Neutral Citation Number: [2018] EWHC 791 (Comm)

CL-2014-000135

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF
ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Rolls Building, Fetter Lane
London, EC4A 1NL

Date: 12 April 2018

Before:

THE HONOURABLE MR JUSTICE BRYAN

BETWEEN:

JSC BM BANK
(a company incorporated in Moscow)

Claimant

and

(1) VLADIMIR ABRAMOVICH KEKHMAN
(2) JFC GROUP HOLDING (BVI) LIMITED
(a company incorporated in the British Virgin Islands)
(3) WHILM MANAGEMENT LIMITED
(a company incorporated in the British Virgin Islands)
(4) GAROLD PROJECTS LIMITED
(a company incorporated in the British Virgin Islands)

Defendants

Alan Gourgey QC and **Adam Kramer** (instructed by **PCB Litigation LLP**) for the **Claimant**
James Stuart and **William Skjott** (instructed by **Fishman Brand Stone**) for the **First Defendant**

Hearing dates: 23, 24, 25, 26, 30, 31 October, 1, 3, 6, 7, 8, 9, 13, 14, 15, 20, 21 November 2017, 21 February 2018

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE BRYAN

THE HONOURABLE MR JUSTICE BRYAN:

A. INTRODUCTION

A1. The parties and the claims

1. In autumn 2011 the Claimant ("Claimant"/"C"), then known as "Bank of Moscow" and part of the VTB Bank Group, lent US$140 million plus □305,732,000 (equivalent in total to around US$150 million) (the "Loans") to JFC Group ZAO ("JFC Russia") under credit facility agreements dated 2 September 2011 and 14 October 2011 (the "Facility Agreements"). JFC Russia was a Russian company in the JFC ("Joint Fruit Company") group of companies ("JFC Group"), which group, though principally based in Russia, carried on a global business in the production, distribution and sale of fruit (especially bananas).

2. The First Defendant, Vladimir Abramovich Kekhman ("Mr Kekhman"/"D"), is a Russian citizen and the founder of the JFC Group. The Second Defendant, JFC Group Holding (BVI) Limited ("JFC BVI"), a BVI company, is the ultimate holding company of the JFC Group. Its wholly owned subsidiaries include the Third Defendant, Whilm Management Limited ("Whilm") and the Fourth Defendant, Garold Projects Limited ("Garold"). JFC BVI, Garold and Whilm ("the BVI Companies") each guaranteed JFC Russia's liabilities under the Facility Agreements (the "Guarantees").

3. The JFC Group of companies was founded by Mr Kekhman in around 1994 or 1996. By September 2011, it consisted of a large number of companies incorporated in Russia, Cyprus, BVI and South America. At all material times, Mr Kekhman owned, through his foundation, 70% of the shares in JFC BVI. Mrs Yuliya Zakharova ("Mrs Zakharova"/"YZ") and Mr Andrey Afanasiev ("Mr Afanasiev"/"AA"), held the remaining 30% of the shares. C alleges (but Mr Kekhman very much denies) that Mrs Zakharova and Mr Afanasiev were at all material times Mr Kekhman's lieutenants who acted in accordance with his directions and instructions, and that they would not do anything of substance in

relation to the business of JFC Group without Mr Kekhman's knowledge and approval.

4. The BVI Companies are insolvent and in administration or liquidation. JFC Russia defaulted on the Facility Agreements and the BVI Companies breached their Guarantees. The BVI Companies were never served in these proceedings, there having been summary judgment against them on 16 November 2012 in earlier proceedings in the Commercial Court for over US$144.5 million plus □328 million, which judgment remains unsatisfied (other than recoveries in the amount of US$5,895,278.81). Mr Kekhman himself was adjudged bankrupt in October 2012 and discharged from his bankruptcy in October 2013.

5. In this action C makes claims in tort, under Russian law, against Mr Kekhman, the primary claim being essentially in deceit in respect of fraudulent misrepresentations made to C in the context of C's agreement to provide the Loans to JFC Russia. C also has an alternative claim in respect of an alleged wrongful dissipation of assets conspiracy said to have been perpetrated by Mr Kekhman and others whereby it is said that Mr Kekhman caused dissipation of assets of the JFC Group and diversion of business away from the JFC Group by Garold and JFC Russia from early September 2011, in each case (it is alleged) in favour of companies, which it is alleged are beneficially owned by Mr Kekhman, so as to defraud C as a creditor of both JFC Russia and of the various companies within the JFC Group (including the BVI Companies). The quantum of the deceit claim against Mr Kekhman is the amount advanced (US$140 million plus □305,732,000) less recoveries (of US$5,895,278.81) plus interest (to be quantified). The amount of the dissipation claim is US$18,531,000.

6. More specifically, C's primary claim in these proceedings is for damages under Articles 1064 and 1080 of the Civil Code of the Russian Federation (the "Russian Civil Code") as a result of the fraudulent misrepresentations made to C by JFC Russia staff on what are alleged to have been the instructions of, and with the knowledge and agreement of, Mr Kekhman. It is alleged that Mr Kekhman instructed Mrs Zakharova as to the making of the false representations with the intention of inducing C to lend to JFC Russia. Mrs Zakharova in turn instructed the JFC staff, who made the false representations

on which C relied. It is said that C was thereby induced to enter into the loan agreements and provide the Loans to JFC Russia.

7. The fraudulent representations comprise:

(1) The "Garold Representations" that the financial figures provided to C in relation to Garold (and the JFC Group of which it formed part) were true, when in fact the revenue and accounts receivable were fraudulently inflated by amounts in excess of over US$200 million (as pleaded at paragraphs 12A-K of the Particulars of Claim).

(2) The "Security Representation" that the shares in JFC BVI were free of any pledge, when in fact they had been pledged to another bank, namely Sberbank (as pleaded at paragraphs 13A to K of the Particulars of Claim).

8. C's case is that both sets of representations were made at the direction, and with the knowledge, of Mr Kekhman, and Mr Kekhman knew them to be false. If C proves such matters, and C's reliance on one or other (or both) of the representations, it is common ground between the parties, based on the Russian law expert evidence of both C's expert Mr Kulkov and Mr Kekhman's expert Mr Holiner, that Mr Kekhman would be liable to C under Articles 1064 and 1080 of the Russian Civil Code.

9. Each set of representations is independent in the sense that it is unnecessary for C to succeed in its claim for misrepresentation that it proves its case in respect of both sets of misrepresentations. If, for example, C succeeds on its case on the Garold Representations, it will be entitled to recover the same loss as it would if it succeeded on the Security Representation, or on both sets of representations. Of course, in order to be successful in relation to either misrepresentation claim, C would have to prove all the necessary elements of that claim.

10. Mr Kekhman says that he was not involved in the negotiations for the Facility Agreements. He admits that Garold's revenue and assets were artificially inflated and that the (fraudulent) Garold Representations were made. He maintains that he had no involvement in, or knowledge of, such matters. He does not admit that C relied upon the Garold Representations when deciding

whether to lend monies to JFC Russia. As to the Security Representation, Mr Kekhman reiterates his case that he was not party to the negotiations for the Facility Agreements. He denies that the Security Representation was false and does not admit that it was made. In any event he denies that he knew of any such representation or directed or agreed that it be made. Furthermore, he denies, in any event, that the Claimant relied upon the Security Representation when deciding whether to lend monies to JFC Russia. Accordingly, he denies any liability in respect of the Garold or Security Representations.

11. C's alternative claim against Mr Kekhman under Articles 1064 and 1080 of the Russian Civil Code is in relation to dissipations by Garold and JFC Russia of assets, which were carried out from early September 2011 onwards. It is C's case that Mr Kekhman caused dissipation of assets of the JFC Group and diversion of business away from the JFC Group, in each case, it is said, in favour of companies which it is said are beneficially owned by D, so as to defraud C as a creditor both of JFC Russia and of the various guarantor companies within the JFC Group (including JFC BVI, Garold and Whilm) (as advanced at paragraphs 30 to 33 and 49 to 50 of the Particulars of Claim). It is said that the result of such conduct was to reduce substantially the recoveries that C would otherwise have made by enforcing the Loan Agreements and the Guarantees. Such loss is quantified by C as some US$18,531,000.

12. The alleged dissipation involved many complex series of transfers between numerous companies (within the various groups of companies in which it is said Mr Kekhman was beneficially interested and controlled). The fact of the various transfers (which are identified in the first and second expert reports of C's forensic accountancy expert, Mr Egor Misiura of JSC KPMG ("Mr Misiura")) is not in dispute. It is C's case that there is no evidence that the transfers were for value and that these transfers were dissipations carried out on the instructions of Mr Kekhman with the intention of defrauding creditors including C, in favour of companies said to be beneficially owned and controlled by Mr Kekhman.

13. The dissipation claim is pleaded in terms of an unlawful means conspiracy (by reference to the elements of such a claim under English law) because at one stage such a claim was pleaded under English law. Thus it is advanced in terms of "*on*

dates unknown in or about 2011 and/or early 2012" Mr Kekhman (with the BVI Companies and/or with JFC Russia or with Mrs Zakharova) wrongfully and with the predominant intention, alternatively with the intention, to injure C by unlawful means conspired and combined together to defraud C by (a) causing the BVI Companies to dissipate their assets and (b) causing the transfer of assets and diversion of corporate opportunities out of the JFC Group with the intention to interfere with the economic interests of C by unlawful means, by making it impossible for the BVI Companies or JFC Russia to repay the monies advanced by C.

14. C's case is that on such facts (if proved) Mr Kekhman is liable to it under Articles 1064 and 1080 of the Russian Civil Code. The issues of Russian law that arise are addressed in due course below (there is a large measure of agreement between the experts on Russian law in this area although some differences remain). For his part Mr Kekhman denies that he was a party to any alleged unlawful means conspiracy.

15. By way of defence Mr Kekhman had raised two other points in relation to the claims against him:-

(1) First, in light of the credit which C says reflects the sum it has recovered against its debt from selling certain South American assets of JFC Group (US$5,895,278.81) Mr Kekhman submits that C has failed to give sufficient credit for the fruits of its enforcement against the South American assets of the JFC Group (although no formal plea of a failure to mitigate has been made).

(2) Secondly, Mr Kekhman says that if he would otherwise be liable in respect of the C's claims, he was released from such liability (except for any liability found to have arisen from his fraud or fraudulent breach of trust) upon discharge from his bankruptcy on 5 October 2013 by operation of section 281 of the Insolvency Act 1986. For its part C says that section 281 is of no assistance to Mr Kekhman as the liabilities of Mr Kekhman arose from his fraud (deceit) in relation to the Garold and Security Representations, or actual dishonesty (D's conduct in respect of the conspiracy to defraud), and as such Mr Kekhman was not released from such liability – see section 281(3) of the

Insolvency Act 1986 and *Templeton Insurance Ltd v Brunswick* [2012] EWHC 1522 (Ch) at [55].

A2. Common ground and the Agreed Facts Document

16. As a result of concessions made both before trial, and in Opening Written Submissions at the commencement of the trial, many factual issues which had previously been contentious ceased to be contentious for the purposes of C's claims in this action. In particular, a number of concessions were made in the Written Opening Submissions on behalf of Mr Kekhman from which it was apparent (as has been confirmed in closing on Mr Kekhman's behalf) that Mr Kekhman does not challenge any substantial part of the findings of C's forensic accountancy expert Mr Misiura in his two reports which identify and illustrate the Biany/Edenis/Garold frauds (as identified below) and identify specific payments of money from the JFC Group companies. In consequence counsel for the parties liaised together during the course of the trial to produce an Agreed Facts document of 6 November 2017 (the "Agreed Facts Document").

17. Following conclusion of the Agreed Facts Document there is a substantial degree of common ground, in particular so far as concerns C's deceit claim based on the Garold Representations. Thus, it is common ground between the parties, and accepted that:-

    (1) Garold's and JFC Group's stated revenue and accounts receivable as set out in the consolidated financial statements for the periods to 30.9.2010, 31.3.2010 and 31.12.2009 and in the breakdown of revenue and accounts receivable for year ending 31.12.2010 (sent by Ms Dakhina to C on 8 and 17 June 2011) were dishonestly inflated in the ways and amounts set out in Misiura 1 section 3. The overstatements in respect of revenue and receivables in the accounts for the year ended 31 December 2010 were over US$213 million and over US$198 million respectively (see Misiura 1 tables 2 to 4). As a consequence, and after adjusting for false invoices rendered by Biany and Edenis and included within costs in the accounts, the reported profit for 2010 of US$3.257 million for the JFC Group was false and the

true position was a **loss** of US$62.269 million, whilst the reported figures for 2009 are a reported profit of US$16.568 million compared to a **loss** of US$11.539 million (these figures do not appear as such in the Agreed Facts Document but they are referred to in Misiura 1 and have not been the subject of challenge).

(2) This inflation was concealed by the creation of documents purporting to evidence (fictitious) sales to customers and fictitious purchases from Biany and Edenis (both of which were controlled and operated by JFC personnel).

(3) As Garold's bank statements show, Biany and Edenis received large sums from Garold as reflected in a table "*Garold to Biany Edenis 2009-11.xls*". The sums paid to Biany and Edenis by Garold in 2009 amounted to US$54,009,785, in 2010 US$121,077,139 and in 2011 US$135,733,940 (a total of US$310,820,864). From at least August 2009 at least some of these were payments were documented by JFC as being made in return for (fictitious) services and goods from Biany and Edenis (C says that all payments to Biany and Edenis were fictitious, but Mr Kekhman maintains that Edenis may have been performing legitimate business both after and prior to August 2009 (although C's case is that Mr Kekhman has adduced no evidence as to what that was or might have been)).

(4) The inflation of figures in the JFC group companies' accounts, and payments being made to Biany and Edenis and documented as being in return for (fictitious) services, were dishonest and conducted by or under the direction of, or with the knowledge of, JFC staff including Mrs Zakharova, Mr Kasatkin and Ms Volkova.

(5) These false accounts were presented to C (by the emails from Ms Dakhina dated 8 June 2011 and 17 June 2011) when JFC Russia was applying for its US$150 million loan with the intention of deceiving C.

18. Thus, as C identifies at paragraph 14 of its Written Closing, as a result of these agreed facts many of the "*building blocks*" for the Garold Misrepresentation claim are agreed including:-

(1) The making by JFC Russia staff of the Garold Representations.

(2) The falsity of the representations arising from the dishonest production of false accounts (the precise period of time over which this was done is not admitted, though it is admitted it was at least in the period mid 2010-mid 2011).

(3) Mrs Zakharova's knowledge as to the falsity of the accounts.

(4) The intention of JFC Russia through the presentation of the false accounts to induce C to agree to advance the loans.

19. Mr Kekhman *"does not admit that [C] relied upon the Garold Representation when deciding whether to lend monies to JFC Russia*" (Kekhman Written Closing paragraph 7). The question of C's reliance will be addressed in due course below. However, it can be noted at this point that Mr Kekhman did not adduce any positive case that C did not rely, there is documentary evidence as to what documentation C considered and referred to contemporaneously, and there is factual evidence before me from two witnesses called on behalf of C (namely Mr Shatalov and Mr Nikishaev) as to C's reliance on the (false) accounts when deciding to lend.

20. The key matters that remain in dispute on the Garold Representations claim are whether Mr Kekhman knew of the falsity of the accounts, whether he knew false accounts were being presented to C, and whether he gave Mrs Zakharova instructions that false accounts should be provided to C as part and parcel of the application for a loan.

21. In relation to the Security Representation, Mr Kekhman's agreement, in the Agreed Facts Document, is more circumscribed:-

"If (which is disputed) the Security representation was made, it was made to induce the loan and it was in fact false. It is not admitted by Mr Kekhman that such representation was made fraudulently by those who made it (i.e. Mr Kekhman says it might have been made without any deliberately false or dishonest intention) and it is denied that C in fact relied upon the alleged representation when deciding to make the $150m loan to JFC Russia."

22. Other agreed facts, as recorded in the Agreed Facts Document (including in the respective footnoted comments of the parties thereon, which I have borne in mind) are as follows:-

"The money flows
7. The specific payments/transfers reflected in bank statements and other documents and identified by Misiura 1 sections 4.3 and 4.5 (as actual money payments/transfers made) and Misiura 2 section 3 (as identified "transfers of cash") and (to the extent that Misiura identifies actual money payments/transfers) repeated in C's written opening were in fact made.

The Other [C]ompanies
8. The companies set out in both Schedule 1 to the POC and in C's Companies Table 24.10.17 version (produced during C's opening) that were not part of the formal JFC or LQ Groups were operated by and acted on instructions of JFC personnel, save for Maldus, Gepson, J Service LLC, and Prometey (which C says were operated on instructions from JFC personnel but D says operated on instructions from Mr Akatsevich, Mr Sayapin and Mr Borovskikh and Mr Lyubomirov).
(It is disputed who ultimately owned, controlled and directed these JFC-managed companies: C says D did; D says JFC and the owners of JFC (i.e. the Private Foundations) and ultimately (by beneficial interests in the Family Foundations) VK/AA/YZ owned the companies. D says that they were at the material times controlled and directed by YZ/AA and/or the JFC personnel acting under the instruction of YZ/AA.)

9. In operating some of those companies and transferring money through them from 2008 to 2012, sometimes fictitious and sometimes backdated contracts were used to 'cover tracks' by evidencing sham transactions so as to disguise (from lenders and auditors) the true purposes of the payments, namely to fund particular recipients or expenses (including repayment of bank debt relating to the LQ Companies' properties).

D's knowledge
10.D knew that YZ was operating a web of offshore companies from 2008 to 2012 including through nominees.

11. D denies knowing about the Biany/Edenis fraud.

12. D knew that from 2008 to 2011 he was being paid (directly and to expenses and payees designated by him) money from the JFC group including from a variety of companies controlled by YZ (and not just paid through the formal channels of JFC BVI dividends or director's emoluments)."

A.3 C's allegations as to the extent of Mr Kekhman's control over the JFC Group and the extent of his knowledge as to the affairs of the Group

23. The central issue in this case is whether C's allegations as to Mr Kekhman's control over the JFC Group and over the LQ Group and the Other Companies are correct. C (rightly) identifies that this issue is directly relevant to the issue of whether D knew of and directed the making of the application to C for a loan, whether he knew that the JFC Group accounts supplied to C were vastly and fraudulently overinflated in the context of the Garold Representations, and whether he knew of the making of the Security Representation and of its falsity. It is also directly relevant to whether he directed transfers, which C characterises as dissipations, to keep money from C and other creditors.

24. C's allegations as to the extent of Mr Kekhman's control over the JFC Group and the extent of his knowledge as to the affairs of the Group are summarised at paragraphs 17 to 19 of C's Closing Submissions:-

"17. It is plain that affairs of the JFC Group were conducted at all material times in a thoroughly dishonest manner. Fraud was endemic and widespread not only in the JFC Group but also the LQ Group and the Other Companies. In particular, as explained below:

17.1 False accounts and accounting records were produced for companies in the JFC Group.

17.2 There was widespread production of fraudulent documentation designed by JFC Group staff to portray as genuine commercial transactions substantial payments made out of the JFC Group for the benefit of a complex and opaque web of companies which C contends were at the material times beneficially owned and controlled by D.

17.3 These recipient companies fall into two categories. First, companies within the LQ Group. This group of companies was beneficially owned as to 90% by D (through his foundation) and as to the remainder by YZ and AA (again through their foundations). Secondly, companies not within any formal group structure, namely the

Other Companies. These companies (there are 99 identified within Schedule 1 to the POC) are incorporated in the BVI and Cyprus. As explained below, the shares were held by nominees, the directors were nominees and often even the disclosed ultimate beneficial owners were nominees. The nominees were in most instances JFC Group staff or provided by the corporate service providers. It is C's case that these Other Companies were beneficially owned by D and that he controlled those companies, giving instructions as to their operation principally through YZ. It is also C's case that all significant decisions made in respect of LQ Group (like the JFC Group) were made by D or required his approval.

17.4 The companies in the LQ Group and the Other Companies were used in multiple complex sequences of transfers to divert monies and business from the JFC Group.

17.5 It is C's case that this was all carried out principally for the benefit of D, not least in the provision of substantial funds from JFC Group through this web of companies to benefit LQ Group of which D was the ultimate 90% beneficial owner.

17.6 Given the scale of the activity and the use of JFC Group's staff to procure the payments, disguise the true purpose of the payments and operate the LQ Group and the Other Companies, it is inconceivable that this was not carried out on D's instruction.

18. It is C's case that at all material times until March 2012, D together with his lieutenants controlled and/or otherwise directed the affairs of the companies in the JFC Group, and that it was D who was responsible for both strategic and other major decisions in relation to the JFC Group, which decisions were made in accordance with his personal objectives and wishes.

19. From March 2012, D controlled and/or otherwise directed the affairs of the companies in the JFC Group both inside Russia and outside Russia, in the latter case with the assistance of AA in respect of the South American companies. It is common ground that to the extent (disputed by D) that D exercised control over the South American companies, he lost that control in September 2012."

A.4 C's pleaded case against Mr Kekhman

25. In the context of the allegation of fraud made against Mr Kekhman (and the matters put to Mr Kekhman in cross-examination) it is important to have regard to C's pleaded case that is made against him (though, of course, cross-examination can also involve cross-examination as to credit). Mr Stuart urges me to have firmly in mind the ambit (and limits) of the case which Mr Kekhman

faces in this action – referring me to the comments of Lewison J in *Mullarkey v Broad* [2007] EWHC 3400 Ch at [45] and [48] citing *Vogon International Limited v The Serious Fraud Office* [2004] EWCA Civ 104 which emphasise that the court is concerned with the pleaded allegations of fraud and dishonesty and that such matters have to be squarely and individually put. I bear such matters well in mind. In that context it is important to set out precisely how C's case is put.

26. In this regard, in particular:-

(1) C pleaded in its Re-Amended Particulars of Claim, amongst other matters:-

"8. The Claimant contends that Mr Kekhman controlled the VK Foundation at all material times and, through it, controlled its shareholding in JFC BVI. Mr Kekhman's control and/or his direction of corporate affairs extended beyond JFC BVI to its direct and indirect subsidiaries...In particular:

(1) At all times until March 2012, Mr Kekhman together with Mrs Zakharova and Mr Afanasiev controlled and/or otherwise directed the affairs of the companies in the JFC Group. It was Mr Kekhman who was responsible for both strategic and other major decisions in relation to the JFC Group of companies, which were made in accordance with his personal objectives and wishes. Mr Kekhman also dealt with other matters essential to the conduct of the affairs of the JFC Group, such as the hiring and dismissal of key employees.

(1A) In the course of negotiations leading to the conclusion of the Facility Agreements between the Claimant and JFC Russia, the Claimant was provided with a presentation, dated April 2011, headed "Multinational banana production, logistics and distribution network - JFC". The final page of that document describes Mr Kekhman as being "... responsible for strategic planning and general control over JFC Group." Mr Kekhman was held out on the JFC Group website as the "top manager" of the JFC Group and in "general control of the JFC Group". Mr Kekhman is the only person named on the website's management page.

(2) The role of Mrs Zakharova and Mr Afanasiev (who were, as set out above, the other ultimate beneficial owners of the JFC Group, although their shareholding amounted to only 15% each) was to implement Mr Kekhman's instructions and to be accountable to him.

...

...

8A. In support of the matters set out in paragraph 8(2), the Claimant relies on the following:

(1) Mr Afanasiev was in charge of international and domestic operational matters, being responsible for purchases, logistics and distribution. Mr Afanasiev provided Mr Kekhman with regular operational reports which included information on sales volumes and sales prices. He also held the office of the General Director of JFC Russia from April 2011 until March 2012.

(2) Mrs Zakharova acted as the chief financial officer and was responsible for financial matters and was the General Director of JFC Russia (until April 2011). She delivered also on at least a weekly basis consolidated financial reports of the JFC Group comprising consolidated balance sheets and profit and loss accounts to Mr Kekhman who was therefore well aware at all material times of the financial position of the JFC Group.

(3) Both Mrs Zakharova and Mr Afanasiev were in almost daily contact with Mr Kekhman by telephone. There were also meetings with Mr Kekhman, often weekly, both before and after Mr Kekhman was appointed as a director of the Mikhailovsky Theatre in 2007.

(4) The matters which Mr Afanasiev and/or Mrs Zakharova discussed with Mr Kekhman for the purpose of obtaining his instructions included (but were not limited to) the setting of prices for the sale of bananas, obtaining additional financing, the acquisition or purchase of property and the hiring or dismissal of key employees. The instructions given by Mr Kekhman were implemented by Mr Afanasiev and/or Mrs Zakharova.

(5) In August/September 2010, when the decision was made to terminate a charterparty agreement with Star Reefers, because the terms were too expensive, the matter was first discussed by Mr Afanasiev with Mr Kekhman, who approved the termination. Consequent on that instruction, Mr Afanasiev took steps to terminate the agreement.

(6) Mr Kekhman gave Mr Afanasiev instructions (together with Mr Kasatkin and Mr Podolsky, a member of the board of JFC Russia) to negotiate a settlement with Star Reefers. Mr Kekhman made it clear to them that they had no authority to negotiate the sum to be paid without first obtaining his approval, before any offer could be made. Pursuant to such instructions, Mr Afanasiev commenced such negotiations. The final settlement terms were then reached at a meeting between Mr Kekhman and the Chief Executive Officer of Star Reefers.

(7) In September / October 2010, it was Mr Kekhman who decided to charter two ships, the Atlantic Clipper and the Baltic Clipper, from SeaTrade and which were being built at the time. Mr Afanasiev opposed this, on the ground that JFC Group already had sufficient shipping capacity, but Mr Kekhman overruled him. Mr Afanasiev then implemented Mr Kekhman's instruction.

(8) In August 2011, Mr Kekhman held a meeting with Ton Hyldelund, the managing director of ZAO Maersk Russia, as Mr Kekhman was interested

in co-operating with Maersk. Subsequently, Mr Kekhman insisted on executing a contract with Nikolav Forsberg and Ms Pukhova of Maersk. Mr Afanasiev then implemented this instruction.

(9) Mr Kekhman instructed Mr Afanasiev to sign the two Facility Agreements with the Claimant.

(10) In February 2012, Mr Kekhman agreed with Mr Afanasiev's suggestion that the application for bankruptcy by JFC Russia should be made and directed Mr Afanasiev to file it.

(11) Once Mr Kekhman decided that Mrs Zakharova was not tough enough in her dealings with the banks with which JFC Russia had obtained facilities, and that he was not comfortable with her being further involved, Mrs Zakharova resigned as financial director of JFC Group in February 2012.

(12) At times when the JFC Group's weekly cash flow was insufficient to cover its expenses, with the consequence that JFC Group would need to draw on its credit lines with banks, Mrs Zakharova required the approval of Mr Kekhman before drawing on such credit lines. In the event that such approval was given Mrs Zakharova then directed payment to be made utilising bank finance.

(13) Mr Kekhman directed that JFC Group funds should be utilised in such manner as would prioritise use of those funds as meeting liabilities owed to banks by the LQ Group (as defined at paragraph 10 below) and Mrs Zakharova implemented such instructions.

(14) Mr Kekhman was the decision-maker as to the amount of any dividend from the JFC Group to Mrs Zakharova and Mr Afanasiev, and Mrs Zakharova implemented Mr Kekhman's instructions.

(15) Mrs Zakharova and Mr Afanasiev discussed with Mr Kekhman the possible consequences and risks for the Latin America operations of JFC Group arising from the case of Star Reefers. Mr Kekhman decided that it was necessary to "ring-fence" the assets of the JFC Group in South America. He wanted this done urgently as he was concerned that enforcement proceedings taken by Star Reefers would interfere with the supply of bananas, which was critical to the survival of the JFC Group. Mr Kekhman therefore wanted to keep the South American assets alive and instructed Mr Afanasiev in about December 2011 to take all such steps as were necessary to do so. Mr Afanasiev implemented such instructions by arranging for two companies, Bagnilasa SA and Duguit SA, to be set up to ringfence the Ecuador Export operations.

(16) Mr Kekhman, exercising his control over the JFC Group, directed Mrs Zakharova to divert assets wrongfully from the JFC Group for his benefit. The Claimant refers to paragraphs 30 to 32 below and to the Responses numbered 1 and 2 contained in the Further Information in respect of the draft Amended Particulars of Claim served on 22 June 2015.

9. *Further, Mr Kekhman was and is the controlling mind of each of the BVI Companies, as well as the other companies forming part of the JFC Group. In the premises, Mr Kekhman was at all times when not a de jure director of the BVI Companies a de facto, alternatively, a shadow director of the BVI Companies, and is to be regarded as a director of the BVI Companies within the meaning of s.2 of the BVI Business Companies Act 2004. As such, he owed the BVI Companies fiduciary duties, including the following:*

    (1) To only exercise his powers or perform his duties honestly and in good faith and in what he believed to be in the best interests of the BVI Companies;
    (2) To act for a proper purpose;
    (3) Not to misappropriate the BVI Companies' assets, nor subordinate the BVI Companies' interest to his own or those of third parties, and not otherwise abuse his powers or position;
    (4) To avoid a situation in which he had or could have a direct or indirect interest that conflicts or possibly may have conflicted with the interest of the BVI Companies without making proper and effective disclosure of such interests to the BVI Companies.

10. *Separate from, and parallel to, the JFC Group, Mr Kekhman owned and controlled another group of companies, the LQ Group of Companies (the "LQ Group"). Mr Kekhman likewise owned and controlled these companies via the VK Foundation, which owned a 90% interest in the ultimate holding company of the LQ Group, LQ Holding Limited, a company incorporated in the BVI. The other shareholders in LQ Holding Limited were the foundations of Mrs Zakharova and Mr Afanasiev, each of which held a 5% interest in LQ Holding Limited. Attached to these Particulars of Claim, marked as "Annexe B", is an undated structure chart purporting to show the companies in the LQ Group.*

11. *The Claimant's case is that numerous other companies, both in Russia and outside of Russia, were subject to the ultimate beneficial ownership and control of Mr Kekhman. A non-exhaustive list of these companies is contained in the amended Schedule to these Particulars of Claim and include Maldus Consulting Limited, Gepson Commercial Limited, Tradement Limited, INT Charterlink Limited, Cetus Trading Limited ("Cetus"), CJSC Prometey ("Prometey"), CJSC Kronos and CJSC Argo. ~~The Claimant reserves the right to add to this list following disclosure and/or the Claimant's further investigations.~~*

12. *With respect to Prometey, this was originally a company, incorporated in Russia, owned by Pollone Investments Limited, a company within the LQ Group. However, from June 2010, Prometey's shareholder was Andrey Lyubomirov. The Claimant contends that Mr Lyubomirov acts as Mr Kekhman's nominee.*

...

30. *Pursuant to and in furtherance of the conspiracy pleaded in paragraph 29 above, Mr Kekhman and the BVI Companies (or any two or more together) and / or JFC Russia carried out the following unlawful acts and means by which the Claimant was injured:*

(1) JFC BVI, Whilm and Garold defaulted on their obligations under the Guarantees they had each given to the Claimant on 22 November 2011 and 27 January 2012 in respect of the liabilities to the Claimant of JFC Russia, and JFC Russia defaulted on its obligations to repay the sums advanced pursuant to the Facility Agreements;

(2) JFC BVI, Whilm and Garold moved or permitted to be moved assets (as defined in the Guarantee) and / or permitted the values of their assets to be diminished in breach of clause 13.2 of the Guarantees, thereby rendering it impossible for any of these parties to meet their respective obligations under the Guarantees;

(3) Mr Kekhman, exercising his ultimate control and influence over, in particular, JFC BVI, Whilm and Garold, and / or JFC Russia procured the breaches of contract identified (1) and (2) above.

(4) Mr Kekhman through his dominant control over the corporate entities making up the JFC Group, and in breach of his own legal and fiduciary obligations owed to JFC Group companies, procured the transfer of assets and diverted corporate opportunities out of the JFC Group (and / or permitted the value of the assets of the JFC Group of companies to be diminished) with the intention to interfere with the economic interests of the Claimant by unlawful means by rendering it impossible for (a) any of JFC BVI, Whilm or Garold to comply with their obligations under the Guarantees and / or (b) for JFC Russia to repay the monies advanced to it by the Claimant."

(2) C pleaded at paragraph 12H of the Re-Amended Particulars of Claim the matters on which C relies in support of its case that D knew of the fraudulent inflation of the Garold and JFC Group accounting figures, which C submits are primary facts from which the inferences in 12H(8) and 12H(9) are to be made. Paragraph 12H provides as follows:-

"12H. By reason of the following matters, it is to be inferred that both Mr Kekhman and Mrs Zakharova knew that Garold's revenue and accounts receivable, and consequently the JFC Group's revenue and accounts receivable, were fraudulently inflated in the accounting documents referred to above and JFC Group's profits falsely stated:

(1) Mrs Zakharova was JFC Group's Chief Finance Director. A major part of her role was the preparation of financial accounts. She coordinated (whether directly or through other employees) the activities of various

employees in the JFC Group financial and accounting team (in particular, Inga Prokofveva, Viktoria Dakhina , Ludmilla Nikitina, Ekaterina Burdina, and Yulia Yakovleva).

(2) The matters set out in paragraph 8A(16) above.

(3) For the reasons set out above, the accounts of the JFC Group were false. Garold's revenue and accounts receivable (and therefore the JFC Group's revenue and accounts receivable) were artificially and fraudulently inflated, in an amount in excess of US$200 million. As a consequence, the profitability of Garold and JFC Group was materially misstated.

(4) Mrs Zakharova must have known the matters stated in sub-paragraph 12H(3) above, by reason of the following:

i. The discrepancy between what was falsely said to be Garold's revenue for the year ended 2010, and hence the value of the JFC Group's accounts receivable as of 31 December 2010, and the true position was very considerable (in excess of US$200million).

ii. The production of "fresh air" invoices and deliberately overstated invoices was not isolated but widespread and must have been carried out pursuant to a plan to falsify the JFC Group of accounts.

iii. The employees directly concerned in the process of generating false accounting records, included Ms Prokofyeva, Ms Nikitina and Ms Burdina, all of whom worked within the JFC Group financial and accounting team, the operation of which was under the direction of Mrs Zakharova.

iv. The creation of the false accounts with false underlying documents, resulting in overstatement of Garold's receivables and revenue by, for example, over US$200 million dollars (out of total receivables of US$267 million) in 2010, could not have been carried out other than at the direction of Mrs. Zakharova.

(5) Mrs Zakharova reported to Mr Kekhman (both orally and via the provision of financial reports) on the financial position of the JFC Group on at least a weekly basis. Accordingly, Mr Kekhman was well aware of the JFC Group's financial position (not just limited to JFC Russia).

(6) The role of Mrs Zakharova was to implement Mr Kekhman's instructions and Mrs Zakharova was accountable to him.

(7) It is inconceivable that Mrs Zakharova would have taken a decision to produce falsified accounts overstating the assets of the JFC Group by over US$200 million, and materially misstating its profits, without the approval and / or other direction of Mr Kekhman.

(8) It is to be inferred that at least one reason for the production of false accounts was to assist JFC Group to obtain substantial funding from banks which it needed for the purposes of maintaining its business, a business in which Mr Kekhman was ultimate majority beneficial owner. As identified in paragraph 12I below. JFC Group made numerous loan applications in the course of 2011.

(9) Accordingly, it is to be inferred that both Mr Kekhman and Mrs Zakharova knew that the said accounts were inflated, in particular in the respects identified above."

(3) C pleaded at paragraph 12(I) the matters on which C relies in support of its case that the Garold Representations were made to it on Mr Kekhman's instruction and/or with his agreement, which C submits are primary facts and inferences in part admitted by D, including the inferences at paragraph 12I(14) (which are denied by D). Paragraph 12I provides as follows:-

"12I. It is further to be inferred that the Garold Representations, which were made by Ms Dakhina of JFC Russia as aforesaid, were made at the direction of Mrs Zakharova and Mr Kekhman and/or pursuant to an agreement between Mr Zakharova and Mr Kekhman. Such inference arises in the following circumstances:

(1) In 2011, and upon Mr Kekhman's instruction JFC Russia was actively looking to raise fresh loans from banks. Indeed, in April 2011, Mrs Zakharova, on Mr Kekhman's instructions, stepped down as the General Director of JFC Russia so that she could concentrate on raising further finance for the JFC Group.

(2) JFC Russia had a number of loans which fell due for repayment in 2011 or in early 2012. The most substantial of such loans, so far as the Claimant is aware, are as follows:

i. A loan, from October 2008, with Sberbank for Russian Rouble 600 million was due for repayment on 20 October 2011.
ii. A loan, from November 2010, with Credit Europa, for US$10 million was due for repayment on 25 November 2011.
iii. A loan, from December 2008, with UniCredit Bank for US$5.1 million was due for repayment on 9 December 2011.
iv. An agreement on provision of an overdraft loan line (multi-currency) from March 2009 with Royal Bank of Scotland

for Russian Rouble 161 million and US 2.184 million fell due for repayment on 18 March 2012.

v. *A loan, from April 2010, with Saint-Petersburg Bank for US$11.5 million was due for repayment on 18 April 2012.*

vi. *An agreement on renewable loan line, from November 2010, with Sberbank for Russian Rouble 1,399 billion was due for repayment on 30 April 2012.*

(3) *In seeking to raise further funds, both before and after her resignation as General Manager, Mrs Zakharova worked closely with Mr Kekhman.*

(4) *In March 2011, JFC Russia obtained a loan of US$88 million and Russian Rouble 1.5 billion from a syndicate of banks (including Sberbank) ("the Syndicated Loan"). The loan was secured by, among other things, personal guarantees from each of Mr Kekhman, Mrs Zakharova, and Mr Afanasiev. The loan from the syndicate was obtained with the approval of Mr Kekhman.*

(5) *In the course of 2011, and in addition to the application for loans from the syndicate of banks, referred to at sub-paragraph 12I(4) above, and the application for loans from the Claimant, JFC Russia and associated companies applied for loans from at least eight other banks in their quest for funding, including to Absolute Bank (from which JFC Russia sought US$150 million), to Moscow Bank of Reconstruction and Development, and to Promsvyazbank (in relation to a proposed loan of US$50 million to CJSC Bonanza International).*

(6) *As part of the process of applying for a loan from Absolute Bank, JFC Russia, by way of an email dated 6 July 2011 from Daria Vyuzhanina (copied to Ms Dakhina) sent substantially the same false accounting information as had been provided to the Claimant. Absolute Bank offered a loan of US$150 million but required by way of security guarantees from Mr Kekhman, Mr Afanasiev and Mrs Zakharova.*

(7) *The loan agreements with the Claimant were entered into with Mr Kekhman's approval, who instructed Mr Afanasiev to sign the loan agreements.*

(8) *The process of obtaining the loans from the Claimant was led by Mrs Zakharova who reported regularly to Mr Kekhman as the loan process progressed.*

(9) *Ms Dakhina, who provided the information by email to the Claimant as set out in paragraph 12A above by which the Garold Representations were made, reported directly to Mrs Zakharova and to Mrs Zakharova's daughter, Valentina Osipova. Ms Osipova reported to her mother.*

(10) *It is to be inferred that Miss Dakhina provided the accounting documents, being an important step in the loan application process, upon the*

instructions of Mrs Zakharova, given either directly or through her daughter, Ms Osipova.

(11) In giving such direction, Mrs Zakharova had knowledge of the falsity of the said accounts and therefore of the Garold Representations.

(12) When directing Mrs Zakharova to apply for the loan, Mr Kekhman must have known that the Claimant would require accounting information concerning the JFC Group as part of the process for applying for the loan, and that such accounting information would include the accounting documents to which reference is made above.

(13) Given the significance of a decision to present false accounts for the JFC Group overstating receivables by over US$200 million, and materially misstating profits, and having regard to the matters set out at 8 and 8A above, it is inconceivable that Mrs Zakharova would have given a direction for the presentation of those accounting documents to the Claimant without having first obtained the direction and agreement of Mr Kekhman, and it is to be inferred that such was given.

(14) For these reasons, it is to be inferred that the Garold Representations were made (i) at the direction of both Mr Kekhman and Mrs Zakharova and/or pursuant to an agreement between them that the accounts should be presented to the Claimant, and (ii) with the knowledge of each of them as to the falsity of such representations.

(15) The said knowledge on the part of Mr Kekhman and Mrs Zakharova falls to be attributed to JFC Russia.

(16) Further, in giving such direction and approval the two of them intended to induce the Claimant to provide the loans."

(4) C pleaded in its Re-Amended Reply, amongst other matters:-

"13. ... (ii) whilst it is admitted that Mrs Zakharova was involved in the management of the LQ Group, the group was controlled by Mr Kekhman, and (iii) it is admitted that Mr Kekhman's control included strategic decisions.
...
18. In paragraph 17E(4) Mr Kekhman denies having heard of Edenis Limited ("Edenis") prior to this action. In support of its contention that Mr Kekhman's denial is false, the Claimant relies upon the following matters:
18.1 On 20 May 2010, Edenis entered into a loan agreement with Mr Kekhman's VK Foundation under which Edenis agree to lend VK Foundation the sum of €2.3m on an interest free basis.
18.2 On the same day, VK Foundation entered into a loan agreement with Mr Kekhman under which VK Foundation agreed to lend Mr Kekhman the sum of €5m on an interest free basis.

18.3 The Claimant contends that it is to be inferred that the loan from VK Foundation was funded in part by the loan to Edenis and that as the beneficial owner and controller of the VK Foundation, Mr Kekhman must have known that part of the loan he was receiving had been sourced from Edenis.
18.4 Further, by email dated 15 April 2010, Dmitry Kasatkin of JFC Group (acting on instructions of Mrs Zakharova) gave an instruction for the sum of €200,000 to be transferred from an account in the name of Edenis to an account in the name of Mr Kekhman. The payment was made as instructed. It is to be inferred that such instruction was given to Mrs Zakharova and Mr Kasatkin by Mr Kekhman.
18.5 By an email dated 12 October 2012, Mrs Volkova of JFC Group informed Mr Kekhman of the resignation of nominee directors from a number of companies including Edenis."

A5. C's witness evidence in relation to Mr Kekhman

A5.1 Mr Afanasiev

27. In his third witness statement Mr Afanasiev stated, amongst other matters as follows in relation to the knowledge and involvement of Mr Kekhman in the business of the JFC Group:

"13. There was no shareholders agreement between the respective foundations as to how the JFC Group would be managed. Mr Kekhman made it clear to Mrs Zakharova and myself that, as the controlling shareholder, he was to have complete control of JFC BVI and how the JFC Group of Companies were to be run, and Mrs Zakharova and I were to implement Mr Kekhman's decisions and were accountable to him.
...
15. It is incorrect for Mr Kekhman to say that he withdrew from the management of JFC Russia after December 2007. Mr Kekhman wanted to be kept informed about all aspects of the business, was involved in all the major decisions and remained as involved in the major decisions as beforehand...
...
16...a. Mr Kekhman as the founder of the JFC business and indirect majority shareholder of its parent company, JFC BVI, controlled the entire JFC business both within Russia and internationally...
b. It was the responsibility of Mrs Zakharova and me to implement Mr Kekhman's instructions...
c. ...I also provided him with regular operational reports which included information on sales volumes and sales prices. I discussed with Mr Kekhman all the time the prices at which bananas were purchased and sold, both inside and outside Russia...I orally reported to Mr Kekhman at regular meetings held at the Mikhailovsky Theatre and sometimes at JFC's offices as well as by phone. My reports were focused on operational activity....
d. Mrs Zakharova acted as the chief financial officer and was responsible for financial matters and was the General Director of JFC Russia. She delivered daily and subsequently weekly consolidated financial reports of the JFC Group comprising consolidated balance sheets and profit and loss accounts to Mr

Kekhman who was therefore well aware of the overall financial position of the JFC Group and, in particular, the level of its external borrowings.

17. Both Mrs Zakharova and I were in almost daily contact with Mr Kekhman by telephone. Mr Tchernenko has exhibited extracts from my mobile phone records and he has provided an analysis showing calls made to the phone number which was used by Mr Kekhman at the time. From that breakdown, it can be seen that there were over 400 communications (calls and texts) between me and Mr Kekhman in each year of 2008 to 2011. In 2012 there were 368.

...

19. There were also meetings with Mr Kekhman probably once a week (either by myself, or with Mrs Zakharova or with another member of staff) both before and after he was appointed as a director of the Mikhailovsky Theatre. The only difference was that instead of meetings being at the JFC Group offices in St Petersburg, some of those meetings took place at the theatre. It is therefore not correct for Mr Kekhman to say that there were only occasional discussions.

20. The purpose of those calls and meetings was to keep Mr Kekhman fully informed of all material developments within the JFC Group, both within Russia and internationally, and to raise issues on which decisions needed to be made that fell within the responsibility of either myself or Mrs Zakharova. Matters discussed included (but were not limited to) the hiring or dismissal of key employees, the setting of prices for the sale of bananas, obtaining additional financing or the acquisition or purchase of property.

21. Whilst the decision making process was very informal, no suggested course of action or decision could be made without Mr Kekhman's approval...

...

39. In our discussions with Mr Kekhman, Mrs Zakharova and I would discuss market conditions and other factors impacting upon the performance of the JFC Group of Companies. This included the following:

...

b. By 2011 the JFC Group was experiencing significant financial difficulties. These difficulties were discussed with Mr Kekhman. In fact, I do not remember any period of time at JFC Russia when Mr Kekhman or Mrs Zakharova said the financial position was good. All the time there were financial problems. This was caused by the syphoning off of funds from the JFC Group to Mr Kekhman's other projects, including the LQ Group of companies' development projects and the Mikhailovsky Theatre...

c. Indeed both before 2011 and in 2011 there was a constant lack of funds due to the monies that Mr Kekhman was extracting from the JFC Group. He was at all times fully aware of the position and indeed was probably the only person who knew exactly what was going on as he knew how much money was being extracted. He used JFC as though it was his personal bank.

