that there was a family history of personal assets being booked as assets of AICO Bahrain. That may be so, but this does not detract from the *prima facie* appearance of a massive and serious fraud having been committed by Tarek, with the assistance of Talal and Tarek's company AIIIC, and to the benefit of Lama, against Rana and Mrs. Murad. It is this apparent fraud which reasonably requires to be investigated. Rana has a good arguable case for the commission of such a fraud. This is not 'blatant Micawberism' as the Set Aside Applicants have submitted. I am entirely satisfied that the interests of justice will be satisfied by an orderly liquidation of AICO Bahrain under the auspices of this BVI Court, and that they would not be satisfied by discharging the PL Order and Notification Injunction on grounds of material non-disclosure.

[294] In short, I do not think that any breach of Rana's duty of full and frank disclosure and fair presentation was deliberate. I was the Judge who heard the (seemingly interminable) three-day *ex parte* hearings. If anything, Mr. Weekes, KC, for Rana, was overly scrupulous to try to cover all the material bases.

[295] I also do not think that omissions on Rana's part were so material that they warrant discharge of the *ex parte* orders. I am satisfied that even with the Set Aside Applicants' vigorous and highly detailed presentation, the overall situation still warrants the orders obtained by Rana.

[296] This was not a case where Rana has deliberately, or in some other way culpably, misled the Court through some key omission or distorted presentation. Usually when that happens the breach is clear enough. Here that has not happened. This is the typical case where an imaginative respondent has identified and seized upon peripheral points and waved them like trophies to clamour for a discharge. It is all too easy for a Judge to succumb to such pressure, particularly when presented by an excellent advocate. But the overarching interests of justice must be robustly kept in view and upheld.

[297] I am therefore not persuaded to accede to the Set Aside Applicants' pleas to discharge the *ex parte* orders for breach of Rana's duties of full and frank disclosure and fair presentation.

7. The Notification Injunction

- [298] The Notification Injunction was an injunction made by this Court on 11th March 2024 upon an *ex parte* application of the Provisional Liquidator appointed over AICO Bahrain. The Respondent to the Notification Injunction was AIIC.
- [299] AIIC seeks to have the Notification Injunction set aside. The Provisional Liquidator seeks to continue it.
- [300] The essence of the Notification Injunction is to compel AIIC to give AICO Bahrain, through its Provisional Liquidator, two weeks' prior notice of any intended dealing with the APIC Shares. Such notice would give the Provisional Liquidator an opportunity (albeit a tight one) to challenge any such dealing to prevent dissipation, or further dissipation, of the APIC Shares and dividends deriving from them. The Notification Injunction itself does not forbid dealing in the APIC Shares. The legal basis for the Notification Injunction is that it is a form of proprietary injunction, on the basis that AICO Bahrain, through its Provisional Liquidator, claims that the APIC Shares beneficially belong to AICO Bahrain. By logical extension, AICO Bahrain also claims ownership of dividends paid in respect of the APIC Shares to AIIC.
- [301] Ancillary to the Notification Injunction were disclosure obligations on the part of AIIC. Information provided by AIIC pursuant to such disclosure obligations showed that AIIC received cash dividends in respect of the APIC Shares. Moreover, that Tarek/AIIC caused such dividends to be paid on to Rana's Siblings, but not to Rana, in the proportions of the Siblings' shareholding in AICO Bahrain – a fact which Rana and the Provisional Liquidator contend supports their case that Tarek and now AIIC have at all times held the APIC Shares for the benefit of AICO Bahrain.
- [302] As part of the Set Aside Applicants' Discharge Application, AIIC challenged the Notification Injunction 'root and branch', to borrow a description used by Rana's learned Counsel. This is also apparent from the parties' skeleton arguments.
- [303] At the hearing, though, only a very small portion of the overall time used addressed the Notification Injunction directly.