...

e. At the suggestion of Mrs Zakharova, Mr Kekhman agreed that I should take over as General Director of JFC Russia from April 2011 so that Mrs Zakharova could concentrate her efforts on finding alternative sources of funding.

f. As a result JFC Russia applied for the loan from Bank of Moscow. The profit margins on the sale of bananas were insufficient to cover the moneys being siphoned off by Mr Kekhman in respect of his non-JFC Group activities. Therefore, of course Mr Kekhman knew that the JFC Group's survival was dependent on further and increasing injection of external funding. That is why Mr Kekhman instructed Mrs Zakharova to raise funds.

40. As I have said, Mr Kekhman had full visibility at the time of these financial difficulties and the steps being taken to address them and was very much involved in the discussions concerning these matters...

...

48. Mrs Zakharova reported (both orally and via the provision of financial reports) to Mr Kekhman on the financial position of the JFC Group. Accordingly, Mr Kekhman was well aware of the JFC Group's overall financial position (not just limited to JFC Russia).

49. After 2007, meetings with Mr Kekhman were usually held at the Mikhailovsky Theatre, but occasionally elsewhere, such as the JFC offices. These meeting[s] would be regularly attended by myself and Mrs Zakharova...

...

50. All major decisions in connection with financial statements / accounting were done with Mr Kekhman's approval. Mrs Zakharova's invariable practice was to obtain Mr Kekhman's approval before taking significant decisions, and Mr Kekhman required that he should be consulted and his approval obtained before taking any significant decisions.

...

56. I should also mention that Mr Kekhman had another business, namely, a citrus fruit business. The fruit business was in effect run by Mr Kekhman's nominees (being Mr Akatsevich, Mr Sayapin and Mr Borovskikh). Although they legally owned the companies operating such businesses, they were minority shareholders of that business. I learned of their financial interest as a result of a conversation with Mr Kekhman. Around the end of 2011 or beginning of 2012, I met with Mr Kekhman at the VIP Lounge of Pulkovo Airport in St. Petersburg. While we were discussing the issues of the JFC Group, Mr Kekhman told me that there was a way to keep the business afloat and away from the reach of creditors by transferring parts of the operations to these nominees. Mr Kekhman said "there is an established working technology with these guys", who in return for 30% of business would manage it for Mr Kekhman's benefit. It is my belief that at least part of what used to be the JFC Group business is now being carried on by what, using Mr Kekhman's terminology, was an 'established working technology'.

...

57. In April 2011, Mr Kekhman directed that Mrs Zakharova should step down as General Director of JFC Russia and Mrs Zakharova, in accordance with his instructions, did so. I replaced her, again on the instructions of Mr Kekhman, Thereafter, Mrs Zakharova's principal role was raising further finance for the JFC Group, which JFC Russia was actively seeking on Mr Kekhman's instructions. In carrying out this task, Mrs Zakharova interacted with and reported to Mr Kekhman.

58. After the application for a loan had been made (and I informed Dmitri Tchernenko that the application was made in June 2011) and the Bank had indicated the terms on which it was prepared to lend, there was a meeting at the Mikhailovsky Theatre on about August 2011, at which Mrs Zakharova presented the conditions of the proposed loan from the Bank to both Mr Kekhman and myself. Mr Kekhman indicated to Mrs Zakharova that Mrs Zakharova should proceed with the loan application.

59. I signed the two loan agreements with the Bank with Mr Kekhman's approval. I could not have done this without Mr Kekhman's approval. Mr Kekhman confirmed that JFC Russia should obtain money from the Bank.

60. In paragraph 37 of his witness statement, Mr Kekhman says he was not aware of how the facility was to work. This is not true. Mrs Zakharova discussed the key terms of the Bank's loan with Mr Kekhman in my presence.

61. As to the board meeting approving the first loan facility of US$100 million, it is correct that the minutes of the meeting were brought to Mr Kekhman at the Mikhailovsky Theatre, where he signed it. He was well aware of what he was signing. As to the board meeting which approved the second loan facility, to the best of my knowledge, Ms Kuzina put Mr Kekhman's facsimile on the resolution in respect of the US$50 million loan from the Bank. She would only have done it on his express instructions. She would not do it otherwise – she would have called Mr Kekhman to approve any use of Mr Kekhman's facsimile.

62. I understand that the bank has discovered that the financial accounts for 2009, 2010 and the first six months of 2011 presented to it by JFC employees significantly overstated Garold's revenues. I did not know that the accounts were overstated. I took my information from an accounting system - SAP - which had all the financial information which I needed for operational activities. The figures were reflected there almost instantaneously and were current. I did not need anything else. Sales in respect of goods were shown on SAP (including those sales on all markets).

63. As I have explained, all major decision in connection with financial statements accounting were done with Mr Kekhman's approval. Mr Kekhman would have known the true picture, as Mrs Zakharova regularly prepared for him the management accounts. If the financial statements were not accurate, Mr Kekhman would have known about it. Mr Kekhman knew well that such statements would be provided to creditors, such as the Bank, as it was usually the case.

64. It is inconceivable that Mrs Zakharova would have presented false accounts to Mr Kekhman without telling him of their falsity and equally inconceivable that she would have presented the false accounts to the Bank without his approval. I say this for the following reasons. The fact of the matter is that Mrs Zakharova would never have taken such a momentous step as to present false accounts to the Bank on her own initiative. There would have been no benefit for her in doing so. The only person who benefited from all this was the person

who controlled the whole business, who could extract money from the business at will (whether for his LQ projects or donations to the Mikhailovsky Theatre or otherwise), that is, Mr Kekhman, and not Mrs Zakharova or me. Furthermore, the nature of the relationship between Mr Kekhman and Mrs Zakharova was such that he dominated her and she would not take any significant steps concerning the business without his knowledge and approval."

A5.2 Mrs Zakharova

28. Mr Dmitri Tchernenko, in his witness statement, gives evidence as to the interviews he had with Mrs Zakharova (and briefly her daughter Valentina Osipova) over two days (18 and 19 September 2014) at the Marriott Hotel in Denia, Spain, and his notes that he made in relation to the same, which he states he made contemporaneously. He summarises what he says were the points that emerged from his interview with Mrs Zakharova at paragraphs 13(1)-(18) of his statement. He was cross-examined in relation to a number of these paragraphs of his statement. At the time that Mr Tchernenko met with Mrs Zakharova C had not yet discovered the facts underlying the Garold and Security Representations, and so she was not asked questions in relation to such matters including the Garold fraud and false invoicing. So far as the notes themselves are concerned they recorded, in relation to Mr Kekhman's involvement in the business of the JFC Group, and also in relation to the Moroccan fruit business and the role of Messrs Sayapin, Akatsevich and Borovskih:-

(1) "*everything that was done at JFC was done for one person – K [Mr Kekhman]*"

(2) "*We had Moroccan programme – oranges/mandarins. It was then dissipated to Akatsevich (J Fruit, Tvoi Mir). K used the money from them as his own money. Akatsevich and Borovskih could be said to be his nominees. Gepson – connect with citrus business. But does not know much about it.*"

(3) "*K considered YZ as his trusted person as YZ discussed with K on the phone on daily basis as she reported to K everything on employees, etc.*"

(4) "*Akatsevitch had a pool of K's funds from Moroccan/citrus and other fruit programme which was split from JFC). YZ discussed that JFC cannot repay K's mortgage by JFC and then K said that the mortgage of K would be repaid by Akatsevich (reimburse JFC). Kuzina dealt with K's personal affairs (including payment of mortgage). Usually Akatsevich returned these monies with some delay.*"

(5) "*Any loans that were made by companies within JFC group to Akatsevich/Sayapin companies were loans for their business on instructions from K...*"

(6) "*[Q] What was the structure of the JFC Group and how did it change between 2006 and when she left JFC Group including:-*
2.1 when VK left in 2007 to take up his ballet post;
[A] the structure did not change, except the purchase of new banana plantations/new companies – owners of plantations in the same structure. New plantation-owner companies.
[Q] 2.2 in 2011in the light of the Star Reefers proceedings; [A] No change as far as YZ know. Tradement and Charterlink. AA knows better.
[Q] 2.3 when the BOM loan was being sought and the loan made; [A] and No change
[Q] In 2012 when JFC was declared insolvent and an interim receiver appointed/VK appointed as GD of JFC Russia? [A] YZ does not know what K did after he was appointed as GD. He changed his mind every day at the time. Everything must be done as K says."

(7) "*[Q] How was that control [JFC Group] to be exercised and how did it change between 2006 and when she left JFC Group?*
[A] YZ was constantly on the phone with K. I had to be able to answer any question at any time of the day 24/7. Nothing changed for YZ since he moved to theatre in 2007. Daily reports, reports checked against AA's reports, etc."

(8) "*[Q] To the extent not answered above, please set out full details of what you know about the following people and, in particular, whether they acted as nominees for Mr Kekhman:*
11.1 Mr Maxim Sayapin
11.2 Mr Vadim Sayapin
11.3Mr Victor Akatsevich
[A] They are all nominees and perform K's instructions. They were most trusted persons by K at the time of the bankruptcy. Known each other for many years."

(9) "*[Q] Your comment on the assertion...that Kekhman has not read the guarantee given by JFC BVI, Whilm and Garold in respect of the Bank of Moscow's loan of US$150m*
[A] "YZ does not know for sure whether he was aware of each specific guarantee. K was provided with a term sheet of the BoM loan (amounts, interest, guarantee, key terms) – of course he knew. It was good news for K as BoM did not ask his personal guarantee (first time after 2008 crisis). K liked the interest, knew about $150m very well, liked the repayment term."

(10) "*[Q] 16. What was VK's involvement in the decision to seek the [Bank of Moscow] loan?*
[A] Same as YZ, We received term sheet from BoM. YZ called K, he said great and then we start the process. The interest was very convenient for refinance."

(11) *"[Q] VK has questioned whether the monies were advanced by BOM at all. Please confirm they were received. [A] K knew it straight away. YZ told K that BoM paid in the credit funds. K called at 8am – asked – did we receive the money? YZ – I am not in the office yet. Every hour / 5 minutes he would check whether money was in JFC account. Finally we received at 3pm. Everyone at JFC would look every 5 minutes at online banking to see if the money was paid in."*

(12) *"...Kuzina had [Mr Kekhman's] facsimile and she would never use K's facsimile without his approval. Kuzina is considered not only JFC's lawyer, but his personal lawyer."*

A5.3 Ms Valentina Osipova

29. Mr Tchernenko also attached a copy of notes of a telephone conversation he had with Mrs Zakharova's daughter, Ms Osipova (Head of Department of Corporate Financing at JFC Russia), on 3 August 2015, and at paragraph 22 of his statement set out what he said she had told him, including that Mrs Zakharova provided Mr Kekhman with a report of management accounts on a regular basis.

A5.4 Victoria Dakhina

30. Mr Tchernenko gives evidence, in his witness statement, as to an interview he had with Victoria Dakhina (Head of Department for Interaction with Financial Institutions) on 24 October 2014, his notes in respect of the same, and at paragraph 19 of his statement he sets out the points he said emerged from that interview. So far as the notes themselves are concerned they recorded, in relation to Mr Kekhman's involvement in the business of the JFC Group:-

"6. [Q] How much and what direct contact did you have with Mr Kekhman?
[A] VD never contacted him personally. Contacted YZ and she dealt with K directly. Sokolova Aleksandra – head accountant now.
7. [Q] What is your take on Mr Kekhman control over the business at JFC in 2009-2011?
[A] Without K no key decision would be made."

A5.5 Ludmila Nikitina

31. Mr Tchernenko also gives evidence, in his witness statement, as to an interview he had with Ludmila Nikitina (the Chief Accountant of JFC Group) on 24 October 2014, his notes in respect of the same, and at paragraph 120 of his statement he sets out the points he said emerged from that interview. So far as the notes themselves are concerned they recorded, in relation to the Loan, and Mr Kekhman's involvement in the business of the JFC Group:-

"*9. [Q] Who prepared the business plan which was provided to BoM? [A] YZ and [financial] department prepared the business plan that was presented to BoM.*

10. [Q] Did K constantly controlled the JFC business? To what extent? [A] LN does not know the extent, as she did not deal with K (except for the last two months of her employment), but she can say that she constantly heard from YZ/AA that they needed to discuss this /that with K, meet with him, K, for example, would say how much dividends must be paid and it was arranged."

A5.6 Mr Zakharova

32. C served a witness statement from Igor Zakharov, Mrs Zakharova's husband dated 19 May 2017. He was scheduled to give evidence but in the event did not do so. The question of the weight to be attached to his evidence is addressed at Sections B6 and C4 below. In terms of the evidence itself he gave evidence as to the contact between Mr Kekhman and Mrs Zakharova. Amongst other matters Mr Zakharova stated as follows in relation to such matters:-

"*4....the amount of communication throughout 2007 to 2012 (until Mrs Zakharova resigned) was always about the same. There were no significant changes in the amount of times Mr Kekhman and Mrs Zakharova spoke neither after Mr Kekhman was appointed as a director of the Mikhailovsky Theatre in 2007, nor after Mr Kekhman had health issues in 2009-2010. My wife, throughout her work at JFC lived and slept with her phone 24/7, as Mr Kekhman could call her at any time of the day and night and ask her specific question on JFC...*
5...I can confirm that Mr Kekhman called my wife several times a week and it could have been in the evenings, at night or in the mornings before she left for work.
6...From 2003 until we left for Spain in 2012 we rented a dacha (cottage house) in Solnechnoe village near St. Petersburg. Throughout my wife's employment at JFC regularly, at least once or twice a month Mr Kekhman came to our dacha where meetings with my wife and other top management of JFC, such as Mr Afanasiev and Mr Dobronravov took place...

7. From the time Mr Kekhman moved to the Mikhailovsky Theatre, my wife attended meetings with Mr Kekhman at the theatre after working hours at least once a week. I know this as she would normally come back home later in the evening and informed me in advance that she would be late as she was having a meeting with Mr Kekhman at the theatre."

A.6 The stance of Mr Kekhman in his statements of case and witness statements

33. It will be necessary to consider how what Mr Kekhman stated in his Defence and Schedule to his Defence, and in his witness statements, as to his involvement in the management of JFC Russia or JFC Group generally, between December 2007 (when he was appointed to manage the Mikhailovsky Theatre) and February/March 2012 (when Mr Kekhman says that he returned to involvement with JFC Russia) stands in the light of all the evidence now before me, including the evidence that Mr Kekhman gave when cross-examined, and the written and oral evidence of other witnesses, together with the documentary evidence before me.

34. Prior to his cross-examination Mr Kekhman's evidence included the following:-

(1) In Mr Kekhman's Amended Defence (supported by a statement of truth signed by him), and repeated in his Re-Amended Defence, it was stated, amongst other matters as follows:-

"*9...*
(2) From December 2007 to March 2012 Mr Kekhman had very little involvement in the management and running of JFC Russia.
...
10...
(2) Mr Kekhman does not know what, if any, monies were in fact advanced by the Claimant.
...
13.
(1) At all material times Mr Kekhman did not control the VK Foundation or the shareholding in JFC BVI.
(2) At all material times Mr Kekhman did not control the direct and indirect subsidiaries of JFC BVI.
(3) Mr Kekhman, together with Mr Afanasiev and Mrs Zakharova, ran the JFC Group until 2007. Thereafter he took little part in the management and running of the business until March 2012, when he was appointed General Director of JFC Russia.

(4) From December 2007 the business of JFC Russia was run by Mr Afanasiev and Mrs Zakharova. During that time they were not subject to Mr Kekhman's instructions or accountable to him other than as an indirect shareholder of 70% of the shares in JFC BVI. Mr Kekhman's role was very limited.

...

13B.

...

(2) It is denied that Mrs Zakharova regularly delivered to Mr Kekhman financial reports concerning the JFC Group. The only purported financial information she provided was at a very high level. In particular, from time to time, Mrs Zakharova confirmed to Mr Kekhman that the group had sufficient liquidity to operate.

(3) Mr Kekhman was not aware of the true financial position of the JFC Group, and it is denied that Mrs Zakharova ever told him that (if it be the case) Garold's turnover had been artificially inflated. As stated at paragraphs 25, 32 and 36ff of the Schedule he was in fact misled by Mrs Zakharova and Mr Afanasiev about the true financial position and the state of the business more generally.

...

A1 The Alleged Garold Representations

...

17E.

...

...Neither Biany Investments Inc (Panama) nor Edenis Limited are or were controlled by Mr Kekhman. Mr Kekhman does not know who controls or controlled these companies nor who owns or owned them. Before this action he had never heard of either company. It seems to Mr Kekhman that both companies are part of a complex web of companies (set up without his knowledge) by Mrs Zakharova."

(2) In the Schedule to his Defence (again supported by the statement of truth signed by him) it was stated, amongst other matters:-

"*11. ...in December 2007, Mr Kekhman was appointed as General Director of the Mikhailovsky Theatre in St. Petersburg, which he has since restored to international prominence as a world-renowned opera and ballet company. At that time he withdrew from active involvement in JFC Russia, and Mrs Zakharova and Mr Afanasiev took over the entire management of the business.*

...

15. During the time that the Fruit Business was under the direction of Mr Afanasiev and Mrs Zakharova, Mr Kekhman's role was very limited indeed. He remained the principal owner of the Fruit Business, and he was still widely known as the principal owner. He would visit the offices of JFC Russia occasionally, and ask about progress of the business. During and after the banking crisis of 2008 he was called upon by Mrs Zakharova to attend various meetings with banks. Occasionally, he would be consulted by Mrs Zakharova and Mr Afanasiev on substantial business transactions, like the raising of trade finance, and sometimes he would be asked to provide security in the

form of a personal guarantee. Sometimes documents would be brought to him for signature at the Mikhailovsky Theatre.

16. On occasion during this period Mr Kekhman would be presented as the principal of the Fruit Business and in that capacity he committed the Fruit Business to importing large quantities of bananas from Venezuela on the occasion of a Russian presidential visit.

17. However, he did not know the state of the business or its finances beyond what was told to him occasionally (and as it transpired inaccurately) by Mrs Zakharova and Mr Afanasiev. He did not know the organisation of the international companies associated with the Fruit Business. He had no control over their affairs which were organised and directed entirely by Mrs Zakharova and Mr Afanasiev and their respective staffs."

(3) At paragraph 2 of his trial witness statement, he stated that his statement was further to his *"Amended Defence which is supported by a Statement of Truth made by me"*, the *"Schedule to my Amended Defence which is also supported by my Statement of Truth"* and *"My first witness statement in these proceedings dated 10th July 2015"*, which he confirmed to be *"true to the best of my knowledge and belief"*. He asked the Court to take the content of those documents as part of his evidence, thereby adopting and affirming such evidence. He went on to state, amongst other matters (bracketed words are corrected translations):-

"21. I stepped back from running JFC Russia in 2007 to concentrate principally on running the Mikhailovsky Theatre for opera and ballet in St. Petersburg and I largely neglected the JFC business from that point onwards (until February 2012, when I had to return in order to assist in dealing with the consequences of the commercial collapse of the business).

...

22. In 2007, quite by accident, I was asked by Zerena Myskova (who was then head of the local BDO office of auditors/accountants in St Petersburg) to meet her to help Farukh Ruzematov to become the artistic director of the Mikhailovsky Theatre in St.Petersburg. As head of a major business based in the city, I was on good terms with two of the senior officials responsible for the arts and culture in St. Petersburg at that time. Surprisingly at the meeting they asked me to become the manager of the Mikhailovsky Theatre – although I had no experience of managing a theatre or ballet company previously....I decided to accept the role. I then spent the first four months of my appointment refurbishing the theatre, using funds which I largely funded myself from money I requested from the VK Family Private Foundation. During this time I spent 95% of my time dealing with Theatre matters and only 5% of my time dealing with JFC matters. I had already handed over the day to day running of the JFC Group to Mrs Zakharova and Mr Afanasiev and I simply was not interested in

knowing the details of the finances or running of the business. I believed the JFC business was a very substantial and profitable business which they could run entirely without me. I trusted them and their expertise and experience. I simply did not want to be involved in the management of the JFC business any more and that was no longer my interest.

23. Thus from 2007 until I returned to the business after I became aware of the Star Reefers proceedings at the end of 2011/beginning of 2012, unless there was a major crisis, or some very major decision was being made (such as the purchase of ships in 2007) I was not involved in management decision making at JFC at all. I spent 95% of my time dealing with the Theatre and just 5% of my time dealing with a very limited involvement at JFC.

24. As I have said if there was a crisis then I would be consulted by Mrs Zakharova and Mr Afanasiev. One such crisis was in 2008 when there were difficulties with the business of JFC Russia. Two of JFC Russia's main competitors had started to experience financial difficulties and [I asked] Mrs Zakharova and Mr Afanasiev to attend some of the discussions and negotiations with those companies regarding the potential purchase of their business. The companies went into bankruptcy – which I believe was not a bona fide bankruptcy and I made a criminal complaint regarding that. I was also asked by Mrs Zakharova and/or Mr Afanasiev to be present at discussions with JFC's lending bankers because the banks were worried that the failure of JFC Russia's two competitors might illustrate a weakness in the market which might lead to JFC itself experiencing similar difficulties. JFC did not want the banks to close their lines of credit.

25. I became personally involved simply because at that time (2008) those parties wanted to negotiate with me due to my historical attachment with JFC Russia. I was trusted and I was the individual who had historically led JFC. My limited involvement in dealing with this particular crisis continued into the first half of 2009 and during that time (late 2008 to early 2009) I probably spent nearer 30% (rather than 5%) of my time dealing with the JFC business and only 70% of my time on Theatre business. I must emphasize, however, that even during this period, when I was assisting in dealing with this specific issue, the day to day running of the JFC group and all commercial and financial matters remained with Mrs Zakharova and Mr Afanasiev.

26. At the end of 2009 and the beginning of 2010, because of the stress that I was under dealing largely with Theatre matters, I suffered two heart attacks which led to surgery to implant two stents. After that time I realized that I could not physically take the stress of all the work I was doing and so I stepped away even further from the JFC business to take care of myself. From that point onwards I really spent almost no time engaging with Mrs Zakharova and Mr Afanasiev and I let them know that I wanted absolutely nothing to do with the decision making at JFC whatsoever. Thus, by the time of the events which are material to the present claim I confirm that I had no material involvement at all with the decisions and steps being taken by Mrs Zakharova and Mr Afanasiev. They knew this – as did the other staff at JFC – and it is completely wrong for

the Bank now to suggest that I was involved in whatever Mrs Zakharova and/or Mr Afanasiev did in 2010 and 2011.

...

28. At some point in 2010/2011, Mrs Zakharova informed me that the borrowings of JFC Russia had increased significantly and that the business had also increased significantly and was continuing to grow. At around that time the price of bananas [dropped considerably] which meant that the usual 3-month low season trade during the summer months (when banana price was usually low) became a 6-month low season from July until the end of the year in 2011.

29. I was not generally concerned with the level of borrowing as informed to me by Mrs Zakharova at the time, because this was necessary for the sake of the business. As an example it was necessary to borrow from Sberbank for which the VK Family Private Foundation was required to pledge shares in JFC BVI.

30. At around this time JFC Russia, acting by Mrs Zakharova, approached VTB Bank for a refinancing loan of UD$300 million. This was required, as Mrs Zakharova explained it to me, because of the Eurozone crisis, during which western banks started to close their lines of credit. VYB bank and Sberbank were approached to restructure the company's borrowing and to try to keep all the company's borrowings within Russian banks. Unfortunately VTB did not agree to grant the loan.

31. I subsequently became aware, before I resigned from the Board of JFC Russia on 20th October 2011, that there was a substitute proposal for financing from JSC Bank of Moscow (a separate part of the VTB Group), which I understood, from Mrs Zakharova, was to be for US$150 million facility. She did not tell me how the loan facility was to be operated and I was not involved in any way in the decision to take the loan nor in any of the negotiations, discussions or information provision regarding the JSC Bank loan. I signed the board minute in which the original proposal for US$100 million loan facility was agreed by the board, but my best recollection is that the minute was brought to me at the Mikhailovsky Theatre to sign off. I did not attend any actual board meeting on 12 October 2011 or sign off the decision to raise the further US$50 million loan at the 12th October 2011 board meeting. I did not see or sign the JFC loan application upon which the Bank granted the loan and the loan agreement facility letter issued by the Bank was never put before me so far as I am aware.

32. I have been informed by JFC Russia's lawyer, Dmitry Kumbaya that a facsimile of my signature was affixed to the board meeting minute relating to the second facility. This indicated and illustrates the extent to which I was absolutely not personally involved in Mrs Zakharova's and Mr Afanasiev's management of the business. I can only assume that because she had previously told me of the need to obtain a total refinancing of US$ 150 million, that Mrs Zakharova, who was in complete control of all negotiations and decisions regarding finance, must have arranged for the second board minute to be drawn up and stamped with the facsimile of my signature. Certainly I did not know

anything about the October 2011 minute until 7th October 2012 – when I was shown the document as part of the litigation.

33. Also it only became apparent by me in late 2012 that JFC BVI, Garold and Whilm gave guarantees to JSC Bank of Moscow. I suspect that Mrs Zakharova must have instructed Mr Kasatkin to deal with the transaction and required him to deal with creation of the company guarantees from JFC BVI, Whilm and Garold in respect of the JSC bank borrowing. My permission was not necessary for these guarantees because I had nothing to do with that aspect of the group. I now see that these company guarantees were required as part of the security demanded by the Bank for the loan in 2011, but at that time I was not involved in this level of detail and I had no knowledge of what Mrs Zakharova had arranged in that respect.

34. I note that the Bank refers to an April 2011 strategic planning document. But that must have been prepared by Mrs Zakharova or Mr Afanasiev or their staff. I suspect the finance department created the document, including the "biography" of me, which is not accurate. I was not in fact in general control of the business by that time (as I have explained and illustrated above) and although I discussed matters of general strategy at an overview level with Mrs Zakharova and Mr Afanasiev, and I occasionally assisted as Chairman of the board in times of crisis, it was absolutely clear that I was not involved in managing the business at all. It was Mrs Zakharova (the General Director at the time) and Mr Afanasiev who had complete control at the time."

35. Mr Kekhman also provided a supplemental trial witness statement and a further supplemental trial witness statement. In the former he addressed the witness statements of witnesses to be called by C, including that of Mr Afanasiev, and that of Mr Tchernenko (including in relation to what he had been told by Mrs Zakharova, Ms Osipova, Ms Dakina and Ms Nikitina), as well as the evidence of Mr Tchernenko as to evidence that had been provided to him by Olga Sidorova (a former member of the Credit Department and Credit Committee of C) via a Ms Shteinbrekher (a former employee of C who worked with Ms Sidorova at the time when JFC Russia's application for a loan was being considered by C). In his second supplemental witness he responded to the evidence contained in the statement of Zakharova.

36. In his supplemental trial statement Mr Kekhman denied many aspects of C's witnesses' evidence, including as to the nature and extent of his alleged contact with Mrs Zakharova and Mr Afanasiev after he moved to the Mikhailovsky Theatre, maintaining that after that move, *"I did not retain any control at all in respect of the JFC business"* (paragraph 20) and stating that he did not order

Mrs Zakharova and Mr Afanasiev to obtain the loan from C, and denying that Mrs Zakharova presented the terms of the loan to him in August 2011 or at all stating, *"She told me that she was obtaining the loan from the Bank and I made clear that I would not be providing any personal guarantee or security in that respect"* (paragraph 55). In his (short) second supplemental witness statement Mr Kekhman denied the statements of Mr Zakharova as to the frequency of Mr Kekhman's contact with Mrs Zakharova after Mr Kekhman moved to the Mikhailovsky Theatre.

37. Thus it will be seen that Mr Kekhman's written evidence (from his Defence and associated Schedule, and witness statements) was, amongst other matters as identified above, that from December 2007 to March 2012 he had very little involvement in the management and running of JFC Russia or JFC Group generally (Defence paras 9(2) and 13(3)) and that unless there was a major crisis, or some very major decision was being made (such as the purchase of ships in 2007) he was not involved in management decision making at JFC at all (first trial witness statement paragraph 23). His evidence was that he was not aware of the true financial position of the JFC Group and also that at all material times he did not control his own foundation or the shares held by it in JFC BVI (paragraphs 13B(3) and 13(1) of the Defence).

38. As to Mr Kekhman's evidence as it stood prior to his cross-examination (as identified above), C asserts as follows at paragraphs 21 and 22 of its Written Closing:-

"... In short, notwithstanding his admitted 70% beneficial interest in JFC Group, his admitted 90% beneficial interest in LQ Group and (on C's case) his beneficial interest in the other D companies and in respect of the period after December 2007:

> *21.1 He alleges that he did not know the state of the business or finances of JFC Group beyond what was told to him occasionally by YZ and AA (and he says it turned out inaccurately).*
>
> *21.2 He alleges he did not even know "the organisation of the international companies associated with the Fruit Business" (encompassing companies such as Garold, Whilm and the Cyprus companies).*

21.3 He contends he had no control over the affairs of the JFC Group "which were organised and directed entirely by [YZ] and [AA] and their respective staffs" ... and that his role was "very limited indeed".

21.4 He states that from December 2007, AA and YZ were not subject to D's instructions.

21.5 He goes further and states that from the end of 2009 and the beginning of 2010 "I really spent almost no time engaging with [YZ] and [AA] and I let them know that I wanted absolutely nothing to do with the decision making at JFC whatsoever."

21.6 He disclaims any knowledge of the fraudulent practices in which they were engaged or as to the true financial position of the JFC Group companies.

21.7 He denies knowledge of the Other Companies despite the evidence that he received through his foundation or directly substantial payments from some of them, and

21.8 He disclaims almost any knowledge prior to the advancing of the loans by C to JFC Russia that loans had been sought or of the terms of the loans, saying that YZ was "in complete control of all negotiations and decisions regarding finance" and that he "was not involved in the managing of the business at all."

22. It was submitted in opening that these denials are completely incredible. According to D, his interests in JFC Group and LQ Group constituted the vast majority (indeed the entirety) of his wealth from 2007 when his foundation ("VKF") acquired the shares in these groups of companies. It is inconceivable that he would (as he now contends) have left the management of these companies entirely to YZ and AA and taken no steps to understand how the business was being operated and with what results. Rather, they operated in accordance with D's instructions and gave instructions to staff accordingly. In most cases, AA gave operational instructions in relation to purchases, logistics and distributions, and YZ in relation to financial matters."

A7. The relevance of the central issue as to the extent of Mr Kekhman's control over the JFC Group, LQ Group and Other Companies, and the extent of his knowledge as to their affairs.

39. The relevance of the extent of Mr Kekhman's knowledge of JFC's financial position (and frauds), his involvement in the management of the JFC Group, and his involvement in the loan application to C (which C says all flow from the finding that I am invited to make that the reality is that Mr Kekhman gave instructions on every strategic or other significant matter of the JFC Group) was

explained by Flaux J (as he then was) in his judgment of 29 October 2015 ([2015] EWHC 3073 (Comm)) in this action when he was considering C's application to amend the Particulars of Claim and Mr Kekhman's application to strike out the Particulars of Claim or alternatively for summary judgment against C responding to the matters alleged by C.

40. Although what Flaux J stated was in the context of applications for strike out or summary judgment, he was looking forward to the position as might exist at trial, and his legal analysis is accepted by Mr Stuart on behalf of Mr Kekhman as a correct statement of the law, as is what he states as to inferences available to the trial judge should particular factual findings be made. In this regard Flaux J stated, amongst other matters as follows:-

> *"51 Thus, the bank has an arguable case with a real prospect of success that Mr Kekhman is not telling the truth about two critical aspects of his evidence, his involvement in the day to day running of the Group after he left for the theatre and his knowledge of the true financial position of the Group. This arguable lack of candour on his part supports the bank's case that other aspects of his evidence are not true either and in particular that, contrary to his evidence, Mr Kekhman (i) did direct the diversion of assets and business opportunities from the Group or at the very least that the diversion took place with his knowledge and approval and (ii) was aware at the time that the loans were obtained from the bank in 2011 of the true parlous financial position of the Group.*
>
> *52 In the circumstances, it seems to me that the bank is correct in its submission that it has a sufficiently arguable case to go to trial that an inference should be drawn that Mr Kekhman was implicated in the diversion of assets and business opportunities away from the Group. It follows that, so far as concerns Mr Swainston QC's point about pleading fraud, the primary facts pleaded in the original pleading: (i) as to the extent of control exercised by Mr Kekhman; (ii) as to the companies to which assets and business opportunities were being diverted being ultimately in his control, do demonstrate that an inference of dishonesty is more likely than one of innocence or negligence or do, in Lord Millett's words, tilt the balance and justify an inference of dishonesty on the part of Mr Kekhman. Accordingly, in my judgment, the originally pleaded case of conspiracy does have a real prospect of success and Mr Kekhman's application to strike out that case, alternatively for summary judgment against the bank in respect of it, is dismissed.*
>
> ...
>
> *60 Mr Gourgey QC submitted that the crucial pleas as to why the inference should be drawn that the fraudulent misrepresentations were made at the direction of Mrs Zakharova and Mr Kekhman and/or pursuant to an*

agreement between them were those in sub-paragraphs (12) and (13) of Paragraph 12I of the draft amendment:

> *"(12) When directing Mrs Zakharova to apply for the loan, Mr Kekhman must have known that the claimant would require accounting information concerning the JFC Group as part of the process of applying for the loan and that such accounting information would include [the previous year's audited accounts for the Group and the management accounts]*
>
> *(13) Given the significance of a decision to present false accounts for the JFC Group overstating receivables by over U.S. $200 million and materially misstating profits and having regard to the matters set out at 8 and 8A above, it is inconceivable that Mrs Zakharova would have given a direction in the presentation of those accounting documents to the claimant without first having obtained the direction and agreement of Mr Kekhman. It is to be inferred that such was given."*

61 Mr Gourgey QC relied upon the following primary facts which he submitted would justify the inference of fraud by Mr Kekhman: (i) the close control of the Group that he exercised even after his departure for the Theatre, on an almost daily basis; (ii) that he was aware of the true financial position and the need to obtain funding; (iii) that he had specifically required Mrs Zakharova to resign as general manager so that she could work on finding funding; (iv) that she did so in conjunction with him; (v) that in respect of any significant decisions she and Mr Afanasiev sought the instructions of Mr Kekhman; (vi) that overstating the financial position by U.S. $200 million in false accounts to be produced to the bank was clearly a significant matter; and (vii) that in relation to the existing conspiracy claim, Mr Kekhman exercising his control over the JFC Group required Mrs Zakharova to divert assets wrongfully from the Group for his benefit.

62 Mr Gourgey QC submitted that, applying the correct test for pleading fraud, these primary facts made an inference of fraud by Mr Kekhman in the present case far more likely than any other inference. He submitted that Mr Kekhman's case that it was an equally plausible inference that he had nothing to do with the fraudulent misrepresentations and was unaware of them, would not be sustainable if those primary facts were established at trial.

...

64 As I have already held in the context of the existing pleading, the bank has a good arguable case (i) that Mr Kekhman was well aware at all material times about the true financial position of the JFC Group and that his denial of such knowledge in his evidence is untrue; (ii) that his involvement in the management of the Group in 2010 and 2011 was greater than he is prepared to admit in his evidence, so that his evidence about that is also untrue; and (iii) that that involvement included involvement in the process of obtaining the loans from the bank. In my judgment, if that case is established by the bank at trial, then the court will be entitled to draw the

crucial inferences set out at [60] above, namely that it is inconceivable that the fraudulent misrepresentations would have been made without the direction and agreement of Mr Kekhman.

65 Indeed, if that case is established by the bank at trial, it is difficult to see how an explanation of the fraudulent misrepresentations having been made which was consistent with Mr Kekhman's innocence would be sustainable. On this hypothesis, he would not have told the truth in respect of two critical aspects of his evidence and the obvious question is why he would do that unless he were trying to conceal his own involvement in the relevant wrongdoing. Furthermore, I accept Mr Gourgey QC's submission that on this hypothesis, Mr Swainston QC's suggestion that Mrs Zakharova was on some frolic of her own, engaged in fraudulent misrepresentations to the bank in order to cover up her own mismanagement and wrongdoing, is completely implausible. If Mr Kekhman was aware of the true financial position of the JFC Group, then there was nothing for Mrs Zakharova to conceal from him. On the assumption that both Mrs Zakharova and Mr Kekhman were aware of the true position of the Group, it is inconceivable that, if she had found that a loan could not be raised without misrepresenting the accounts, she would have proceeded on a U.S. $200 million overstatement of the accounts without informing Mr Kekhman and procuring his approval. Indeed, on this assumption and the further assumption that Mr Kekhman maintained close control of the Group (in relation to both of which assumptions the bank's case has a real prospect of success) it is far more likely that it is he who instructed her to misrepresent the accounts rather than her thinking of the idea and seeking his approval. Either way, I consider that if the bank establishes its case at trial as to Mr Kekhman's knowledge and control, the court would be entitled to draw the inference that he was a party to the fraudulent misrepresentations.

...

71 Mr Swainston QC placed a great deal of emphasis in his submissions on the fact that the bank does not allege that Mr Afanasiev was dishonest, which he suggested presented the bank with an insuperable difficulty in alleging fraud against Mr Kekhman. In my judgment, that analysis is misconceived. Mr Afanasiev can and does give a great deal of evidence about the extent of the control exercised by Mr Kekhman over the Group and Mr Kekhman's awareness at all material times of the true financial position of the Group, all of which directly contradicts the evidence of Mr Kekhman and will, if accepted at trial, establish that Mr Kekhman's evidence is not true in a number of important respects. I also consider that Mr Swainston QC's criticism of the last paragraph of Mr Afanasiev's statement as no more than assertion or "foot stomping" seriously underestimates the potential value of his evidence. Mr Afanasiev worked closely with both Mrs Zakharova and Mr Kekhman and was able to observe their relationship at first hand. If his evidence that Mr Kekhman dominated her and that she was scared of Mr Kekhman is accepted at trial, that is evidence which will support the bank's case that it is inconceivable that Mrs Zakharova would have committed a fraud on the bank without the direction or approval of Mr Kekhman. It is no

answer to say that, if Mr Kekhman had been acting fraudulently Mr Afanasiev would have known about it. He was not concerned with the finances of the Group but the operational side of the fruit business so there is no reason why he should have known that a fraud had been committed."

B. Applicable Legal Principles

B.1 Pleading and proving fraud

41. What must be pleaded and proved in relation to an allegation of fraud, was addressed by Flaux J on the strike out application in the present case, at paragraphs 14 to 19 of his judgment, by reference to what was said in the House of Lords in *Three Rivers District Council v Bank of England* [2001] UKHL 16; [2003] 2 AC 1.

42. In this regard in *Three Rivers*:

(1) At [55]-[56], Lord Hope of Craighead stated the principles as follows:-

> "55. As the Earl of Halsbury LC said in *Bullivant v Attorney General for Victoria* [1901] AC 196, 202, where it is intended that there be an allegation that a fraud has been committed, you must allege it and you must prove it. We are concerned at this stage with what must be alleged. A party is not entitled to a finding of fraud if the pleader does not allege fraud directly and the facts on which he relies are equivocal. So too with dishonesty. If there is no specific allegation of dishonesty, it is not open to the court to make a finding to that effect if the facts pleaded are consistent with conduct which is not dishonest such as negligence. As Millett LJ said in *Armitage v Nurse* [1998] Ch 241, 256G, it is not necessary to use the word "fraud" or "dishonesty" if the facts which make the conduct fraudulent are pleaded. But this will not do if language used is equivocal: *Belmont Finance Corporation Ltd v Williams Furniture Ltd* [1979] Ch 250, 268 per Buckley LJ. In that case it was unclear from the pleadings whether dishonesty was being alleged. As the facts referred to might have inferred dishonesty but were consistent with innocence, it was not to be presumed that the defendant had been dishonest. Of course, the allegation of fraud, dishonesty or bad faith must be supported by particulars. The other party is entitled to notice of the particulars on which the allegation is based. If they are not capable of supporting the allegation, the allegation itself may be struck out. But it is not a proper ground for striking out the allegation that the particulars may be found, after trial, to amount not to fraud, dishonesty or

bad faith but to negligence.

56. In this case it is clear beyond a peradventure that misfeasance in public office is being alleged. There is an unequivocal plea that the Bank was acting throughout in bad faith. The Bank says that the facts relied on are, at best for the claimants, equally consistent with negligence. But the substance of that argument is directed not to the pleadings as such, which leave no doubt as to the case that is being alleged, and the basis for it in the particulars, but to the state of the evidence. The question whether the evidence points to negligence rather than to misfeasance in public office is a matter which must be judged in this case not on the pleadings but on the evidence. This is a matter for decision by the judge at trial."

(2) At [160] Lord Hobhouse stated:-

"Where an allegation of dishonesty is being made as part of the cause of action of the plaintiff, there is no reason why the rule should not apply that the plaintiff must have a proper basis for making an allegation of dishonesty in his pleading. The hope that something may turn up during the cross-examination of a witness at the trial does not suffice. It is of course different if the admissible material available discloses a reasonable *prima facie* case which the other party will have to answer at the trial."

(3) At [184]-[186] Lord Millett stated:-

"184. It is well established that fraud or dishonesty (and the same must go for the present tort) must be distinctly alleged and as distinctly proved; that it must be sufficiently particularised; and that it is not sufficiently particularised if the facts pleaded are consistent with innocence: see *Kerr on Fraud and Mistake* 7th ed (1952), p 644; *Davy v Garrett* (1878) 7 Ch D 473, 489; *Bullivant v Attorney Genera; for Victoria* [1901] AC 196; *Armitage v Nurse* [1998] Ch 241, 256. This means that a plaintiff who alleges dishonesty must plead the facts, matters and circumstances relied on to show that the defendant was dishonest and not merely negligent, and that facts, matters and circumstances which are consistent with negligence do not do so.

185. It is important to appreciate that there are two principles in play. The first is a matter of pleading. The function of pleadings is to give the party opposite sufficient notice of the case which is being made against him. If the pleader means "dishonestly" or "fraudulently", it may not be enough to say "wilfully" or "recklessly". Such language is equivocal. A similar requirement

> applies, in my opinion, in a case like the present, but the requirement is satisfied by the present pleadings. It is perfectly clear that the depositors are alleging an intentional tort.
>
> 186. The second principle, which is quite distinct, is that an allegation of fraud or dishonesty must be sufficiently particularised, and that particulars of facts which are consistent with honesty are not sufficient. This is only partly a matter of pleading. It is also a matter of substance. As I have said, the defendant is entitled to know the case he has to meet. But since dishonesty is usually a matter of inference from primary facts, this involves knowing not only that he is alleged to have acted dishonestly, but also the primary facts which will be relied upon at trial to justify the inference. At trial the court will not normally allow proof of primary facts which have not been pleaded, and will not do so in a case of fraud. It is not open to the court to infer dishonesty from facts which have not been pleaded, or from facts which have been pleaded but are consistent with honesty. There must be *some* fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved."

(4) Lord Millett then analysed the judgment of Thesiger LJ in *Davy v Garrett* 7 Ch D 473, 489 and the judgments of the Court of Appeal in *Armitage v Nurse* [1998] Ch. 241, continued at [189]:-

> "189. It is not, therefore, correct to say that *if there is no specific allegation of dishonesty* it is not open to the court to make a finding of dishonesty if the facts pleaded are consistent with honesty. If the particulars of dishonesty are insufficient, the defect cannot be cured by an unequivocal allegation of dishonesty. Such an allegation is effectively an unparticularised allegation of fraud. If the observations of Buxton LJ in *Taylor v Midland Bank Trust Co Ltd* (unreported) 21 July 1999 are to the contrary, I am unable to accept them."

43. On the strike out application Mr Kekhman's then counsel submitted that the test to be derived from Lord Millett's speech was as follows:-

> "...the primary facts must necessarily lead to the inference that Mr Kekhman is guilty of fraud because otherwise and ex hypothesi the primary facts can be consistent with innocence...You don't get to arguability until you've established that there is a proper fraud plea. You don't establish that there is a proper fraud plea before particulars are pleaded which are only consistent with Mr Kekhman being dishonest and which cannot

be consistent with Mr Kekhman being honest."

44. This submission was (rightly) rejected by Flaux J in terms Mr Kekhman's current counsel, Mr Stuart, does not suggest is anything other than the correct test:-

> "20 I agree with Mr Gourgey QC that this overstates what is required for a valid plea of fraud. The claimant does not have to plead primary facts which are only consistent with dishonesty. The correct test is whether or not, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence. As Lord Millett put it, there must be some fact "which tilts the balance and justifies an inference of dishonesty". At the interlocutory stage, when the court is considering whether the plea of fraud is a proper one or whether to strike it out, the court is not concerned with whether the evidence at trial will or will not establish fraud but only with whether facts are pleaded which would justify the plea of fraud. If the plea is justified, then the case must go forward to trial and assessment of whether the evidence justifies the inference is a matter for the trial judge. This is made absolutely clear in the passage from Lord Hope's speech at [55]-[56] which I quoted above.

45. I have already quoted the paragraphs of the Re-Amended Particulars Claim in which C sets out the primary facts on which it relies.

B.2 The burden and standard of proof in relation to fraud

46. The burden and standard of proof in relation to allegations of fraud are well-established. The burden of proof is upon the claimant as in an ordinary civil claim. As to the standard of proof, the fact that fraud is alleged does not change the standard from being on the balance of probability – see *In Re B (Children)* [2009] 1 AC 11 at [13] per Lord Hoffmann.

47. In this regard Lord Nicholls stated as follows in *In Re H (Minors)* [1996] AC 563, 586E-G:-

> "The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event

occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence... Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established."

48. In *In Re B (Children)* the House of Lords emphatically re-iterated that there is only one civil standard emphasising that any logical or necessary connection between the seriousness of an allegation and its inherent probability is to be rejected; inherent probabilities are simply something to be taken into account as a matter of commonsense in deciding where the truth lies. Thus Lord Hoffmann said at paras [13] to [15] as follows:

"13... I think that the time has come to say, once and for all, that there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not. I do not intend to disapprove any of the cases in what I have called the first category, but I agree with the observation of Lord Steyn in McCann's case, at p 812, that clarity would be greatly enhanced if the courts said simply that although the proceedings were civil, the nature of the particular issue involved made it appropriate to apply the criminal standard.

14 Finally, I should say something about the notion of inherent probabilities. Lord Nicholls said, in the passage I have already quoted, that—
"the court will have in mind as a factor, *to whatever extent is appropriate in the particular case* , that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability."

15 I wish to lay some stress upon the words I have italicised. Lord Nicholls was not laying down any rule of law. There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will

show that it was all too likely. If, for example, it is clear that a child was assaulted by one or other of two people, it would make no sense to start one's reasoning by saying that assaulting children is a serious matter and therefore neither of them is likely to have done so. The fact is that one of them did and the question for the tribunal is simply whether it is more probable that one rather than the other was the perpetrator."

49. See also what Griffith William J stated at paragraph 10 of his judgment in *Gale v Serious Organised Crime Agency*, quoted by Lord Phillips in that case in the Supreme Court ([2011] UKSC 49) at paragraph [10]:-

> "9. The burden of proof is on the claimant and the standard of proof they must satisfy is the balance of probabilities. While the claimant alleged serious criminal conduct, the criminal standard of proof does not apply, although 'cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some other reprehensible manner. But the question is always whether the tribunal thinks it more probable than not' – see *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153 at para 55, per Lord Hoffmann."

50. The standard is flexible in its application, as is recognised by the editors of Phipson on Evidence 18th edn. at paragraph 6-55:

> "*Where a serious allegation is made in a civil case, such as an allegation of criminal conduct, the standard of proof remains the civil standard. Otherwise, where there was a claim for fraudulent misrepresentation and breach of warranty, the court might hold that the warranty claim was proven and the fraud claim was not proven on the same facts. However, the civil standard is flexible in its application. Thus if a serious allegation is made then more cogent evidence may be required to overcome the unlikelihood of what is alleged in order to prove the allegation.*"

B3. Inherent Probabilities

51. In applying the civil burden of proof on balance of probabilities inherent probabilities can be weighed alongside or against specific evidence from a particular case. But care must be taken in working out what in a particular case is inherently probable or improbable. It is generally correct that, absent other information, the more serious the wrongdoing, the less likely it is that it was carried out, because most people are not serious wrongdoers. The standard of proof remains the same, but more cogent evidence is required to prove fraud

than to prove negligence or innocence because the evidence has to outweigh the countervailing inherent improbability.

52. Thus as Andrew Smith J stated in *Fiona Trust v Privalov* [2010] EWHC 3199 (Com) at 1438:

> "It is well established that "cogent evidence is required to justify a finding of fraud or other discreditable conduct": per Moore-Bick LJ in *Jafari-Fini v Skillglass Ltd.,* [2007] EWCA Civ 261 at para.73. This principle reflects the court's conventional perception that it is generally not likely that people will engage in such conduct: "where a claimant seeks to prove a case of dishonesty, its inherent improbability means that, even on the civil burden of proof, the evidence needed to prove it must be all the stronger", per Rix LJ in *Markel v Higgins*, [2009] EWCA 790 at para 50. The question remains one of the balance of probability, although typically, as Ungoed- Thomas J put it in *In re Dellow's Will Trusts*, [1964] 1 WLR 415,455 (cited by Lord Nicholls in *In re H*, [1996] AC 563 at p.586H), "The more serious the allegation the more cogent the evidence required to overcome the unlikelihood of what is alleged and thus to prove it". Associated with the seriousness of the allegation is the seriousness of the consequences, or potential consequences, of the proof of the allegation because of the improbability that a person will risk such consequences: see R(N) v Mental Health Review Tribunal (Northern Region), [2005] EWCA 1605 para 62, cited in *Re Doherty*, [2008] UKHL 33 para 27 per Lord Carswell."

53. Other cases in which reference to a need for cogent evidence has been made include *Three Rivers District Council v Bank of England* [2001] UKHL16 at [181] per Lord Millett who stated that regard should be had to the *"seriousness and sheer improbability of their case and the cogency of the evidence required to prove it..."* and *JSC BTA Bank v Ablyazov & Zharimbetov & Others* [2013] EWHC 510 (Comm) at [76] *"...the cogency of the evidence relied upon must be commensurate with the seriousness of the conduct alleged"*. See also *Mullarkey v Broad* [2007] EWHC 3400 (Ch) at [47], and *Mohammad Jafari-Fini v Skillglass Ltd & Others*, [2007] EWCA Civ 261 at [73] per Moore-Bick LJ.

54. When considering the cogency of the evidence it is, however, always important to appreciate that one is looking at the cogency of the evidence in the context of inherent probabilities, and sight should not be lost of the fact, as emphasised in *In Re B (Minors)*, that there is but one standard, namely the balance of probabilities,

and ultimately the question is whether fraud has been proved on the balance of probabilities having regard to the evidence before the court.

55. It has already been noted that the reason why more cogent evidence is required to prove fraud than to prove negligence or innocence is because the evidence has to outweigh the countervailing inherent improbability of the commission of fraud.

56. In this regard in *Jadari-Fini v Skillglas Ltd* [2007] EWCA Civ 261 Moore-Bick LJ stated at [40] (in the context of considering the standard of proof in the context of an allegation of bribery):

> "The authorities were exhaustively reviewed recently by this court in *R(N) v Mental Health Review Tribunal* [2006] 2 WLR 850. They showed that there could be no 'straightjacket of classification' and that –
>
> > "... the civil standard of proof is flexible in its application and enables proper account to be taken of the seriousness of the allegations to be proved and the consequences of proving them." (per Richards LJ, at para 59)
>
> Thus in civil proceedings, the "presumption of innocence" is not so much a legal rule, as a common sense guide to the assessment of evidence. It is relevant not only where the cause of action requires proof of dishonesty, but wherever the court is faced with a choice between two rival explanations of any particular incident, one innocent and one not. Unless one is dealing with known fraudsters, the court should start from a strong presumption that the innocent explanation is more likely to be correct."

57. However, when considering what is or is not probable it is necessary to have regard to the facts of the particular case. In the present case C points out that it is common ground that, inherently improbable though they may themselves have been in the general course of events in the world, there were in fact extensive frauds and deceits perpetrated by JFC employees over an extended period of time (including, but not limited to, the Biany/Edenis fraud and the fraudulent Garold Representations). These frauds are therefore information that is available and should be factored in when assessing likelihood (by analogy if one were speaking in statistical terms (as C puts it) the scenario we are dealing with is conditional probability - the probability of A *given that* B).

58. I agree with this approach. Part of the backdrop to the allegations made against Mr Kekhman is that it is common ground that there were extensive frauds and

deceits perpetrated by JFC employees over an extended period of time. That is of relevance when considering likelihood and the probability or improbability of someone in Mr Kekhman's position, and indeed Mr Kekhman himself, knowing of, and being involved in, such fraud when considering the evidence before the Court as to the degree of involvement of Mr Kekhman in the business.

59. C's case is that it is inherently improbable, *given that there was widespread fraud in the business*, that Mr Kekhman (as the owner and group head of the business) was not himself party to the widespread fraud in that business. Furthermore, C submits that such inherent improbability increases if C establishes other aspects of its case on which it asks the court to make factual findings such as Mr Kekhman's actual involvement in the business and what C submits is Mr Kekhman's hands-on management style and strong personality.

60. C also submits that Mr Kekhman has proved himself to be a dishonest witness who has lied to this court in these proceedings. I address the allegations made in due course below. If I make such findings, however, C submits that as Mr Kekhman has been proved to have been dishonest it is not inherently improbable (indeed C would say it is probable) that he was dishonest in the further respects alleged by C. Indeed C says that the lies that it submits Mr Kekhman has told as to his (alleged lack of) involvement in the business have been made for the very reason of seeking to add credibility to his alleged lies as to a lack of knowledge of the fraud upon C.

61. In closing Mr Stuart, as well as accepting that motive was relevant when considering why a witness gave particular evidence, also accepted (rightly in my view), as follows (day 15 page 47 lines 7-14):

> *"I would accept that if you found that the - - that a witness was giving you important directly relevant dishonest, deliberately dishonest evidence in a material matter which he had every reason to - - should have been able to give you a correct and honest answer, then you might take that factor - - I will call it, not a fact, it is a factor - - into account in the general mix of determining the issue."*

62. The legitimacy of having regard to other findings of dishonesty or dishonest conduct when considering the inherent probabilities of particular conduct on the

part of a defendant having occurred, was rightly recognised by Andrew Smith J in *Fiona Trust v Privalov* [2010] EWHC 3199 (Comm) at paras [1440]-[1441]:

> "1440 In this case, it is not disputed that Mr. Borisenko and Mr. Privalov were dishonest in carrying out their duties for Sovcomflot. Mr. Dunning submitted that the dishonesty of Mr. Privalov and Mr. Borisenko does not make it more probable that Mr. Skarga would have behaved dishonestly or accepted bribes. He observed that in fact Mr. Privalov had acted dishonestly and defrauded Sovcomflot before Mr. Skarga joined the group, and thereafter he continued to act dishonestly in matters which he concealed from Mr. Skarga, including making agreements with Clarkson and Norstar for secret payments. It is impossible to tell from the evidence the full extent of Mr. Borisenko's financial dealings in association with Mr. Privalov, but, as he accepted, Mr. Skarga was unaware of them. I refer, by way of example, to their parallel share dealings through Wegelin, and the manner in which he had his funds paid when he withdrew his investment from Capco. I cannot infer from what Mr. Borisenko and Mr. Privalov did that dishonesty was so prevalent amongst executives in the Sovcomflot group as to affect the inherent probability (or improbability) that Mr. Skarga was similarly dishonest. However, as I conclude, Mr. Nikitin made payments to Mr. Privalov by way of bribes or secret commissions, and that he dishonestly involved him in acting in breach of his fiduciary and other duties. I accept the claimants' submission that this is relevant in assessing the likelihood that he would be prepared similarly to corrupt Mr. Skarga and Mr. Izmaylov, and involve them in acting dishonestly and in breach of their duties.
>
> 1441 Moreover, in assessing the allegations against Mr. Skarga, it must be recognised that he did in some ways act dishonestly in relation to Sovcomflot. He admitted, for example, that he was dishonest in signing Mr. Privalov's employment contract, and in my judgment he was certainly dishonest when he signed the Supplemental Agreement. His dishonesty on both occasions involved collusion with Mr. Nikitin and Mr. Privalov, and also with Mr. Wettern. I have also concluded that he has given dishonest evidence. I accept the claimants' submission that this makes it the less improbable that he behaved dishonestly on other occasions and again did so in collusion with Mr. Nikitin, Mr. Privalov and others. I am therefore unable to accept that, in assessing the likelihood that Mr. Skarga colluded dishonestly in relation to the various schemes, my starting point should be that it is inherently unlikely that he would have behaved so improperly."

63. To similar effect is what was said by Eder J in *Otkritie v Urumov* [2014] EWHC 191 at [89]:

> "I am prepared to accept that in a very broad general sense, it may well be true to say that it is inherently improbable that a particular defendant will commit a fraud. But it all depends on a wide range of factors. For example, if the court is satisfied (or it has been admitted) that a defendant has acted fraudulently or reprehensibly on one occasion, it cannot necessarily be considered inherently improbable that such defendant would have done so on another; or if, for example, the court is satisfied (or it has been admitted) that a defendant has created or deployed sham or false documents, the court cannot assume that it is inherently unlikely that such defendant did so on other occasions. For the avoidance of doubt, I should make absolutely plain that this is not to say that inherent probability is irrelevant. On the contrary, as submitted by Mr Casella, I accept, of course, that the court should take into account the inherent probability of an event taking place (or not taking place) as is made abundantly plain by Baroness Hale in the passage from *Re S-B* quoted above. However, as it seems to me, the court must in each case consider carefully what is – and is not – inherently probable having regard to the particular circumstances – but the standard of proof in civil cases always remains the same i.e. balance of probability."

64. An illustration of the application of such principles is the case of *Novoship (UK) Ltd v Mikhaylyuk* [2015] QB 499 (CA). A Mr Ruperti bribed a Mr Mikhaylyuk of Novoship to permit Mr Ruperti's own companies to charter Novoship's vessels and then sub-charter them to PDVSA (the Venezuelan national oil company) at a higher price, rather than direct charters by PDVSA. The bribes consisted of US$1.7 million payments to Mr Mikhaylyuk but also (from 2003 to 2004) US$410,000 to a BVI company (Amon) owned by a Mr Nikitin, arranged by secret emails not seen by Mr Nikitin suggesting the creation of fictitious documents to provide cover for the payments. Mr Nikitin knew of the payments and his explanation that they were payments made at Mr Ruperti's behest in return for business introduced to him was rejected. Mr Nikitin had lied in previous proceedings (the *Fiona Trust* proceedings).

65. Christopher Clarke J, as he then was, found (and the Court of Appeal upheld such finding) that Mr Nikitin must have known of these payments that benefited him. Longmore LJ (giving the judgment of the Court of Appeal) at [7] quoted from various paragraphs in the judgment of Christopher Clarke J, including from paragraphs 361 and 390:

"The suggestion that such a proposal occurred without Mr Nikitin's knowledge … is implausible. There would have been no reason for Mr Mikhaylyuk and Mr Ruperti to keep it from him… I … infer that Mr Nikitin knew that the money coming to Amon was coming from Mr Ruperti's companies, and that the charters in respect of which commission was being paid were charters to Mr Ruperti's company. I regard it as wholly improbable that whereas Mr Mikhaylyuk and Mr Ruperti knew what the moneys paid to Amon represented, Amon and Mr Nikitin did not" (emphasis added)

66. Whilst that was a case where the individual concerned (Mr Nikitin) had been found to have lied in previous proceedings (in contrast to the present case) C submits that there are parallels with the present case in that C says that Mrs Zakharova had no reason to keep the Biany/Edenis fraud from Mr Kekhman and that it is wholly improbable that whereas Mrs Zakharova knew of the fraudulent Garold Representations, Mr Kekhman did not, particularly if (as C invites the court to find), Mr Kekhman has given dishonest answers during the course of his written and oral evidence as to his actual involvement in the business.

B.4 Documentary Evidence

67. As C identifies at paragraph 43 of its Written Closing, it is now widely accepted that memories are fallible, people can convince themselves of the veracity of false recollections of events and retain confidence in their false recollection, and a judge's ability to evaluate honesty and reliability merely from a witness's demeanour is also fallible, and therefore where possible a court should rely on documentary evidence and any other objectively provable facts: see for example the comments of Lord Pearce in *Onassis v Vergottis* [1968] 2 Lloyd's Rep (HL) at 432 column 2, Robert Goff LJ in *The Ocean Frost* [1985] 1 Lloyds Rep 1 (CA) at 57, and Leggatt J in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at paras 15-22.

68. In such circumstances, as Robert Goff LJ stated in *The Ocean Frost* (at page 57):

"Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is

a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth."

69. Where there is a lack of contemporaneous documentation it is necessary to have regard to the inherent plausibility or implausibility of witnesses' accounts. As Moore-Bick LJ stated in *Jafari-Fini v Skillglass Ltd* [2007] EWCA Civ 261 at [76] and [80]:

> "76 ...Whenever an allegation of fraud or similar misconduct is made it is particularly important to consider the whole of the evidence before reaching a final conclusion, to test the oral evidence by reference to any contemporaneous documents and to consider the inherent probabilities. Having said that, however, it must be recognised that since the final conclusion must be capable of accommodating any facts which are admitted or which are established by evidence which is not capable of being seriously challenged, such facts provide a useful starting point for the assessment of the more controversial parts of the evidence.
>
> ...
>
> 80 It is necessary to bear in mind, however, that this is not one of those cases in which the accounts given by the witnesses can be tested by reference to a body of contemporaneous documents. As a result the judge was forced to rely heavily on his assessment of the witnesses and the inherent plausibility or implausibility of their accounts. In these circumstances considerable weight must be given to the fact that the judge had the great advantage of seeing most of the principal actors give evidence. We have not had that advantage and in my judgment are not well-placed to differ from his assessment of the truthfulness and reliability of Mr. Rowland or any of the other witnesses, particularly in relation to matters that are not reflected in any of the documents..."

70. The contemporaneous documents in this case principally came from three sources:-

(1) Around 230,000 documents on two hard drives and in hard copy kept at the Cypriot office of a JFC company Vidya Ltd and first identified to C shortly before a committal application against Mr Kekhman in December 2012 and ordered to be disclosed by Order of Flaux J dated 4 December 2012.

(2) Around 17,000 documents extracted from JFC Russia's servers in St Petersburg and held on a disc by a JFC employee Mr Salov and first identified to C in January 2014 and which were disclosed pursuant to a consent order dated 22 January 2014 compromising the committal proceeding.

(3) Some documents from JFC Russia held by Navigant, plus such documents as were found on Mr Kekhman's telephones, his PA's laptop and his theatre email account.

71. The disclosure extends not just to JFC companies but to a large number of non-JFC companies in Cyprus, the BVI and elsewhere operated by nominee directors and shareholders that C says were controlled by D. Thus the disclosure includes documents that only the controllers of companies would have (bank statements; official stamps; scanned signatures; plans of payments to be made by the companies; apparently fake contracts between these companies and non-JFC companies, often back-dated; and correspondence with the corporate agents of the companies instructing and paying those agents) and correspondence showing that payments to and from such companies were organised by JFC Group employees. Such disclosure accordingly evidences the control of such companies by JFC Group employees.

72. C also relies on the documentary evidence as giving the lie in relation to aspects of the oral evidence in particular in relation to (i) Mr Kekhman's denial that he was aware of companies, transactions or information recorded in documents he signed, (ii) payments that were made, loans taken out, and things previously said by Mr Kekhman and (iii) the operation of Maldus and Gepson, with which the evidence of Mr Kekhman and the three nominee witnesses in relation to the citrus business were in conflict.

73. There has, accordingly, been some disclosure, though the documentary picture is by no means complete. One discrete area where the documentation is not complete is in relation to Mr Kekhman's personal bank statements. Such statements, as contemporary documentary evidence, are of obvious potential relevance as the presence (or absence) of payment flows into and out of Mr Kekhman's personal bank accounts from or to entities of which Mr Kekhman

says he had no knowledge of or connection with, has the potential not only to support or undermine C's case as to Mr Kekhman's involvement and knowledge in relation to such entities, but also the veracity of Mr Kekhman's evidence on such matters (assuming that Mr Kekhman checked his own bank statements, something that Mr Kekhman was to deny when cross-examined).

74. In this regard it will be recalled that at paragraph 17E of Mr Kekhman's Amended Defence (supported by a statement of truth signed by him) he had stated, *"Neither Biany Investments Inc (Panama) nor Edenis Limited are or were controlled by Mr Kekhman. Mr Kekhman does not know who controls or controlled these companies nor who owns or owned them. Before this action he had never heard of either company. It seems to Mr Kekhman that both companies are part of a complex web of companies (set up without his knowledge) by Mrs Zakharova"* (emphasis added). Mr Kekhman therefore denied having ever heard of Edenis. In due course he was cross-examined as to the truth of such evidence, given that the documentary evidence that is available shows that on 15 April 2010 a payment of €200,000 was paid into Mr Kekhman's own bank account with ABN Amro Bank (Switzerland) A.G. from an Edenis bank account, "240—01-473979-01 EUR EDENIS LIMITED" (the transfer being at the instruction of Dmitry Kasatkin (head of the JFC Cyprus Office) *"According to the direction of Yulia Zakharova"* (per Mr Kasatkin's email of 15 April 2010 to Inga Prokofieva (an employee of Vidya Limited based in Cyprus and signatory for Garold on various contracts and bank accounts)). This transaction was, unsurprisingly, investigated with Mr Kekhman in cross-examination. My findings in relation to this transaction are at Section C.5 below.

75. During the course of the trial C sought disclosure of Mr Kekhman's personal bank statements. Mr Kekhman gave written instructions to the banks concerned in letters that are before me. In the event the relevant banks have never provided copies of Mr Kekhman's bank statements. I find it surprising that they have not done so, despite the passage not only of days or weeks, but now months since the requests were made. I would have expected commercial banks to have complied with the written request of their customer, and to have done so within a relatively short period of time. However I am not in a position to speculate, still less know,

why the banks have not provided copies, and I have not been invited to, and do not, draw any adverse inference against Mr Kekhman as a result of their non provision. The position is simply that documentary material which could have been of considerable potential relevance in terms of what it did or did not show in terms of payments to and from Mr Kekhman's personal bank accounts (and potentially what knowledge Mr Kekhman did or did not have in that regard) is not before me.

76. So far as emails are concerned, there are only a limited number of emails sent or received by Mr Kekhman. The most likely explanation for this, based on Mr Kekhman's own evidence, is that Mr Kekhman did not use emails much until 2012. C suggests that Mr Kekhman may also have discouraged others from emailing him. In particular reliance is placed on a text message chain between Mr Kekhman and Mr Afanasiev in 2012 in which Mr Kekhman texted Mr Afanasiev, "*Why didn't you call me? I don't understand you at all. Why do you send me e-mails?*", Mr Afanasiev responded "*you always told me to write e-mails to you... I thought... it is better to send it in writing*" and Mr Kekhman responded, "*You are far from the present reality. That is why you behave in such a way.*". Whilst this exchange was explored with Mr Kekhman in evidence, I do not consider that C demonstrated that Mr Kekhman discouraged others from emailing him though even had that been so, it does not follow that any such discouragement was to avoid any documentary trail as to his involvement. It is equally consistent with Mr Kekhman not being a user of emails much until 2012. In such circumstances, the absence of email traffic involving Mr Kekhman from 2007 until 2012 is essentially neutral on the issues that arise as to Mr Kekhman's alleged involvement (or lack of involvement) in the affairs of the JFC Group after December 2007 and his alleged knowledge (or lack of knowledge) of the matters in issue.

77. I do, however, bear well in mind that notwithstanding the substantial amount of documentation that is before the Court, there is no document (or "*smoking gun*") which in and of itself proves that the Garold Representations or the Security Representation were made with Mr Kekhman's knowledge and involvement, nor is there (for example) correspondence between Mrs Zakharova and her underlings

(as Mr Stuart put it in closing) of Mr Kekhman personally having played any part in, or having had any knowledge of, the fraud albeit that might not be surprising if those involved were aware of Mr Kekhman's involvement and knowledge but their contact with him was oral, and they chose not to record anything in writing. Of course from March 2012 Mr Kekhman did become involved. One very notable point, that C makes much of in its written and oral closing, is that Mr Kekhman's evidence in his witness statement was that at this time his, *"priority was to ensure that [he] did everything possible to look after the creditors of the business"* (statement paragraph 39). C submits that the obvious thing for Mr Kekhman to do would have been to collect in the receivables of Garold and Whilm which were stated in the accounts to be well in excess of US$200 million, and that the only plausible explanation for him failing to do so was that he knew there was no point collecting in the receivables because he knew they were fictitious. This aspect of the evidence is addressed in Section M.2.

B.5 Circumstantial Evidence

78. As is often the case in cases involving allegations of civil fraud and questions of knowledge, much of the evidence in the present case is circumstantial evidence. The nature of circumstantial evidence is that its effect is cumulative, and the essence of a successful case based on circumstantial evidence is that the whole is stronger than individual parts. In relation to circumstantial evidence, and the drawing of inferences, both parties place reliance upon what was said by Teare J in *JSC BTA Bank v Ablyazov & Others* [2013] EWHC 510 (Comm) at [197] – [198]:

> "197. So far as Mr Zharimbetov's own liability for the Bank's losses is concerned it is necessary to determine whether, when he signed the "minutes", he knew that Mr Ablyazov was, by means of the Original Loans, misappropriating the Bank's money for his own purposes.
>
> 198. Mr Zharimbetov said that he did not know this. He is not a reliable witness but I have to decide whether the Bank has established that he did not know. The bank must do so on the balance of probabilities but the allegation is extremely serious and exposes Mr Zharimbetov to a personal liability of over US$1 billion. The evidence must therefore be of a cogency commensurate with the seriousness of the allegation. The Bank's case is based upon inference from circumstantial evidence. In this regard it is helpful to recall what Rix LJ said about circumstantial evidence in his judgment on the occasion of Mr

Ablyazov's appeal against the finding of contempt at [2012] EWCA Civ 1411 at para 52:

> "It is, however, the essence of a successful case of circumstantial evidence that the whole is stronger than individual parts. It becomes a net from which there is no escape. That is why a jury is often directed to avoid piecemeal consideration of a circumstantial case: *R v Hillier* (2007) 233 ALR 63 (HCA), cited in Archbold 2012 at para 10-3. Or, as Lord Simon of Glaisdale put it in *R v Kilbourne* [1973] AC 729 at 758, 'Circumstantial evidence . . . works by cumulatively, in geometrical progression, eliminating other possibilities'. The matter is well put in *Shepherd v R* (1990) 170 CLR 573 (HCA) at 579/580 (but also passim):
>
> > '. . . the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. That means that the essential ingredients of each element must be so proved. It does not mean that every fact - every piece of evidence - relied upon to prove an element by inference must itself be proved beyond reasonable doubt. Intent, for example, is, save for statutory exceptions, an element of every crime. It is something which, apart from admissions, must be proved by inference. But the jury may quite properly draw the necessary inference having regard to the whole of the evidence, whether or not each individual piece of evidence relied upon is proved beyond reasonable doubt, provided they reach their conclusion upon the criminal standard of proof. Indeed, the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately.'"
>
> (emphasis added)

79. Of course, what Rix LJ stated in *Ablyazov* (including as to *"a net from which there was no escape"*) was stated in the context of contempt where the standard of proof is to the criminal standard namely "*beyond reasonable doubt*" / "*satisfied so that you are sure*" (in terms of a direction to a jury) where the "*net*" metaphor is particularly apt. However, care needs to be taken in utilising a similar metaphor where the standard is that of balance of probabilities. Something can be proved on balance of probabilities even if all other possibilities have not been excluded, which is why Lord Millett in *Three Rivers* referred to *some* fact which tilts the balance and justifies an inference of dishonesty. Nevertheless the points that are made that it is the essence of a successful circumstantial case that the

whole is stronger than the individual parts, and that circumstantial evidence works cumulatively, are equally apt in the context of civil fraud.

80. In his decision in relation to the particular claims before him in *JSC BTA Bank v Ablyazov*, Teare J concluded that it was an inevitable inference from the circumstantial evidence he identified that Mr Zharimbetov must have known that the loans were being made for the secret benefit of Mr Ablyazov. C submits that the same is true here – Mr Kekhman must have known of, and been involved in, the fraud upon C. In this regard C submits that it is the inevitable inference from the primary facts that C invites the court to find as to Mr Kekhman's knowledge as to the financial position of the JFC Group and his involvement in the management of the Group in 2010-2011 (based on the evidence the court has heard), that Mr Kekhman knew of, and was involved in, the fraud upon C.

81. In contrast Mr Stuart submits on behalf of Mr Kekhman that no "*net*" has been created, there is no inevitability (or, so it is said, even cogent possibility) of a finding of fraud created by the evidence that has been adduced and it is submitted that the circumstantial evidence cannot be said to have eliminated all other possibilities. C's riposte to such points (aside from denying Mr Stuart's characterisation of the state of the evidence) is to reiterate (as is the case) that the appropriate principle on the drawing of inferences was identified by Flaux J in his strike out judgment at [20] namely, *"whether or not, on the primary facts [proved], an inference of dishonesty, is more likely than one of innocence or negligence. As Lord Millett put it, there must be some fact 'which tilts the balance and justifies an inference of dishonesty'."*

B.6 Hearsay evidence

82. Certain of the evidence adduced on behalf of C is hearsay evidence – in particular much of the evidence of Mr Tchernenko, and his notes of meetings with Mrs Zakharova, Ms Osipova, Ms Dakhina, Ms Nikitina and the information that he says was provided to him by Ms Sidorova, via Ms Shteinbrekher, and the statement of Mr Zakharova which was ultimately relied upon as evidence notwithstanding that (in the event) Mr Zakharova was not tendered for cross-examination.

83. It is well established that hearsay evidence of a witness who has not been cross-examined is generally given less weight than the evidence of a witness who has been called and cross-examined and had his or her evidence tested in cross-examination, a point I bear well in mind when considering such evidence, and weighing it in the context of the evidence as a whole.

84. However, Mr Stuart seeks to go further in this regard on behalf of Mr Kekhman and submits that where issues in the case turn upon the credibility of the principal witnesses, statements put in under hearsay notices are to a large extent evidentially worthless (First Defendant's Written Closing Submissions paragraph 80). In this regard he relies upon what was said by Flaux J in *Republic of Djibouti & others v Boreh & Others* [2016] EWHC 405 (Comm) at paragraph [58]:-

> "58 Furthermore, in circumstances where the issues in the case turn upon the credibility of the parties' respective principal witnesses, as they so clearly do in the present case, witness statements put in under hearsay notices pursuant to the Civil Evidence Act, as were the President's statements in the present case, are to a large extent evidentially worthless. As Brandon J (as he then was) famously said in *The Ferdinand Retzlaff* [1972] 2 Lloyd's Rep 120 at 127:
>
> > "...matters of this importance, in a case of this kind, should be proved by oral evidence ... I cannot think that the Civil Evidence Act 1968 was intended, in general, to change the long-established system by which seriously disputed central issues in civil cases are tried on oral evidence, given on oath and capable of being tested by cross-examination, and to substitute for it a system of trial on unsworn documents brought into existence by parties to the proceedings post litem mortam, and I do not think the Act should be used, or rather abused, so as to produce such a result.""

85. It is, however, important to bear well in mind the context in which Flaux J made the above observations. *Boreh* was, as the learned judge described it (at [50] of his judgment), *"in a very real sense, ...a "swearing match" between two protagonists, the President and Mr Boreh, with Mr Boreh maintaining that the President was well aware of Mr Boreh's personal interests in the various ventures of which complaint is now made, specifically his shareholding in Horizon, all such matters having been discussed orally between them and agreed by the President. The President on the other hand denied all such knowledge."* What is more, the President was in charge of the litigation, and had decided not to

present himself for cross-examination. In that context it is hardly surprising, and entirely apposite, for the learned judge to consider the President's hearsay statements as "*to a large extent evidentially worthless*" as the President could have given oral evidence but chose not to do so.

86. Where the question is one of credibility of witnesses, and competing accounts of events (or of the extent of a person's knowledge and involvement in events) I accept that evidence untested by cross-examination is to be given less weight, but it does not follow that it should be given no weight whatsoever having regard to the circumstances of the case, and any reasons given as to why a particular witness or witnesses were not called to give oral evidence.

87. In the present case, for example, the evidence is that C was not able to persuade Mrs Zakharova (who was not a compellable witness) to give evidence in the circumstances explained by Mr Tchernenko at paragraph 17 of his statement (which he confirmed was correct when he was cross-examined), namely that following Mrs Zakharova's return to Russia to face a criminal investigation, Mr Tchernenko had been contacted by her Russian lawyers and informed that she had been advised not to give evidence in the English proceedings because it would incriminate her in the Russian criminal proceedings which Sberbank had initiated, which I consider to be a perfectly understandable explanation, which I accept, in circumstances where Mrs Zakharova was at the heart of a fraud perpetrated upon the Bank of Moscow, and was herself under criminal investigation. It is unrealistic to suggest that she might have been willing to give and sign any form of statement, still less attend to give oral evidence. Of course I bear in mind the fact that as someone who was involved in fraudulent conduct herself, her evidence (as reflected in Mr Tchernenko's notes) is itself to be approached with circumspection.

88. In the present case, the hearsay evidence is in many, but not all, cases relied upon in support of other evidence that is also before me, and which is adduced by C, which it is said goes to Mr Kekhman's knowledge and involvement in the affairs of JFC. This includes the evidence of Mr Afanasiev who has been called by C, and cross-examined by Mr Stuart on behalf of Mr Kekhman (though C says not challenged in crucial respects). I bear well in mind that there is hearsay evidence

on which C seeks to place reliance that has not been tested in cross-examination, and that this potentially impacts upon the weight that should be given to it, but it is evidence which is part of the overall evidence before me, and to the extent that it is consistent with, and supports, other evidence (for example the evidence of Mr Afanasiev) or (conceptually) if it contradicted such evidence, it is not evidentially worthless, and is evidence which can be taken into account as part of the overall evidential picture, whilst bearing in mind its limitations, the fact that it has not been tested in cross-examination, and the fact that this is a case where the credibility of witnesses (and of Mr Kekhman in particular) is of central importance. These are all points which I bear well in mind in my consideration of the evidence.

B.7 Challenging a witness's evidence

89. C submits that core aspects of Mr Afanasiev's evidence (which evidence C submits is fatal to Mr Kekhman's defence in the context of inferences to be drawn as to Mr Kekhman's knowledge) were not challenged in cross-examination. I have already identified Mr Afanasiev's written witness evidence in relation to Mr Kekhman's knowledge of, and involvement in, the affairs of the JFC Group in Section A.5 above. What was, or was not, challenged in the course of Mr Afanasiev's cross-examination is itself in issue, and is addressed in Section C.1 below.

90. As to the applicable principles in relation to the challenge of evidence through cross-examination, the editors of *Phipson on Evidence*, 18th edn state at paragraph 12-12 as follows:

> "*In general a party is required to challenge in cross-examination the evidence of any witness of the opposing party if he wishes to submit to the court that the evidence should not be accepted on that point... This rule serves the important function of giving the witness the opportunity of explaining any contradiction or alleged problem with his evidence. If a party has decided not to cross-examine on a particular important point, he will be in difficulty in submitting that the evidence should be rejected.*"

91. In this regard C refers to what was stated by Peter Smith J put it in *EPI Environmental Technologies Inc v Symphony Plastic Technologies Inc* [2005] 1 WLR 3456 at 3471:

> "I regard it as essential that witnesses are challenged with the other side's case. This involves putting the case positively. This is important for a judge to enable him to assess that witness's response to the other case orally, by reference to his or her demeanour and in the overall context of the litigation. A failure to put a point should usually disentitle the point to be taken again a witness in a closing speech. This is especially so in an era of pre-prepared witness statements. A judge does not see live in-chief evidence, thereby depriving the witness of presenting himself positively in his case."

92. The origins of the rule are considered in *Markem Corp v Zipher Ltd* [2005] EWCA Civ 67, and the summary in *Halsbury's* on the point is approved as follows: "*failure to cross examine a witness on some material part of his evidence or at all, may be treated as an acceptance of the truth of that part or the whole of his evidence*".

C. The Witnesses and their Evidence

93. The detail of particular witnesses' evidence, and the findings I make in relation thereto, is addressed throughout this judgment. In this section I summarise my overall findings as to each witness' evidence, credibility, reliability, and honesty or otherwise.

The Claimant's witnesses

C.1 Mr Afanasiev

94. Mr Afanasiev gave oral evidence over the course of three days (days 3, 4 and 7). He was independent of C, and not compellable by C. It is suggested at page 52 of Mr Kekhman's Closing Submissions that he appeared to have taken positive steps to try to make himself unavailable for the trial, but that he could not, in the end avoid giving evidence. However that was not put to him, and in any event the fact is that he did give evidence. It is also suggested that he was a witness who held a grudge against Mr Kekhman. I do not recall that being put to him. In any event it was not suggested that his evidence was other than truthful whatever his motives might or might not have been for giving evidence.

95. Whilst I did not find him to be a particularly impressive witness (he was prone to giving over-long answers that, on occasions, also did not directly answer the question asked (his answers often began "*let me answer in the following way*") and he did not have a good recollection of many matters (which is perhaps

unsurprising given the length of time passed since the events in question)), his oral evidence was broadly consistent with his written evidence and overall I found him to be an honest witness (it was not at any point put to him that he was lying as opposed to mistaken), and I accept the truth of the evidence he gave.

96. A point was taken that his lengthy trial witness statement (his third) was written only in English in circumstances where he gave his oral evidence in Russian, and his understanding of English was accordingly put into question. However in that statement (at paragraph 6) he confirmed that he was able to understand written English and that he had been able to understand what was stated in his statement with particular words and phrases translated for him. It is not uncommon for witnesses to be familiar with written English but only feel confident giving their oral evidence in their first language. I am satisfied that Mr Afanasiev understood the contents of his witness statement, and that it reflected his evidence.

97. In closing Mr Stuart accepted, on behalf of Mr Kekhman, that *"if there is a major piece of factual evidence where you are saying that the witness is lying, then you should put that."* I have already addressed the applicable legal principles in Section B.6 above. Mr Afanasiev was an important witness for C and important aspects of his evidence were either not challenged in cross-examination (head-on or otherwise) or, where addressed, his evidence in that regard was not undermined. These aspects were not minor matters ("*every little aspect that you don't agree with*" – Mr Stuart's words in closing) but went to the heart of the case against Mr Kekhman and the extent of his involvement and knowledge in the affairs of the JFC Group.

98. I have already set out in Section A.5 a summary of Mr Afanasiev's written evidence which stood as his evidence in chief. Core aspects of that evidence (on which he was either not challenged or his evidence was not undermined where the subject matter was addressed in cross-examination) included that:-

(1) YZ reported daily and subsequently weekly financial reports of the group, and accordingly Mr Kekhman was well aware of the JFC group's financial position and Mr Kekhman was informed of all material developments (see paragraphs 16d, 20 and 48 of AA's third witness statement quoted at Section

A.5 above). Mr Stuart accepted that Mrs Zakharova was aware of all those matters, and whilst he (rightly) pointed out that the evidence that Mr Kekhman was *"informed of all material developments"* was very broad evidence, such evidence was not the subject of any direct challenge in cross examination. The extent of Mr Kekhman's knowledge of the business of JFC group after December 2007 is a central issue in this case and goes directly to the fraud case advanced against him.

(2) AA and YZ were in heavy contact with Mr Kekhman in person and by telephone (see paragraphs 17,19 and 49 of AA's third witness statement quoted in Section A.5 above). Mr Afanasiev was cross-examined (over 7-8 pages of evidence on day 4, page 43 line 11 to page 51) as to the frequency of texts and phone calls and the timing and location of meetings, but the substance of Mr Afanasiev's evidence was not challenged. That evidence goes directly to the extent of Mr Kekhman's knowledge of the business of the JFC group after December 2007 and his level of involvement in the same.

(3) Mr Kekhman knew by 2011 that the JFC Group was experiencing significant financial difficulties and had a constant lack of funds throughout (see paragraphs 39b-c of AA's third witness statement quoted in Section A.5 above). Whilst Mr Afanasiev was cross-examined on day 3 as to what he knew about the profitability of JFC Group in 2009, 2010 and the first half of 2011 (including as to the contents of Mr Misiura's reports) (day 3 page 41 line 16 through to page 45 line 15), he was not challenged about his evidence as to Mr Kekhman's knowledge by 2011 that the JFC Group was experiencing significant financial difficulties. That is of obvious relevance in the context of the loans sought from C.

(4) AA took over as General Director so YZ could concentrate on seeking further financing (see paragraph 39 e and 57 of AA's third witness statement quoted in Section A.5 above). Mr Stuart accepted that Mr Afanasiev was not cross-examined about this evidence in circumstances where he submitted that the evidence was not particularly material. The evidence is, nevertheless of some relevance as it corroborates C's case as to the reason why Mr Afanasiev took over as General Manager, the need for refinancing, and Mrs Zakharova's

role in that regard (which links in with the evidence identified as sub-paragraphs (6) and (7) below).

(5) AA was told by Mr Kekhman in an airport conversation that Mr Kekhman had a citrus business that was in effect run by Mr Akatsevich, Mr Sayapin and Mr Borovskikh as Mr Kekhman's nominees. Mr Afanasiev so stated at paragraph 56 of his third witness statement (already quoted at Section A.5 above). It will be recalled that his statement continued:

> *"Although they legally owned the companies operating such businesses, they were minority shareholders of that business. I learned of their financial interest as a result of a conversation with Mr Kekhman. Around the end of 2011 or beginning of 2012, I met with Mr Kekhman at the VIP Lounge of Pulkovo Airport in St. Petersburg. While we were discussing the issues of the JFC Group, Mr Kekhman told me that there was a way to keep the business afloat and away from the reach of creditors by transferring parts of the operations to these nominees. Mr Kekhman said "there is an established working technology with these guys", who in return for 30% of business would manage it for Mr Kekhman's benefit. It is my belief that at least part of what used to be the JFC Group business is now being carried on by what, using Mr Kekhman's terminology, was an 'established working technology'".*

This paragraph of Mr Afanasiev's statement was put to him in cross-examination on day 7 (pages 24-28) and he confirmed he remembered the conversation and he confirmed the truth of paragraph 56 of his statement. There was some cross-examination as to whether the words in quotes were actually said by Mr Kekhman or not, and I also explored the same with Mr Afanasiev. Ultimately Mr Afanasiev's evidence was that the words in quotes were the meaning, the essence, of what Mr Kekhman said (and I accept that evidence). As for the words that followed I accept Mr Afanasiev's evidence that the gist of what was said was, *"who, in return for 30 percent would be managing this business"* or *"would run the business"*, and that Mr Afansiev's understanding (as reflected in what he said at the end of paragraph 56) was that the business was being managed or run on behalf of Mr Kekhman. That directly contradicts Mr Kekhman's own evidence.

(6) After the application for the Loan had been made, and C had indicated the terms on which it was prepared to lend, Mr Kekhman had been informed (at a meeting at the Mikhailovsky Theatre by Mrs Zakharova in the presence of Mr

Afanasiev) as to the conditions and key terms of the proposed loan, and Mr Kekhman indicated to Mrs Zakharova that she should proceed with the loan application (see paragraphs 58 and 60 of Mr Afanasiev's third witness statement quoted in Section A.5 above). Whilst Mr Stuart explored the Bank of Moscow loan with Mr Afanasiev on Day 4 (page 52 line 10 to page 58 line 20) he did not cross-examine Mr Kekhman in relation to this important evidence which relates to Mr Kekhman's level of knowledge and involvement in the very loan under consideration.

(7) At paragraph 64 of his third witness statement Mr Afanasiev stated:

> "*It is inconceivable that Mrs Zakharova would have presented false accounts to Mr Kekhman without telling him of their falsity and equally inconceivable that she would have presented the false accounts to the Bank without his approval. I say this for the following reasons. The fact of the matter is that Mrs Zakharova would never have taken such a momentous step as to present false accounts to the Bank on her own initiative. There would have been no benefit for her in doing so. The only person who benefited from all this was the person who controlled the whole business, who could extract money from the business at will (whether for his LQ projects or donations to the Mikhailovsky Theatre or otherwise), that is, Mr Kekhman, and not Mrs Zakharova or me. Furthermore, the nature of the relationship between Mr Kekhman and Mrs Zakharova was such that he dominated her and she would not take any significant steps concerning the business without his knowledge and approval.*"

Mr Afanasiev was not cross-examined on paragraph 64 of his third statement. I address the significance of this in Section M.2 below in the context of the Garold Fraud.

99. As for Mr Afanasiev's own role and knowledge, Mr Afanasiev's evidence (which I accept) was that he managed the actual practical on-the-ground operations of banana purchase, shipment, delivery and other logistics throughout the world i.e. the operational trading side of the business, but that he was not involved with the paper-trail, financing, execution and routing of payments, or accounting i.e. the financial reporting side of the business, and the contrary was not put to him in evidence.

100. Mr Afanasiev's evidence was that he was not involved in or aware of the fictitious purchases and sales by Garold and dissipation of money through Biany

and Edenis (see paragraph 62 of his third statement). I find his evidence in respect of these matters to be credible, and I accept it. In this regard I would echo the words of Flaux J (at [61] of his judgment), with which I agree, namely that Mr Afanasiev, "*was not concerned with the finances of the Group but the operational side of the fruit business so there is no reason why he should have known that a fraud had been committed.*"

101. In such circumstances, I reject the suggestion (advanced by Mr Stuart in closing) that there is any inconsistency between Mr Afanasiev's innocence and lack of knowledge of Mrs Zakharova's activities, and an inference that Mr Kekhman *"must have known and directed Mrs Zakharova"*. The two are not inconsistent. There are a number of points to be borne in mind in relation to the position of Afanasiev in this regard. First, the fraud itself involved Garold, and through that JFC Group BVI. Mr Afanasiev was not running the whole of the JFC Group. Whilst he was General Director of JFC Russia, JFC Russia's accounts were not falsified, and the monies taken in favour of Biany and Edenis came from Garold. Secondly, and as I have highlighted above, Mr Afanasiev's evidence was that his role concerned operations, what was actually happening on the ground. He was not concerned with financial reporting. Thirdly, decisions in relation to financial matters were taken by Mrs Zakharova and did not involve, or need to involve, Mr Afanasiev.

102. There is also an over-arching point about the state of Mr Kekhman's alleged knowledge in relation to the Biany/Edenis fraud and the subject matter of the Garold Representations, which is independent of any knowledge or lack of knowledge of Mr Afanasiev, and which I have already foreshadowed, which is the (indisputable) fact that Mr Kekhman took no steps to recover the Garold receivables from March 2012 onwards which C says is consistent only with Mr Kekhman already knowing that the Garold receivables were fictitious. This is addressed, in detail, in Section M.2 below.