- [304] During the hearing the only specific attack levelled at it from the Set Aside Applicants concerned the justice and convenience of granting or continuing the Notification Injunction.
- [305] The Set Aside Applicants adverted to a representation made by Rana that the Notification Injunction causes no prejudice, and that this is a factor which weighs in favour of its continuation. They submitted that the reality is different. They referred to an Affidavit of Mr. Tareq Shakaa, a director and Vice Chairman of APIC filed on 27th November 2024. This had been adduced in support of an application by APIC *inter alia* to be permitted to re-domicile out of the BVI into Palestine. That application is not presently before the Court. In that Affidavit, Mr. Shakaa explained why APIC should be permitted to re-domicile from the BVI to Palestine, citing numerous reasons and factors. At paragraphs 37 and 38, Mr. Shakaa stated that the combined effect of the Freezing Order granted on 12th October 2023 and of the Notification Injunction was to prevent re-domiciliation because this would amount to dealing in APIC shares prohibited under those orders.
- [306] Rana argued that there is no proper basis for the challenge to the Notification Injunction. Rana acknowledges that before granting an injunction the Court must be satisfied that the likely effect of the injunction will be to promote the doing of justice overall and not to work unfairly or oppressively. She avers that the interests of both parties must be taken into account, as must the likely effects of an injunction on the defendant: **Les Ambassadeurs Club Limited v Albluewi** ¹⁰³
- [307] As regards the balance of convenience test, Rana acknowledges that '[t]he basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other': see **National Commercial Bank Jamaica v. Olint Corp Ltd.** ¹⁰⁴
- [308] Rana herself maintains that the effect of APIC's intended re-domiciliation would be to remove the value of AIIIC's assets in the jurisdiction below the level frozen in the Damages Claim and deal with the shares that are the subject of the Notification Injunction.

¹⁰³ [2020] EWHC 1313 (QB) at [63] (Freedman J.).

¹⁰⁴ [2009] UKPC 16; [2009] 1 WLR 1405 at [17] (Lord Hoffmann).

[309] But, submits Rana, the Notification Injunction causes no prejudice, in circumstances where (1) AIIIC is a holding company and has not suggested that it has any kind of day-to-day business, let alone business that is impacted by the injunction; (2) AIIIC is a private limited company owned (it is claimed) solely by Tarek. There is therefore no risk of adverse publicity arising from the injunction and none is suggested; and (3) the injunction is in 'notification' terms only: if any genuine business transaction is contemplated or required, notice can be given.

7.1 Discussion on challenge to the Notification Injunction

[310] The challenge to the Notification Injunction is not brought by APIC. It is brought by AIIIC. AIIIC relies on the Affidavit of Mr. Shakaa to say that the Notification Injunction has been causing prejudice.

[311] In my respectful judgment that is incorrect. Firstly, there is no evidence of prejudice to AIIIC, and there could be none, as Rana has correctly submitted.

[312] Then, it is to be noticed that Mr. Shakaa conflates the effect of the Freezing Order with the effect of the Notification Injunction. It is the Freezing Order which prevents dealing in APIC shares, not the Notification Injunction. Mr. Shakaa does not point to any prejudice caused to APIC by the requirement that AIIIC should give two weeks' notice of proposed dealings in APIC shares. Indeed, he cannot do so, because there could be no such prejudice. That is why, in order to run his argument, he has to take the Notification Injunction together with the Freezing Order.

[313] It is beyond the scope of the applications presently before this Court to consider and determine whether APIC should be allowed to re-domicile from the BVI to Palestine, despite, or as an exception to, the Freezing Order.

[314] I am satisfied that the Notification Injunction itself causes no prejudice to anyone. Conversely, it has proved effective in causing disclosure of information about transactions which affect, or could affect, the value of AICO Bahrain, and has thereby assisted with policing the Freezing Order. The balance of convenience comes down in favour of maintaining it.

8. Disposition

[315] For the reasons given above, I am persuaded of the following conclusions.

- (1) The Set Aside Application is to stand dismissed;
- (2) The Discharge Application is to stand dismissed;

[316] Additionally:

- 1. Rana's application for the appointment of a liquidator over AICO Bahrain, by an Amended Originating Application filed on 19th November 2024;
- 2. Rana's application filed on 20th March 2024 to continue the PL Order in respect of the AICO Bahrain;
- 3. the application filed on 20th March 2024 by AICO Bahrain to continue the Notification Injunction against AIIC

are granted. The result in these three application flows as the corollary to dismissal of the Set Aside and Discharge applications.

[317] Consequential matters, including issues pertaining to costs, stand adjourned.

[318] I take this opportunity to thank both sides' learned Counsel for their assistance.

Gerhard Wallbank
High Court Judge

By the Court

Registrar