103. I should say that in addition to the points made above in relation to Mr Afanasiev's lack of knowledge of the Garold fraud, Mr Stuart submitted that Mr Afanasiev's evidence supported Mr Kekhman's version of events in a number of respects. Mr Stuart, in his closing submissions identified the following particular

points when commenting on Mr Afanasiev's evidence generally. First, it is said that he would not challenge Mr Akatsevich's evidence that Mr Akatsevich had his own business (even if he had been *"to a small extent allowed access/give a corridor, to this wealth"* – day 7 page 19 lines 18-25). However, as I have already noted, and addressed above, Mr Afanasiev at paragraph 56 of his third statement gave evidence in relation to the airport meeting, and what he was told about the business being managed for Mr Kekhman's benefit. Furthermore, Mr Afanasiev also stated, "*I do not believe Mr Akatsevich was conducting his own business*" (day 7 page 19 lines 12-13) and (as I have already noted above in relation to the closing words of paragraph 56 of Mr Afanasiev's third statement), his answer, "*I think that would have sounded in the following words, in the following way, '... who in return for 30 per cent, would be managing this business', or, 'Would run this business'*" (day 7 page 27 lines 21 to 25).

104. It is also said that Mr Afanasiev would not challenge Mr Sayapin about his ownership of his business (*"I don't know anything about [Mr Sayapin's interest in J services]"* - day 7 page 28 line 15) or about Maldus (day 7 page 31 line 20), or challenge Mr Borovskikh's evidence on the issue (*"I don't have any allegations or accusations either toward Mr Borovskikh or Mr Akatsevich or Mr Sayapin*" – day 7 page 32 line 19). However, that evidence must be read subject to the very next sentence of his evidence (which is entirely consistent with paragraph 56 of his third statement), *"What I am saying is that in 2012 they were acting in the interests of Mr Kekhman and did not have an independent business."* It is that final sentence (coupled with what he had said at paragraph 56 of his third statement) that reflects the thrust of Mr Afanasiev's evidence, and I accept that Mr Afanasiev held such belief. I address in due course below in Section L my findings as to the actual position. In such circumstances I do not consider that Mr Afanasiev's evidence supports Mr Kekhman's case in the respects alleged.

C.2 Mr Tchernenko

105. Mr Tchernenko was cross-examined on days 5 and 13. He is an English-qualified solicitor and an in-house lawyer in C's corporate group. He interviewed Mrs Zakharova, Ms Dakhina, Ms Nikitina and Ms Osipova. He attaches his interview

notes and explains the circumstances in which he carried out his interviews. As an in-house lawyer his evidence was obviously not independent evidence, but it was evidence from a professional person, with professional responsibilities, and I formed the impression that he was an intelligent, and reliable, witness, who was well aware of his responsibilities as an English qualified solicitor when interviewing witnesses, and recording their evidence in his notes. I am satisfied that his notes accurately record the evidence of the witnesses concerned. By way of example, Mr Tchernenko's evidence in relation to his interview with Mrs Zakharova, was that he did his best to put down in English, and in as much detail as possible, in his notes, the words used by Mrs Zakharova in Russian whilst avoiding summarising his evidence. I am satisfied that he did so, and accept that he recorded what was said by the witnesses in his notes.

106. However, it is the case that some of what he states in his witness evidence does not appear in the notes of his interviews with Ms Dakhina, Ms Nikitina, Ms Osipova and Mrs Zakharova. It is suggested in this regard that Mr Tchernenko was very keen to argue C's case rather than stick to the facts known to him. Mr Stuart went so far as to suggest to him (in relation to the summary in his statement of his conversation with Mrs Zakharova) that, *"either deliberately or unthinkingly, you, in your summary in your witness statement are producing a version of this conversation with Mrs Zakharova which overlays your preferred version, that is that Mr Kekhman is solely responsible, onto what was actually said..."* (day 5 page 63 lines 20-25).

107. Mr Tchernenko's response was that he did not accept that, and that he did his best to take notes on the key information. He also explained that he also had his recollection of what Mrs Zakharova told him besides the notes. He explained that what was recorded in his statement was discussed. As I have stated, I am satisfied that the notes taken by Mr Tchernenko accurately reflect what was said to him. The hearsay evidence is in the notes themselves. I reject the suggestion that Mr Tchernenko was deliberately, or otherwise, overlaying his own arguments onto the actual information provided to him by the witnesses, and I bear in mind the matters that he said in his statement were discussed. However ultimately it is to the notes themselves that I have looked when considering whether they support or

rebut the evidential case that C mounts against Mr Kekhman, as they are contemporaneous documentary evidence of what was stated by the witnesses at the time of interview.

108. Those notes carry less evidential weight then they would had the witnesses been called to give oral evidence and be cross-examined. However the witnesses (leaving aside the hearsay evidence of Ms Sidorova which I address separately below), were not compellable witnesses, and Mr Tchernenko gave evidence as to the circumstances in which they were not called, which I accept. He was only cross-examined in this regard in relation to Mrs Zakharova, and I have already set out why I consider that it was understandable that she was not willing to give a statement or give evidence. As Mr Tchernenko explained, she had received advice from her Russian lawyers, not to give evidence.

109. It is notable that much of the hearsay evidence that it relied upon, that was given by these individuals in the autumn of 2014, has subsequently been confirmed by documents obtained and examined by C (for example as to the LQ companies' bank loans, the details of who operated payment instructions for the JFC and offshore companies, and as to payment flows). Indeed, on occasions, Mr Stuart put aspects of those notes to Mr Afanasiev during his cross-examination, as Mr Kekhman's case.

110. As already noted, I bear well in mind that Mrs Zakharova was very much involved in the fraud herself. Nevertheless, and whilst also bearing well in mind the limitations of evidence which has not been subject to cross-examination, I consider that this hearsay evidence is consistent with the evidence of Mr Afanasiev, who was cross-examined, and it goes to confirm and corroborate the same, in the context of Mr Kekhman's involvement and control of the business, which both goes to support C's case, and undermine the evidence of Mr Kekhman. I address the hearsay evidence of Ms Sidorova, conveyed to Mr Tchernenko though Ms Steinbrekher, which is in a different category, in Section N.2.

C.3 Mr Shatalov and Mr Nikishaev

111. Mr Shatalov (the former Head of the Treasury and Member of the Credit Committee of C) and Mr Nikishaev (a former member of the Credit Committee of C and Director of the Department for the Protection of Corporate Interests), who each gave evidence on day 6, were clearly honest and reliable witnesses, whose evidence Mr Kekhman accepted as essentially true in his written Closing Submissions. Of the two I felt that Mr Nikishaev had the better recollection of events. I address their evidence in due course below in the context of the Garold and Security Representations. Suffice it to note, at this point, that whilst their evidence was challenged in relation to reliance on the Security Representation, no challenge was made to their evidence (including that given in chief) as to their reliance on the Garold Representations.

C.4 Mr Zakharov

112. Whilst a witness statement was put in from Mrs Zakharova's husband, and he was scheduled to give oral evidence, in the event he did not do so due, it was said, to the poor health of his wife, his evidence being put in under a (late) hearsay notice. C submits that the hearsay notice could not have been served earlier, and that Mr Kekhman suffered no prejudice from the delay in its service as he had had notice of the evidence for some time and so was in a position to adduce such opposing evidence as he was able. Mr Zakharov's evidence is of narrow compass as I have already identified (essentially as to the alleged extent of contact between Mrs Zakharova and Mr Kekhman). I am prepared to admit his evidence in the light of the explanation given, but the weight that can be given to it, absent cross-examination, is limited. Suffice it to say, that his evidence, such as it is, is consistent with the evidence of other witnesses as to the extent of contact between Mrs Zakharova and Mr Kekhman.

The First Defendant's Witnesses

C.5 Mr. Kekhman

113. In the case of Mr Kekhman, his oral evidence was preceded by a large volume of written evidence, and by his Amended Defence supported by a statement of truth. I have already set out key aspects of that evidence in Section A.6 above. As there identified, his written evidence (from his Defence and associated

Schedule, and witness statements) was, amongst other matters, as identified above, that from December 2007 to March 2012 he had very little involvement in the management and running of JFC Russia or JFC Group generally (Defence paragraphs 9(2) and 13(3)) and that unless there was a major crisis, or some very major decision was being made (such as the purchase of ships in 2007) he was not involved in management decision making at JFC at all (first trial witness statement paragraph 23). His evidence was that he was not aware of the true financial position of the JFC Group and also that at all material times he did not control his own foundation or the shares held by it in JFC BVI (13B(3) and 13(1) of the Defence). In his first trial statement at paragraph 26 he went so far as to say that from the beginning of 2010 he, *"really spent almost no time engaging with Mrs Zakharova and Mr Afanasiev and I let them know that I wanted absolutely nothing to do with the decision making at JFC whatsoever. Thus, by the time of the events which are material to the present claim I confirm that I had no material involvement at all with the decisions and steps being taken by Mrs Zakharova and Mr Afanasiev".*

114. His written evidence was clearly designed to distance himself from involvement in the running of the Group after he left for the Theatre and any knowledge of the true financial position of the Group, and the consequences of any such involvement and knowledge, and accordingly the inferences which C invites the Court to draw from such primary facts (as identified by Flaux J at [64] and [65] of his judgment as addressed at Section A.7 above).

115. However Mr Kekhman's case depends on my acceptance of Mr Kekhman's written evidence, which is dependent first upon my finding him to be a witness of truth, whose evidence was honest and true, and secondly such evidence surviving his (lengthy) cross-examination and being found to represent the true position on the entirety of the evidence I have heard.

116. As to the first of these, and having had the opportunity to view Mr Kekhman giving evidence over some five days, I have no hesitation in concluding that Mr Kekhman is not a witness of truth. On the contrary, he demonstrated himself to be a thoroughly dishonest, untruthful and unsatisfactory witness, who lied in respect of various aspects of his evidence, who had a propensity to make up

evidence as he went along, who changed his evidence repeatedly (particularly when confronted with contrary documentation or other evidence, including prior evidence of his own), and who on numerous occasions provided explanations that were, quite simply, incredible. In consequence I treat his oral and written evidence with extreme caution and am not in a position to, and do not, accept the truth of that evidence, save where it is corroborated by credible evidence, or where it is contrary to his interest (of which there were significant admissions elicited during cross-examination which provided a telling insight into the true position).

117. Secondly, Mr Kekhman's evidence as to his (lack of) involvement in the running of the Group after he left for the Theatre and his (lack of) knowledge of the true financial position of the Group thereafter did not survive cross-examination, and is also contrary to credible evidence, including the evidence of Mr Afanasiev, which I accept, which presents a very different picture as to Mr Kekhman's involvement and knowledge.

118. As to the former, ultimately Mr Kekhman himself gave telling evidence which I regard as representing the true position, from which it is clear that he retained a significant involvement in decision-making. He accepted that he would influence general strategy (day 7 page 74 lines 19 to 20), it was natural for him to be consulted about significant decisions (day 7 page 78 lines 18 to 23), big projects or where there was a crisis (day 7 page 79 lines 12-14), or problems (day 8 page 20 lines 21-22) or (tellingly), "***when large sums of money needed,*** *or could be spent, then they would turn to me*" – day 7 page 79 lines 3 to 5 (my emphasis).

119. Perhaps most telling of all was this (unguarded) significant admission by Mr Kekhman on day 10 that followed a series of denials on his part (page 10 line 21 to page 11 line 4):

> "*Q. Mr Afanasiev is also right, Mr Kekhman, when he says that* ***Mrs Zakharova's invariable practice was to obtain your approval before taking significant decisions, and that you required that you should be consulted and your approval obtained before taking any significant decisions****. That, again, is correct, isn't it, Mr Kekhman?*
>
> *A.* ***Significant decisions, that's correct. Serious decisions. That is true****."*

(emphasis added)

120. This evidence itself suffices to tell the lie to Mr Kekhman's written evidence about his alleged lack of involvement in the business of the JFC Group post December 2007 (and is of particular relevance in the context of his denial of knowledge of the Garold Fraud, the Garold Representations and the Security Representation). It is also entirely consistent with, and corroborates, the evidence of Mr Afanasiev and other witnesses. For example, Mr Afanasiev's evidence, at paragraph 50 of his third statement, which I accept, is that:

> "*All major decisions in connection with financial statements / accounting were done with Mr Kekhman's approval. Mrs Zakharova's invariable practice was to obtain Mr Kekhman's approval before taking significant decisions, and Mr Kekhman required that he should be consulted and his approval obtained before taking any significant decisions.*"

121. Such evidence is also consistent with the evidence of other witnesses, which I accept, including that which appears from Mrs Zakharova's interview notes, that no one could use loaned funds without Mr Kekhman's approval, Mr Kekhman knew about strategy and its implementation in detail, and controlled everything, with her needing to seek confirmation from Mr Kekhman, and with many other employees refusing to implement instructions without checking directly with Mr Kekhman. In this regard both Mr Afanasiev's evidence, and Mrs Zakharova's evidence (from the interview notes), was that Ms Kuzina had a facsimile of Mr Kekhman's signature but would not use it without Mr Kekhman's approval and would have called Mr Kekhman to approve any use of his facsimile (paragraph 62 of Mr Afanasiev's third statement, and page 13 of the interview notes in relation to Mrs Zakharova). In this regard the evidence from Ms Dakhina's interview notes is that, "*Without K no key decision would be made*". Ms Nikitina confirms that she constantly heard from Mrs Zakharova and Mr Afanasiev that they needed to discuss things with Mr Kekhman or meet with him.

122. I address the relevant evidence, and my findings in relation to Mr Kekhman's knowledge and involvement in relation to the various matters alleged against him (most particularly the Garold Fraud, the Garold Representations and the Security Representations), in detail in due course below in Section M.2, but suffice it to

say at this point that I am satisfied, and in due course find below, that it was Mrs Zakharova's invariable practice (as it was Mr Afanasiev's invariable practice), and Mr Kekhman's invariable requirement that he be consulted and approve any significant financial decisions (and therefore be party to such financial decisions) which would therefore extend to the accounts and the subject matter of the Garold Fraud and the Garold Representations, as addressed in Section M.2.

123. I will turn now, in more detail, to my conclusion that Mr Kekhman was not a satisfactory or reliable witness or indeed a witness of truth. It was not a propitious start to his oral evidence that on the first day of his cross-examination, and despite expressly confirming the truth of the Amended Defence and Schedule in his trial witness statement (which were themselves supported by a statement of truth from him), he started by denying that he even knew what those documents were (day 7 page 49 line 20), and that he had ever seen the Defence (day 7 page 51 lines 17 to 19) or a version in English (the Defence and Amended Defence are, of course, in English).

124. This extraordinary evidence, which was inherently improbable given that Mr Kekhman had signed a statement of truth, and had adopted such documents in his trial statement, could not be explored further that day as the Amended Defence with the statement of truth (as opposed to the Re-Amended Defence) was not in the trial bundle. However when presented with the statement of truth the following morning, he confirmed that it was his signature and that he had carefully checked the Amended Defence to confirm that it was accurate before he signed the statement of truth (day 8 page 1 lines 21 to 25) thereby affirming as his evidence what was stated in the Amended Defence and Schedule (and so nailing his colours to that mast). Yet in his oral evidence Mr Kekhman repeatedly departed from the evidence contained therein calling into question both the veracity of his written evidence, and his oral testimony (not least given that he on a number of occasions repeatedly changed his evidence during the course of cross-examination even from an initial variation from his written evidence).

125. A good early example related to what was said in the first sentence of paragraph 13(3) of the Amended Defence, namely "*Mr Kekhman, together with Mr*

Afanasiev and Mrs Zakharova, ran the JFC Group until December 2007". This evidence was undoubtedly true (as was apparent from the entirety of the evidence), was linked to Mr Kekhman's appointment as General Director of the Mikhailovsky Theatre in December 2007, and was not itself damaging to Mr Kekhman or his version of events (albeit that it then required him to seek to contrast the position before and after December 2007). However he soon departed from that evidence in cross-examination seemingly because he wanted to distance himself from involvement with the management of the JFC Group even before December 2007 (presumably because he assumed that the less involvement on his part the better).

126. Thus on day 7 (page 64 line 19), Mr Kekhman stated that he was appointed the General Director of the Theatre in May 2007, not December 2007 (contrary to the date of December 2007 pleaded in paragraph 11 of the Schedule), and when it was put to him (as pleaded at paragraph 13(3) of the Amended Defence), that until December 2007 he, together with Mr Afanasiev and Mrs Zakharova, ran the JFC Group he said, *"of course it is not true"* (day 7 page 65 line 8), yet within a few answers he was to confirm that it was true (day 7 page 69 line 15). However the very next day he changed his evidence again, saying that what he had said the day before was that he was *"handing over the case load, so to speak, I wasn't managing anything. I was just handing over, introducing people to my contacts. I facilitated the meetings to Andrey and Yuliya, and they were manging by that time,* ***for a long, long time, themselves****"* (day 8 page 42 lines 6 to 10) (my emphasis). By day 10 when being questioned about the accounts he went still further stating, *"once again, I repeat, I was not involved in the running of the JFC Group in 2007"* and when asked *"Not even in April 2007, Mr Kekhman"*, he replied *"Group, no"* (day 10 page 17 to 10).

127. On this occasion it is plain that it was Mr Kekhman's initial account (as recorded at paragraph 13(3) of the Amended Defence) which was true, and it reflected his running of the JFC Group together with Mr Afanasiev and Mrs Zakharova in the period to December 2007 (consistent with his initial evidence and the weight of the evidence before the court), but Mr Kekhman showed himself unable to give reliable or consistent evidence in this regard, and shifted

his evidence as he saw fit during the course of his cross-examination to whatever he (misguidedly) thought was in his best interests at any particular point in time during his cross-examination. I reject the different versions of events given on this point by Mr Kekhman in cross-examination in terms of his involvement in the management of the JFC Group in the period to December 2007. Such evidence was simply untrue.

128. There are numerous other examples of Mr Kekhman changing his evidence either from previous oral evidence or from previous written evidence. C gives four examples in its Written Closing each of which I agree with, and am satisfied are representative:-

(1) On Day 7 (page 78 lines 4 to 10), Mr Kekhman gave this telling answer (which I find represented the true position), "*there [was a] partnership relationship, when I wanted to spend money for, for example, real estate, when I needed to spend money for LQ and I needed it, I turned to them*" (that is Mrs Zakharova and Mr Afanasiev). Yet the following day Mr Kekhman denied turning to Mrs Zakharova and Mr Afanasiev when he needed money for LQ, (*"No, it is not correct"* – day 8 page 52 line 21) and suggested that the previous day he had been only talking about the acquisition of properties by LQ Group (day 8 page 52 lines 8 to 16). There was no such qualification in his evidence the previous day, and that evidence was not limited to acquisitions. I consider that his evidence the previous day reflected the true position, and I so find. He was later to give evidence, which is rightly characterised as incredible, given his earlier oral evidence, that he did not know at what price LQ Group had agreed to buy the properties from JFC Group or how it was funded. This aspect of his evidence is addressed in Section F.7 below.

(2) In his trial witness statement (in Russian) at paragraph 39, Mr Kekhman referred to learning after "*we had settled the Star Reefers proceedings*" that the "*amount of cash*" in JFC Russia was only US$38m and to being "*shocked*" and that he then brought bankruptcy proceedings. It is clear that Mr Kekhman had got the timing wrong. However Mr Kekhman first tried to suggest that the translation was wrong, but once it was confirmed as accurate, he suggested that the Russian "*translation*" might be wrong, having seemingly forgotten that the

Russian was the original version he signed. At that point he then gave an account which I am satisfied was simply untrue, namely that by January 2012 "*we had already met the management of Star Reefers and agreed that we will be settling*" (page 40 line 25 to page 41 line 1), and even suggested that by that time an agreement had been reached to settle (page 43 lines 2 to 10). This was contrary to the sequence of events (the settlement was after his appointment as General Director in March 2012 as noted in paragraph 38 of his statement) and was also demonstrably contrary to the facts. Star Reefers was not settled in January 2012. There was an effective return date on the freezing order in the Star Reefers proceedings on 9 March 2012, and the order was continued on that date. Mr Kekhman's changing oral account of events was, I am satisfied, quite simply untrue.

(3) Mr Kekhman was asked about the arrangement he had with Mr Akatsevich when on many occasions the mortgage payments made by or on behalf of Mr Kekhman for the mortgage on his home were reimbursed by Mr Akatsevich. When questioned, Mr Kekhman initially said he did not remember that the mortgage payments that were made by him or on his behalf to Sberbank were reimbursed to him by Mr Akatsevitch. He said *"I do not remember that"* and when it was put this happened on a regular basis he replied, *"Absolutely not, no I don't"* (day 11 page 18 lines 14 to 21). For him not to remember any of this was itself incredible given what the payments related to, and the frequency of what happened. Yet he reiterated that he did not remember having an arrangement with Mr Akatsevitch for this (day 11 page 19 line 19), yet within a few answers his evidence was that, *"Mr Akatsevitch has very kindly offered to lend me money and at some point later I paid it back to him when either I personally or Yuliya [Zakharova] had money to give back to him. This is the only explanation."* (page 20 lines 6 to 10). He provided no meaningful answer as to why, given that he could not previously remember that mortgage payments that were made by him or on his behalf to Sberbank were reimbursed to him by Mr Akatsevitch, he now remembered (just moments later) a loan arrangement with Mr Akatsevitch. A few answers later he gave another version of events which distanced himself from direct contact with Mr Akatsevitch in relation to any alleged loan, saying, *"I imagine Ms Zakharova or maybe Ms Kuzina spoke*

with Mr Akatsevitch who very generously and kindly lent me money" (day 11 page 23 lines 8 to 11). At the time of hearing this evidence it was quite apparent to me that Mr Kekhman was not telling the truth. There was no such loan arrangement, and no evidence of repayment of any such alleged loan. The reality (as recorded in the notes of Ms Zakharova's interview which I accept in this regard) was that Mr Akatsevich had a pool of Mr Kekhman's funds earned from Moroccan citrus and other fruit programmes outside of JFC, and this was the source of the mortgage payments from Mr Akatsevich (which was put to Mr Kekhman and which Mr Kekhman predictably denied – day 11 page 24 lines 20 to 24). The citrus fruit business, and whose business it as, is addressed in Section L below.

(4) A further example of Mr Kekhman's changing account was in relation to the reason why no dividends were paid from the end of 2009 or early 2010. In his witness statement evidence he had stated that the explanation why he did not receive dividends in 2010 was, *"Because Mr Afanasiev and Mrs Zakharova explained to me that the profits were being reinvested in the business to fund Mr Afanasiev's expansion plans",* yet on day 9 he said that Mrs Zakharova told him that at some point the banks kicked off that the loan agreements stipulated that *"we didn't have the right to pay ourselves dividends"* (day 9 page 90 line 14). On day 10, when this inconsistency was put to him, he said, *"I just remembered things about the covenants now"* (day 10 page 7 line 10). For my part I formed the distinct impression that Mr Kekhman was simply making evidence up as he went along.

129. I am satisfied that on numerous occasions Mr Kekhman gave evidence which was untrue. Whilst Mr Kekhman's precise reasons or motive for doing so may, in many cases, never be known (though often it was as part of a denial of knowledge and involvement in the subject matter of the claims) I am satisfied that a number of the instances were designed to distance himself either from a greater involvement in the business of the JFC Group (or any other business other than theatre business) post December 2007 (if not earlier as aforesaid) or to deny knowledge of companies implicated in the Biany/Edenis fraud, or which

were connected with payments to or from the Foundations or Mr Kekhman himself.

130. Mr Kekhman's evidence in relation to his dealings with the Maroc Fruit Board are, I am satisfied, an example of the former. Mr Kekhman's evidence (at paragraph 17E of Mr Kekhman's Amended Defence) that before this action he had never heard of Edenis is, I am satisfied, an example of the latter.

131. In relation to Mr Kekhman's evidence concerning his dealings with the Maroc Fruit Board, it was plain from the answers that Mr Kekhman gave during the course of his cross-examination, that his oral evidence as to his dealings with the Maroc Fruit Board were untrue. In his first trial statement at paragraph 26 (as quoted in Section A.6 above) he went so far as to say that from the beginning of 2010 he, *"really spent almost no time engaging with Mrs Zakharova and Mr Afanasiev and I let them know that I wanted absolutely nothing to do with the decision making at JFC whatsoever"* and nowhere in his trial witness statement did he mention any dealings that he had with the Maroc Fruit Board, whether on behalf of the JFC Group or otherwise in 2010 and 2011. Nor did he do so when expressly asked to identify any major decisions in relation to the business that he was involved in in the period December 2007 to the end of 2011 (day 7 page 85 line 17), and when he was referred to meetings he had with Moroccan customer he said that he had not mentioned that as these were protocol dinners, nothing specific was discussed, there was nothing major-decision making there, no major decisions (day 7 page 86 lines 2 to 10). These answers were quite simply untrue, as was readily apparent from contemporary documents that were put to Mr Kekhman the following day.

132. A document entitled "*Secret Project*" "*Commercial Partnership Agreement M.F.B. – J.F.C*" bearing a date of April 2011, and containing a draft agreement between MFB and JFC, refers in terms to a meeting in April 2011 where Mr Kekhman was negotiating on behalf of JFC with MFB. It is clear from the subject matter of the draft agreement that this was not a mere matter of protocol, but rather concerned exclusivity and substantial trading between MFB and JFC. The agreement is in draft but there is no evidence of Mr Kekhman or indeed anyone else challenging its contents at the time. Mr Kekhman initially accepted

that he had seen this document at the time ("*yes, sure*") (day 8 page 27line 15) and he confirmed that it provided for a draft commercial partnership agreement between JFC and MFB , but he denied that it was the result of negotiations in the meeting, and said that *"we never discussed this project...this so-called secret project"* (day 8 page 28 lines 18 to 20) and said (in response to a question from the court) that he did not have discussions in April 2011 about a "*new*" partnership agreement between JFC and MFB, as by then they had been working together for fifteen years (day 8 page 29 lines 17-19). I find it inconceivable that if this evidence from Mr Kekhman had been true (that the subject matter of this document, the project, was not discussed) that there would not have been some contemporary correspondence from Mr Kekhman or someone at JFC protesting that the contents of the document were untrue or did not reflect what had been discussed yet there is nothing of that sort. In such circumstances I conclude that it was Mr Kekhman's answers which were untrue. He professed not to remember what was being discussed (an answer which itself I did not find credible given the apparent subject matter of the meeting which I would have thought would have remained in Mr Kekhman's memory) and when pressed as to why he did not go back to the MFB and tell them that he did not know what this was all about, he changed his evidence and said that he saw the document for the first time in England (i.e. in the course of these proceedings) (day 8 page 32 line 1), an answer which I consider was itself untrue, having regard to his previous (unguarded) answers when initially asked about the document.

133. He was then shown a letter dated *"Casablanca, 06/06/2011"*, which was within JFC's disclosure, from Mr Grana of MFB, which was addressed *"To the kind attention of Mr Vladimir Kekhman" and on the next line "Copy: To Mr Slava"* (which Mr Kekhman confirmed was Mr Borovskikh). The letter was said to be *"In response to your letter"* (that letter is not within the disclosure) and expressly referred to *"our negotiations last Friday and Saturday"*, a proposal, and that the JFC company would first have to confirm "*Mr Kekhman's commitment to give MFB $3 million"*. Mr Kekhman said that he saw this document, but that these negotiations were held by Slava with Mr Buamar. I do not believe that evidence, and consider it to be inherently unlikely given the fact that the addressee is Mr

Kekhman, the most natural reading is that the negotiations had been with Mr Kekhman, and that is all entirely consistent with the earlier letter and Mr Kekhman's earlier meeting with the MFB. Mr Kekhman was also shown a further document from Mr Grana entitled *"Casablanca, July 2017, 2011"* which was similarly addressed to Mr Kekhman with copy to Slava (which Mr Borovskikh confirmed, when he was cross-examined, was a reference to him) and which made reference to the provision of financial assistance and the commercial partnership agreement. I am quite satisfied that, contrary to Mr Kekhman's evidence, Mr Kekhman was very much involved in the negotiations with the MFB. Nor do I find credible Mr Kekhman's suggestion that, as far as he recollected, JFC was no longer involved in the fruit business in 2011 (day 8 page 25 lines 14 to 15), nor that he did not remember why the MFB needed financial assistance or the details of the agreement (day 8 page 20 to 22), asserting that it was "*not right*" that he was fully involved in the negotiations with Maroc Fruit Board and that the negotiations were on behalf of JFC (day 8 page 40 lines 4 to 8), an answer I simply do not believe given the documentary evidence put to Mr Kekhman and for which he had no satisfactory explanation.

134. I would also add that the previous day he had said that he was negotiating with MFB for Mr Akatsevich's and Mr Borovskikh's companies (though he could not remember when this was), and when asked why he was doing so he said this was because, *"when JFC was dealing with fruits we donated those fruits to four women's monasteries when JFC stopped the business with fruits, and Akatsevitch and Borovskikh started to do this business. I agreed with them to do the following; I agreed that for them I will do special conditions, services...and they will keep helping these four women's monasteries, Convents*" (day 7 page 90 lines 17 to 24). There is no documentation supporting such explanation, no evidence was adduced from Mr Kekhman's other witnesses to support it, and I find it inherently implausible. If, however, Mr Kekhman was at any time negotiating with the MFB on behalf of Mr Akatsevich and Mr Borovskikh's companies (as opposed to JFC) I consider that it would have been because he had a financial interest in these companies (which was put to him and which he also denied), rather than for the reason stated by him, which I regard as implausible.

135. As for Edenis, it will be recalled that at paragraph 17E of the Amended Defence (supported by a statement of truth signed by Mr Kekhman) it was pleaded:-

> *"Neither Biany Investments Inc (Panama) nor Edenis Limited are or were controlled by Mr Kekhman. Mr Kekhman does not know who controls or controlled these companies nor who owns or owned them.* ***Before this action he had never heard of either company****. It seems to Mr Kekhman that both companies are part of a complex web of companies (set up without his knowledge) by Mrs Zakharova."*
>
> (emphasis added)

136. Thus Mr Kekhman expressly denied knowing of Edenis prior to these proceedings. I am satisfied that that denial was untrue. In this regard specific mention is made of Edenis in an email sent to Mr Kekhman and his lawyers and Edenis provided a "loan" to his foundation which was used to fund a payment of circa €2.2 million that Mr Kekhman paid in May 2010 to his wife's account which in turn was used to pay for the Cannes Villa. Furthermore, as already noted, Mr Kekhman received directly into his personal Swiss bank account the previous month €200,000 direct from Edenis.

137. There are a number of aspects of Mr Kekhman's evidence in relation to such matters that I do not find to be credible, indeed I consider to be incredible. Mr Kekhman's evidence was that he did not know what sums were received by VK Family Private Foundation ("the Foundation"), from what source or indeed anything about the dealings by the Foundation with monies received. The Foundation was the main source of his wealth (he said he had no assets outside of Foundation from 2007) and the main source of his income. It is simply not credible that he would not have made himself aware (no doubt through the receipt of statements from the Foundation) as to what sums were being received and from what source and how those monies were being applied. Of course he had every reason to deny such knowledge given the movements of monies to and from the Foundation and the sources and recipients of the same. Equally I do not consider his evidence that he had no interest in Edenis to be credible either. There is no evidence or explanation as to why Edenis would make such a loan to him (absent him having an interest in Edenis), and if there had been any genuine loan one would have expected Edenis to chase for repayment, but there is no evidence of that either.

138. Mr Kekhman denied that the payment made by him to his wife's account was not derived from the loan that the Foundation made to him (as recorded in the Foundation statement) and itself derived from the Edenis loan. I am satisfied that such denial is false. The loan by the Foundation coincided exactly with the payment to his wife and Mr Kekhman could not point to any other source for the payment.

139. I am also satisfied that the explanation that Mr Kekhman gave to his trustee in bankruptcy as to the source of the payment was itself untrue. Quite apart from the lack of any evidence (other than Mr Kekhman's assertion) that a sum of money was lent to YZ/JFC Group from the proceeds of sale of a business because of "*liquidity of the fruit business in financial crisis*", he knew that the funds were not derived (as he told the trustee – see paragraph 3.11 of the letter) "*by way of dividends from the Group*". He attempted to justify that answer by saying it referred to what "*would*" be the position, but was left with no real explanation when the interpreter intervened to point out that the word "*would*" did not appear in the letter, and was simply a translation error, causing him to give the (non) explanation, "*in that case I do not understand*".

140. The payment of €200,000 into his Swiss bank account, which would have contained reference to Edenis is an example where Mr Kekhman would have received, in the form of his Swiss bank statements, a document which showed the origin of a substantial payment to him. It is inconceivable that he (or indeed anyone) would not have challenged receipt of such money had he not known of Edenis. The fact that he did not do so shows that he did know of the existence of Edenis (contrary to what he had expressly stated in his Amended Defence supported by a statement of truth) unless, of course, he did not read his bank statements.

141. Mr Kekhman's explanation was indeed, that he did not check his own bank statements and that he never made personal payments out of his account, leaving this to Mrs Kuzina. However there is no evidence of her doing so (other than Mr Kekhman's own assertions), and she would no doubt have needed a power of attorney to do so (of which there is no evidence). I do not believe Mr Kekhman. I do not consider it credible that Mr Kekhman would not have regard

to his own bank statements, would not have checked his own bank statements, and would not have had at least some role in the operation of his bank accounts and would not have acquainted himself with monies coming into his bank accounts and the sources of the same as well as monies being paid out. There is also the fact that I do not consider Mr Kekhman to be a witness of truth, and that Mr Kekhman had every motive for denying knowledge of Edenis, and saying whatever was needed in support of his assertion that he did not know of Edenis.

142. Another area where I am satisfied that he gave evidence that was untrue, is in relation to his knowledge and involvement in relation to acquisitions by the LQ businesses, how the prices were determined, how the purchase prices were to be paid (largely from JFC Group monies), and his (alleged) lack of knowledge of the loans taken out by LQ companies (despite some being guaranteed by him) and the use to which proceeds were put. Mr Kekhman was the 90% owner of the LQ Group and these were very much his projects (as he admitted) and they involved serious and significant decisions which (on his own evidence) would not have been taken without his knowledge and involvement. Matters relating to LQ companies are addressed in detail in Section F.

143. There are a number of other instances where I am satisfied that Mr Kekhman gave evidence which was untrue:-

(1) He denied having heard of Calico prior to these proceedings before these proceedings, yet that cannot be true as his own Statement of Affairs referred to his sale in 2008 (handled by Mrs Kuzina) of shares he held in Vin Project LLC to Calico. Mr Kekhman then denied any recollection of the transaction or what Vin Project did. However when he was interviewed by Vedomosti he had said that at Uralsib Bank's request Vin Project had purchased bonds issued by Soros. He told Vedomosti that this had nothing to with JFC Group, yet when cross-examined he said that Uralsib Bank had asked JFC Russia. I am satisfied that his denial of having heard of Calico, and what he said about Vin Project to Vedomosti, was, in each case, a lie. He also denied remembering anything else about Vin Project other than the purchase of the bonds – I am satisfied that was also a lie – Mr Kekhman could not have forgotten about the fact that Vin

Project played a significant role in the Frunzensky project (one of his projects) - for example providing funding of some US$50 million borrowed from Uralsib bank - not least in circumstances where he had himself given a personal guarantee (which he also professed not to remember, which I am satisfied was another lie).

(2) Mr Kekhman also denied any interest in Prometey, and indeed told the bankruptcy court that Prometey had nothing to do with JFC Group. I am satisfied he was lying in relation to the former, and in stating the latter. Mr Kekhman had given personal guarantees of over US$50 million for Prometey, and it is not credible that he could have forgotten that. He could offer no explanation as to why he would have given the personal guarantees if he had no interest in Prometey. It was not as if Mr Kekhman had not had plenty of time to consider such a question. At paragraph 48 of his October 2015 judgment Flaux J had stated, *"It is a fairly obvious question why Mr Kekhman would have been prepared to provide a guarantee and his staff would be applying for the loan if Prometey was nothing to do with him. What this demonstrates in my judgment is that the Court cannot take at face value what Mr Kekhman says in his statement and Defence"*. Yet Mr Kekhman had no answer. I am satisfied that his evidence in relation to Prometey was untrue – and that he did have an interest on Prometey.

(3) I am also satisfied that Mr Kekhman's denial of any interest in Chenet, or indeed any knowledge of its existence, prior to the commencement of these proceedings, is also untrue. In this regard Chenet had loaned €10million to his foundation – yet he could offer no reason why Chenet would make him a loan, or why (if it was a loan) there was no evidence of Chenet seeking repayment from him. He could point to no plausible reason why Chenet would make the loan and fail to seek repayment of it if the company was not his. There is a document dated 11 July 2007 from Mr Kekhman to his bank which contains a request for payment of US$150,000 to Chenet for the "*purpose of payment loan provided under the agreement dd July 10 2007*", yet Mr Kekhman denied any such

request in circumtances where there is no reason why anyone other than Mr Kekhman (or someone acting on his behalf) would have produced such a request. The income and expenses schedules maintained by JFC staff (in respect of Mr Kekhman's income and expenditure) records various payments made by Chenet as expenses incurred by Mr Kekhman. The payments include two payments of US$70,000 each to an account with La Salle Bank in Chicago. Incredibly Mr Kekhman denied having any account with La Salle Bank and professed a lack of any recollection of any dealings with that bank – yet a letter from Mr Kekhman refer to an account with La Salle Bank and a US$10 million loan that had been repaid. A US$10 million loan is not something that Mr Kekhman could have forgotten. There is no credible reason why the staff at JFC in compiling the expenses schedule would be recognising Chenet as Mr Kekhman 's company, or as to why Chenet would be paying money on Mr Kekhman's behalf, unless Chenet was Mr Kekhman's company.

(4) I am also satisfied Mr Kekhman's evidence that he had no interest in Alder is also untrue. Alder is dealt with in detail in Section E.4 below. Suffice it to note at this point that the evidence is that Alder advanced "loans" of US$20.8m to his foundation (yet there is no evidence that it ever sought to recover them), and payments to and from Alder are shown as income and expenditure of Mr Kekhman in the income and expenses schedule.

(5) Another example is Mr Kekhman's evidence in relation to Garold. Garold is addressed in detail in Section L.5 and M below. In his trial statement, Mr Kekhman denied being in a position to control Garold after he resumed as General Director of JFC, yet was able to direct the transfer of the contents of Garold's bank account in favour of Gepson, as is addressed in Section L.5 below. The subject matter of the Garold Fraud itself is addressed in Section M below.

(6) Mr Kekhman denied that the signature on the 2007 JFC Group accounts (above his name) was his signature, but could offer no explanation as to why anyone would sign his name or forge his signature. One would

expect Mr Kekhman to sign the accounts, and his denial of doing so (or even of having sight of the accounts at the time) is simply not credible, and I reject his evidence in that regard.

C.6 Mrs Kurzina

144. Mrs Kurzina gave evidence on Day 10. The relevance of her evidence relates to the contrast between what she said in her statement, and what emerged from her cross-examination. There is a startling contrast between her statement and what emerged from her oral evidence, as to her true relationship with Mr Kekhman. In her witness statement she gave the strong impression that she did not have any real association with Mr Kekhman and indeed only had limited contact with him, referring only to limited dealings with Mr Kekhman after 2005 (in the context of guarantee documentation required by JFC Russia), with no suggestion that she acted for him in his personal life – with only a passing reference to having given him some free legal advice in relation to the Theatre soon after his appointment. This could not be further from the truth. It was clear from her evidence (and I find) that she had a close association with Mr Kekhman, and indeed was used by him in effect as a personal assistant and personal lawyer as well as a confidant, a relationship which seemingly dated back to the early days of JFC when he was employed as Head of Legal at JFC from 1999 (at a time when she was only qualifying as a lawyer), and JFC was a business in its infancy being run by Mr Kekhman. It is notable that she was also keen to distance herself from the off-shore and non-JFC companies giving the impression in her witness statement that she only dealt with Russian law, and indeed she did not mention involvement with any company other than JFC Russia.

145. I am satisfied that the reason she down played her involvement and relationship with Mr Kekhman, was because her actual involvement and relationship with him would have implicated him in matters known by her (and which were being carried out by her on Mr Kekhman's behalf). In this regard the following matters emerged from her cross-examination:

146. First, she undertook various personal financial matters for or on behalf of Mr Kekhman. These included preparing Mr Kekhman's personal tax returns, acting as Mr Kekhman's lawyer on personal property sales in December 2007 and January 2008 and paying Mr Kekhman's monthly Sberbank mortgage with her own cash. This latter point in itself called for some explanation given that the amounts involved (some ₽400,000 per month) was around three times her own monthly salary. She said that she was then reimbursed in cash from Mr Akatsevich in a "*package*"/"*envelope*". It was unclear why she performed this convoluted way of paying Mr Kekhman's mortgage (rather than by use of a bank transfer by Mr Kekhman, or by Mr Akatsevich by bank transfer). Whilst she could offer no explanation I agree with the submission, made on C's behalf, that it was probably to hide payments from Mr Akatsevich to Mr Kekhman for some reason (of which the most likely reason would be to hide them from the tax authorities). That does not, of course, explain why Mr Akatsevetich was giving money to Mr Kekhman via Mrs Kurzina. As to that, it is consistent with Mrs Zakharova's evidence (which I accept) that Mr Akatsevich had a "*pool*" of Mr Kekhman's money from Mr Kekhman's citrus business (for her part Mrs Kuzina was unable to explain why Mr Akatsevich had a pool of D's money).

147. Second, she acted for Mr Kekhman on other personal matters including acting on Mr Kekhman's sale of Vin Project shares to Calico in September 2008 for £1,981 and in September 2009 purchasing a company, Korf LLC from Mr Kekhman, the company used to build Mr Kekhman's house in Pushkin City (as Mr Kekhman confirmed). There were also payments to her from an entity CC Korf (seemingly a different entity) in the sum ₽10m (around US$340,000) only days later a couple of days later, and a smaller sum from Korf the next month, the reasons for which remain obscure but must involve her acting in association with Mr Kekhman in some way.

148. Third, she acted as nominee owner of an LQ company, which C has identified as the Cyprus company Tavrosun, the direct owner of the Frunzensky development as well as acting as owner or general director of non-JFC non-LQ Russian companies Lite and Calypso and receiving remuneration from them.

149. Fourth, she herself applied in September 2012 to intervene in the legal action by Bank of St Petersburg against Prometey and Mr Kekhman as guarantor D (no JFC company being a party to that action), in her capacity as pledger of Calypso shares, and seeking to appeal the court's refusal of her application, liaising with Mr Kekhman's external lawyers Ivanyan & Partners.

150. None of the above matters were mentioned in her witness statement, an omission which I do not consider can have been the result of mere oversight. Rather I consider she must have made a conscious decision to omit them, presumably in order to protect Mr Kekhman. From the facts set out above, I infer that what she did in relation to the above matters, was done on behalf of, and with the knowledge of, Mr Kekhman. Accordingly, amongst other matters, Mr Kekhman would have known about (and through Mrs Kuzina, would have had involvement in) non-JFC and non-LQ companies such as Lite and Calypso, and I so find.

C.7 Mrs Sokolova

151. Mrs Sokolova also gave evidence on Day 10. Her evidence was of limited relevance. She worked in the separate accounting office dealing only with JFC Russia accounts and tax returns. She confirmed that JFC Russia's accountants had access to who owed JFC Russia money (which would include Garold). She did not deal with any of the matters relating to the Garold Fraud. She confirmed that Mrs Nikitina was based in a (separate) "*International Department of IFRS accounts*" based in the JFC Russia office in St Petersburg. It was in that separate department that those involved in the Garold Fraud were based.

C.8 Mr Akatsevich, Mr Sayapin and Mr Borovskikh

152. These witnesses were called on Days 11 and 12 (Akatsevich), and on Day 12 (Sayapin and Borovskikh), after Mr Kekhman's evidence was concluded. I address their evidence in Section K below. None of these witnesses were witnesses of truth. I am in no doubt whatsoever, having regard to the documentary evidence before me and the witness evidence that I have heard,

that they deliberately, and repeatedly, lied to this Court so as to conceal the fact that they ran the citrus companies (especially Maldus and Gepson) as nominees for Mr Kekhman at all material times. I would add that in the case of Mr Akatsevich I also heard evidence from him of what was clearly a bribe to a Mr Grana, whilst he also felt the need to claim the privilege against self-incrimination at one point when asked what a particular business did. The former undermines his integrity, whilst the latter suggests a concern that he might incriminate himself criminally.

C.9 Mr Martinez

153. Mr Kekhman also relied upon the written evidence of Mr Martinez, who worked in Ecuador and gave evidence in relation the banana plantation part of the JFC business. Such evidence was not material to the issues for determination, and he was not required to attend for cross-examination.

C.10 The Expert Evidence

154. There was expert evidence before me in respect of two disciplines:-

(1) **Forensic accounting**. In this regard C called Mr Egor Misiura of KPMG who provided two reports. Mr Kekhman did not call a forensic accountant, and the opinions expressed by Mr Misiura went largely unchallenged. Indeed much of his forensic work in relation to the Garold Fraud in particular is admitted on Mr Kekhman's behalf. I found him to be a reliable expert who had analysed the matters before him with meticulous care. I accept his expert opinion evidence.

(2) **Russian law**. C called Mr Maxim Kulkov, who initially provided two reports. Mr Kekhman called Mr Drew Holiner who also initially provided two reports. After the conclusion of the hearing Mr Holiner produced a further report to which Mr Kulkov responded. There was much common ground between as recorded in the Joint Experts' Report which also identified the (limited) areas of disagreement. I address in due course below in Sections N.8 and O.6 their evidence in relation to the application of Russian law to the deceit and dissipation claims. I found each of them

to be an experienced expert witness who gave independent expert evidence that was of assistance to the Court. Where there were differences between them of any relevance to the issues that arise in relation to the misrepresentation and dissipation claims, I set out my findings in that regard in due course below. They also addressed matters going beyond what was necessary to consider in respect of the misrepresentation and dissipation claims. Their respective positions appear from the Joint Experts' Report. I have not found it necessary to address those additional matters, as they do not impact upon the issues that arise for determination.

D. The period up to December 2007

D.1 The Corporate Structure of the JFC Group and Mr Kekhman's knowledge thereof

155. The business of the JFC Group had been built up by Mr Kekhman from nothing in the period 1996 until 2007 by which stage it was a global fruit company owning substantial plantations and a fleet of vessels. That business comprised dozens of companies around the world that produced, shipped and sold fruit (especially bananas).

156. Furthermore and whilst, as I have already noted, by the time he gave his oral evidence Mr Kekhman was seeking (unsuccessfully) to distance himself from his involvement in the JFC Group in the period up to December 2007, his written evidence (which I accept) was that until around 2007, *"he knew everything that was going on within JFC Russia"*, *"was intimately involved in all aspects of the decision making"* and *"made all decisions on [his] own"*.

157. A key point to note is that the JFC Group, as it existed during the period 2007-2012 and the events under consideration was substantially already in place by February 2007 (as is shown by an organisation chart at that time, and subsequent charts). The corporate structure was put in place by external consultants in around 2006 for strategic reasons as identified in Mr Kekhman's witness statement.

158. As for the structure itself, JFC BVI was the BVI holding company. JFC BVI was owned by three family private foundations to reflect three ultimate beneficial owners of the group Mr Kekhman (through the "VK Family Private Foundation"), Mrs Zakharova (through the "Wealth Independence Nobleness (WIN) Private Foundation") and Mr Afanasiev (through the "Private and Defense Foundation").

159. The three foundations were set up together in the Netherlands Antilles. Through these foundations Mr Kekhman, Mrs Zakharova and Mr Afanasiev were the ultimate beneficial owners of JFC BVI, as originally set up sharing 90:5:5, though this was changed in July 2007 to 70:15:15 (with Mr Kekhman's foundation holding the largest share). Mr Kekhman was appointed beneficiary on 1 March 2007, and from July 2007 onwards he was the ultimate beneficial owner of 70% of the JFC. It is an obvious point, but this meant that Mr Kekhman was the largest beneficial owner of JFC. Furthermore, through his foundation, JFC was his main source of income following his departure for the Theatre.

160. There were four divisions of the JFC Group (as described in various organisational charts including the 2011 organisational chart):-

(1) The "Trading & Logistics Division". This was primarily based in Russia although it included some Cyprus companies (Huntleigh Investments Ltd and Espotting Investments Ltd) and BVI companies (Garold Projects Ltd and Larcom Global Ltd). Within this division was:-

(a) The Russian company JFC Group ZAO/ZAO Group JFC (referred to by the parties, and herein as "JFC Russia"). This was the borrower under the Loan (and various other loans). It bought fruit from Russian JFC company Bonanza International ZAO (which bought it from other JFC companies in Ecuador and Costa Rica) and sold it to the Russian market. It was owned by JFC BVI through Huntleigh. Mr Kekhman was its General Director until 15 March 2005, followed by Mrs Zakharova from then until 24 April 2011, followed by Mr Afanasiev until 4 March 2012, after which Mr

Kekhman returned as General Director. Mr Kekhman was Chairman of the Board of Directors and a director from June 2005 until at least 20 October 2011.

(b) Garold Projects Ltd ("Garold") a BVI company, which was formed in October 2006, and was the main fruit seller and contractor of chartering services in international (that is non-Russian) markets. Garold sold the fruit to non-Russian customers (later through the JFC company Bonanza Europe d.o.o in relation to European non-Russian) customers. Garold was one of the guarantors of the Loan granted by C.

(2) The "Shipping/Chartering Division". The Group's internal providers of chartering services, were Cyprus company Vidya Ltd (formed later than 2007) and BVI company Whilm Management Ltd ("Whilm") (formed in March 2005), as well as various Panamanian companies. Whilm was another of the guarantors of the Loan granted by C.

(3) The fruit "Production Division". This consisted of many plantation-owning companies and other companies including in Ecuador, Costa Rica and Panama, including the head company of the Ecuadorian production sub-group Marsella Group Inc of Panama.

(4) The "Financial Services Division". This comprised JFC Financial Services SA, which was registered in Luxembourg.

161. Whilst it was Mr Kekhman's evidence that he was not involved in the setting up of the international business, and that (per his written opening) the international group was created at the instigation of Mrs Zakharova and Mr Afanasiev, Mr Kekhman accepted, when cross-examined, that he was aware of the various divisions, the JFC BVI holding company and foundations, and the roles of Garold and Whilm (he was himself a director of Whilm between 2005 and 2007). He also accepted that Mrs Zakharova had explained to him the structure of the group when it was being set up and that he had approved the structure.

D.2 The Group's financial position in 2007 and its plans for the future

162. The JFC Group had a declared revenue of around US$354 million and EBITDA of US$52 million in 2006, whilst JFC's internal documents record that at this time Garold had an annual revenue of US$48 million and Whilm had a revenue of US$22 million. JFC had an ambitious group strategy in 2006 for the period 2007 to 2010 which included an increase in international sales (conducted by Garold) by 46% by 2010, contributing to an increase in group revenue to US$706 million and EBITDA of US$87 million in 2010. In his oral evidence Mr Kekhman accepted that this strategy was formulated with his involvement and agreed by him.

163. Against such a back drop of ambitious expansion plans that Mr Kekhman was involved in and approved, it might be thought inherently unlikely that Mr Kekhman would have neglected, and have had little or no involvement in, decision making within the JFC Group going forward. In the event, and as I have already addressed in Section C.5 above (and address in further detail in the context of the Garold Fraud and the Garold Representations), I am satisfied that Mr Kekhman was, going forward, kept informed by Mrs Zakharova and Mr Afanasiev of financial matters and that no significant or serious decisions would have been made, or were made in the period after December 2007, without his knowledge and approval. As he accepted during the course of his cross-examination he would influence general strategy, it was natural for him to be consulted about significant decisions, big projects or where there was a crisis and when large sums of money were needed, or could be spent, and in relation to significant decisions it was Mrs Zakharova's invariable practice to obtain his approval, and he required that he should be consulted and his approval obtained before any significant or serious decisions were taken.

E. The position after December 2007

E.1 Mr Kekhman's knowledge of the finances of the JFC Group

164. The impression that Mr Kekhman sought to convey in his witness statement was that he did not have knowledge of the finances of the JFC Group in the period 2008 to 2011. I am satisfied, on the entirety of the evidence, that that was not true and that the true position was that he was kept informed (principally by Mrs

Zakharova) of the financial position of JFC Russia and the JFC Group throughout this period. I have already addressed the relevant aspect of Mr Afanasiev's evidence in relation to such matters in Section C.1 above, and that of Mr Kekhman in Section C.5 above. I address such matters further below in Section M.2 in the context of Mr Kekhman's knowledge of the Garold Fraud.

165. Suffice it to note at this point, that Mr Afanasiev's evidence, which was not challenged in cross-examination, and which I accept, was that Mrs Zakharova:-

(1) provided, *"daily and subsequently weekly consolidated financial reports of the JFC Group comprising consolidated balance sheets and profit and loss accounts to Mr Kekhman who was therefore well aware of the overall financial position of the JFC Group and, in particular, the level of its external borrowings*", and

(2) "...reported (both orally and via the provision of financial reports) to Mr Kekhman on the financial position of the JFC Group. Accordingly, Mr Kekhman was well aware of the JFC Group's overall financial position (not just limited to JFC Russia)".

166. I am satisfied that this reflected the true position from which Mr Kekhman would have had knowledge of the JFC Group's overall (actual) financial position. The portrayal of Mr Kekhman as having almost total ignorance of the finances of the Group was simply not credible. In this regard I reject his evidence that he knew nothing about the international business or of that fact that it was (through Garold) said to make up 37% of the turnover of the group by 2010. An example of the truly incredible nature of Mr Kekhman's evidence in relation to financial matters was his denial of seeing the audited H1 2007 accounts for the group and the disowning of his own signature on them. I have no doubt, and find, that he had sight of such accounts, and that was the context in which his signature was affixed to such accounts. Equally incredible was an alleged lack of familiarity with how to read a balance sheet, and an alleged lack of awareness of where JFC's group accounts were prepared or even kept. I am satisfied he was aware of such matters.

167. Ultimately his own evidence was that he *"definitely knew the figures of turnover of the companies and profit"* of companies that were borrowing, before he gave personal guarantees, and he accepted that he received daily reports of sales in Russia (it appears from information from the SAP accounting system sent by text message). He also accepted that he was kept informed regularly by Mrs Zakharova up until September 2011 in respect of the business's financial performance and position, for example as to its periodic reported results and performance in each season. It is notable that he was also able to give detailed information to the interviewer in his interview by Vedomosti newspaper in July 2009 (albeit that Mr Kekhman says that he had been briefed beforehand).

E.2 The Russian centric nature of the payment operations

168. I also consider it relevant that Russia was the focus of much of what was going on, in terms of financial matters, at the time. Thus whilst the detail of international payments was conducted by Ms Volkova under Mr Kasatkin in Cyprus, much of what was going on in terms of payments and accounting was going on in Russia, where Mrs Zakharova and Mr Kekhman were. Mrs Zakharova was herself in Russia and, as is reflected in the evidence, met frequently with Mr Kekhman. Ms Sokolova's oral evidence was that Mrs Nikitina was (as well as being Chief Accountant) head of an "International Department of IFRS accounts" in the JFC Russia office which also housed the Treasury Dept (where Elena Dormeneva worked) and Finance/Financial department (where Viktoria Dakhina and Ekaterina Burdina worked), all apparently within the Corporate Finance department. Mr Kekhman confirmed in cross-examination that the International Department of IFRS accounts handled "*international accounting. IFRS accounting*" (which would include the group accounts).

169. Per the evidence of Ms Dakhina and Mrs Zakharova (which I accept), Ms Dakhina, who was herself based in Russia, was in charge of the department that dealt with banks, and she reported to Ms Osipova (Mrs Zakharova's daughter) and Mrs Zakharova herself (both in Russia). In this regard Ms Dakhina would, for example, know that LQ Group and Prometey loans needed repaying or interest paying, and Ms Osipova and Ms Nikitina would devise the necessary payment, and Ms Dakhina would then instruct the payments department, who

would pay using payment keys which were held in a JFC locked office. These payment keys for the offshore companies were held in the JFC offices in Russia as is apparent from what Ms Osipova says in payment planning emails, specifically, *"I have Biany in the second drawer of the sideboard (paper envelope with a note "Panama company"), the bank details of Lambera are in the folder for the bank/Hellenic, file New companies.xls"* and *"I have Lambera in the second drawer of the sideboard (paper envelope with a note "Group of companies")"*.

170. C points out that other individuals within JFC involved in many of the relevant management and payments include Ms Prokofyeva, Mrs Kuzmina, Ms Rudakova, Ms Yakovleva and Ms Burdina, and that a number of the staff apparently had substantial personal payments/loans from 2007 to 2010, namely: (a) around US$350,000 to Ms Kuzina in October 2007, and (b) around US$500,000 to Ms Dakhina, Ms Dormeneva and Ms Nikitina and Osipova (all the same sum of □15,562,500) on 30 June 2010 with another approximately US$390,000 to Ms Nikitina the following month.

171. I am satisfied, and find, that the majority of the conduct of the back-dating, transfers and fictitious documents (including in relation to many non-Russian companies), which it is not disputed occurred, occurred from the Russian office, though with involvement in Cyprus in the form of Ms Volkova, Ms Prokofyeva and Mr Kasatkin.

E. 3 Mr Kekhman's actual involvement in the JFC Group post December 2007

172. I have already rejected, in Section C.5 above Mr Kekhman's evidence that in the period after December 2007 he was not involved in management decision-making at all save for cases of major crises or very major decisions, had only general discussions about the business, and that from the beginning of 2010 he "*wanted absolutely nothing to do with the decision making at JFC whatsoever*" and had "*no material involvement at all*" with decision-making.

173. In this regard, the only real substantive involvement that Mr Kekhman was prepared to admit to in this period was the purchase of ships in 2007, discussions as to tactics and negotiations with JFC's competitors and banks upon the

competitors' collapse in late 2008, and dealing with the Star Reefers freezing order in late 2011 and settling the dispute in early 2012. However further examples emerged during the course of his oral evidence, including that he would expect to be, and was, consulted upon the purchases of plantations, was involved in agreeing Mr Afanasiev's new group strategy in 2009, gave the go ahead for termination of the Star Reefers contract in 2010 and had discussions with Mrs Zakharova about problems arising out of a drop in the banana price at the time of the Arab spring in 2010-2011. More fundamentally (as already addressed in Section C.5 above), he was (contrary to his denials) heavily involved personally in negotiations with the Maroc Fruit Board as the documentation demonstrates. The picture emerging, even from such matters, was of a much greater involvement in the business of the JFC Group after December 2007 than he was prepared to admit.

174. However the evidence that emerged in cross-examination (including Mr Kekhman's own oral evidence) goes much further than that, and showed that he retained significant involvement in decision-making. This evidence has already been identified in Section C.5, and is considered further in relation to the Garold and Security Representation claims, in particular, but it included that he would influence general strategy (day 7 page 74 lines 19 to 20), it was natural for him to be consulted about significant decisions (day 7 page 78 lines 18 to 23) , big projects or where there was a crisis (day 7 page 79 lines 12-14), or problems (day 8 page 20 lines 21-22) or "*when large sums of money needed, or could be spent, then they would turn to me*" (day 7 page 79 lines 3 to 5) as well as Mr Kekhman's significant admission that Mrs Zakharova's invariable practice was to obtain his approval before taking significant decisions and that he required that he should be consulted and his approval obtained before any significant decisions were taken, to which Mr Kekhman replied, "*Significant decisions, that's correct. Serious decisions. That is true.*" (day 10 page 10 line 21 to page 11 line 4).

175. Such evidence was also entirely consistent with, and corroborates, the evidence of Mr Afanasiev and other witnesses. For example Mr Afanasiev's evidence (which I accept) included that Mr Kekhman, "*wanted to be kept informed about all aspects of the business, was involved in all the major decisions and remained*

as involved in major decisions as he had been before", that *"any trading strategy which [Mr Afanasiev] pursued was in accordance with instructions given by Mr. Kekhman"*, that Mr Kekhman *"was responsible for [the business's] strategic and other major decisions*", that *"no suggested course of action or decision could be made without Mr Kekhman's approval"* and that *"It was the responsibility of Mrs Zakharova and [Mr Afanasiev] to implement Mr Kekhman's decisions"*. The same was also true of financial decisions. As Mr Afanasiev also said (and I accept), *"All major decisions in connection with financial statements / accounting were done with Mr Kekhman's approval. Mrs Zakharova's invariable practice was to obtain Mr Kekhman's approval before taking significant decisions, and Mr Kekhman required that he should be consulted and his approval obtained before taking any significant decisions."* Similar evidence (which I accept) comes from the interview notes of Mrs Zakharova, Ms Dakhina (*"Without K no key decision would be made*") and Ms Nikitina (who confirms that she constantly heard from Mrs Zakharova and Mr Afanasiev) that they needed to discuss things with Mr Kekhman or meet with him).

176. I am satisfied, and find, that it was the invariable practice of both Mrs Zakharova and Mr Afanasiev, and Mr Kekhman's invariable requirement, that Mr Kekhman be consulted, and his approval obtained, before any significant or serious decisions (be they strategic or financial) were undertaken, with the consequence that Mr Kekhman would be, and was, a party to all such decisions.

E.4 Mr Kekhman, the Foundations and the money trail

177. It is common ground that Mr Kekhman was the ultimate beneficial owner of the Foundation and that substantially all his wealth was held by his family foundation, comprising its 70% share of JFC Group, 90% share of LQ Group, the Foundation bank account, and other holdings (such as the Maxum group). Mr Kekhman also accepted that the dividends to his foundation were his main source of income for living expenditure. The Fortis Intertrust Letter of Undertaking between Mr Kekhman and Fortis Intertrust (Curacao) N.V. ("Fortis") in relation to the management of his foundation, provided that Fortis would take instructions from its principal (Mr Kekhman) or from individuals or legal entities under a power of attiorney from Mr Kekhman.

178. Mr Kekhman accepted that he was involved in the setting up of the Foundation and signed various formation documents, and also accepts that he was party to the decision as to when to declare dividends and in what amounts and that he signed instructions to JFC BVI to pay such dividends, although he denied knowing that they were going into his foundation's bank account. I do not consider it credible that Mr Kekhman would lack an awareness of where dividend payments were going (given that such dividends were a principal source of his income and he was to direct many payments which came out of the Foundation bank account) nor do I find it credible that he would not be aware of what monies were in the Foundation and available for payments to be made. In this regard I reject his evidence in which he disagreed with the following question *"I suggest to you that before your directed a payment to be made from your Foundation you needed to satisfy yourself, and you did satisfy yourself as to whether the Foundation had the funds available."* Once again I consider that Mr Kekhman was seeking to down-play his personal involvement in financial matters that impacted both upon the JFC Group and himself, as well as seeking to distance himself from payments into and out of the Foundation and what those payments might show.

179. The documentation shows that Mr Kekhman was personally involved, certainly in terms of giving instructions, in relation to the Foundation, communicating, (it appears) with Ms Kuzina ("*V.A. and Y.V. have approved*", "*This is instruction of V.A.*") or Ms Osipova ("*Vladimir Abramovich asked to transfer...*"). As has already been noted, Ms Kuzina had D's scanned signature and applied it to documents on request by Ms Volkova (with requests coming from Mr Kasatkin to Ms Volkova), but in situations (such as purchase of the Bentley) where Mr Kekhman would already have approved the payment. Mr Kekhman's personal involvement is also shown by emails in June 2012 which indicate that Mrs Zakharova and the administrative staff would not even authorise a payment to the corporate agents (Intertrust) without Mr Kekhman giving, "*direct instructions*".

180. Mr Kekhman maintained that at all material times he did not control the Foundation—or at least did not "*personally*" control it. The former is totally lacking in credibility (given that it was his foundation). The latter is little more credible in the light of the evidence that I have heard (and accepted) about Mr

Kekhman's personality and his relationship with Mrs Zakharova and JFC Group employees.

181. Whilst there is no doubt that Mrs Zakharova and others handled the administration of Mr Kekhman's foundation account, it was his foundation and they were acting on his instructions. I am satisfied that even if he did not know the precise details of every payment and how each of them was effected (which is a possibility given that I accept that Mrs Zakharova was the person that was taking whatever steps were necessary to action his instructions) Mr Kekhman did know of payments into and out of the Foundation, how they were effected (at least in general terms) and their destination, all pursuant to his instructions. I reject Mr Kekhman's evidence that he did not receive statements or equivalent documentation showing what monies went in or out of his foundation. The Foundation was the body through which his personal wealth was held, and dividends received. Whatever his level of involvement with the Theatre it defies belief that he was lacking knowledge of payments to his foundation (in terms of source) and from his foundation (in terms of destination).

182. There were very substantial payments into the Foundation by entities for which no explanation has been given. These included from Alder, Kalimna, Edenis, Chenet and Poloma, all of which paid six or seven figure dollar sums (some of which originated in the JFC Group) to his private foundation (which was, of course, a private foundation and not a business) with no apparent reason or justification. Mr Kekhman must have known of these entities, and absent any explanation as to why they were making payments to his foundation (which Mr Kekhman ought to have been able to give if there was a different explanation), the most likely explanation is that he owed and controlled such entities, and directed their activities.

183. He was able to offer little by way of explanation as to the involvement of such entities. By way of example, in relation to Alder, Mr Kekhman's evidence was that his wife's money from sale of Aviamotors went to Alder because his wife was loaning it at Mrs Zakharova's request, but he was quite unable to explain why Alder was funding his family's flights and other expenses, other than that Mrs Zakharova had chosen to use it. Equally he could not explain why Chenet

was funding his personal expenses and paying money to what appeared to be his own LaSalle loan account (an account which he initially denied but later accepted he had). Such matters are consistent with such entities being owned and controlled by Mr Kekhman. Otherwise they would have had no reason to make substantial payments to him (certainly absent Mr Kekhman being able to explain away such payments for some legitimate reason). I have already rejected the truth of Mr Kekhman's evidence in relation to Chenet and Alder in Section C.5 above.

184. The Foundation's account statements were in the documentation before the Court. Whilst much of the income to the Foundation was from JFC BVI dividends and was paid out immediately directly to Mr Kekhman's Swiss bank account at ABN AMRO (often immediately after receipt of a dividend), payments for private expenses (rental and other payments apparently relating to a superyacht, villas, apartments, purchase of a Bentley car), or donations to the Mikhailovksy Theatre (many through the company "*Beatrice*") or to churches, the statements also showed (amongst other matters) loans to and from the Foundation for which Mr Kekhman could offer no explanation when he was cross-examined in relation to such matters.

185. In this regard, the statements show, amongst other matters, the following:-

(1) A receipt of a JFC BVI dividend of US$3.745 million on 22 February 2008 paid out three days later to Pollone.

(2) US$20 million and US$800,000 payments from Alder on 17 June 2008, said to be by way of loan, the US$20 million paid out the same day to LQ Smolny and the US$800,000 paid as a donation to a church. As to the latter, Mr Kekhman admitted that this payment was on his instructions but he denied knowledge of how it was financed, saying that he simply asked Mrs Zakharova for money. He accepted that the payment for reconstruction of the church was on his instructions but he denied knowing how it was financed, saying he just asked Mrs Zakharova "*I did need the money but I did not give any instructions. Yuliya organised the way it was convenient to her whether it was Alder or someone else. I didn't know these details. For me it was all the same. For me it didn't matter*". He denied ever checking whether the

Foundation had funds before directing payments, which evidence (as addressed above) I found incredible. He could not explain why Alder would make a loan of this size to his personal foundation unless he controlled it. Equally he could point to no evidence that Alder ever pressed for repayment or was repaid. I have already rejected his evidence about his lack of interest in Alder in Section C.5 above.

(3) A US$10 million loan payment from Chenet on 25 June 2008 paid out the next day to LQ Frunzensky (it seems likely to fund LQ Frunzensky's purchase of the Frunzensky property from JFC). Mr Kekhman could offer no explanation as to why Chenet would make a loan of this size to his foundation. It was, of course Mr Kekhman's evidence that he had never heard of Chenet before these proceedings. He could point to no evidence that Chenet ever pressed for repayment or was repaid. There was also a US$1 million loan payment from the Foundation back to Chenet on 21 January 2009 and a US$350,000 loan payment from the Foundation back to Chenet on 4 September 2009, the first described as a "*payment to JFC Group under the letter of chenet*" and the second described as a new loan (not repayment of an earlier loan). I have already rejected Mr Kekhman's evidence in relation to Chenet in Section C.5 above

(4) A dividend of US$1,290,000, almost all of which was immediately paid out to Tavrosun (around US$620,000) and Calico (around US$680,000) by way of new loans. Mr Kekhman could not explain why his foundation was making a loan to Calico. It was his evidence that although he would have known the amount of the dividend, once again his evidence was that he had no idea where it went and what it was spent on (evidence which I find as incredible and which I reject).

(5) A US$1,750,000 dividend payment on 23 June 2009, US$1.4 million of which was paid out immediately as a loan to Saccoto.

(6) Other money paid to the Foundation by Poloma at this time was paid on to Avronade Ltd. The conclusion of Mr Misiura (which I accept) is that this

entity was used only as a cash conduit. The money then went back to the JFC company Whilm.

(7) A US$700,000 payment (with US$150,000 payments to each of the other two foundations) went from Maldus via Kalimna on 25 July 2011.

186. Monies that can be traced to the Garold Fraud (which is addressed in Section M below, is also reflected in the Foundation accounts:

(1) A US$2.9 million (€2.3 million) payment from Edenis on 21 May 2010 pursuant to a purported interest free two-year loan agreement of the previous day (not repaid prior to the statements ending in March 2011). This was paid out to Mr Kekhman personally five days later pursuant to a two-year loan agreement (interest rate to be agreed) also dated 20 May 2010. Mr Kekhman could not explain why Edenis was making a loan to his foundation, though he suggested that perhaps it was a repayment of his wife's funds from her sale of 35% in Aviamotors advanced to Mrs Zakharova at an earlier time. I have already addressed, and rejected, aspects of Mr Kekhman's evidence in relation to Edenis, in Section C.5 above. It appears that Mr Kekhman needed it to cover a €2.26 million payment to his wife's Monaco account (narrative instruction: "*replenishment of own account – family transfer*") and some other private expenses (school fees, car expenses, flight costs) in relation to which he gave instructions to his bank a few days later.

(2) A further US$20,000 loan payment from Edenis on a date in June 2010 paid on for a Swiss apartment.

(3) A US$300,000 payment from Poloma on 11 October 2011 (with US$150,000 payments to each of the other two foundations). This money had been received by Poloma 6 days earlier from Biany which had received it the day previously from Garold.

E.5 Mr Kekhman's and others' bank accounts

187. I have already noted in Section B.4 above, that during the course of the trial C sought disclosure of Mr Kekhman's personal bank statements but that

notwithstanding Mr Kekhman's written instructions to the banks concerned in letters that are before me, the relevant banks have never provided copies of Mr Kekhman's bank statements. Accordingly documentary material which could have been of considerable potential relevance in terms of what it did or did not show in terms of payments to and from Mr Kekhman's personal bank accounts (and potentially what knowledge Mr Kekhman did or did not have in that regard) is not before me. I have not been invited to, and do not, draw any adverse inference against Mr Kekhman as a result of the non-provision of such statements.

188. However there is some material before me from other bank statements and similar documents (from the payer or payee) provided on disclosure that shows certain payments to or from Mr Kekhman. Payments to Mr Kekhman include:

(1) It appears that in 2007 Chenet paid around US$550,000 for "California" and "flight" expenses of Mr Kekhman.

(2) In April 2010 Mr Kasatkin instructed Ms Prokofieva (each a JFC Cyprus employee) *"CONFIDENTIALLY!"* (said to be on a direction of Mrs Zakharova) to procure that Edenis transfer €200,000 to Mr Kekhman's ABN AMRO account in Switzerland, which she did, then sending proof of payment to Mr Kasatkin. I have already addressed this payment in Section C.5 above in the context of Mr Kekhman's evidence about Edenis.

(3) In March 2011, Eliora paid €14,700 for *"treatment Litvinov Valentin 22.11.37"* (the father of Mr Kekhman's wife Tatiana Valentinova Litvinova).

(4) In July 2011, Mr Kekhman advanced □20m (around US$800,000) by loan to Lite under a □25 million loan agreement. It appears from the evidence that this money funded payments from Lite to Sberbank in relation to the Nevsky Project development.

(5) In September 2011, JFC Russia advanced □30 million (around US$1 million) by loan to Mr Kekhman.

189. The documentation is not available that would help identify the precise circumstances in which particular payments were made to the Foundation. Many were clearly for Mr Kekhman or for his benefit. Thus, for example, a 22 June 2009 summary of the first six months of 2009 states that in that period US$246,000 of "*help*" was provided by JFC to "*theatre + orphanage + theological seminary + Kekhman's payment*".

190. There is also evidence of two payments from Mr Kekhman in July 2007, the first is a payment of US$520,000 to Larcom (said to be repayment of a loan the previous month from Larcom to Mr Kekhman) and US$350,000 to Chenet (said, on the instruction to Mr Kekhman's bank, ABN AMRO in Switzerland in a communication said (on its face) to be from Mr Kekhman, to be pursuant to a loan agreement dated 10 July 2007). Mr Kekhman nevertheless denied knowing of Chenet or of sending the instruction. I have already addressed Mr Kekhman's denial of any interest in, or even knowing of the existence of, Chenet, prior to the commencement of the proceedings at Section C.5 above. I am satisfied that this is another respect in which Mr Kekhman is not telling the truth.

191. The position as to the actual operation of Mr Kekhman's bank accounts remains unclear (though it is a matter that Mr Kekhman ought to have knowledge of and theoretically at least ought to have been able to demonstrate (if banks were prepared to supply him with documentation as they, prima facie, ought to have been)). Mr Kekhman has variously claimed that Mrs Zakharova handled his personal bank accounts with his PA Ms I Osipova or that Ms Kuzina did so (though no general power of attorney is in the disclosure). When pressed about the suggestion that Mrs Zakharova had authority to make payments from his personal bank account Mr Kekhman said, more than once that "*I don't know that*". In the context of the payment from Edenis that has already been addressed in Section C.5 he denied seeing any bank statements of his personal ABN AMRO account (though he also said that once a year Ms Kuzina would show him all his statements when he was preparing his tax returns). His evidence that he did not

look at his bank statements is not credible (given the sums involved) and I reject it. Equally I do not find it credible (absent documentary proof) that Mrs Zakharova had authority to make payments from his personal bank accounts. In any event, and whether or not others could action payments on his behalf (for example there is evidence of Mr Kasatkin passing on Mr Kekhman's instructions to Mr Kekhman's bank in relation to personal payments), I am satisfied, and find, that Mr Kekhman would have been aware of, and would have authorised payments into and out of, his own bank accounts.

192. So far as payments to the Theatre are concerned I have already noted that a company "Beatrice" was used in relation to such payments. It is also clear that Mrs Zakharova also assisted Mr Kekhman in relation to his donations. Thus she was, for a time, Director of his "Fund of Imperial Mikhailovsky Theatre" set up in June 2007 which was run from JFC offices. She was also president of company Beatrice which had a donation agreement with Mr Kekhman's private foundation. The evidence (per the interview notes of Mrs Zakharova's interview), which I accept, is that she made payments from Beatrice to the Theatre on Mr Kekhman's instructions.

193. The bank statements show various payments involving Beatrice. There is a payment of US$35,000 from Lambera to Beatrice on 18 October 2011, and US$20,000 from Maldus and Cetus to Beatrice on 20 December 2011. There were also a number of payments between Eliora Advisory Ltd to and from Beatrice, including €200,000 to Beatrice in November 2010 (received by Eliora from Coronella) with US$220,000 returned the same month, €20,000 to Beatrice on 20 December 2010, €175,000 and US$25,000 to Beatrice in March 2011 (received by Eliora from Zosimo), US$400,000 to Beatrice on 26 April 2011 (also received from Zosimo) with €370,000 returned in May and June 2011.

194. Mr Kekhman also gave evidence that Mrs Zakharova managed some US$3,500,000 he had from a sale of some shares in 2007, but he was quite unable

to say where such monies were kept. I do not know whether this aspect of his evidence was true, but it seems incredible that he had no knowledge of the whereabouts of any such monies.

195. Overall I am satisfied, and find, that whatever the extent of his knowledge of the precise details of particular transactions, Mr Kekhman was aware of substantial payments into and out of his foundation and his personal bank accounts. In this regard, and given the evidence that I have heard and accepted as to Mrs Zakharova and other JFC employees only acting on his instructions and with his approval, they would only have acted on his instructions and with his approval.

196. Mr Kekhman also seeks to portray Mrs Zakharova's and Mr Afanasiev's foundations as belonging to each of them beneficially (and him having no control over them). This does not accord with the evidence of Mr Afanasiev and Mrs Zakharova, however. Thus Mr Afanasiev's evidence is that he had an agreement that his financial entitlement from his role at JFC was (notwithstanding an apparent 15% shareholding in JFC) limited by agreement with Mr Kekhman to an annual dividend of US$300-400,000 and that anything above that level was used by Mr Kekhman for his private purposes including in payment to the Theatre or the LQ Group (though Mr Kekhman denies this). Equally, the evidence of Mrs Zakharova (through Mr Tchernenko) is that she operated the bank accounts and paid part of the dividends received by her and Mr Afanasiev's foundations to the Theatre on Mr Kekhman's instructions. Mr Kekhman denies this too, suggesting that if Mrs Zakharova chose to apply her and Mr Afanasiev's private foundations' money to the good cause of his Theatre that was due to their generosity. I reject Mr Kekhman's denials, and accept the evidence of Mr Afanasiev and Mrs Zakharova in this regard. I can see no reason why Mr Afanasiev and Mrs Zakharova would not be telling the truth in this regard, and I am quite satisfied that despite their 15% shareholding in JFC, the monies Mr Afanasiev and Mrs Zakharova ultimately retained were dependent on the instructions of Mr Kekhman.

197. Such documentation as exists (the only transaction summaries for these foundations that are available are the May 2008 transaction summaries) is consistent with Mr Afanasiev and Mrs Zakharova's evidence and them only

retaining part of the sums received or their own use. Thus in relation to the May 2008 transaction summaries and other bank statements, they record that in relation to the year of transactions recorded, the Foundations each received dividends of approximately US$1,800,000, but each paid to Mrs Zakharova/Mr Afanasiev personally only US$290,000 (in each case in mid-December 2007) whilst each, on 25 February 2008, passed on the entirety of an US$802,500 JFC dividend received on 22 February 2008 to Pollone (on the same date as the VK Family Private Foundation made a payment of US$3,700,000). It is not known where that money went after that. Mrs Zakharova and Mr Afanasiev also each made donations totalling US$200,000 to the Theatre on the same dates as each other. Mr Kekhman suggested in cross-examination that they had made such donations in the context of Mr Kekhman saying, *"please be so kind and participate"* in support of an event that Sberbank was organising for a children's cancer charity. I am doubtful as to whether such evidence reflects the true position given the lack of corroborative evidence and the fact that this was not put to Mr Afanasiev in cross-examination. However even assuming that such payments were charity payments made by Mrs Zakharova and Mr Afanasiev of their own free will (and given their relationship with Mr Kekhman it is possible, even in that context, that they felt obliged to contribute), that does not cut across the thrust of Mr Afanasiev's evidence, which I have accepted, that payments above his agreed remuneration were for Mr Kekhman's benefit. In this regard Mrs Zakharova and Mr Afanasiev also each paid US$100,000 to LQ Smolny on 12 September 2008 (which were used for a payment to Foster and Partners for architectural services).

198. It is also relevant to note that even in relation to the 10% shareholding that Mr Kekhman says he gave through this foundation to Mr Afanasiev and Mrs Zakharova according to Mr Kekhman this was not a gift of 15%, but rather his witness evidence was that the 15% interest was subject to an unwritten shareholders' agreement by which Mr Afanasiev and Mrs Zacharova were not entitled to 15% of the value of the JFC Group but only 15% of any increase in the value above the value at the time of the transfer of the shares, adding in his oral evidence that the value of the group at the date of transfer was US$650 million. Quite how this was to work (assuming it to be true), in terms of payments to and

from the Foundations and how this was to be calculated, is not clear. On any view such evidence suggests that Mr Kekhman had an even greater beneficial interest than 70% under his control, the interests of Mr Afanasiev and Mrs Zakharova not truly being that of beneficial owner of the remaining 30% of the shares.

F. The LQ Companies

F.1 Overview

199. The LQ companies are of particular relevance to the issues arising in this case for a number of reasons:-

(1) They led to a huge funding requirement. In this regard an important aspect of understanding the financial needs of the JFC Group, is an appreciation of the acquisition and financing of the development properties.

(2) They provide an explanation for much of the dissipation of funds from JFC, namely to finance LQ developments and their loans.

(3) They provide a motive and explanation for the Garold Fraud – namely a need to inflate JFC accounts to attract borrowing to finance the LQ developments, and to provide a means of getting cash out of the JFC Group, from Garold through Biany and Edenis (as addressed in detail in Section F.8 below).

(4) They explain the use of offshore companies as conduits for money transferred, as it became necessary to disguise from lenders the use of financing provided to JFC companies (for JFC's business) for LQ companies.

200. At the heart of all the above is the acquisition, financing and funding of the development properties, and Mr Kekhman's appreciation, knowledge and involvement in the same, in particular his knowledge of the huge funding requirements and the fact that the monies would have to come from the JFC Group and its borrowings.

201. It is a striking feature of Mr Kekhman's evidence that he does not set out the nature or history of the various development projects or address the question of his knowledge and involvement in the same in his witness statements – no doubt,

once again because he seeks to distance himself from such matters though, as appears below, he did have knowledge of such matters and was involved in the same.

202. Mr Afanasiev, in his evidence describes the LQ Group as "*Mr Kekhman's project*", and that accords with Mr Kekhman's evidence. He admitted to owning the LQ Group and acknowledges that those companies *"were involved in property investment and development*" (in contra-distinction to the JFC business, principally in relation to bananas but also other fruit). It is clear, as identified in Mrs Zakharova's evidence, that the LQ projects were important to Mr Kekhman and to his reputation. The Frunzensky Department Store, for example, being a Norman Foster-designed project.

203. Importantly Mr Kekhman accepted, when cross-examined, that *"any significant decision concerning the business of the LQ Group of companies required [his] approval"*. Mr Afanasiev's evidence is to like effect*: "Mr Kekhman took all decisions in relation to [the LQ properties]"* and gave instructions to Ms Skvortsova who implemented them, albeit that he said he relied on Mrs Zakharova, assisted by Ms Skvortsova, to deal with the "*financial side of the business*", evidence that I reject in the context of the interaction between Mrs Zakharova and Mr Kekhman in relation to financial decisions. Whilst Mrs Afanasiev and Mrs Zakharova had a 5% share, it does not appear that any dividends were ever paid, or that they had any decision-making role. As developed below, I am satisfied that it was Mr Kekhman who was the owner and controller of the LQ companies, who would stand to profit, or lose, based on their success or failure.

F.2 The acquisition of development properties

204. The initial stage, namely the acquisitions of the properties, at least in part, pre-dates Mr Kekhman's departure for the Theatre in December 2007. In relation to this:-

(1) The Frunzensky property was bought by a JFC company in 2005 for around US$15 million (though for reasons which have not been explained it was

booked in JFC's mid-2007 accounts at US$25 million). Norman Foster architects acted as the designers of the development.

(2) The MCDS "International Centre of Business Partnership" project was bought by a JFC company by share purchase of ZAO MCDS in April 2007 for around US$23 million.

(3) The Nevsky Bereg commercial complex including the Hotel Rechnaya was bought for around US$25 million in September 2007 or January 2008.

(4) The Nevsky Project property, which owned the Aeroplaza a business centre, was bought at an unknown time. It was not clearly within the JFC Group. A 2010 document states that, "*Nevesky Proekt LLC is not part of the LQ Group*". It appears that it was owned by a Cyprus company Saccoto (a company seemingly operated through Mr Kasatkin as a nominee and directed by Mrs Zakharova). It is an "Other Company" as characterised, and categorised, by C.

(5) Arts Square, which owned a square opposite the Theatre, was another project. Its ownership structure is obscure. It was envisaged that the project would involve an underground carpark, but Mr Kekhman confirmed when giving evidence that nothing moved further than the reconstruction of the square itself.

(6) Various pieces of land were owned by the company ZAO Calipso.

205. Group accounts for the first half of 2007 (the accounts for the full year 2007 were not before me), were prepared on three bases – the whole group, the fruit business and the property development business. Although the same was not addressed in detail in Mr Kekhman's written evidence, in cross-examination Mr Kekhman confirmed that it was his decision to buy the buildings and form the LQ companies, and that he, not Mrs Zakharova took part in the negotiations and he was doing the deals. Mr Kekhman's evidence was that the decision as to how to fund the development property acquisitions was a joint decision between him and Mrs Zakharova.

206. He was, however, very vague on any matters of detail including purchase prices and how purchases were funded and the like. Whilst it is possible that he may not have been able to recall the precise details with the passage of time, I formed the impression that Mr Kekhman knew far more about such matters than he was willing to admit, and consider that this was another example of Mr Kekhman seeking to distance himself from involvement in the business of the JFC Group (even before his departure for the Theatre), and also an instance of him seeking to distance himself from financial aspects of the property development business. I am satisfied, and find, that at the time of the purchases and associated loans Mr Kekhman did know how the purchases were funded including what loans were taken out, and by whom. I have already set out in Section C.5 above his involvement in relation to the LQ properties and that when he needed to spend money for LQ companies he turned to Mrs Zakharova and Mr Afanasiev.

207. There is only limited information available as to how the JFC companies funded the property acquisitions, although it appears that, at least in part, it used monies that its lenders had envisaged would be used for the development of the fruit business, which did not go down well some of its lenders. Thus in March 2008 the Commerzbank/ABN AMRO syndicate stated that it was a *"fact that JFC group used a significant part of its cash flows to invest into real estate rather than in the development of the fruit business as the banks were expecting... This was not detailed in the Info Memo upon which banks based their decision to participate in the transaction*". That loan, of US$150 million, was advanced pursuant to a facility agreement dated 9 July 2007 (when Mr Kekhman was, on any view, still actively involved in JFC Group affairs).

208. It also appears from the mid-2007 JFC group accounts that JFC companies took out, in relation to the MCDS and Frunzensky projects, loans of US$12.1 million from BaltInvestBank (due for repayment 2008), US$5.8 million from Vin Project (due for repayment 2008), and US$19.3 million from Uralsib (due for repayment 2011). Given the timing of these loans, and the fact that they were taken out by JFC rather than LQ companies I consider it most likely that these loans were part of the funding of the purchases rather than the properties development (although Mr Kekhman's evidence was that JFC used its own monies to fund the purchase

of Frunzensky). Nevsky Project appears to have been funded by □1.5billion (US$50 million) Sberbank loans to ZAO Nevsky Project dated 3 November 2006 and 18 February 2008 (these were overdue by □1.2 billion (US$40 million) by October 2009). It appears that these loans were guaranteed by Mr Kekhman.

F.3 The LQ Corporate Structure

209. Mr Kekhman states in his witness statement that he was aware in general terms of the existence of the LQ companies and that they were involved in property investment and development. His evidence in cross-examination was that Mrs Zakharova would propose to him the form of the companies and it was a joint decision between them as to how it would end up (i.e. in terms of the LQ corporate structure). I am satisfied, on the evidence, that Mr Kekhman knew of the LQ corporate structure. It was his own evidence (at paragraph 15 of his Defence) that whilst day-to-day management of the LQ group rested with Mrs Zakharova and Svetlana Skvortsova he believed he retained strategic control for example in relation to acquisitions or disposals of real property (of which I have no doubt), although it was pleaded that *"after 2008 little was required in terms of strategic input"*, which I consider is yet another example of Mr Kekhman seeking to down play his role and involvement in the affairs of the LQ companies. I have already referred in Section C.5 to Mr Kekhman's evidence (which he went on to deny, but I am satisfied represented the true position) that, *"there [was a] partnership relationship, when I wanted to spend money for, for example, real estate, when I needed to spend money for LQ and I needed it, I turned to them"* (that is Mrs Zakharova and Mr Afanasiev) (Day 7 (page 78 lines 4 to 10). This shows not only that money was needed for the LQ companies (which were to be a significant financial burden on the finances of the JFC Group) but that Mr Kekhman associated himself with the LQ companies and monies required by those companies.

210. As for the setting up of the structure of the LQ companies, it appears (based on the evidence of Ms Kuzina), that the structure of LQ companies was set up on the advice of, and with the help of, external consultants with most of the LQ companies being set up in late 2007. The documentary evidence consists of (later) organisational charts and the "Strike off Summary" (though it appears that

the structure was not changed from once the LQ structure was set up, albeit that Pollone does not appear in one of the charts). Such documents record that the VK Family Private Foundation and the other two foundations were ultimate beneficial owners of LQ Holdings Ltd, a BVI holding company, under which there was a group of companies—referred to as the "LQ Group". As is apparent from the charts, ownership of the LQ Group of companies was shared between the three foundations 90:5:5 (as the JFC group was originally) with the result that Mr Kekhman was the ultimate beneficial owner of 90% of the LQ Group. Accordingly whilst the LQ Group was outside the JFC Group it had the same owners.

211. Most of the LQ companies were Cyprus registered (including Pollone Investments Ltd, LQ Frunzensky Ltd, Tavrosun Investments Ltd, LQ Smolny Ltd and LQ Nevsky Bereg) but the ultimate owners of each Russian property development were Russian companies (ZAO New City, ZAO MCDS and ZAO Nevsky Bereg), as was ZAO Prometey.

212. As for the transfer of the properties to the LQ Group, as at the end of 2007 only the MCDS development property had been sold by the JFC group. It was sold on 25 December 2007 by Huntleigh to LQ Smolny for US$50 million (such value being supported by an independent valuation), with payment deferred until 2008, by a share sale of MCDS. The other properties were still owned by JFC or other companies.

F.4 The transfer of the properties from JFC to LQ companies

213. As already referred to, in March 2008 the Commerzbank/ABN AMRO syndicate noted that, it was a *"fact that JFC group used a significant part of its cash flows to invest into real estate rather than in the development of the fruit business as the banks were expecting... This was not detailed in the Info Memo upon which banks based their decision to participate in the transaction*". This led to a meeting of the lenders, and the possibility of further security and monitoring and a proposed waiver fee (i.e an additional payment) of 100bps (US$1,500,000). There were then counter-proposals in May 2008 in which JFC countered that they would only pay a 50bps waiver fee, and that the LQ companies become

guarantors of the syndicate's loan to JFC for a time. The available disclosure does not reveal how matters were resolved with the syndicate. However these events illustrate the perhaps unsurprising proposition that lenders were not happy with monies lent to a particular entity, and for the business of that entity, being used for a different purpose through other companies. In order for the practice of JFC financing being used for LQ company purposes to continue, it was necessary to disguise payments through the use of offshore companies as conduits for money transferred, and it appears that this is what occurred.

214. At the time of the problems with the syndicate, the Smolny/MCDS property had already been divested to the LQ group and it appears that there was already a preliminary agreement to sell the Nevsky Bereg property to the LQ companies with some money received. It seems likely that JFC's difficulties with the syndicate contributed to the decision to divest the remainder of the development properties to the LQ group, there being some evidence that external consultants were used in this regard.

215. The decision to divest the LQ properties out of the JFC, which is not addressed by Mr Kekhman in his evidence, was a significant decision, and in the context of the evidence that I have heard and accepted, it is not one that Mrs Zakharova and others would have actioned without consultation with, and the agreement of Mr Kekhamn, and I so find.

216. The transfers from JFC to LQ companies of the other developments took place as follows:-

(1) The Nevsky Bereg property was sold to LQ in the first half of 2008 (previously in JFC's books at US$21 million).

(2) The Frunzensky property was sold by Espotting to LQ Frunzensky for US$10m on 23 June 2008, subsequently reduced to US$5 million, by share sale of Tavrosun, which owned New City, although the development itself was in the JFC accounts at US$25 million and said to be sold for a profit during the first half of 2008.

(3) The Nevsky Project property was not transferred into the LQ group.

F.5 The financing of the sales to LQ companies

217. The evidence is that Mr Kekhman was aware that the properties were initially held by JFC and were then transferred to LQ companies. Whilst initially denying, but later accepting, that he knew of the sales, Mr Kekhman continued to deny knowledge of the prices that the LQ companies would have to pay (i.e. the market price), though such purchases would require funding by further lending and/or cash injections (the properties being development properties not generating income in the short term). I do not accept Mr Kekhman's evidence in this regard. It is not consistent with his own evidence or that of other witnesses. As to the former he himself said (in relation to when he would be consulted by Mrs Zakharova), *"if there is no money available and [Mrs Zakharova] believes that for some reason there is no money, and yet she believes that for some reason it should be transferred, she would have told me"* whilst he also volunteered in his evidence that he required that he should be consulted, and his approval obtained, before any significant or serious decision was taken. The price of purchases and the funding basis are such decisions, and set against the backdrop of his accepted involvement in all strategic decisions concerning the development of the properties, I am satisfied and find that he knew of the need for funding (and funding for later development) and the source of such funding. The funding of LQ companies and Mr Kekhman's knowledge in relation to the same is addressed in Section F.6 and F.7. As for why Mr Kekhman was not willing to admit to knowledge of the need for funding and how it was achieved, this is clear enough. He wished to distance himself from how it was achieved – namely by the use of false accounting and the Garold Fraud and dissipation of monies from JFC companies. The central issue of whether Mr Kekhman knew of the Garold Fraud itself is addressed in Section M.2 below.

218. A complete picture does not exist as to how the transfer prices in respect of the properties were funded. However what emerges from the evidence is set out below.

219. **Nevsky Bereg**. ZAO Nevsky Bereg funded its payment of US$15 million to JFC Russia by way of a loan for that sum in roubles (□440 million) from Sberbank dated 28 March 2008 (which expressly referred to the sale by JFC Russia which

is being funded). The effective interest rate by the end of 2008 was 14.76%, and personal guarantees were provided by Mr Kekhman and a Mr Olersky. It was repayable in instalments in 2010 with the main repayment on 27 September 2010. Nevksy Bereg was 70% owned by the LQ group (i.e. LQ Development Ltd only owned 70% of LQ Nevsky Bereg Ltd), the other 30% being owned by Mr Olersky. It is not credible that in the context of signing a personal guarantee Mr Kekhman in respect of such lending Mr Kekhman did not acquire knowledge of the terms of this lending, I am satisfied that he did have such knowledge.

220. **Smolny/MCDS**. The US$50 million price for MCDS was actually paid by LQ Smolny to Huntleigh (the JFC company) using money that had been sent to LQ Smolny from JFC companies immediately beforehand. The payment route was convoluted. In this regard:-

(1) US$27 million of this was effected by JFC employees on instructions from Valentina Osipova (Stupakova) to Ms Prokofyeva, Ms Dakhina, Mr Kasatkin and YZ recorded in an email of 30 December 2008, with Mr Kasatkin and Ms Prokofyeva supplying supporting documents. The payments took place in late December 2008. On 17-18 December 2008, US$12.6 million was paid in a circle from JFC Financial Services & JFC Russia (via Kalistad) to Whilm to Artaleta (leaving the JFC group at that point, supposedly for delivery of a ship engine), then to LQ Smolny (a new loan), and was then repaid to Huntleigh and on to JFC Russia. On 29 December 2008, US$9.69 million from LLC JFC Fresh left the group at that point being paid to LQ Smolny, and then repaid to Huntleigh and on to Kalistad (US$3.6 million), Whilm (US$1.09 million) and Garold (US$5 million). Of the US$5 million returned to Garold it then went on from Garold to Calico, and US$4.71 million went back to LQ Smolny (for the second time) and then repaid Huntleigh (for the second time) and went on to Larcom and Kalistad. In short the same US$4.71 million paid off US$9.42 million of LQ Smolny's debt to Huntleigh.

(2) The remaining US$3 million that made up the US$30 million payment (together with the US$12.6 million + US$9.69 million + US$4.71 million, totalling US$27m) was sent on 16 to 18 December 2008 from Eliora to LQ

Smolny to Huntleigh (the documentation does not exist as to its origin, but it seems likely it originated from JFC companies).

(3) All stages of the payment of the remaining US$20 million of the price cannot be identified from the documentation. However it is apparent from the accounts of Mr Kekhman's foundation and LQ Smolny, that on 17-18 June 2008, US$20 million was paid from Alder to VK Private Family Foundation to LQ Smolny to Huntleigh (the Zakharova notes of interview suggest that the US$20 million was received by Alder from a JFC company) which would be consistent with the above pattern. For his part Mr Kekhman has not identified any source for the Alder payment to the VKF, and this fits the pattern above. No source for Alder's payment to the VKF of US$20 million has been advanced by D.

(4) The accounts of LQ Smolny indicate that there remained outstanding at the ends of 2010 and 2011 US$20 million to Mr Kekhman's foundation, and US$30 million to other companies, which remain unnamed. From the matters identified above it seems likely that the US$30 million relates to a US$12.6 million loan from Artaleta, US$9.69 million loan from LLC JFC Fresh, US$4.71 million from Calico, and US$3 million from Eliora – with the result that US$50 million was lent to LQ Smolny by JFC companies through companies controlled by JFC and Mr Kekhman's foundation. There is no evidence that these were commercial loans, or that they ever were, or were intended to be, repaid. The very existence of particular transactions is doubtful – for example US$12.6 million was accounted for in the JFC companies as the cost of an engine from Artaleta – but no witness has suggested that there was any JFC-controlled business in ship construction, and there is no evidence that there was ever an engine.

221. Mr Kekhman denies being aware of this scheme for JFC to fund the sale price from JFC to LQ Smolny. Whilst I accept that Mr Kekhman may not have known the minutiae of the convoluted route by which this was achieved (such matters being left to JFC employees through Mrs Zakharova), there was no reason proffered as to why Mrs Zakharova would have hidden from Mr Kekhman the funding of the purchase by JFC (to the benefit of Mr Kekhman as the 90% owner

of LQ) , and the decision for JFC to fund the sale price was a serious and significant decision, and as such, on the evidence, Mr Kekhman would have required that he should be consulted, and his approval obtained, before such a decision was taken, and I so find.

222. **Frunzensky**. The routing of the purchase price is not entirely clear as the documentation is incomplete. The US$10 million price was due from LQ Frunzensky to Espotting under a sale agreement dated 23 June 2008. On 25 June 2008 there was a US$10 million payment from Chenet to Mr Kekhman's foundation to LQ Frunzensky which appears to be part of this transaction. US$10 million was then paid from LQ Frunzensky to Kalistad pursuant to a letter dated 26 June 2008 from Espotting to Kalistad (that is not in the disclosure, though it seems likely it contained a request by Espotting to pay Kalistad). The US$10 million price was reduced to US$5 million on 1 August 2008, and there was a "*return of prepayment*" from Espotting to LQ Frunzensky. The amended price of US$5 million was then paid in a circle from Kalistad to Garold to Calico to LQ Frunzensky to Espotting to Kalistad (principally according to new loan agreements to be dated the same day as the payments, 30 December 2008, for the shares in Tavrosun). This was itself co-ordinated by JFC staff by reference to the email of 30 December 2008 that has already been referred to. Once again the funding of such purchase was a significant and serious decisions, and as such would Mr Kekhman would have been consulted and approved such funding, whether or not he knew of the minutae of its routing.

F.6 The financing of the development of LQ companies

223. Mr Kekhman accepted that the development of the LQ companies were *"very major projects...in which [he was] heavily involved"*, but once again (and no doubt for similar reasons to his denial of knowledge of the funding of the purchases) he denied knowledge in relation to the funding of the developments. His evidence in this regard, as will appear below, was simply not credible.

224. As to the former, i.e. the development of the LQ companies themselves, Mr Kekhman accepted that he was involved with discussions with the architects and advisors, and the obtaining of construction permission, leasing of surrounding

land, obtaining permits and approvals from city authorities, and was kept informed as to development progress.

225. There were detailed costings for the development projects, which included development costs for the three projects (on top of the acquisition costs of around US$75 million) of US$1.2 billion with total estimated financing required of US$1.3 billion (as appears from an early 2008 powerpoint for the LQ business). Construction was at that time, in early 2008, estimated to begin in 2009 (Q1 for Smolny/MCDS, Q2 for Frunzensky, Q4 for Nevsky Bereg). Mr Kekhman did not suggest when cross-examined (on day 8) in relation to the developments and costings of over US$1 billion that he was unaware of the same.

226. The Frunzensky project was funded, initially, by US$71 million of loans as follows. A US$50 million loan from Uralsib to Vin Project LLC, entered into on 10 June 2008, with an effective interest rate of 12.5%, guaranteed by Mr Kekhman. Whilst Mr Kekhman denied knowledge of this loan or of Vin Project or its finances I do not find that evidence credible (I address Vin Project further below). This was a huge loan, it was for one of Mr Kekhman's projects and he was being required to give (and gave) a personal guarantee (as a result of which he would have acquired knowledge of the loan and its terms – and I so find). Equally there was a US$21 million from Sberbank to ZAO New City, entered into on 26 December 2008 for a year, with a (high) effective interest rate of 20%, once again guaranteed by Mr Kekhman. We do not have a copy of this loan agreement. Mr Kekhman also denies any recollection of this loan or awareness at the time of the finances of New City. Once again this was a substantial loan, for one of Mr Kekhman's projects and he was being required to give (and gave) a personal guarantee (as a result of which he would have acquired knowledge of the loan and its terms – and I so find).

227. The interest rate on the US$21 million loan of 20% suggests that higher interest rates were being demanded by banks following the financial crisis which hit in Autumn 2008. Mr Kekhman accepted that he was aware that the financial crisis had had the effect that banks stopped financing projects such as the LQ developments for a while. Standing back for a moment it must have been obvious to Mr Kekhman that he was personally liable on the loans he had

guaranteed (indeed he accepted that he would have been bankrupted if they had been called in), and it must have been equally obvious to Mr Kekhman that the existing loans would need to be funded. Whilst he denied that there was a "problem" the need to fund such loans (and how they were to be funded) was an important matter, and accordingly one in relation to which I am satisfied Mr Kekhman would have required to be consulted, and was consulted by Mrs Zakharova. His evidence to the contrary is not credible, and I reject it.

228. As for Vin Project LLC itself (the recipient of the US$50 million loan from Uralsib) and Calico (to whom Vin Project was sold in September 2008), Mr Kekhman denied any recollection of the loan or Vin Project or awareness of the finances of Vin Project. I am satisfied this is another untruth on Mr Kekhman's part. Mr Kekhman spoke about Vin Project in an interview with Vedomosti newspaper in July 2009 when he said that Vin Project had nothing to do with JFC, whilst Mr Kekhman's statement of affairs of September 2012 show that Vin Project was owned by Mr Kekhman personally and sold to Calico in September 2008 for £1,973, three months after the loan of US$50m was taken out.

229. I am satisfied that Mr Kekhman was well aware of the particular companies that owned the properties, the development costs, the bank finance, and was party to decisions in relation to those matters and how to fund the development, in the circumstances, and having regard to the evidence, that I have identified above. Such matters are classic examples of serious and significant decisions a category of decision where it was Mr Kekhman's own evidence that he would have required that he be consulted and his approval obtained. These are not matters that he would have left to Mrs Zakharova, and I reject the contention that he did so.

F.7 The Funding of LQ companies by JFC companies

230. It is clear from the evidence that Mr Kekhman was aware that JFC companies were funding LQ companies, such evidence coming from his own Defence, his witness statements and his oral evidence, including:-

(1) *"At all material times Mr Kekhman assumed that from time to time payments would (and could properly) be made from the JFC Group for the benefit of the*

LQ Group when required, although he cannot now recall whether he was aware of any specific payment being made during the material time" (Defence paragraph 13P(3).

(2) *"It is correct that properties held by the LQ Group were used, on occasion, as security for loans made partly for the benefit of the JFC business, so that it was quite proper for repayment of those loans to be made from JFC funds"* (Mr Kekhman's second witness statement paragraph 16) and *"from some point in time LQ Frunzensky, as a project, was frozen, and it was used by Yuliya as a real estate asset to serve as a security, and this money was used by JFC Group"* (day 9 page 86 lines 4 to 7) – although there is no documentary evidence that LQ properties were used as security for loans made for the benefit of the JFC business.

(3) *"I relied entirely upon Mrs Zakharova in this respect and she never suggested to me that payments being made were not legitimate and lawful. She certainly never once said to me that money from JFC Russia could not be used to service the loans of LQ companies. That is a lie. The Nevskiy Bereg asset was not sold in December 2011 so far as I am aware. Money from the asset was used for the benefit of JFC because it was used to fund payments in respect of the Star Reefers matter, which I have described in my previous witness statements and affidavits"* (Mr Kekhman's second witness statement paragraph 18).

(4) *"at the beginning it was a crisis period—at the beginning [Mrs Zakharova] took money in order to refinance with the purpose from ZAO Group JFC to LQ, those loans, and then they were refinanced all the time"* (day 9 page 57 lines 5 to 9).

(5) *"I do not know the details, but not all the money was taken from JFC, and when the companies left JFC they should not have—when they were spun out from JFC, when they were taken out from JFC, they should not have been serviced by JFC"*

(6) *"even the money which was taken from JFC, borrowed from JFC, was always returned, was always put back or should have been returned, should have been returned, when the projects were sold"* (day 9 page 59 lines 1 to 5).

(7) *"Q. Are you saying that these projects were not using JFC money? A. Of course they used it... I believe that the amounts were reasonable, that JFC could always have returned when it was sold. For JFC, the money was not outrageously high. It was reasonable*" (day 9 page 63 line 17 to page 64 line 15).

(8) *"I knew that Yuliya was always working on—always having—that always having a decision that all the money of JFC that was used to buy real estate would always go back to JFC. How it was done I don't know... it should have returned..."* (day 9 page 85 lines 10 to 20).

231. In the light of such evidence I am satisfied, and find, that Mr Kekhman was aware that JFC companies were funding the LQ loans, and given the importance of such funding, these were matters on which I am satisfied he would have required that he be consulted and his approval obtained (as is also supported by the evidence of Mr Afanasiev and Mrs Zakharova). Even if Mr Kekhman did not know the exact figures I am satisfied that he would have known of the scale of the funding.

232. As is apparent from the interview notes of Mrs Zakharova, it was a priority for everyone at JFC to pay LQ, and she was herself involved when she had discussed borrowed funds with Mr Kekhman (which I accept and find she did). It was also Mr Afanasiev's evidence when cross-examined about the money being borrowed by JFC to fund these projects (which I accept) that *"I was not aware of the purpose and the application of this money, because all of this was the personal responsibility of Mr Kekhman personally. We are talking about real estate, the assets"* (day 3 page 73 lines). It was also his evidence (in his third witness statement), which I also accept, that the true position was that *"Mr Kekhman gave instructions to [Ms Skvortsova] as to who the business should be run by and she implemented those instructions"* and that he could *"extract money from the business at will (whether for his LQ projects or donations to the Mikhailovsky Theatre or otherwise)"*. It was (as Mr Afanasiev put it) the *"syphoning off of funds to Mr Kekhman's other projects, including the LQ Group of companies' development projects"* that led to the JFC Group's significant financial difficulties by 2011 that are addressed in Section I.2 below.

233. The LQ loan burden was substantial, and would have been known as such both to Mrs Zakharova and Mr Kekhman. Indeed in her interview with Mr Tchernenko, Mrs Zakharova produced a remarkably accurate picture of that loan burden:-

> *"the financial burden to service the loans were on JFC. And if starting from 2007 on average was paid 15-19% interest plus interest we paid for loans ourselves – it is very significant. A rough calculation is below*
>
> *For MCDS – 5 years (for example – interest of 15%) - $50m - $37m*
>
> *New City 5 year - $25m – (15%) – 18.75m*
>
> *Nevskiy Bereg – 5 years - $17m (15%) - $13m*
>
> *$68m rough total interest burden for 5 years...*
>
> *Nothing of this was returned to JFC"*

234. As for the funding itself, the evidence is that it was carried out using the "Other Companies" using funds from the JFC Group through the Garold fraud and other means, and with production of false documentation. As C rightly characterise matters, the scale of the fraudulent activity was enormous. These involved very significant decisions concerning the operation of JFC Group and use of its assets. I address the question of Mr Kekhman's alleged knowledge and involvement in such matters (in particular in the context of the Garold Fraud) in due course below. Suffice it to say at this point that I am satisfied that there is no reason why Mrs Zakharova would hide the fictitious transactions that were used to take monies from the JFC companies to the LQ companies from Mr Kekhman given that she was operating principally for his benefit and was acting on his instructions in relation to any significant or serious decisions (which such matters clearly were).

235. In addition to the funding by JFC of LQ companies' purchase price to JFC companies themselves, a huge amount of money was paid by JFC companies out of the group. The ultimate destination of much of it is unclear on the documents although it is clear that a significant part of it went to the LQ companies, as a key source of funding of the LQ companies during the financial crisis.

F.8 The funding of LQ Companies by the use of JFC monies

236. There is an incomplete picture of how the LQ companies were funded, but it appears that Prometey and Kronos were at the heart of matters. As to such funding:-

(1) A January 2011 payment planning email instructs a payment of US$705,000 from Garold to Biany to Lambera to Kronos to *"all... according to the need"*. It appears therefore that the role of Kronos was to act as an accumulator of monies, and as a bank account for general needs. As part of the US$705,000 payment chain, on 25 February 2011, Ms Dakhina and Ms Osipova exchanged emails about whether US$100,000 should be sent to MCDS via LQ Smolny or Kronos, and the decision was taken to send it from Lambera via Kronos (as confirmed by Lambera bank statements).

(2) Prometey took out loans totalling US$150 million in December 2010, June 2011 and December 2011. Large profits were also diverted to Prometey during the same period (for which no explanation has been given by Mr Kekhman).

(3) US$26.6 million went to MCDS comprising: US$10 million from Vidya to Whilm to Garold to Edenis to Remo to Prometey to Kronos to MCDS, and US$17.5 million from Vidya to Whilm to Ovium to Remo to Prometey to Kronos to MCDS (plus US$470,000 from Ovium to Lambera, and US$260,000 from Remo to Tavrosun) all on 12-13 July 2011. The first half of this was instructed according to a single plan sent from Ms Osipova on 7 June 2011, with the payment to Ovium described as *"for purchase of plantations (Olya Volkova executes the agreement, she will provide accurate payment reference)"*. Mrs Zakharova states that MCDS had a loan from Bank of St Petersburg that it could not service itself and so JFC serviced it, and a further document confirms that US$25m was to repay the Bank of St Petersburg loan to ZAO MCDS. An associated narrative records that Kronos was returning an advance payment by MCDS for repair and construction works under a 2009 contract (such narrative disguising the reason for the payment). By the end of 2011, US$25 million (R750 million) remained owing by Kronos to Prometey.

(4) In September 2011, around US$8 million of a Raiffeisenbank loan to JFC Russia was sent by Garold to Kronos via (i) Malbec/Ategra/Colant, (ii) Lambera.

Separately, a further US$375,000 was transferred Garold-Malbec-Lambera-Kronos.

(5) In November 2011, around US$1.5 million was sent from Edenis via Kalimna/Lambera to Kronos.

(6) In December 2011, around US$6 million was paid to Kronos out of money sent from JFC Russia-Prometey-Cetus-Lambera.

(7) In April 2012 around R19 million (US$650,000) went from Prometey and Kronos to Lite to fund its debt to Sberbank, which went to fund the remains of the US$50m Sberbank loan advanced to Nevsky Project and then assigned to Lite. (As already noted the Nevsky Project was a development project outside the LQ group).

(8) In 2012 Calypso (a property company that it appears was controlled by Mrs Kuzina for Mr Kekhman) owed Prometey □734 million (approximately US$25 million).

237. There was also further Frunzensky funding (that does not appear to have involved Prometey or Kronos), namely:-

(1) US$5 million was paid from Calico to LQ Frunzensky prior to 31 December 2009.

(2) In February 2010 US$13.9 million went from JFC Russia-Tisoy/Ursula-Calico-VIN Project Ltd (with a small payment to LQ Smolny), the same sum having previously reached JFC Russia money from Tisoy/Ursula via Calico (origin unknown on the available documentation).

(3) US$13m was sent from Zosimo to LQ Frunzensky and US$6 million was sent from Zosimo to Tavrosun (mostly during 2010).

(4) US$1.4 million was sent from Edenis to Tavrosun (half during 2010 and half during 2011). US$300,000 of this payment formed part of a list of payments outlined in an email from Ms Dakhina dated 12 August 2011, asking Ms Volkova to prepare agreements and resolutions (of Tavrosun and Lambera) to

support that payment of US$300,000 from Edenis to Tavrosun; US$420,000 from Edenis to Lambera ; □40 million (about US$1.4 million) from Tavrosun to New City ; □50 million (about US$1.75 million) from Lambera to Kronos. Ms Volkova sent the Lambera board resolution the next day, and Ms Dakhina edited it. On 16 August 2011 Ms Dakhina sent executed copies of associated Edenis/Lambera and Edenis/Tavrosun loan agreements to Ms Prokofyeva. On 15 August 2011, Ms Arina (Deputy Chief Accountant at JFC Russia and Chief Accountant of New City) asked Ms Dakhina to send □147,000 from New City to Aurora.

(5) US$3.5m went to Tavrosun during 2010 and 2011: from Eliora (over US$500,000, borrowed from Sberbank), Calico (around US$500,000), Cetus (around US$400,000), Sanecio (around US$350,000) , Malbec , Remo, Lacoma, Coronella (all over US$200,000 each).

238. As to further Smolny/MCDS funding (that does not appear to have involved Prometey or Kronos):-

(1) Eliora sent US$255,000 to LQ Smolny in December 2010.

(2) US$65,000 went from Garold to Biany to LQ Smolny to (its subsidiary) MCDS in around January 2011.

(3) In the first half of 2011 US$300,000 was paid in by Lambera, US$75,000 by Zosimo, all of which went out to ZAO MCDS immediately.

(4) US$100,000 went from Garold to Edenis to Lambera to LQ Smolny to MCDS and US$146,000 from Garold to Edenis to Lambera to Kronos to Nevsky Bereg and New City on 20 April 2011 (all instructed according to a single plan sent by Ms Osipova).

(5) US$380,000 went from JFC Russia to Garold to Edenis to Tavrosun to New City and US$100,000 from JFC Russia to Garold to Edenis to Lambera to LQ Smolny to MCDS on 16 and 17 May 2011 (all instructed according to a single plan sent from Ms Dakhina to Ms Dormeneva and Ms Prokofyeva).

G. The Other Companies

239. Whilst Mr Kekhman very much denies knowledge of particular companies (such denial calling into question the truth of his evidence as identified below), it is common ground (as reflected in paragraph 8 of the Agreed Facts and the Companies Table at Appendix 6 to C's Closing Submissions) that there was a complex web of off-shore companies outside the JFC and LQ groups and that a large number of them were operated by JFC personnel, namely: Alder Group, Akras, Alustar, Alvinia, ZAO Argo, Artaleta Investment Ltd, Ategra Trading Ltd, Avronade, Biany, Calico, ZAO Calypso, Cetus, Chenet, Colant, Edenis, Fudo, Hildeth, INT Charterlink, Kalimna, ZAO Kronos, ZAO Lite, Lambera, Malbec, Maxum, Middlex Invest, Mongallet, Ovium, Poloma, Prometey, Rangi, Remo, Retagon, Saccoto, Sanecio, Tetuana, Tisoy, Tradement, Ursula, Zosimo.

240. In this regard Mr Kekhman himself pleaded that *"the financial affairs of the Fruit Business were labyrinthine and irregular"* and that there was a *"complex web of companies"*. It is an Agreed Fact (paragraph 10) that, *"[Mr Kekhman] knew that [Mrs Zakharova] was operating a web of offshore companies from 2008 to 2012 including through nominees"*. As Mr Stuart put it in opening on Mr Kekhman's behalf, *"He knows that [YZ] and [AA] said they were going to create, and did create, webs of companies... He says he was well aware that she said, "Oh, we are going to do it this way. We are going to have a Foundation, BVI companies, Cyprus companies, Russian companies, trust companies, companies held by nominees, nominees who are then directors"*. However Mr Kekhman denied knowing particular company names.

241. Mr Kekhman's stance in relation to the Other Companies is reflected in paragraphs 8 and 9 of the Agreed Facts document that has already been quoted in Section A.2 above, but is repeated here for ease of reference:-

> *"The Other [C]ompanies*
> *8. The companies set out in both Schedule 1 to the POC and in C's Companies Table 24.10.17 version (produced during C's opening) that were not part of the formal JFC or LQ Groups were operated by and acted on instructions of JFC personnel, save for Maldus, Gepson, J Service LLC, and Prometey (which C says were operated on instructions from JFC personnel but D says operated on instructions from Mr Akatsevich, Mr Sayapin and Mr Borovskikh and Mr Lyubomirov).*
> *(It is disputed who ultimately owned, controlled and directed these JFC-managed companies: C says D did; D says JFC and the owners of JFC (i.e.*

the Private Foundations) and ultimately (by beneficial interests in the Family Foundations) VK/AA/YZ owned the companies. D says that they were at the material times controlled and directed by YZ/AA and/or the JFC personnel acting under the instruction of YZ/AA.)

9. In operating some of those companies and transferring money through them from 2008 to 2012, sometimes fictitious and sometimes backdated contracts were used to 'cover tracks' by evidencing sham transactions so as to disguise (from lenders and auditors) the true purposes of the payments, namely to fund particular recipients or expenses (including repayment of bank debt relating to the LQ Companies' properties)."

242. Thus the money flows identified by Mr Misiura are agreed, as is the fact that the offshore companies were used to transfer money including to repay LQ debts and using fictitious and sometimes backdated contracts to evidence sham transactions

243. As for the nominees of the Other Companies (leaving aside Maldus and Gepson and related companies which are addressed in due course below), they included:-

(1) Mr Kasatkin: Ategra, Avronade, Calico, Cetus, Colant, Edenis, Fudo, Hildeth, Kalimna, Lambera (which owned ZAO Kronos), Malbec, Maxum, Ovium, Poloma, Rangi, Remo, Saccoto, Sanecio, Tetuana, Ursula, Zosimo.

(2) Ms Kuzina: Calypso and Lite, Tavrosun.

(3) Mr Lyubomirov: Prometey

(4) Mr Udalov: Rangi, INT Charterlink, Tradement (and LQ company Nevsky Bereg).

(5) Mrs Zakharova: Chenet, Alder, Artaletta .

(6) Mr Martinez: Biany.

244. Mr Kekhman denies any knowledge of Alder, Biany, Calico, Cetus, Chenet, Edenis, Kalimna, Maldus, Rangi and Remo before this dispute. Mr Kekhman's alleged lack of knowledge about Calico (and the role of Vin Project) and Edenis has already been addressed in Section C.5 and for the reasons there identified I am satisfied that he gave untrue answers in relation to his knowledge of such entities. The veracity of his evidence is also called into question by reason of the fact of:-

(1) Payments from and to Alder, Avronade, Calico, Chenet, Edenis, Poloma and Saccoto.

(2) Mr Kekhman selling Vin Project to Calico and talking about Vin Project to Vedomosti newspaper.

(3) In October 2012 being consulted personally by Ms Volkova in Cyprus about various companies including Edenis and Calico, and not querying their existence or function with her.

245. Mr Kekhman's case is that the owners and directors were under the ultimate supervision and control of Mrs Zakharova and/or Mr Afanasiev. They may well have been under the supervision and control of Mrs Zakharova and/or Mr Afanaisev but I am satisfied that any such supervision and control was ultimately on behalf of Mr Kekhman who was acting not on behalf of the JFC Group but on behalf of the LQ Companies and his own interests (though including, potentially, the interests of his foundation and those of Mrs Zakharova and Mr Afanasiev). In this regard the evidence, which I have accepted, is that Mrs Zakahraova would not act other than on the instructions of, and with the agreement of, Mr Kekhman in relation to any serious or significant decisions, and that would include the use of such companies to channel monies to LQ companies and Mr Kekhman. Furthermore, in the context of his discussions with Mrs Zakahraova in relation to such decisions, Mr Kekhman will have been aware of the names of the key companies, and he is not giving truthful evidence when he denies knowledge of the names of such companies.

246. In such circumstances, and although Mr Kekhman may not have known all the details of all the companies and payments, I am satisfied, based on his own evidence, and that of Mr Afanasiev and Mrs Zakharova (as recorded in the interview notes), that Mr Kekhman would have ordered or approved all major strategies. This would include funding a particular LQ company loan, funding the citrus business through Maldus and Gepson, and the funnelling of money to Kronos for LQ companies. The question of Mr Kekhman's knowledge and involvement in the Garold Fraud itself is addressed separately and in detail, in

Section M.2 given its relevance and importance to the Garold Representations claims.

247. Prometey is in something of a category of its own, not least in circumstances where Mr Kekhman does not deny all knowledge of it. ZAO Prometey does not appear on the organisation charts showing the LQ Group but does appear in the 27 March 2012 Table of Companies found at JFC, and registration records indicate that ZAO Prometey is a Russian company that was formed by Pollone (an LQ Group company) and registered by Mrs Zakharova in April 2008, and owned by Pollone until April 2010, with its Director General being Ms Kuzina and then Vladimir Popov. Mr Popov was also the Director General of Kronos for most of 2010 and it appears he provided maintenance services on behalf of JFC. From around April 2010, it appears that Prometey was owned by Mr Lyubomirov who was also general director and CFO. He worked as a JFC sales manager. Mr Afanasiev's evidence is that Mr Lyubomirov was a nominee for Mr Kekhman (though this is denied by Mr Kekhman).

248. In other proceedings (a bankruptcy annulment application) Mr Kekhman said that Prometey was just a banana importer and had nothing to do with the JFC group. If Prometey was Mr Lyubomirov's company, Mr Kekhman has never explained how or why (on his case) Prometey (originally owned by Pollone an LQ company) left the LQ Group (and as such Mr Kekhman's ownership and control) and how much Mr Lyubomirov paid for it or why. These are all matters that I would have expected Mr Kekhman to be able to give evidence of not least in circumstances where Prometey had been owned by Pollone an LQ company. Of course Mr Lyubomirov could also no doubt have shed light on matters but he did not give evidence for Mr Kekhman. The role of Prometey, and the diversion of profits to Prometey is addressed in Section H.2 below.

249. As for Kronos (where it appears much of JFC's money ended up), little is known about it. It was incorporated in April 2008 and had PA Kaul as a director and was apparently owned by Lambera. Its bank statements were not before the Court.

H. Particular events in 2010

H.1 September 2010 - the termination of the Star Reefers Contract

250. In around September 2010, the contract with Star Reefers was terminated. Mr Kekhman accepted Mr Afabasiev's evidence that he was consulted by Mr Afanasiev as to problems with Star Reefers and whether he should terminate the Star Reefers contract and that Mr Afanasiev obtained Mr Kekhman's approval to that course of action. At around in the same time (in September or October 2010), Mr Kekhman decided to charter two ships from Sea Trade.

H.2 2010 onwards - the diversion of profits to Prometey

251. Mr Afanasiev, in his witness statement, gave evidence as to a "*parallel structure*", outside the JFC structure, consisting of a separate group of companies (which he recalls included Prometey, Carugno, Solifruit and Tradement) which supplied bananas to the JFC group and made profits from it (although his evidence was that he thought that cash generated by them would be for the JFC Group as if it was JFC's money).

252. At some point in 2010 (in June 2010 or possibly later), Prometey was interposed into the supply chain between fruit suppliers and JFC Russia. It appears that Prometey was used to divert profits that would otherwise have been earned by JFC Russia from the sale of fruit (principally bananas) in Russia.

253. Prometey's own borrower's questionnaire (completed and submitted by JFC personnel when Prometey was obtaining a bank loan guaranteed Mr Kekhman) confirms it had only one major customer—JFC Russia, and two major suppliers—Cetus and Solifruit SA. From the bank statements Cetus appears to have been a conduit (providing no services itself). In late 2011 and 2012 payments were mostly made from Prometey (or Garold or Biany) to Cetus to Carugno of a few million dollars per month (mainly in payments of around US$400,000 or US$1 million).

254. In an email of 16 March 2011, Ms Nikitina set out for Mr Usov, Ms Kuzmina, Ms Prokofyeva, Ms Osipova (all JFC staff) and others the new "*more complicated*" scheme for the purchase of bananas in place since the new year. It included schemes by which Carugno sold to Cetus and then Cetus sold to Prometey (which itself sold to JFC Russia) on cost and freight terms, Cetus chartering from Apus which chartered from Vidya; and by which Marsella sold to

Solfruit SA which sold to Prometey (which itself sold to JFC Russia) on cost and freight terms, Solfruit chartering from Apus which chartered from Vidya. Lower down in the chain Ms Osipova had sent *"samples"* of the "*stamps and signatures of their directors"* for *"Cetus Trading Ltd (sale) and Apus Trading Ltd (freight)"*, which were attached, including corporate stamps (which could be copied for use) for Akras, Apus, Ategra, Cetus, Colant, Fegana, Kalimna, Ovium and Spica. This was supplemented by further schemes from Mr Usov on 18 March 2011.

255. It is clear, and I find, that all of these companies were controlled by JFC personnel, and that the JFC Group was selling to itself (Marsella selling to JFC Russia, or an unknown company selling to JFC Russia via Carugno) and providing freight to itself (Vidya providing freight) via a network of non-JFC companies that were interposed (Solfruit SA, Prometey, Apus). The purpose of these companies was to skim off profits. Such a structure, with such a purpose, was a serious and significant decision, and not something that JFC employees would have done without the knowledge and agreement of Mr Kekhman, and I so find.

256. Mr Misiura's calculations show that during the first 10 or so months of 2011, Prometey's net cash inflow from its operating activities (the sale of fruit to JFC Russia) was US$24.3 million. Mr Misiura also calculates that Prometey had a net inflow from loans from JFC and LQ companies of US$27 million during this ten months, although this was from a much larger cash through flow (and hence during this time US$105 million came from JFC Russia, Biany and Edenis).

257. This technique of diversion of profits appears to have continued into 2012 and thereafter (i.e. after the return of Mr Kekhman to JFC). The report of the JFC Russia bankruptcy manager of May 2016 noted findings that JFC Russia may have lost profits of □1.9 billion (over US$60 million) in three years *"as a result of purchase of fruit from foreign suppliers at a higher price compared to the price formed in Ecuador*" as well as □1.8-2.2 billion (over US$60 million) in three years from transferring profits to other *"companies headed by the former top management of"* JFC Russia.

I. Particular Events in 2011

I.1 January 2011 - Payment Plans

258. On 23 January 2011, Ms Osipova emailed Ms Dormeneva and Ms Dakhina setting out in an email headed "*Scheme*" several planned cash transfers for the following week amounting to US$705,000 from Garold to Biany to Lambera to Kronos to *"all... according to the need"*, and US$65,000 from Garold to Biany to LQ Smolny to (its subsidiary) MCDS. The right-hand column of the email is of note. Next to the first payment (Garold to Biany) Ms Osipova says *"Inga [Prokofyeva] knows the exact purposes"*. Next to the second payment (Biany to Lambera) Ms Osipova says *"I have Biany in the second drawer of the sideboard (paper envelope with a note "Panama company"), the bank details of Lambera are in the folder for the bank/Hellenic, file New companies.xls*" and next to the fourth payment (Lambera to Kronos) Ms Osipova says *"I have Lambera in the second drawer of the sideboard (paper envelope with a note "Group of companies")"*. From this it is clear that Ms Osipova had a filing cabinet with payment keys or other documents used to give instructions on behalf of various Other Companies (in this case Biany and Lambera). This is consistent with what Mrs Dakhina said in interview.

259. On 1 April 2011, Ms Dakhina sent to Ms Prokofyeva, Ms Dormeneva and Ms Osipova a payment plan by which over US$40 million would be routed JFC Russia/Vidya-Garold (some via Whilm)-Biany/Edenis-Prometey-Bank St Petersburg.

260. On 26 May 2011, Ms Nikitina sent to Ms Osipova, Ms Dormeneva and Ms Dakhina an email entitled "*Approximate payments plan*" with a spreadsheet called "*Payments*" which appears to be a 2-part plan for payments from 20 May 2011 to 13 June 2011. The payments involved JFC Group companies and Other Companies (Ovium and Tisoy).

I.2 2011 - Financial difficulties of the JFC Group

261. By 1 October 2010, the total loan portfolio of JFC group was over US$408 million. It was Mr Afanasiev's evidence that Mr Kekhman was well aware of the

financial difficulties of JFC in 2011 from discussions with Mr Afanasiev. Whilst Mr Kekhman accepted that he was aware of serious trading losses and financial difficulties from September or October 2011 he would not confirm any earlier date. However it was also his evidence that in 2011 there was "*alarm*" for the business and that Mrs Zakharova told him they had problems because the business was not covering its costs. He also indicated that he had been told in 2010 by Mrs Zakharova that the banks would not permit further dividends to be issued due to JFC's financial position, and that earlier his wife had lent Mrs Zakaharova money to use for JFC.

262. I reject Mr Kekhman's written evidence that the first indication that something might not have been right with the business and management of JFC Russia came when he was served with the freezing order in Star Reefers (some time after 16 December 2011).

263. On the contrary, I am satisfied that Mr Kekhman was aware of financial difficulties of the JFC Group throughout 2011 from his discussions with Mr Afanasiev, and the other matters identified above. Mr Kekhman also accepts that Mrs Zakharova discussed her desire to restructure the loan portfolio, which (it was discussed) stood at around US$400 million, and that she had sought a US$300 million loan from VTB but had been unsuccessful. In this regard I also accept Mr Afanasiev's evidence that the reason for Mrs Zakharova ceasing to be General Director of JFC Russia in April 2011 because Mr Kekhman directed that she needed to concentrate on obtaining financing. I address the attempts to obtain financing, and the extent of the loan burden at Section N.1 below.

264. Prometey took out a number of loans in late 2010 and the first half of 2011. First, a loan of US$50 million from Bank of St Petersburg dated 6 December 2010. This loan was repaid in April 2011 using money extracted from Garold through Biany and Edenis under the Garold Fraud. Second a US$35 million nearly 3-year loan from Bank of St Petersburg dated 1 June 2011, secured by a charge over Calypso, and guaranteed by Mr Kekhman himself. This loan and guarantee were enforced in 2012. Mrs Kuzina engaged in a personal intervention (as pledger of Calypso shares) in the enforcement action brought by C against Mr Kekhman. Mr Kekhman's evidence was that he could not remember guaranteeing this or any

Prometey loan. Hs evidence was not credible – this was a substantial obligation that was guaranteed by him, and which came to be enforced. It was not the only Prometey loan guaranteed by Mr Kekhman as Prometey also took out a third US$21 million loan (for a 2-month period) from Baltic Financial Agency dated 17 June 2011, guaranteed by Mr Kekhman and also Mrs Zakharova and Mr Afanasiev. It was repaid in August 2011.

265. This third loan is of particular significance as it shows, beyond doubt, that Mr Kekhman knew about Prometey (as Flaux J noted in his judgment). It was arranged within JFC by Ms Osipova and Ms Dakhina. They were sent a draft guarantee directly by the bank with the email subject "*Kekhman's Guarantee*". The guarantee signing had to take place late on Friday 17 June 2011 because Mr Kekhman was going on his personal holiday on Monday 20 June. Mr Kekhman's evidence that he could not recall this loan and guarantee is simply not credible, not least in the context of its signing – in relation to which there can be no doubt that he signed the loan personally and in circumstances that accommodated his movements. His willingness to sign such a guarantee shows that he was commercially interested in Prometey.

266. The loan appears to have been effectively a bridging-loan for short-term cashflow purposes of the JFC Group (as was Mrs Zakharova's evidence). It appears from bank statements that the US$21 million was paid by Prometey to Cetus and then the vast majority (via ten intermediaries who each held the money for no more than two days: Alustar, Artaleta, Avronade, Chanceron, Fegana, Hildeth, Lacoma, Lambera, Retagon, Tetuana) on to Garold and Whilm within a few days. Mrs Zakharova thought the loan was a bridging loan to deal with cash flow. In turn Cetus bank statements show that US$10 million of the US$12.6 million that was paid to Whilm was returned on 8 August 2011 to Cetus via Akras Inc, to which a further US$11m paid by Biany to Cetus was added, allowing payment of US$21 million to Prometey (on 5 and 8 August 2011) and then repayment to the BFA Bank in August 2011.

I.3 May- October 2011 - The Loan from C to JFC

267. Chronologically, the application process for the Loan from C by JFC took place in the period May to August 2011 with the agreements being signed on 2 September 2011 (US$100 million) and 14 October 2011 (an additional US$50 million). The application process for the Loan is addressed in Section N.2 below, and the claims against Mr Kekhman in relation to the Garold Representations and the Security Representation are addressed in Sections N.3 to N.13 below.

I.4 August 2011: Repayment of the US$2.7 million Chenet Loan

268. In November 2006 (i.e. when Mr Kekhman was actively invoved in the affairs of JFC Russia), JFC Russia made a loan of US$2.7 million to Chenet, repayable in January 2012. On 11 August 2011, Ms Prokofyeva emailed Ms Volkova and Ms Sugorovskaya a letter signed on behalf of Chenet and dated 8 August 2011 requesting that Pollone repay US$1.3 million to JFC Russia pursuant to the 2006 loan, such payment being made on 10 August 2011. It is not clear why Pollone was paying on behalf of Chenet (reference being to, *"In consideration with current balance between our parties"*). It appears that the US$1.3 million came from Gepson to Maldus to Kalimna in the preceding weeks. There is no evidence as to where Gepson got the money from.

269. So far as the payment of interest on the loan is concerned, on 19 December 2011, Ms Nikitina emailed Ms Prokofyeva and Ms Dormeneva (both at JFC) asking them to execute all the steps in what amounted to a circular payment chain of around US$208,000 from JFC Russia to Prometey, from Prometey (on behalf of Coronella), to Pollone (the parent of Prometey), and from Pollone (on behalf of Chenet) to JFC Russia. The payment was treated as partial repayment to JFC Russia of interest on the loan made by JFC Russia to Chenet.

I.5 September 2011 - Proceeds of ZAO Raiffeisenbank loan to JFC Russia transferred to Kronos

270. In the period 16-22 September 2011 almost US$8 million of a loan of US$9.64 million from ZAO Raiffeisenbank to JFC Russia was transferred to ZAO Kronos as follows: from JFC Russia to ZAO Bonanza International, then to Garold, then in three payments US$8.37m out of the JFC Group to Ategra, Malbec and Colant (*"all of which lacked economic substance"* – in the opinion of Mr Misuira), those

three sums then all being passed on to Lambera the same day, and then on to ZAO Kronos the next day. The payments up to Ategra, Malbec and Colant were all recorded on an "*End Use Breakdown*" document sent on 22 March 2012 by Ms Dakhina to YZ. Mr Misiura noted that he *"found no evidence of any economic value being provided by the recipients for these payments."*

271. The □250 million (US$8 million) payment from Lambera to ZAO Kronos was documented by a resolution for financial help of Lambera (the owner of Kronos) put together by Ms Dakhina and Ms Volkova and backdated. The ZAO Raiffeisenbank loan remained unpaid 6 years later.

272. C says that this was part of a pattern of sums being advanced to the JFC Group only to be paid to companies outside the Group and out of the reach of the creditors, other examples being C's Loan itself, as well as a US$25.5 million loan from Sberbank to Eliora on 7 December 2010, US$22.3 million of which was immediately paid to Alvinia; and a further US$8.4 million loan from Sberbank to Eliora on 9 June 2011, all of which was the same day paid to Alvinia (US$5.4 million) and Artaleta (US$3 million, then paid on immediately to Lambera, Whilm and Tavrosun). C submits that it is absurd to suggest that such transfers were made on the initiative of the JFC employees concerned and without the knowledge and involvement of Mr Kekhman. I agree. I address the knowledge and involvement of Mr Kekhman in relation to financial matters and all serious or significant decisions, and my associated findings, in detail in the context of the Garold Fraud (Section M.2).

I.6 October 2011 - US$6.5 million payment through Biany

273. On 4 October 2011, US$6.5 million went from Garold to Biany, then split the next day among Fudo, Sanecio and Poloma. The US$2.2 million paid to Poloma was then split US$1.6 million to Avronade (which Mr Misiura concludes was a company *"used only to transfer cash between companies under control of Mr Kekhman"*) and then to Whilm, and US$600,000 to the three foundations.

I.7 Late 2011 - Further borrowings

274. Subsequent to C's Loan, further loans were taken out in late 2011:-

(1) US$20 million was loaned by Uralsib to ZAO Bonanza International on 27 October 2011 with a two year term, the loan being guaranteed by Mr Kekhman, Mrs Zakharova and Mr Afanasiev.

(2) US$50 million was loaned by Promsvyazbank to ZAO Bonanza International on 3 November 2011 with a two-year term, the loan being guaranteed by Mr Kekhman and Mrs Zakharova.

(3) US$47.5 million was loaned by BFA Bank to Prometey on 2 December 2011 for two and a half months, the loan being guaranteed by Mr Kekhman, Mrs Zakharova and Mr Afanasiev. The short term nature of this loan shows just how dire the state of the finances of the JFC and JFC-controlled companies were by this stage.

I.8 December 2011 - dissipation of US$47 million paid to Prometey

275. The evidence is that in December 2011 around US$47 million was transferred from Prometey (such money having originated from JFC Companies as addressed in Section H.2 above) to Other Companies, including US$13.6 million to Maldus (although US$11.5 million was paid back), US$6.5 million to Gepson and US$8.5 million to Kronos. In this regard:

(1) US$22.4 million was paid on 6 December 2011 by Prometey to Calico Capital Ltd (labelled in Calico's bank statements a prepayment for fruit). These monies were then paid on by Calico to Maldus (US$6.5 million), Gepson (US$6.5 million, with US$4 million going on to Maldus), Tavrosun (US$270,000) (although the US$10.5 million paid to Maldus appears to have been returned to Prometey).

(2) US$25 million was paid on 7 December 2011 by Prometey to Cetus Trading Ltd. These monies were then paid on by Cetus to various other entities including Maldus (US$7.1 million: US$4 million directly, US$3.1 million via Kalimna), Kronos via Lambera (US$8.6 million), and Beatrice Enterprises (US$20,000). C identifies that at least US$13 million of this US$25 million was not returned to JFC companies or paid to apparently legitimate third parties i.e. was dissipated. In relation to three of the recipeints (Midelex

Invest, Brevex Ltd and Importland SA) documents disclosed by JFC show instructions to only make payments in odd amounts with cents (rather than whole dollars), indicative of an attempt to conceal that such payments had no legitimate purpose.

J. The ring-fencing of assets in January 2012

276. In or about January 2012 (at a time when Mr Kekhman accepts that he was taking a fully active role in JFC), JFC personnel, overseen by Ms Volkova, undertook the incorporation of INT Charterlink and Tradement and implementation of a plan that Mrs Zakharova has described as a parallel trading structure. On 26 December 2011 Ms Nikitina emailed Ms Osipova, Mr Usov, Ms Prokofyeva and Ms Kuzina describing Tradement as *"the company that will replace Garold"* and stating that it was required to arrange the notification to all debtors that they should pay Larcom not Garold. An amended "*money flow*" chart, amended by Ms Volkova at this time, when compared with the old version, shows that Vidya was replaced by INT Charterlink as internal provider of freight services, and Garold (which one of the guarantors of C's loan) was replaced by Tradement as supplier of fruit to non-Russian purchasers, with some fruit also being supplied by Kalimna. The effect of this was to cut Garold and Vidya out of the profit-making.

277. Ms Volkova was a signatory under a power of attorney, and lawyer Mr Oleg Udalov was the stated beneficial owner for INT Charterlink (and documents at this time show he was also owner/signatory for Global Service, Nevsky Bereg, Baragovin Solutions Ltd and Calico), and with various trust and signatory documents and contracts (between Tradement and Bonanza) also handled by Ms Volkova/JFC at this time. Ms Volkova explained that Mr Udalov was *"our nominee UBO, in order not to show connection with companies through Dima [Kasatkin], me or our main principals"*. This allowed Ms Kuzmina to confirm (falsely) to the auditors in an email on 20 June 2012 that *"[INT Charterlink] is not related to any company of JFC Group Holding."*

278. In July 2012, Ms Kuzmina sought to execute various assignments of debts to allow offsetting between INT Charterlink, Garold, Lacom and Novaldy so as to

reduce the interest that needed to be paid and therefore tax that needed to be paid on that interest.

279. Correspondence in June 2012 shows JFC employees (Natalya Kuzmina, Elena Kiseleva, Evgenya Gribova and Julia Rudakova, all at JFC email addresses) calculating that US$1.3 million had been earned by INT Charterlink performing (by contracting external suppliers) freight for Fruitservice LLC in the months of April and May 2012, and shows that Fruitservice LLC were asked to pay the money to Gepson rather than INT Charterlink. In an email to Mr Kekhman on 17 July 2012, Ms Volkova referred to the fact that monies in Gepson (referred to by name) could be used to pay certain expenses of JFC Financial Services, Saccoto re: auditing, and services of Panama companies.

280. The line adopted by Mr Kekham in his Defence (supported by a statement of truth), was that he, "*was not involved in the decision to divert Garold's business and was not aware of it at the time. He infers that it was done upon the instructions of Mr Afanasiev.*" That was untrue. Mr Kekhman was involved and was aware of it at the time, as can be seen both from Mr Kekhman's oral evidence, and Mr Afanasiev's evidence. As to the former Mr Kekhman said during the course of his cross-examination, "*I don't know the names exactly of the companies, but yes indeed, in order to protect us, Andrey told me to protect the cargo for being arrested, they developed some kind of a structure how the company is going to operate... He informed me with Yuliya together that for the reasons of Star Reefers what happened, we had to create parallel structure in order to protect the assets, and I stress we are talking only about cargo, so that our cargo would not be arrested*". As to the latter, Mr Afanasiev stated at paragraph 54 of his witness statement that, "*Other companies, specifically, Bagnilasa and Duguit, were set up specifically in response to the Star Reefers litigation. Mr Kekhman orally instructed me to set up a ring-fence structure in the course of various meetings in December 2011...*".

281. The likely explanation for Mr Kekhman's initial stance is that he did not want to be seen to be involved in hiding assets and circumventing enforcement by Star Reefers, as that might be regarded as inappropriate conduct on his behalf. It is clear, however, that he was involved, and also used other methods of

circumventing the Star Reefers enforcement using his (per Mr Afanasiev) citrus companies controlled by Mr Akatsevich (addressed further in Section K.4 below). In this regard Mr Akatsevich stated in his second witness statement at paragraphs 15 to 17:

> *"At the time ZAO Gruppa JFC was in litigation with Star Reefers – there was a risk of arrest of their cargo outside the Russian Federation – I was invited to ZAO Gruppa JFC office and we discussed this in general terms with Mr Afanasyev and Mr Kekhman. When ZAO Gruppa JFC made the decision that Andrei Afanasyev and I should assist in the cargo's support we discussed all the details of the bank details of the company, my rate for buying the bananas, importing the bananas to the Russian Federation and selling them to ZAO Gruppa JFC at an agreed rate... After the issues with Star Reefers were settled the contract with Fruitservice LLC was terminated and JFC resumed importing directly from Ecuador and Central America..."*

282. In the context of hiding assets from Star Reefers, Mr Akatsevich also stated at paragraph 26 of his second witness statement:

> *"At the time when Star Reefers was suing ZAO Gruppa JFC there were risks associated with that. Mr Kekhman came to me asking for help... The essence of the deal was my company that I managed was borrowing money based on a loan agreement. I had to return the money on a 1st call from the lender. That's exactly what happened. I think it was LQ Development which lent money to Gepson. When the threat of arrest from Star Reefers passed, I was asked to return the money in accordance with the loan agreement.. I dealt with Mr Kekhman..."*

283. I am satisfied from such evidence that despite Mr Kekhman's denials in his Defence, Mr Kekhman was involved in the decision to take the strategic decision to ring-fence assets and divert profits from JFC companies and hide that from JFC's creditors (specifically Star Reefers) and auditors and he was also involved in agreeing the associated methodology to implement such decision.

K. Other Events in late 2011-2012

284. In December 2011, Ms Volkova was arranging the purchase of new Panamanian and Cypriot companies and was corresponding with Mr Kasatkin in that regard. In an email on 7 December 2011 Mr Kasatkin explained in relation to the Cyprus companies that if a nominee shareholder was appointed, agents and banks would still ask who the beneficial owner, *"that is true owner... of the company"* would be. He continued, *"That is why when providing the nominee shareholder service,*

I will still need the beneficiary's data, which will be known only to me, the agent and bank. No one will disclose them without a court order. Some clients desiring complete confidentiality also employ the nominee beneficiary service".

285. In an exchange of emails on 19 December 2011, Ms Prokofyeva confirmed to Ms Nikitina that she managed the bank accounts of Pollone.

286. On 27 March 2012, Ekaterina Bolshakova emailed Eduard Konyshev of JFC a table of companies (referred to by C in its submissions as *"The 27 March 2012 Table of Companies"*). This document included information such as net asset position for each quarter from Q1 2010 to Q3 2011, identity of director and CFO, corporate addresses, corporate or individual owner of the company, relating to a variety of companies (said by C to be inside and outside the JFC Group) including: ZAO Bonanza International (JFC Group); ZAO Argo, New City (LQ Group); and ZAO Prometey, ZAO Kronos and ZAO Lite (Other Companies).

287. In May 2012, Ms Frolova asked Ms Volkova for data (including as to signatory) *"with approval of Vladimir Abramovich"* (i.e. Mr Kekhman) as to Cetus, Solfruit, Calico, Eliora, Coronella and Remo. Ms Volkova replied that she knew about Cetus, Calico and Remo and *"We may arrange the signing of documents for these companies, if necessary"* but that she should speak to Ms Osipova about the other companies. Ms Dormeneva then circulated on 21 May 2012 a list of companies the accounts of which had funds, noting which accounts were blocked by court order, including various JFC and LQ Companies as well as INT Charterlink and various Kasatkin companies Calico, Saccotto, Maxum and Edenis.

288. On 29 May 2012, Ms Volkova forwarded some questions in relation to various companies and accounts, noting that it had not been decided which companies would be liquidated as they were awaiting information from *"the lawyer [of] Vladimir Abramovich"*, and asking who can confirm final reporting documents for "*various companies (including LK companies [sic] and not-holding companies)*" (presumably a reference to LQ companies) and asking whether cross-demand obligations could be assigned in relation to *"LK Holding companies and the companies in Cyprus not included in the holdings (Pollone,*

Lagaiana, Artaleta, Charistran, Saccoto)". This description shows that the financial personnel within JFC also regarded there as being JFC companies, LQ companies and what was referred to at trial as the "Other Companies".

289. On 26 July 2012 Ms Volkova consulted Mrs Zakharova and then arranged for various "JFC/BVI" companies (referring to them as companies *"which have been organized for us by the agent")* to be sold back to Cyprus corporate services provider Eltoma. The list included many Other Companies including Alvinia, Ategra, Avronade, Cetus, Colant, Kalimna, Lambera, Malbec, Ovium, Rangi, Tetuana, Tradement (as well as the main LQ Cyprus company LQ Development Ltd).

290. On 17 July 2012, Mr Kekhman was notified of the need to pay the auditors of Saccoto and Charistran and the administration services for Panamanian companies and sent a list of professional services provided to companies for which money was owed, including to Saccoto, INT Charterlink and Tradement.

291. The "*Strike-off Summary*" (a few drafts of which were sent by Ms Volkova to Mr Torkanovskiy (of Ivanyan & Partners) in August 2012), was apparently a global list (with different tabs for different jurisdictions) of companies, with commentary on ways to strike the companies off their corporate registers, also identifying the "*UBO*" (Ultimate Beneficial Owner), the corporate agent, the directors, and some detail of the company's liability to third parties. The final list includes over 70 companies including JFC, LQ, and Other Companies (with JFC and LQ companies labelled accordingly in the list), including Ategra, Avronade, Calico, Cetus, Colant, Edenis, INT Charterlink, Kalimna, Lacoma, Lambera, Malbec, Mongallet, Ovium, Poloma, Rangi, Spica, Tetuana, Tisoy, Ursula, Tradement, Zosimo (and an earlier draft included Alder and Chenet).

292. In September 2012, Ms Volkova notified Mr Kekhman of companies that could be struck off, including some LQ Companies and also Saccoto, Artaleta and others.

293. In October 2012 corporate administrators Christabel withdrew from office-holding for *"the Cypriot companies"* including JFC Group company Vidya Ltd and certain listed LQ Group companies, and from *"the BVI companies"* including

Other Companies Calico, Edenis and Maxum, and LQ Holding Ltd (described as *"the parent company of LQ holding"*). Ms Volkova notified Mr Kekhman of this (copying in external lawyers at Ivanyan & Partners) by an email dated 12 October 2012 directly and that Mr Kekhman would become the director and company secretary of the LQ companies in the place of Christabel.

294. In October 2012, Eltoma administrators sent Mr Kasatkin at JFC company Concordia CM (JFC) BVI Ltd invoices for their services in relation to various Cyprus companies including Alustar, Ategra, Avronade, Cetus, Colant, INT Charterlink, Kalimna, Lacoma, Lambera, LQ Development Ltd, Malbec, Mongallet, Ovium, Spica, Tradement.

295. Whilst, as already noted, it is an Agreed Fact that Mr Kekhman knew that Mrs Zakharova was running a web of offshore companies from 2008 to 2012 (Agreed Facts paragraph 12), it is notable in the context of all this correspondence that at no point is there any indication of Mr Kekhman asking what these companies were, or what their role was, or whether they had any assets – all questions that one would expect Mr Kekhman to ask in 2012 (at a time when there was a need to recover any available assets). The inevitable inference (which I draw) is that Mr Kekhman did not ask about such matters as he well knew about such companies (through his discussions and directions on all serious and significant decisions with Mrs Zakharova), and that they had no assets because, to his knowledge, all monies had moved through them (on his instructions) primarily to Kronos, Prometey and Maldus.

L. The Citrus Business and Maldus and Gepson

L.1 Overview

296. The citrus business is of relevance for a number of reasons. As already addressed in Section C.5, I am satisfied that Mr Kekhman demonstrably lied in relation to his dealings with the Maroc Fruit Board which in itself impacts upon his credibility, quite apart from his reasons for doing so. Secondly, as appears below, Mr Akatsevitch, Mr Sayapin and Mr Borovoskikh deliberately, and repeatedly, lied in their evidence before me so as to conceal the fact that they ran the citrus companies (especially Maldus and Gepson) as nominees for Mr Kekhman at all

material times. Thirdly, a consideration of this aspect of the business shows that Mr Kekhman was willing to hide assets from creditors by funnelling money to the offshore companies and making citrus profits outside the JFC Group. Fourthly, it is of relevance to Garold and the Garold Fraud, in particular in the context of what Mr Kekhman did not do in relation to seeking to recover assets from Garold in 2012 (this aspect is addressed in detail in Section M.2 below in the context of the Garold Fraud).

L.2 2008 and J Fresh

297. Mr Akatsevich explained when giving oral evidence that the citrus fruit seasons run from October to February/March. The evidence in his witness statement was that he worked at OOO JFC Fresh within the JFC Group and that it made a *"very good return"* in the 2007/8 season, with a turnover of several billion roubles (over US$100 million) and profit of tens of millions of roubles (single figure US$millions).

298. He said in his witness statement that Mrs Zakharova took the citrus business in-house into JFC Russia in late 2008 after the financial crisis hit, to make it easier to get financing *("all the business to do with fruit programmes moved over completely to [JFC Russia]"*). He then left JFC and wanted to become a *"competitor"*, and took the company OOO JFC Fresh (later named J Fresh) with him in late 2008, paying R15,000 for it (negotiated with Mrs Zakharova), although it was essentially a shell with no customers and negligible assets. He confirmed when cross-examined that he was saying that it was in 2008 that he took over JFC Fresh. Mr Akatsevich remained on the JFC Russia management board until October 2009.

299. I am satisfied that the reality was rather different. Far from being a shell company with no customers and negligible assets (and so apt to be transferred for nominal value) JFC Fresh was in a position to make a payment of US$9.69 million to LQ Smolny in December 2008. Mr Akatsevich was unable to explain this payment despite being in charge of JFC Fresh at the time, and it is simply inconsistent with it being a shell company. The suggestion that it might have been a *"technical"* movement orchestrated by Mrs Zakharova to *"optimise her accounts"* is

unsupported by any credible evidence. In re-examination it was suggested that this was a different Fresh company controlled by Mr Akatsevich, but there is no evidence of that, and that does not explain the payment to LQ Smolny. I am satisfied that JFC Fresh (later J Fresh) did have substantial assets and that it was only transferred to Mr Akatsevich for a very small price because Mr Akasevitch was simply acting as a nominee, and a nominee for Mr Kekhman (as is addressed below), thereby taking the citrus business out of the JFC Group but under Mr Kekhman's control.

L.3 2008-2010 and Maldus

300. The witnesses' evidence in relation to the period up to 2010 and Maldus was confused and, as appears below, does not bear examination:-

(1) Mr Akatsevich said in his witness statement that because of the crisis he never got going in the citrus business in 2008/9 and instead operated a logistics business with Mr Maxim Sayapin, possibly through J Fresh although he was not sure. In his oral evidence he expanded upon this logistics business explaining that it did warehousing and packaging at a couple of distribution centres in Russia.

(2) The evidence was that Maldus (registered to Mr Sayapin from March 2009 in the BVI) was used by Mr Akatsevich and Mr Sayapin for this logistics business - for their *"limited needs"* and *"in the old business I rarely used Maldus"* (Mr Akatsevich said) - although it had to be in Mr Sayapin's sole legal name. Mr Sayapin's evidence broadly agreed with this, save that he did not mention Mr Akatsevich, saying he acquired Maldus *"for myself alone"*. When questioned, his explanation for not mentioning Mr Akatsevich was that nobody asked him. It is clear that Mr Akasevitch did not wish to be publically associated with Maldus and it appears that Mr Sayapin did not realise that Mr Akatsevich was willing to acknowledge his involvement with Maldus.

(3) When asked what business he and Mr Sayapin did through Maldus Mr Akatsevich said, *"there were certain operations for the benefit, for the purposes of our company"* and when pressed to be more specific he claimed

the privilege against self-incrimination – seemingly in relation to the possible commission of criminal offences in Russia.

(4) In their witness statements, Mr Akatsevich and Mr Sayapin said that Maldus was registered by JFC Cyprus staff as a favour but had nothing to do with Mr Kekhman or JFC, and that JFC Cyprus staff continued to be used for communicating with lawyers on these companies for convenience and without Mr Kekhman's knowledge.

301. There is, however, no evidence whatsoever for any such logistics business—no documents showing any such business, nor any associated documents such as accounts, tax returns, bank statements or the like showing any benefit to Mr Akatsevich and Mr Sayapin. Had there been any such business I consider that there would have been documentation available to Mr Akasevitch and Mr Sayapin demonstrating that. They referred to no such documentation. As already noted, when pressed as to what this business was that Mr Akatsevich operated with Mr Sayapin through Maldus, Mr Akatsevich gave an unintelligible answer and then claimed the privilege against self-incrimination, indicating that if he *"revealed this information, it can be used as the criminal case that could be started against [him] in Russia"*. Mr Akatsevitch was entitled to adopt such a stance, but his own evidence shows that he believed that if he said what the business was *"it can cause harm to [him] in Russia"*. I do not consider that Maldus was in fact carrying on any business in 2009, or at least any legitimate business.

302. Maldus entered into a loan borrowing US$2 million from Zosimo on 20 December 2010, Mr Sayapin signing for Maldus, and payments appear to have been made under it (according to the covering email). Mr Sayapin thought, when cross-examined, that the signature looked very much like his but said that he was not familiar with the document. As for Mr Akatsevich, he said that this must have been pursuant to his arrangement by which he and Mrs Zakahrova would lend money back and forth, after doing their numbers in advance of each fruit season. I am satisfied that this was an untrue explanation.

303. Mr Akasevitch had forgotten his evidence that he and Mr Borovskikh's citrus trading did not start until the autumn of 2011 (as addressed further below), but then changed his evidence to say that he must have returned to the citrus business in 2010 not 2011. However, I am satisfied that this changed evidence was itself untrue for a number of reasons:-

(1) The witness statements of Mr Akasevitch and Mr Sayapin, signed in 2013 when events were considerably more recent, and so those events fresher in the minds of the witnesses, were very clear that the fruit business only started in 2011.

(2) Although he denied it, Mr Borovskikh was still working at JFC in 2010, and was on the management board of JFC Russia (as is evidenced by the minutes).

(3) The version of events that Mr Akatsevich gave that he ran the fruit business with Mr Borovskikh using Maldus without Mr Sayapin knowing, is not consistent with Mr Sayapin signing the Zosimo loan for Maldus in December 2010. Mr Akatsevich did not give any explanation for this.

304. I am satisfied that the reality was that Maldus was not being carried on as a business by Mr Akasevitch or Mr Sayapin or Mr Borovskikh in this period, but was simply another offshore company being used by JFC staff as a conduit for funds.

L.4 2011-12 - Maldus and Gepson

305. Mr Akatsevich initially said that in late 2011 Mr Afanasiev *"wrapped up"* the citrus business for JFC's part (i.e. JFC stopped trading citrus) and Mr Borovskikh took over the citrus business outside JFC in a joint venture (50:50) with Mr Akatsevich. In contrast, Mr Borovskikh denied that JFC did any fruit business from autumn 2010 onwards.

306. Mr Akatsevich's case in his witness statement was that after Maldus had been used for his and Mr Sayapin's "*limited needs*" in the logistics business, he later decided to engage in fruit trading, but he and Mr Borovskikh never got Maldus

operational in the citrus business because for a time they could not find the relevant constitutional documentation to pass Maldus over from Mr Sayapin to Mr Borovskikh (which they wanted to do in 2012), and by the time they did, they had set up Gepson (legally owned by Mr Borovskikh) and used that instead. Mr Akatsevich said that Mr Sayapin was never involved in the fruit business.

307. As to timing, Mr Akatsevich confirmed that he went into fruit in late 2011 (*"The project definitely started in the autumn... would have been in 2011... let me put it on record. I now remember it was in the autumn of 2011"*). It was about the time of the Star Reefers crisis. Mr Sayapin confirmed that he used Maldus for his (non-fruit) business *"up until 2011... and then it became dormant and I decided to transfer it"*, and his explanation was that *"I no longer needed it and so passed it on to Mr Borovskikh as a favour to a friend"* (without mentioning Mr Akasevitch). He added that, *"whilst I was the owner the company did not hold assets for Mr Kekhman. It did not trade to my knowledge with [JFC Russia]."*

308. Documents show that Mr Sayapin was beneficial owner and director of Maldus from 6 March 2009 until 1 March 2012 and was replaced in both roles by Mr Borovskikh (backdated from May to March in the case of directorship). Mr Sayapin confirmed this, although thought that the transfer process may have begun in late 2011.

309. Mr Aktsevich's case in oral evidence was that he and Mr Borovskikh did operate Maldus for the citrus business for a time but Mr Sayapin found out and did not like it so they moved over to Gepson.

310. Mr Akatsevich explained that Maldus and Gepson were just financial businesses that did not make profit, interposed in the contract chain to purchase fruit outside Russia from the suppliers, and then sell it on to his Russian entities, making the currency control easier, it apparently being his evidence that Russian legislation required the profit to be made in Russia. It was his evidence that Gepson also had nothing to do with Mr Kekhman. It had to be owned by Mr Borovskikh alone to make it simpler when trading with Mr Akatsevich's companies in Russia (i.e. so that it would not be apparent to the tax and state authorities that both were owned by Mr Akatsevich).

311. Mr Borovskikh's (very short) witness statement (in relation to which certain questions of translation arose) nevertheless unequivocally referred to *"the citrus business **I** owned and ran in 2011/2012"* (my emphasis), without any reference to Mr Akatsevich, and he denied that he was a nominal representative of Mr Kekhman.

312. Mr Akatsevich also said that in late 2011 his companies started trading bananas to assist JFC and protect its assets from Star Reefers, and took loans from LQ companies for the same reason under an arrangement (presumably in winter 2011), agreed with Mr Kekhman personally.

313. I am satisfied that the reality was rather different. A declaration to a bank relating to Maldus, in an email on 10 October 2012, shortly before it went into insolvency, referred to *"declared turnovers (average monthly amount 50 milion euros)"*. Whilst Mr Akasevitch sought to describe this as "*blow cheeks*" (i.e. puffery), an exaggerated forecast that did not mean anything, it is clear from JFC's documentation that huge sums went in and out of Maldus from June 2011 including to and from JFC controlled companies including Kalimna, Colant, Cetus, Edenis, Lambera and Prometey.

314. The record of bank account transactions which covered the period 27 June 2011 to 9 April 2012 was found in JFC documents. Mr Akatsevich could not explain why it would be in JFC's documents in circumstances where it was not his evidence that JFC personnel operated Maldus' bank account. As for that record:-

(1) It showed large payments between Maldus and Gepson throughout the period (with a net transfer of over US$3 million from Gepson to Maldus), starting in July 2011. The first over US$3 million paid by Gepson to Maldus in July and August 2011 were labelled *"return of prepayment"* suggesting, if taken at face value, that Maldus had made such payments to Gepson at an earlier time. In this regard:

(a) This is inconsistent with the story that Gepson came along later and replaced Maldus, and that failure to find the constitutional documents delayed use of Maldus until 2012. This led Mr Akatsevich to say that Maldus traded from July 2011, but it makes

no sense as to why Maldus was being used (against Mr Sayapin's wishes) if Gepson was already up and running, and Mr Akatsevich could not explain why (on this hypothesis) Gepson was selling fruit to Maldus or vice versa.

(b) Mr Akatsevich could not explain why Gepson had money in the first place. He suggested that Gepson did make profits because the minimum price the Russian entity had to pay Gepson was greater than the price Gepson had paid for the citrus fruits in Morocco. Such explanation is not only undocumented but it is also inconsistent with the prior explanation that Gepson did not make profits.

(2) It showed initially that the Gepson monies to Maldus were then routed on to Kalimna as loans. However, there was a net transfer during this period from Kalimna to Maldus of over US$8 million, the associated narratives suggested that US$2 million was lent under a loan agreement dated 1 August 2011, yet US$7.7 million was returned under it (much of the money going through a chain of conduits). Mr Akatsevich could not explain why the loans were not made directly from Gepson to Kalimna, or why the narratives showed massive over-repayment of a loan, or why JFC (a large business) would be borrowing money from a newly formed (in 2011) citrus business run by Mr Akatsevich. As for the 1 August 2011 loan agreement itself, this was signed by Mr Sayapin yet Mr Sayapin was supposed not to have anything to do with the fruit business, and when he discovered it Mr Akatsevich moved the business to Gepson.

(3) The record showed regular US$1 million payments to Maroc Fruit Board totalling over US$14 million in a two-month period. Mr Akatsevich said that Moroccan supply was the main supply to his and Mr Borovskikh's citrus business, and the payments he identified to other suppliers (in South Africa and elsewhere) were very small by comparison. Mr Borovskikh said that MFB supplied JFC until 2010 then supplied his business J Fresh.

(4) The record showed a US$50,000 payment to Mr Grana. Whilst Mr Akatsevich suggested that he was a freelance employee of Maldus, the liaison

in Morocco, he then had to accept, in cross-examination, that Mr Grana was in fact very senior in the Maroc Fruit Board. I am quite satisfied that this was a payment made to Mr Grana, and received by Mr Grana, in breach of his duties to the Maroc Fruit Board, and that Mr Akatsevitch lied about this payment which is entirely consistent with my conclusion that Mr Akasevitch was not an honest witness, being someone who was prepared to pay a bribe.

(5) The record also showed around US$15.5 million in payments from Edenis, Lambera, Colant, Calico and Cetus in November and December 2011, although US$14.5 million was then paid to Prometey. The US$1 million difference between these two figures, and the net US$8 million received from Kalimna, provided the majority of the funding for the payments for fruit to Maroc Fruit Board.

(6) Mr Kekhman's and Mr Akatsevich's explanation was (after Mr Akatsevich earlier suggesting no business dealings with JFC in 2011) that this was repayment of a loan of money organised by Mrs Zakharova to his companies, which Mrs Zakharova needed back because of a loan due for repayment from Prometey to BFA Bank. Mr Akatsevitch concluded that a Gepson/Prometey fruit supply contract was probably not real or not executed. He could not explain why the narratives provided to the bank to explain the payments (many of which refer to fruit supply to and from Maldus) were, even on his version of events false. He then gave a new explanation as to why repayments were made to Prometey, not the payers, that involved a meeting between him and BFA Bank (the lender to Prometey). I satisfied that this new explanation was not true.

315. I am quite satisfied that the reality, as to Maldus and its purpose, was very different to that portrayed by Mr Akatsevich, Mr Borovskikh and Mr Sayapin, and that it was not owned by Mr Akatsevich and Mr Borovskikh but was Mr Kekhman's business and under his control being used to operate a citrus business (primarily buying fruit from Maroc Fruit Board), and as a conduit for other transfers (such as the money channelled to Prometey), and also (in this respect accepting Mr. Akatsevich's evidence on this) to divert the banana business as part

of the ring-fencing response to the Star Reefers litigation (utilising INT Charterlink and Tradement).

316. In opening Mr Stuart suggested that even if Mr Akatsevich, Mr Borovskikh and Mr Sayapin were acting as nominees, there was nothing to indicate that they were acting as nominees for Mr Kekhman or with his knowledge. However I am satisfied that the evidence of Mr Afanasiev, which I accept, reflects the true position. I have already addressed that evidence in Section C. 5 above. In particular I accept Mr Afanasiev's evidence (at paragraph 56 of his witness statement - which he confirmed was true when cross-examined):-

> *"Mr Kekhman had another business, namely, a citrus fruit business. The fruit business was in effect run by Mr Kekhman's nominees (being Mr Akatsevich, Mr Sayapin and Mr Borovskikh). Although they legally owned the companies operating such businesses, they were minority shareholders of that business."*

317. It will be recalled that Mr Afanasiev's statement continued:

> *"Around the end of 2011 or beginning of 2012, I met with Mr Kekhman at the VIP Lounge of Pulkovo Airport in St. Petersburg. While we were discussing the issues of the JFC Group, Mr Kekhman told me that there was a way to keep the business afloat and away from the reach of creditors by transferring parts of the operations to these nominees. Mr Kekhman said "there is an established working technology with these guys", who in return for 30% of business would manage it for Mr Kekhman's benefit. It is my belief that at least part of what used to be the JFC Group business is now being carried on by what, using Mr Kekhman's terminology, was an 'established working technology'".*

318. As already addressed in Section C.5 above, this paragraph of Mr Afanasiev's statement was put to him in cross-examination on day 7 (pages 24-28) and he confirmed he remembered the conversation and he confirmed the truth of paragraph 56 of his statement. There was some cross-examination as to whether the words in quotes were actually said by Mr Kekhman or not, and I also explored the same with Mr Afanasiev. Ultimately Mr Afanasiev's evidence was that the words in quotes were the meaning, the essence, of what Mr Kekhman said (and I accept that evidence). As for the words that followed I accept Mr Afanasiev's evidence that the gist of what was said was, *"who, in return for 30 percent would be managing this business"* or *"would run the business"*, and that

Mr Afansiev's understanding (as reflected in what he said at the end of paragraph 56) was that the business was being managed or run on behalf of Mr Kekhman.

319. There is also other evidence that supports the conclusion (as I find) that Mr Kekhman was heavily involved and that the citrus business was run for, and owned by him, and with his knowledge, specifically:-

(1) Mrs Zakharova explained (in her interview) that *"We had Maroccan progamme [sic] – oranges/mandarins. It was then dissipated to Akatsevich (J Fruit, Tvoi Mir). K used the money from them as his own money. Akatsevich and Borovskih could be said to be his nominees. Gepson – connect with citrus business. But does not know much about it. Maldus – does not know much. Services the parallel fruit business (this information was so secret from YZ/finance team)."*

(2) Mr Akatsevich, Mr Sayapin and Mr Borovskikh had been personal contacts of Mr Kekhman's over a long period of time. Mr Akatsevich was on the board of JFC Russia from 2005 until 2009 and all three were on the management board from 2005 until 2009. As already addressed, Mr Akatsevich personally funded Mr Kekhman's mortgage. Mr Kekhman turned to them in 2012, when he came back into active management of JFC Russia and it is clear that they were used to assist him in hiding assets from creditors including Star Reefers. Mr Kekhman also managed to secure their attendance at trial to give (what I am satisfied was) false evidence on his behalf.

(3) It is also clear that the long-standing relationship between JFC and the Maroc Fruit Board (dating back some 15 years to the start of JFC) was personal to Mr Kekhman. Mr Kekhman himself explained that he had strong personal relations with the senior people at Maroc Fruit Board, including Moroccan royalty, his evidence being that he had to stay involved from 2008 to 2011 as a matter of "*protocol*", and that this involved meetings in St Petersburg and trips to Morocco. I have already addressed in Section C.5 above that Mr Kekhman had far greater dealings with the Maroc Fruit Board than he was prepared to admit. As already addressed, the documentation shows that he (as well as Mr Borovskikh) was negotiating with MFB in 2010-11. I have

already rejected his explanation that, despite JFC apparently being in the citrus business until late 2011, he was meeting with Maroc Fruit Board for Mr Akatsevich and Mr Borovskikh on the basis of an arrangement whereby they would continue to provide fruit to convents. Equally untrue, was Mr Borovskikh's suggestion that documents addressed to Mr Kekhman and Mr Borovskikh only included Mr Kekhman by a mistake of Mr Grana who was old and that Mr Kekhman had nothing to do with the MFB dealings with Mr Borovoskikh and his company J Fresh.

(4) The explanation for why Mr Akatsevitch was paying Mr Kekhman's mortgage, and doing so in cash (for which no convincing explanation has been proffered, as has already been addressed) is, I am satisfied, that Mr Akatsevich had access to Mr Kekhman's money from the citrus business. Mrs Zakharova's evidence in interview (which I accept) was that, *"Akatsevitch had a pool of K's funds (from Moroccan/citrus and other fruit programme which was split from JFC). YZ discussed that JFC cannot repay K's mortgage by JFC and then K said that the mortgage of K would be repaid by Akatsevich (reimburse JFC)."* Mr Akatsevich did not mention any such arrangement in his witness statement, but in his oral evidence said this was short-term loans to Mr Kekhman as a service in the hope of receiving some favour or other service later, stating that he had destroyed all documents showing the loans were repaid as they would have been harmful. I am satisfied that such evidence of Mr Akastsevich was untrue, and that he paid Mr Kekhman's mortgage because he was using monies that were Mr Kekhman's from the citrus business.

(5) It provides a likely explanation for why no documents relating to Gepson or Maldus or the citrus business were produced by Mr Akatsevich, Mr Sayapin or Mr Borovskikh in support of the evidence they give in their witness statements – namely that such documentation would be likely to shed light on the true position, including the involvement and/or ownership of Mr Kekhman in the business.

(6) It also explains why Mr Kekhman was able to give instructions in relation to Gepson's money in mid-2012 (as addressed in Section L.5 below).

L.5 The transfer of balances to Gepson and Mr Kekhman's involvement

320. On 24 February 2012, agreements (created by Ms Volkova and sent to Ms Skvortsova to be signed by Mr Borovskikh for Gepson) recorded a US$5 million loan from LQ Development Ltd to Gepson under which an advance of US$4.1 million was immediately sought, and a US$13 million loan from LQ Nevsky Berg Ltd to Gepson under which an advance of US$11.8 million was immediately sought. Subsequently there were payments from Gepson of US$11.8 million to LQ Development, with Ms Volkova's reconciliation document referring to a US$11.1 million debt attributed to "*VK*" (i.e. Mr Kekhman) and US$240,000 debts for each of the other foundations, and the covering email referring to the need to transfer funds to LQ Development to pay invoices *"confirmed by [D]"*.

321. The evidence shows that after JFC Russia had gone into bankruptcy, steps were taken (involving Mr Kekhman) to move such remaining monies as there were in JFC companies to Gepson. In early June 2012, Ms Volkova administered payments from Tradement and Garold to Gepson, overseeing all aspects, and supplying the template Gepson invoice *("Please fill in the information about the value")* that was used to raise an invoice against which Tradement paid Gepson. It appears that a payment of US$464,900 was made with the narrative suggesting it was for fruit. The previous invoice, attached, indicated that Tradement had paid Gepson US$1.9 million in the second half of May 2012. This documentation shows that Gepson (like Tradement and Garold) was administered by Ms Volkova and JFC (with the use of fictitious invoices to support payments). Mr Kekhman's evidence was that he could not remember this payment.

322. He was, however, undoubtedly involved in the transfer of monies from Garold to Gepson. On 4 June 2012, VTB Deutschland notified Garold, Whilm and Kalistad that it was closing their accounts. Ms Volkova Mr Kekhman and Mrs Zakharova, identifying that that only Garold had a significant balance. Mr Kekhman himself gave instructions as to what was to happen. On 11 June 2012, Ms Volkova instructed the payment of all remaining balance in Garold's VTB Deutschland euro and dollar accounts (after some smaller payments to others) to Gepson. The instruction described the payment as *"for goods as per invoice NoG-081-06-12*

dd 05/06/2012". Mr Misiura saw no evidence of economic value provided in return, and the likelihood is that this was another example of the use of a fictitious transaction being used to support the transfer. A payment of US$783,000 was made on 13 June 2012 and the account closed that day.

323. In a previous affidavit in April 2013 Mr Kekhman said that he was trying to get to the bottom of the transaction but the payment was made by Mrs Zakharova without Mr Kekhman's knowledge. However Mr Kekhman's evidence since August 2013 has been rather different, namely that whilst he did not direct any activities of Garold and did not know who operated it and how after March 2012, he did give instructions for Garold to make the US$780,000 payment out of the JFC Group to Gepson (which Mr Kekhman says was owned and controlled by Mr Akatsevich) as (according to Mr Kekhman) Garold's offshore accounts needed to be closed down and Gepson was a *"trusted offshore company"* and then another Akatsevich company (Fruitservice) could repay JFC Russia (*"less a small commission"*) by supplying fruit to it (for free or at a reduced price to reflect the money previously received). Mr Kekhman says that he did this because he wanted the money to be available to JFC Russia and its creditors; *"It was a difficult time, as we were being chased by creditors and I was trying to rationalise the business. In the circumstances, I thought, and continue to think, that this was in the best interests of the company and its creditors."*

324. Mr Akatsevich did not mention this in his first witness statement of February 2013, but in his second witness statement of August 2013, he gives a corresponding explanation, saying the sum was US$3 million from various offshore companies but that he has no documents because he liquidated Fruitservice and did not keep them. He does not say which company provided the credit to JFC Russia. He also said that US$3 million was not particularly significant in summer 2012 because JFC was doing more than US$100 million per year with his companies (though his own evidence was of having re-entered the fruit business in late 2011).

325. I am quite satisfied that this story is untrue. As is now clear, Mr Kekhman was involved in the transfer, and the transfer was to Gepson, as Mr Kekhman had control of Gepson. In this regard:-

(1) The fact that the payment was made by Ms Volkova on Mr Kekhman's instructions (as is now accepted by Mr Kekhman) shows that Mr Kekhman was (contrary to his case) directing Garold after March 2012.

(2) The explanation given for the payment is not consistent with the narrative on the instruction (that the payment was pursuant to a fruit invoice dated 5 June 2012), a narrative which was itself untrue (and Mr Kekhman did not justify the same).

(3) Neither Mr Kekhman nor Mr Aketsevich suggested that an arrangement was reached with Mr Borovoskikh (who was alleged to be the owner of Gepson), who would surely have had to be involved if this was the true position.

(4) Mr Kekhman's explanation made no sense in any event. There is no reason why Fruitservice would give a credit for a payment made by Garold to Gepson, and logically any credit would be back to Garold not JFC Russia. There is also a complete lack of any supporting documentation. Fruitservice itself went into insolvency in mid-August 2012 and did not make any repayment, but in this scenario no witness addresses what happened to the US$ 3million.

326. I am satisfied that the money was transferred out of Garold to Gepson on Mr Kekhman's instruction because Gepson was controlled by Mr Kekhman (through Mr Akatsevich as nominee) Gepson being outside the JFC group and so such monies would not be available to creditors. There is evidence that there were also other payments in this period to Gepson (which might account for the US$3 million figure referred to by Mr Akatsevich).

327. In June 2012, US$1.3 million was sent from INT Charterlink to Gepson by JFC employees and then used for payment of corporate expenses of various companies. Mr Kekhman denied any knowledge of this. On 27 June 2012, Ms Volkova instructed Christabel to sign a letter for Edenis to be sent to LQ Smolny, asking the latter to make a payment to Gepson. The remaining balance of LQ Smolny's account (US$317,000) was paid to Gepson on 28 June 2012, with the narrative *"for fruit as per invoice dd 19.06.2012"* (no doubt yet another fictional invoice). Mr Kekhman denied any involvement, suggesting (incredibly) that *"I think we at last have found out who was controlling Edenis that's Olga Volkova"*.

I am satisfied, on the evidence, that Ms Volkova would not have undertaken such transfers other than on instructions originating (directly or indirectly) from Mr Kekhman In the same vein, in July 2012, Ms Kiseleva was notified by Ms Volkova that there were funds in INT Charterlink's account and that Larcom's account was to be closed and the balance needed transferring. Ms Kiseleva told Ms Volkova that *"These kind of decisions are taken by Vladimir Abramovich, please, inform him urgently about this."*

328. I am satisfied that it was Mr Kekhman who instigated the instructions to transfer the balances out of JFC and LQ offshore accounts to Gepson. There is no evidence of any legitimate reason for such instructions (no evidence of real fruit supplies and no reason why LQ Smolny (part of the property business) would in any event have been buying fruit.

M.The Garold Fraud

M.1 The Garold Fraud Itself

329. As is apparent from the Agreed Facts Document summarised in Section A2 above, the following is admitted:-

(1) From August 2009 to 2011, JFC personnel including Mrs Zakharova, Ms Nikitina and Ms Burdina (based in Russia), and Mr Kasatkin and Ms Volkokva (based in Cyprus) deliberately created fabricated fictitious invoices from fictitious banana customers, and fictitious invoices from companies Biany and Edenis which were real but did not supply any bananas or freight services.

(2) Biany and Edenis were controlled and operated by JFC personnel.

(3) This led to a huge deliberate and dishonest inflation of the revenue, profit and accounts receivable figures in the accounts which was concealed by the fabricated invoices.

330. In the period from November 2009 to 2011, Garold paid Biany and Edenis no less than US$301 million. At least some of these were payments for fictitious

goods and services, i.e. the dissipation of funds from Garold for no legitimate commercial purpose and for no value.

331. In opening, Mr Kekhman maintained that there was no evidence of actual money moving from Garold to Biany or Edenis prior to April 2010 (when a payment was made by Edenis to Mr Kekhman). However, when cross-examined (by reference to the Garold bank statements disclosed by Mr Kekhman,) it is now accepted that payments were made from 2009 to 2011. However (as reflected in paragraph 3 of the Agreed Facts Document) Mr Kekhman maintained that Edenis (and Biany) may have been performing legitimate business both after and prior to August 2009, so that some of the US$301 million paid by Garold to Biany and Edenis from November 2009 to 2011, or the US$9.8 million paid in January 2009, may have been in return for legitimate business.

332. Ultimately I do not consider it matters in relation to the issues before me whether Biany and Edenis undertake any legitimate business, given the admission of the matters that I have identified above – the precise extent of such fraud does not matter. However I note that Mr Kekhman was not able to identify any services that were in fact provided by Biany or Edenis in the context of the large volume of disclosed materials, and I am satisfied, that the weight of the evidence justifies the conclusion that the main purpose of Biany and Edenis was to act as JFC creatures taking money for fictional fruit and services which was then supplied to fictional suppliers (as C submits), and I so find.

333. The following appears from section 3 of Mr Misuira's first report, which I accept. It is summarised at paragraph 311 of C's Written Closing:-

(1) From August 2009 onwards Garold's accounts recorded fictional fruit sales to 26 customers. 23 of them were new "*customers*" in 2009 and 2010 and 3 of which were pre-existing customers.

(2) The sales were separately recorded internally within JFC as "*addition*" sales, alongside or separate from "*actual*" sales, and as adjustments to the legitimate figures derived from actual sales. The "*addition*" sales were supported by suspicious documentation containing errors and with long payment deferrals. Whereas "*actual*" sales had prepayments and payment

within one month, "*addition*" sales had payment within 9 to 13 months and records showed no payments made even in that period, with the entire price payable to Garold remaining outstanding as an account receivable. Mr Misuira concludes that the additional revenue "*appeared not [to] exist and which was artificially created by JFC Group employees*" and was "*unlikely to be genuine*". As already noted, and as is recorded in the Agreed Facts Document, the additional revenue is now admitted to be fictitious.

(3) The (fictional) fruit sold in the "*addition*" sales all came from a different seller, Biany, compared with Bonanza Fruit Co Ltd, the JFC seller used for all actual sales of fruit by Garold. The signed template for Biany's invoices was held by JFC in its documents and JFC employees prepared a response from Biany to a letter sent by themselves on behalf of Garold. Mr Martinez, a JFC employee D's witness, was a director of Biany. JFC documents included a contract between Biany and Orion International LP, a Scottish company purporting to sell fruit to Biany whose signatory was Ms Kuzina of JFC.

(4) The (fictional) fruit sold in the "*addition*" sales was all shipped on a different carrier, Edenis (incorporated in August 2008), compared with the JFC carriers used for all actual sales of fruit by Garold (who were Kalistad and Vidya). There were suspicious features of the Edenis invoices. Further, most of the ships recorded in the documents as having carried the goods to certain ports at certain times did not, according to publicly available records, in fact do so. JFC documents include an instruction from Ms Osipova instructing Ms Prokofyeva to make payments totalling US$12 million from Edenis to Eliora, Zosimo and Ursula.

(5) The amount of fictional "*addition*" Garold revenue was US$103 million out of a total revenue of US$213 million in 2009, US$213 million out of a total of US$268 million in 2010, and US$128 million out of a total of US$194 million in the first half of 2011. When this is stripped out, Garold goes from being a profitable company to a loss-making one (e.g. instead of making US$42 million profit in the first half of 2011, it made a loss of

US$4 million). And the JFC Group goes from being profitable to loss-making (e.g. instead of making US$33 million profit in the first half of 2011 from US$417 million turnover, it made a US$13 million loss from US$289 million turnover; and instead of making US$3 million profit from US$718 million turnover in 2010, it made a US$62 million loss from US$505 million turnover). The position is summarised in Table 19 in Mr Misiura's first report:

	12m 2009			12m 2010			6m 2011		
Group P&L	***As per FS***	***less additional figures***	***Corrected***	***As per FS***	***less additional figures***	***Corrected***	***As per FS***	***less additional figures***	***Corrected***
Sales revenue	659,093	102,878	556,215	718,381	213,171	505,210	416,778	127,705	289,073
Cost of Sales	(562,071)	(74,771)	(487,300)	(623,768)	(147,645)	(476,123)	(335,200)	(82,090)	(253,110)
Commercial expenses	(8,879)	-	(8,879)	(7,517)	-	(7,517)	(5,692)	-	(5,692)
General and administration expenses	(25,195)	-	(25,195)	(18,663)	-	(18,663)	(11,588)	-	(11,588)
Gross profit margin	**62,948**	**28,107**	**34,841**	**68,433**	**65,526**	**2,907**	**64,298**	**45,615**	**18,683**
Other operating profit (losses)	(12,511)	-	(12,511)	(21,996)	-	(21,996)	(4,560)	-	(4,560)
Other financial profit (losses)	(33,869)	-	(33,869)	(43,180)	-	(43,180)	(26,705)	-	(26,705)
Profit (loss) before tax	**16,568**	**28,107**	**(11,539)**	**3,257**	**65,526**	**(62,269)**	**33,033**	**45,615**	**(12,582)**

(6) The amount of fictional "*addition*" Garold accounts receivable was US$96 million out of a total of US$130 million at the end of 2009, US$198 million out of a total of US$200 million at the end of 2010, and US$263 million out of a total of US$265 million at the end of Q2 2011. This had a similar effect on the JFC Group accounts receivable such that the figure in the financial statements (provided to C when the loan application was made) of US$253 million, if corrected to remove the fictional Garold accounts receivable, was only US$54 million. The position is summarised in Table 16 in Mr Misiura's first report:

Indicator	**Formula**	**31 December 2009**	**31 December 2010**	**30 June 2011**
Garold AR in the Financial statements (net 5% provision)	[1]	130,202	200,201	265,052

Indicator	Formula	31 December 2009	31 December 2010	30 June 2011
Garold "Additional" AR (gross)	[2]	101,028	208,801	276,728
Garold "Additional" AR (net 5% provision)	[3] = [2] x 0.95	95,977	198,361	262,892
Garold AR corrected	[4] = [1] - [3]	**34,225**	**1,840**	**2,161**
JFC Group AR in the Financial statements	[5]	199,972	252,914	306,712
JFC Group AR corrected	[6] = [5] - [3]	**103,995**	**54,553**	**43,820**
Decrease in "actual" AR balance by	[7] = 1 - [6]/[5]	**48%**	**78%**	**86%**

(7) Directly implicated personnel were Ms Prokofyeva, Ms Nikitina, Ms Osipova, Ms Chistyakova, and Ms Burdina.

334. It is admitted in the Agreed Facts Documents that the inflation of figures in the JFC group companies' accounts, and payments being made to Biany and Edenis and documented as being in return for (fictitious) services (which were dishonest) were conducted by or under the direction of, or with the knowledge of, JFC staff including Mrs Zakharova, Mr Kasatkin and Ms Volkova.

335. On any view it was a major decision to falsify the accounts, by massively inflating them. I am satisfied on the evidence that I have heard (from that of Mr Afanasiev (in particular at paragraph 64 of his statement), from the notes of Mr Tchernenko of his meeting with Mrs Zakharova (*"everything that was done at JFC was done for one person – K [Mr Kekhman]"*), and indeed from Mr Kekhman's own evidence (that he required that he be consulted by Mrs Zakharova and his approval obtained before taking *"Significant decisions, that's correct. Serious decisions. That is true"* day 10 page 10 line 21 to page 11 line 4)) that Mrs Zakharova would not have produced the false accounts without obtaining the prior instruction and approval of Mr Kekhman. I address this in more detail, and make my associated findings, in the next section in which I consider the issue of Mr Kekhman's knowledge and involvement in more detail.

At this point I would simply add that there was no reason for her to hide from Mr Kekhman was she was doing (I reject any suggestion, unsupported by evidence, that she might have done so to cover up her own alleged mismanagement – a point I address further in the next section).

336. As for the purpose of falsifying the accounts, this was clearly for the purpose of securing bank lending (as to which the JFC Group had a constant need) as well as a means of hiding the payments based on fictitious invoices to Biany/Edenis, and I so find.

337. I would only add at this point (given the use of fictitious payments and documentation in the context of the Garold Fraud) that it is clear that such fraudulent activities were endemic within the JFC and wider business, and that it was a major job for various JFC employees to maintain a charade based on fictitious and sometimes backdated contracts which were used to "*cover tracks*" and evidence sham transactions to disguise from lenders and auditors the true purposes of various payments. This included making payments from JFC companies to LQ companies. For example, on 16 June 2011, the auditors (BDO) requested surveyors' reports as external confirmations of Garold's shipments with Edenis reaching buyers' ports. Ms Prokofyeva said to Ms Nikitina that reports were not held but that some were "*drawn*" during the 2009 audit. She expressed her discomfort with this and anger at having to do it in emails to Ms Burdina.

338. In December 2011, Ms Prokofyeva and Ms Nikitina were contacted by a Mr Gerasimov who had to field a request from Deloitte, who were auditing Garold, that had been sent to Mr Muller of Biany. Mr Gerasimov asked in his email stating

> *"Lyudmila, who is the person signing documents from Biany? As we have agreed with you, we have sent them the contract of Mr. Muller whom we had found in our old documents, we have also created an email box for him. We can create an email box and prepare a letter from another person if you think it necessary."*

339. There are also communications in April and May 2011 in which Ms Nikitina instructed Mr Kasatkin to make a backdated land purchase and a shipbuilding contract which needed to be "*pretty*"/"*beautiful*" "*for the auditors*", and in October 2011 in which she instructed him to make backdated investment acquisition ""*pretty*" *agreements for audit*".

340. It is clear that various staff were less than happy about what they were being required to do, and that some of those staff were prepared to express their views on such matters, at least to each other, in terms which showed their true feelings. Thus Ms Burdina (in Russia) and Ms Prokofyeva (in Cyprus) stated in an email dated 13 April 2011 (translated from the Russian):

> *"I do remember that when I was hired and Chernishova was leaving the job, she was repeatedly saying that she is fed up digging in this shit, this trash hole, fed up of lying to the auditors...it should be clear this will never end..."*

M.2 Mr Kekhman's involvement in the Garold Fraud

341. C's case is that Mr Kekhman knew about the production of fraudulent accounts (the Garold Fraud) and indeed that it was carried out by Mrs Zakharova on Mr Kekhman's instructions. Mr Kekhman denies that he knew about the Garold Fraud and denies that he instructed Mrs Zakharova to carry it out.

342. As an overarching point, and before turning to the evidence, C directs attention to events after Mr Kekhman was appointed as General Director of JFC Russia, and his actions (or rather inactions) thereafter.

343. Mr Kekhman's evidence was that after being appointed General Director of JFC Russia on 5 March 2012 (and following JFC Russia's voluntary bankruptcy in late 2012) he immediately tried to gather information but only discovered the true position, that the JFC group had cash/ready assets of US$38 million, some weeks after being appointed General Director on 5 March 2012.

344. Yet JFC Russia had access in 2012 and throughout to financial information as to its creditors. Mrs Sokolova confirms (in paragraph 10 of her witness statement) that she provided some information to Mr Kekhman in relation to JFC Russia's finances in 2012. She also confirmed that at any time she had ready access to

financial information as to JFC's creditors, and in April 2012 a reconciliation showing Garold's debts to JFC Russia (including by access to JFC Russia's own financial records) was prepared. That reconciliation showed that in April 2012, Garold and Whilm owed JFC Russia US$60.8 million and US$16.4 million respectively. I am satisfied that from the position he was then occupying Mr Kekhman must have known such matters. Equally the Russian finance department must have known, as at the end of 2011 that Garold and Whilm also owed US$40 million and US$62 million to JFC Financial Services SA which itself owed more than that US$165 million to JFC Russia, and such information would have been available to Mr Kekhman.

345. In the context of the insolvency of JFC Russia, and Mr Kekhman's position, I consider (and find) that Mr Kekhman must have known that JFC Russia was directly or (at one JFC corporate remove) indirectly owed c.US$101 million by Garold and c. US$78 million by Whilm. It is also apparent from the Garold bank statements that over US$301 million was transferred by Garold to Biany and Edenis from November 2009 to 2011 - the agreed evidence supports the conclusion that the vast majority of this was part of a fraud, and was in return for nothing.

346. In relation to the period from when Mr Kekhman was appointed CEO of JFC Russia on 5 March 2012, Mr Kekhman stated in his trial witness statement (at paragraph 39) that his "*priority was to ensure that I did everything possible to look after the creditors of the business*". As C points out, if that had been his priority, the obvious step for him to have taken would have been to collect in the receivables of Garold and Whilm which were stated in the accounts to be well in excess of US$200 million. Those accounts were available to him (they were maintained in the IFRS Department with the JFC head office in St Petersburg). Yet there is no evidence that <u>any</u> steps were taken by Mr Kekhman to collect in such purported receivables. When he was cross-examined about this he suggested that, *"that was done, I don't remember exactly at what date it was done, we sent official letters to all the companies that owed us money but we did not control them"* (day 10 page 58 lines 3 to 6). I do not accept that evidence - it is unsupported by any documentary evidence and C contends there is an obvious

answer why no attempt was made by Mr Kekhman to collect in such receivables – namely that he knew they were not genuine receivables – I address that below.

347. Of course if they had been genuine receivables, their collection would have made a very considerable difference to the financial position of the JFC Group and of JFC Russia (which was owed US$60.8 million directly by Garold). The likelihood is that if those receivables had been genuine, and steps had been taken to recover them in February 2012, this would almost certainly have obviated the need for JFC Russia to enter into an insolvency process.

348. Mr Kekhman was cross-examined about this and was asked why he had taken no steps to collect in receivables from Garold and Whilm. He suggested that he had no means of taking control of Garold, but that answer does not bear analysis. On 4 June 2012 VTB Deutschland notified Garold, Whilm and Kalistad that it was closing their accounts. Ms Volkova notified Mr Kekhman and Mrs Zakharova pointing out that only Garold had a significant balance. It was Mr Kekhman himself who gave instructions as to what was to happen to that balance of some US$783,000, instructing that it be paid to Gepson. The instruction described the payment as *"for goods as per invoice NoG-081-06-12 dd 05/06/2012"* but as addressed by Mr Misiura in his second report, he saw no evidence of economic value provided in return, and this appears to be an example of a fictitious explanation. The payment was made on 13 June 2012 and the account was closed the very next day.

349. Mr Kekhman admitted he gave the instruction, and accepted (in the context of a communication about Garold) that he was the, *"sole person who – to whom Olga Volkova could turn as to what to do with this enormous number of companies"*. This evidence shows that Mr Kekhman was in control of Garold at this stage, and I so find, though even when confronted with the evidence, Mr Kekhman was not prepared to accept that he was in control of Garold at this time.

350. It was put to Mr Kekhman that he knew there was no point collecting in the receivables because they were fictitious. He denied this but I am satisfied that this was, indeed, the explanation as to why Mr Kekhman did not seek to collect in the receivables from March 2012 onwards. Mr Kekhman was aware of the true

financial position at all times (as I address below). Mr Kekhman is not a witness of truth (as I have found in Section C5 above), and I reject his evidence in this regard.

351. Mr Kekhman's alleged lack of knowledge of the true financial position of the Group throughout 2011 (including his alleged lack of knowledge at the time of the application for a loan to C in May 2011) is closely linked Mr Kekhman's evidence as to his (lack of) involvement in the running of the Group after he left for the Theatre. His evidence on each of these areas did not survive cross-examination, and is also contrary to credible evidence, including the evidence of Mr Afanasiev, which I accept, which presents a very different picture as to Mr Kekhman's involvement and knowledge.

352. As to the former, and as I have already identified in Section C5 above, ultimately Mr Kekhman himself gave telling evidence which I regard as representing the true position, from which it is clear that he retained a significant involvement in decision-making. He accepted that he would influence general strategy (day 7 page 74 lines 19 to 20), it was natural for him to be consulted about significant decisions (day 7 page 78 18 to 23), big projects or where there was a crisis (day 7 page 79 lines 12-14), or problems (day 8 page 20 lines 21-22) or "***when large sums of money needed**, or could be spent, then they would turn to me*" – day 7 page 79 lines 3 to 5 (my emphasis).

353. I have also already referred to this significant admission by Mr Kekhman on day 10 that followed a series of denials on his part (page 10 line 21 to page 11 line 4):

> *"Q. Mr Afanasiev is also right, Mr Kekhman, when he says that **Mrs Zakharova's invariable practice was to obtain your approval before taking significant decisions, and that you required that you should be consulted and your approval obtained before taking any significant decisions**. That, again, is correct, isn't it, Mr Kekhman?*
>
> *A. **Significant decisions, that's correct. Serious decisions. That is true.**"*

354. Set against the backdrop of the true extent of Mr Kekhman's involvement in the business of the Group after December 2007 through to 2011 it is inconceivable that Mr Kekhman did not have knowledge of, indeed was instrumental in the

Garold Fraud, and I am satisfied that he did have such knowledge and was instrumental in it, and I so find. It is difficult to envisage a more significant decision than to create a deliberate (and dishonest) inflation of the revenue, profit and accounts receivable figures in the accounts with associated deliberately fabricated and fictitious invoices. It is simply not realistic to envisage (still less to submit) that Mrs Zakharova would have carried out the Garold Fraud without Mr Kekhman's involvement and instruction given the evidence I have heard as to the relationship between Mrs Zakharova and Mr Kekhman. I am satisfied that, on the evidence, not only was Mr Kekhman well aware about the production of the fraudulent accounts but that such fraudulent accounts were produced on Mr Kekhman's instruction.

355. I turn then to further evidence that supports such a conclusion. In addition to the evidence I have identified above as to the true extent of Mr Kekhman's involvement in the business after December 2007, I have had particular regard to the evidence of Mr Afanasiev's, at paragraph 50 of his third statement, which I accept, that:

> *"All major decisions in connection with financial statements / accounting were done with Mr Kekhman's approval. Mrs Zakharova's invariable practice was to obtain Mr Kekhman's approval before taking significant decisions, and Mr Kekhman required that he should be consulted and his approval obtained before taking any significant decisions."*

356. As addressed in Section C5 above, I found Mr Afanasiev to be an honest witness and I accept the truth of the evidence he gave. I set out in Section C5 above core aspects of his evidence (on which he was either not challenged or his evidence was not undermined where the subject matter was addressed in cross-examination). I will repeat at this point those aspects of that evidence which are of direct relevance to Mr Kekhman's knowledge of the Garold Fraud and the falsity of the accounts:-

(1) Mrs Zakharova reported daily and subsequently weekly financial reports of the group, and accordingly Mr Kekhman was well aware of the JFC group's financial position and Mr Kekhman was informed of all material developments (see paragraphs 16d, 20 and 48 of Mr Afanasiev's third witness statement quoted at Section A.5 above). Mr Stuart accepted that Mrs Zakharova was

aware of all those matters, and whilst he (rightly) pointed out that the evidence that Mr Kekhman was *"informed of all material developments"* was very broad evidence, such evidence was not the subject of any direct challenge in cross examination.

(2) Mr Afanasiev and Mrs Zakharova were in heavy contact with Mr Kekhman in person and by telephone (see paragraphs 17,19 and 49 of Mr Afanasiev's third witness statement quoted in Section A.5 above. Mr Afanasiev was cross-examined (over 7-8 pages of evidence on day 4, pages 43 line 11 to page 51) as to the frequency of texts and phone calls and the timing and location of meetings, but the substance of Mr Afanasiev's evidence was not challenged.

(3) Mr Kekhman knew by 2011 that the JFC Group was experiencing significant financial difficulties and had a constant lack of funds throughout (see paragraphs 39b-c of Mr Afanasiev's third witness statement quoted in Section A.5 above). Whilst Mr Afanasiev was cross-examined on day 3 as to what he knew about the profitability of JFC Group in 2009, 2010 and the first half of 2011 (including as to the contents of Mr Misiura's reports) (day 3 page 41 line 16 through to page 45 line 15), he was not challenged about his evidence as to Mr Kekhman's knowledge by 2011 that the JFC Group was experiencing significant financial difficulties.

(4) Mr Afanasiev took over as General Director so Mrs Zakharova could concentrate on seeking further financing (see paragraph 39 e and 57 of Mr Afanasiev's third witness statement quoted in Section A.5 above). Mr Stuart accepted that Mr Afanasiev was not cross-examined about this evidence in circumstances where he submitted that the evidence was not particularly material. The evidence is, nevertheless of some relevance as it corroborates C's case as the reason why Mr Afanasiev took over as General Manager, the need for refinancing, and Mrs Zakharova's role in that regard.

357. At paragraph 64 of his third witness statement Mr Afanasiev stated:

> *"It is inconceivable that Mrs Zakharova would have presented false accounts to Mr Kekhman without telling him of their falsity and equally inconceivable that she would have presented the false accounts to the Bank without his approval. I say this for the following reasons. The fact of the matter is that Mrs Zakharova*

would never have taken such a momentous step as to present false accounts to the Bank on her own initiative. There would have been no benefit for her in doing so. The only person who benefited from all this was the person who controlled the whole business, who could extract money from the business at will (whether for his LQ projects or donations to the Mikhailovsky Theatre or otherwise), that is, Mr Kekhman, and not Mrs Zakharova or me. Furthermore, the nature of the relationship between Mr Kekhman and Mrs Zakharova was such that he dominated her and she would not take any significant steps concerning the business without his knowledge and approval."

358. Whilst it is correct that Mr Afanasiev is expressing an opinion as to what Mrs Zakharova would or would not have done, what he is stating is based on Mr Afanasiev's factual knowledge of the relationship between Mrs Zakharova and Mr Kekhman (which he was in a position to give evidence on from his own actual knowledge). This goes to a central aspect of the inferential case against Mr Kekhman, and any attempt by Mr Kekhman to rebut the same by reference to any suggestion that Mrs Zakharova was on a frolic of her own engaged in fraudulent misrepresentations to the bank in order to cover up her own mismanagement and wrong doing (as to which see what was said by Flaux J at paragraph 64 and 65 of his judgment, as has already been quoted above) albeit that, at trial, any such suggestion was neither advanced in Mr Stuart's opening submissions or during Mr Kekhman's evidence, though it was to an extent revived (in terms of hiding mismanagement or employees mismanaging business without telling their superiors) at trial.

359. Mr Afanasiev was not cross-examined on paragraph 64 of his third statement, nor was his knowledge of the relationship between Mrs Zakharova and Mr Kekhman explored, notwithstanding the fact that the state of Mr Kekhman's knowledge of the true financial position of the group at the time of the loan was at the heart of the case against Mr Kekhman, and Mr Afanasiev's evidence was of relevance in that regard. The point is important for if Mrs Zakharova did discuss financials of the JFC Group with Mr Kekhman, per Mr Afanasiev's evidence as aforesaid, and would per Mr Afanasiev's evidence as aforesaid have told Mr Kekhman the true financials then, as Mr Stuart rightly accepted in closing, Mr Kekhman would have acquired knowledge of the overstatement, and the falsity of the accounts.

360. Mr Afanasiev's evidence is also consistent with the evidence of other witnesses, which I accept, including that which appears from Mrs Zakharova's interview

notes that no one could use loaned funds without Mr Kekhman's approval, Mr Kekhman knew about strategy and its implementation in detail, and controlled everything, with her needing to seek confirmation from Mr Kekhman, and with many other employees refusing to implement instructions without checking directly with Mr Kekhman. In this regard the evidence from Ms Dakhina's interview notes is that, "*Without K no key decision would be made*". Ms Nikitina confirms that she constantly heard from YZ and AA that they needed to discuss things with Mr Kekhman or meet with him.

361. In the light of all the evidence that I have heard (in particular that identified in this section and in Sections M.1 and C.5) I am satisfied that the position was as follows and I make the following findings of fact:-

(1) Mr Kekhman was kept informed by Mrs Zakharova as to the true financial position of the JFC Group from time to time (there being no reason for Mrs Zakharova not tell him in the true position).

(2) Mr Kekhman accordingly knew what the true financial position of the JFC Group was at all material times, including at the time the false accounts were produced, and so knew of the falsity of the accounts (and his evidence to the contrary was untrue).

(3) The purpose of producing the false accounts was two-fold (a) for the purpose of securing bank lending (as to which the JFC Group had a constant need), and (b) as a means of hiding the payments based on fictitious invoices to Biany/Edenis.

(4) It was a significant and serious decision to falsify the accounts, by massively inflating them.

(5) Mrs Zakharova had no reason to hide from Mr Kekhman, or not to consult and obtain the approval of Mr Kekhman to, what she was doing.

(6) Mrs Zakharova would not have made a significant or serious decision without first consulting with, and obtaining the approval of, Mr Kekhman.

(7) Mr Kekhman required that he be consulted and his approval obtained before any significant or serious decisions were taken.

(8) It would have been obvious to Mr Kekhman that the true financial position of the JFC Group was different to that stated in the (false) accounts, yet he did nothing about that at the time.

(9) The fact that Mr Kekhman took no steps to realise Garold's reported receivables in 2012 is, in the circumstances I identified in Section M.1 above, consistent only with Mr Kekhman knowing that the receivables were fictitious.

362. In the light of those findings of fact it is to be inferred, and I do so infer, that Mrs Zakharova did consult Mr Kekhman and obtain his approval for the production of the fraudulent accounts, and that they were produced on his instruction and with his approval.

363. I would only add (although it is not necessary for the inference I have drawn) that I am also satisfied that the funds taken out of the JFC Group were used for the benefit of Mr Kekhman, either by way of indirect payment through a web of companies to the LQ Group or to Other Companies beneficially owned and controlled by him – as addressed in Sections F.6 to F.8.

N. The Deceit Claims

N.1 Existing Loans at the time of the granting of the Loan Facilities

364. The JFC Group started talking to C about borrowing from it in May 2011. At this time JFC had a number of existing loan facilities both long term and short term (many of which were to be repaid out of the Loan Facilities granted by C). In particular:-

(1) JFC had long-term facility of around US$150 million (in □) entered into on 31 August 2010 with Sberbank. This loan included a pledge/equitable mortgage (at clause 9.1) of 75% of the shares held by the foundations within four months. The agreement was amended by Supplemental Agreement 1 on 30 December 2010 to require by 31 March 2011 at least 38% based on 50%

of their market value and depending upon the amount of indebtedness at the relevant time. The valuation took place in March 2011 and the pledge had to secure □3.158 billion (around US$110 million), and therefore had to secure shares worth twice that. The pledge communications with Sberbank were discussed within JFC by Ms Osipova, Mr Kasatkin, Ms Volkova and others, and 49% of JFC BVI shares were pledged at the end of March 2011 (with the VK Family Private Foundation acting under power of attorney granted to Mr Kasatkin and Ms Volkova).

(2) JFC had long-term facilities of US$88 million and □1.5billion (about US$50 million) entered into on 15 March 2011 with a syndicate of banks led by Raiffeisen, Sberbank, Amsterdam Trade Bank NV, ZAO UniCredit and Société Générale. Various documents were signed by Mr Kekhman and Mr Kekhman made a market announcement upon securing the loan. The syndicated loan included a negative pledge obligation (clause 21.4) preventing all Obligors (which includes all Guarantors per the definition of Obligor), including Mr Kekhman who gave a personal guarantee, creating any Security (including pledge per the definition on page 14) over any of its assets. These loans were guaranteed by Mr Kekhman, YZ and AA.

(3) JFC had various shorter-term loans with Uralsib, Sberbank, Raiffeisen, RBS, Promsvyazbank and others. Many of these were, in due course, repaid out of C's lending.

365. It is clear that by mid-2011 the JFC Group was experiencing significant financial difficulties, and Mr Afanasiev's evidence (at paragraphs 39b-c of his third statement), which I accept, was that Mr Kekhman knew that. Equally, as per Mr Afanasiev's evidence, which I again accept, Mrs Zakharova had stepped down as General Director of JFC Russia for the very reason of seeking alternative financing (paragraphs 39e and 57 of Mr Afanasiev's third witness statement). In this regard an application for a US$300 million restructuring loan from VTB had been refused, and other loans had been taken out by Prometey including short-term borrowing from BFA. JFC Russia had a number of loans falling due for repayment in 2011 and early 2012. It is clear that the JFC Group were in need of further funding, and it was in this context that C was approached.

N.2 The Meetings between JFC Group and C, the financial information provided and the approval of the Loans

366. Two meetings were held between representatives of C and representatives of the JFC Group, the first on 19 May 2011 (at JFC Group's offices in St. Petersburg), the second on 30 June 2011 (at C's headquarters). Ms Sidorova (Deputy Director General of the Department of Credit Security) and Mr Fedorov (Vice-President) attended on behalf of C and Ms Osipova (Head of the Corporate Finance Department of the JFC Group) and Ms Dakhina (Head of the Department for Interaction with Financial Institutions) attended on behalf the JFC Group.

367. Shortly before the first meeting, there were emails within JFC between Ms Osipova, Ms Dakhina and others on 10-11 May 2011 discussing the fees to be paid in relation to the provision to Sberbank of the pledge of shares. C submits, therefore, that the Sberbank pledge would have been something that was very much in their minds at the time, and that may well have been so (whether that was actually so will never be known as they did not give evidence).

368. As to what was discussed in the meeting on 19 May 2011, C relies upon the hearsay evidence of Ms Sidorova transmitted to Mr Tchernenko through Ms Steinbrekher (a former employee of C who worked with Ms Sidorova at the time when JFC Russia's application for a loan was being considered by C), as addressed in Mr Tchernenko's third witness statement.

369. At paragraphs 26(3) of that statement Mr Tchernenko stated as follows:-

> *"At the first meeting, on 19 May 2011,* ***Ms Sidorova informed the JFC Group that it must provide all information about the existing credit portfolio and, in providing this information, it was essential that any existing security (such as guarantees or pledges over any property) granted by the JFC Companies, the owners of the JFC Group and any third parties was reflected. Ms Sidorova informed the JFC Group that this information was essential to the decision to lend.*** *The JFC representatives informed the Bank that no pledges could be provided to the Bank to secure a loan by the Bank because of the existence of a negative pledge covenant in an existing loan by a syndicated group of banks."*
>
> (emphasis added)

370. What was actually said at the meeting is very much in issue – specifically it is denied on behalf of Mr Kekhman that Ms Sidorova did in fact ask the JFC

representatives expressly to provide details of all security (including pledges) provided by the ultimate beneficial owners of all JFC Group companies, and Mr Tchernenko was cross-examined in this regard. During the course of the trial underlying email traffic from May 2015 was disclosed by C, including emails in which Ms Steinbrekher edited a draft text of Ms Sidorova's evidence, in particular an email on 21 May 2015 (in bundle D1/17.81-17.82).

371. At one point in his cross-examination, Mr Tchernenko stated that Ms Sidorova did not want to speak to him directly and that she spoke via Ms Steinbrekher (day 5 page 159 lines 7 to 9). However later in his cross-examination Mr Tchernenko referred to discussing matters on the phone with Ms Sidorova and Ms Steinbrekher (day 13 page 31 lines 18 to 19). Mr Tchernenko did not refer to any such conversation in his statement and I consider that he was mistaken in his recollection in his later evidence (which came at the end of his cross-examination), and that his earlier evidence (that he did not himself speak to Ms Sidorova) is to be preferred.

372. I consider that the emails in May 2015 are a more reliable source of evidence (albeit that I bear well in mind that they themselves concern events some four years earlier, and all this evidence is hearsay evidence recounting Ms Sidorova's own evidence as to her recollection).

373. From those emails, I am satisfied that at the meeting the question of what security could be provided on the part of the JFC Group of companies as well as of JFC owners, including personal guarantees from the owners, was raised, and that in response Ms Osipova said that she would raise the matters with her managers. I am also satisfied that in that meeting Ms Osipova or Ms Dakhina informed C's representatives that there was already a negative pledge obligation in favour of the lenders under the syndicated loan (Ms Dakhina thereafter sending Ms Sidorova and Ms Steinbrekher an email on 23 June 2011 setting out clause 21.4 (the negative pledge obligation)).

374. I am not satisfied, however, that C has demonstrated, through the evidence, that Ms Sidorova at that meeting expressly asked the JFC representatives to provide details of all security including pledges provided, not least because, Ms

Steinbrekher deleted the words, *"The Bank made it clear what had been provided on the part of JFC and its owners, including information on the assets pledged"* (to reflect Ms Sidorova's evidence).

375. What is, however, clear is that, unsurprisingly (on the part of a bank), C did require financial information in relation to JFC's loans and security though it is in issue what that was to encompass. Whether or not the nature of the financial information required was specifically discussed in the 19 May 2011 meeting, the position is that on or around 7 June 2011 a draft Excel spreadsheet was sent to JFC as a template for JFC to provide information as to its other loans and security. The last column on this spreadsheet was headed, "*Type of security and pledge value*". Mr Nikishaev confirmed (when re-examined by Mr Gourgey), that this was the table that the credit department sent to the prospective borrowers so that they can fill it in and reflect their financial indicators and whether they have any loans from other financial institutions (day 6 page 67 lines 11 to 15).

376. On 7 June 2011 Ms Osipova wrote to Mr Fedorov of C seeking the US$150 million loan from C.

377. On 8 June 2011, JFC sent to C the consolidated BDO-audited accounts for JFC BVI for 2009, as well as the consolidated profit and loss statement for Q1 of 2010 and for Q1-3 of 2010, JFC organisation chart, JFCO commodity flow chart, 25 April 2011 presentation and lists of buyers, suppliers and other information.

378. On 14 June 2011 Ms Sidorova emailed Ms Dakhina with a list of questions seeking information from Ms Dakhina, which included, at question 8, "*breakdown of the credits and loans indicating the repayment dates as of 31 December 2010 and as of the current date.*"

379. Meanwhile on 16 June 2011 Ms Osipova and Ms Dakhina wee arranging a US$21 million loan by the Baltic Financial Agency to Prometey, guaranteed by Mr Kekhman.

380. On 17 June 2011, JFC sent to C lists of group consolidated figures for 2010 for revenues (US$718.4 million), financial expenses, costs, fixed assets, accounts

receivable (US$253.2 million) and accounts payable, and loans as of 31 December 2010 and 31 May 2011.

381. Included were completed tables of debts and securities entitled "*Breakdown of loan debts of the JFC Group of Companies*" one as of 31 December 2010 and the other as of 31 May 2011. They were not in identical format to the Excel spreadsheet sent on 7 June 2011. However in the middle of the various columns was a column entitled "*Security*", and in the completed entries under this column it identified sureties (guarantees) given in relation to each of JFC's loans, including personal guarantees by the owners of the shares in the parent company.

382. In relation to the Sberbank loan, the entry provided, "*Sureties by NFC JFC CJSC, Cargo JFC CJSC, V.A. Kekhman, Yu.V. Zakharova, A.S. Afanasiev*" and thus the entry disclosed various personal guarantees, including by Mr Kekhman (i.e. the entry did not merely record security provided by the borrower JFC Russia or other group companies). The entry did not identify the pledge of Mr Kekhman's foundation's shares in the JFC parent company.

383. On 23 June 2011, Ms Dakhina sent Ms Sidorova and Ms Steinbrekher (copying Ms Osipova) an email that set out clause 21.4 (which contained the negative pledge obligation) in the syndicated loan. I accept that this suggests that, at some point, Ms Dakhina or Ms Osipova had told Ms Sidorova and Ms Fedorov about the negative pledge obligation. C submits that that it was misleading to refer to that negative pledge obligation without also revealing that there were also a pledge of the JFC BVI shares to Sberbank.

384. Further documents were provided by JFC to C on 28 and 29 June 2011. Also on 29 June 2011, Ms Osipova and others were communicating with Sberbank in relation to the value that the pledged 49% of the foundations' shares would be treated by Sberbank as having. It is apparent from the draft letter that even on JFC's case the 49% of shares to be pledged fell just under the sum required by Sberbank (with the result that there was a risk that more shares would need to be pledged).

385. The second meeting between C and JFC took place on 30 June 2011 at C's headquarters and was attended by Ms Sidorova, Mr Fedorov and Mr Mokhov on

behalf of C, and Mrs Zakharova on behalf of JFC. Again, the evidence of this comes from Mr Tchernenko relaying Ms Sidorova's evidence through Ms Steinbrekher. There is no internal minute of that meeting. It appears (per Mr Tchernenko's evidence) that in this meeting Mrs Zakharova stated that the negative pledge obligation in the syndicated loan meant that there could be no pledge to C, and that with respect to the request for personal guarantees, Mrs Zakharova said that she would need to consult with Mr Kekhman. As to the former point this is consistent with the fact that Clause 21.4 (the negative pledge obligation) had been provided to Ms Sidorova and Ms Steinbrekher in Ms Dakhina's email of 23 June 2011, and I accept the evidence that Mrs Zakharova did state as alleged in this meeting. As to the latter point, and Mr Tchernenko's further evidence that Mrs Zakharova subsequently confirmed by telephone to Ms Sidorova that Mr Kekhman refused to grant a personal guarantee, I do not understand this evidence to be challenged, and I accept it.

386. The same day Ms Prokofyeva sent Ms Osipova and Ms Chistyakova an email outlining the extent of the Garold "*additional revenue*" overstatement in the Garold and JFC figures (that C was at that time considering).

387. On 2 August 2011, Ms Dakhina sent C further information consisting of the end of Q2 balance sheet and profit and loss report and schedule of loans and securities granted (updated from the previous data which was to end of 2010). The list of loans again excluded the pledge from the security listed on the Sberbank loan.

388. The Credit Committee, which included both Mr Shatalov and Mr Nikishaev (who gave evidence) and Ms Sidorova met on 3 August 2011. The papers for consideration by the Credit Committee included:

    (1) An internal report headed "*General Information*" which had been produced by C from the information supplied to it by JFC and from publicly available information. This document summarised the JFC Group's financial results including 2010 and Q1 2011 revenues and net loss, profitability, receivables (internal pages 13, 20 and 33 of the translation), cash flow forecast (page 15 and 17), EBITDA (pages 20 and 26), profits of individual companies including the main earners Garold

and JFC Russia (page 21), assets including advance payments to Biany and Edenis (pages 21-2), loans (pages 24-5). Paragraph 5 of the General Information document contained information about the revenue of the JFC Group in 2010, which purportedly amounted to US$718.4 million. Appendix 3 to the General Information document "*Analysis of the financial position of the Group of companies in the JFC Group Holding (BVI) Limited*", set out, amongst other matters, purported revenue of the JFC Group in 2010 in the amount of US$718.4 million, and also referred to Garold's purported revenue for 2010 in the amount of US$267,914,000 and to JFC Group's accounts receivable as at 31 December 2010 in the amount of US$253,221,000. The analysis also included a table setting out the information about the short-term and long-term loans of JFC Group as at 31.05.2011 The total loan liability at 31.05.2011 was stated to be US$432.44 million. It also provided a description of the security granted in respect of JFC Group loans.

(2) An Opinion of the Risk Management Department, prepared by Mr Sidorov, dated 26 July 2011. Of significance was also the risk report of Mr Sidorov dated 26 July 2011, which when considering "*Client risks*" contained some detail as to revenues (including of Garold), turnover, EBITDA and losses. It mentioned an increase in the revenue of the Group in 2010 to US$718.4 million.

(3) An (internal) application for the Credit Committee dated 29 July 2011 signed by Mr Germanov and Mr Mokhov of C. This document summarised the Group and JFC Russia revenue, profit, EBITDA etc figures for 2010. In the section "*Financial Position*" the application referred to JFC Group's purported revenue in 2010 in the amount of US$718.4 million. In the section "*Relationship with the banks as at 31.05.11*" the application stated that JFC Group's total liabilities amounted to US$434.2 million.

(4) There were also other papers prepared within C that were considered by C's Credit Committee include various memos on particular aspects of the loan. In fact, at the first meeting, and as is apparent from the minutes of

that meeting and Mr Shatalov's evidence, the proposal was sent back for revision/renegotiation in relation to the intended use and type of the loan product, the conditions precedent, and the guarantees, and Mr Shatalov did not attend the second meeting (that took place on 10 August 2011). However Mr Nikishaev did do so, and his evidence (at paragraph 10 of his statement) is that at the meeting on 10 August 2011 when the Loan was approved, he continued to believe that the financial information presented to the Credit Committee was accurate, and had he or his fellow Committee members known at the time of the matters identified in paragraph 11 of Mr Shatalov's statement, the application for the facilities would have been rejected.

389. Meanwhile, on 3 August 2011 Ms Osipova, YZ and others at JFC were discussing JFC's agreement the day before to pledge two further shares to Sberbank, taking the total pledged amount to 51% of the three foundations' shares in the JFC holding company. Further drafts of the pledge agreements were circulated within JFC on 15 August 2011 and there was further correspondence the following day, and in mid-September 2011.

390. Mr Fedorov sent a memo on 8 August 2011 confirming the proposed new conditions for the loans, which included an increased list of 13 guarantors and a restriction that no more than US$100 million was to be used for refinancing. Ms Slutskaya sent a memo on 9 August 2011 making some minor suggestions for the loan.

391. As I have identified, the Credit Committee (including Mr Nikishaev and Ms Sidorova—Mr Shatalov was not present) met again on 10 August 2011 and resolved to grant the facilities. Thereafter further information was sent through by JFC during August 2011.

392. The first facility, for US$100 million, was signed on 2 September 2011, as is recorded in a board minute signed by Mr Kekhman, and which Mr Kekhman admits he signed. The loan was at LIBOR plus 5.5% and repayable within one year pursuant to a repayment schedule (in clause 6).

393. The proceeds of the first facility were rapidly utilised, a reflection, no doubt, of the need for further financing to repay other facilities in the context of JFC Group's true financial position. In this regard, US$93.1 million was drawn down in early September 2011, and appears to have been used to repay a number of bank facilities in the period 7 to 9 September 2011, specifically US$50 million to OAO Uralsib Bank, US$11.5 million to OAO Bank St Petersburg, US$10 million to ZAO Royal Bank of Scotland, approximately US$9.7 million (in roubles) to ZAO Raiffeisen Bank, approximately US$6.8 million (in roubles) to Sberbank, US$5.1 million to UniCredit , as well as a small amount to OAO Bank St Petersburg). The remaining US$6.9 million was drawn down in late September 2011 and appears to have been used to repay Sberbank and (a small sum to) RBS on 28 September 2011. In this regard the Sberbank and Raiffeisen loans were due for repayment in October and December 2011. They were guaranteed by Mr Kekhman, YZ and AA personally.

394. In relation to the second facility, there was a JFC Russia board meeting on 12 October 2011 approving the loan. Mr Kekhman denies attending or signing a minute of the meeting (per paragraph 31 of his witness statement). Mr Afanasiev's evidence (per paragraph 61 of his first witness statement) is that Ms Kuzina affixed Mr Kekhman's signature to the board meeting on Mr Kekhman's instructions. In my view nothing turns on whether Mr Kekhman attended the meeting. In the light of the evidence, which I accept, Ms Kuzina would not have applied Mr Kekhman's signature to the minutes without his knowledge and consent. Ultimately, however, nothing turns on this. There is no dispute that Mr Kekhman was aware of the first and second facilities.

395. The second facility was signed on 14 October 2011, and was drawn down on 26 October 2011. There was a further meeting of the Credit Committee on 24 October 2011, in which they agreed to extend the time for providing guarantees by 20 days. The contracts were amended on 11 November 2011 and guarantees were provided on 22 November 2011 and 17 January 2012.

N.3 The Garold Representations

396. It is common ground the financial documents that were sent by JFC to C on 8 and 17 June 2011 made the Garold Representations that:

(1) In 2010 Garold's revenue was US$267,914,000 whereas in fact it was no more than US$55 million; and

(2) the value of the JFC Group's accounts receivable as of 31 December 2010 was US$253,221,000 whereas in fact it was no more than US$54 million.

397. These figures impacted upon many other figures provided to C (including JFC group's 2010 revenue of US$718.4 million and first 9 months of 2010 revenue of US$513.6 million, JFC Group's 2010 profit after tax of US$2.7 million and EBITDA of US$55.6 million).

398. As is set out in the Agreed Facts Document, and summarised in Section A.2 above, the Garold Representation and its falsity is admitted and it is also admitted that JFC employees made the misrepresentation with the intention of deceiving C into providing the loans provided. More specifically:-

(1) Garold's and JFC Group's stated revenue and accounts receivable as set out in the consolidated financial statements for the periods to 30.9.2010, 31.3.2010 and 31.12.2009 and in the breakdown of revenue and accounts receivable for year ending 31.12.2010 (sent by Ms Dakhina to C on 8 and 17 June 2011) were dishonestly inflated in the ways and amounts set out in Misiura 1 section 3. The overstatements in respect of revenue and receivables in the accounts for the year ended 31 December 2010 were over US$213 million and over US$198 million respectively (see Misiura 1 tables 2 to 4). As a consequence, and after adjusting for false invoices rendered by Biany and Edenis and included within costs in the accounts, the reported profit for 2010 of US$3.257 million for the JFC Group was false and the true position was a **loss** of US$62.269 million, whilst the reported figures for 2009 are a reported profit of US$16.568 million compared to a **loss** of US$11.539 million (these figures do not appear as such in the Agreed Facts Document but they are referred to in Misiura 1 and have not been the subject of challenge).

(2) This inflation was concealed by the creation of documents purporting to evidence (fictitious) sales to customers and fictitious purchases from Biany and Edenis (both of which were controlled and operated by JFC personnel).

(3) As Garold's bank statements show, Biany and Edenis received large sums from Garold as reflected in a table "*Garold to Biany Edenis 2009-11.xls*". The sums paid to Biany and Edenis by Garold in 2009 amounted to US$54,009,785, in 2010 US$121,077,139 and in 2011 US$135,733,940 (a total of US$310,820,864). From at least August 2009 at least some of these were payments were documented by JFC as being made in return for (fictitious) services and goods from Biany and Edenis (C says that all payments to Biany and Edenis were fictitious, but Mr Kekhman maintains that Edenis may have been performing legitimate business both after and prior to August 2009 (although C's case is that Mr Kekhman has adduced no evidence as to what that was or might have been)).

(4) The inflation of figures in the JFC group companies' accounts, and payments being made to Biany and Edenis and documented as being in return for (fictitious) services, were dishonest and conducted by or under the direction of, or with the knowledge of, JFC staff including Mrs Zakharova, Mr Kasatkin and Ms Volkova.

(5) These false accounts were presented to C (by the emails from Ms Dakhina dated 8 June 2011 and 17 June 2011) when JFC Russia was applying for its US$150 million loan with the intention of deceiving C.

399. Thus in relation to the Garold Misrepresentation claim, the following are agreed:

(1) The making by JFC Russia staff of the Garold Representations.

(2) The falsity of the representations arising from the dishonest production of false accounts (the precise period of time over which this was done is not

admitted, though it is admitted it was at least in the period mid 2010-mid 2011).

(3) Mrs Zakharova's knowledge as to the falsity of the accounts.

(4) The intention of JFC Russia through the presentation of the false accounts to induce C to agree to advance the loans.

N.4 C's reliance on the Garold Representation

400. Mr Kekhman *"does not admit that [C] relied upon the Garold Representation when deciding whether to lend monies to JFC Russia"* (Kekhman Written Closing paragraph 7). Mr Kekhman did not, however, advance any positive case that C did not rely, as identified in Section N.2 above there is documentary evidence as to what documentation C considered and referred to simultaneously, and there is factual evidence before me from two witnesses on behalf of the C, namely Mr Shatalov and Mr Nikishaev as to C's reliance on the (false) accounts when deciding to lend.

401. The evidence as to C's reliance is powerful, indeed overwhelming. In this regard:-

(1) The materiality of the financial figures of the borrower's group and guarantor Garold is obvious, and undeniable, as is the extent of the inaccuracy and materiality of the inaccuracy and the sheer size of the same, and implications on the true financial position of the borrower's group and guarantor.

(2) It is accepted that misrepresentation was made with the intention of deceiving C (thus the JFC employees themselves, on behalf of the borrower, expected and intended C to rely on the representations).

(3) It is clear that C did have regard to the figures as the figures were reproduced in C's own internal summaries considered by the Credit Committee, as identified in Section N.2 above.

(4) The evidence of Mr Shatalov and Mr Nikishaev was that the figures were relied upon and their evidence was not challenged.

402. Mr Shatalov's evidence, which I accept, was that he approached the first Credit Committee meeting on the assumption that the financial and other information presented to the Credit Committee concerning JFC Russia and JFC Group as a whole was accurate and complete. His evidence is that he also had no doubt that his fellow Committee members proceeded on the same assumption (as Mr Nikishaev confirmed so far as he was concerned). This evidence is, perhaps, a statement of the obvious. I have no doubt that any member of a credit committee would approach such a meeting on the assumption that financial information and other information presented to such a committee would be accurate and complete (though as to the latter what was complete information would depend on what information was sought, and also what information was not provided).

403. Mr Shatalov's evidence (as set put at paragraph 11 of his witness statement) was that had he, and his fellow members of the Credit Committee known that:

"(i) The financial information in respect of JFC Group was inaccurate;

(ii) Garold's revenue for 2010 and consequently JFC Group's total revenue as well as JFC Group's accounts receivable were artificially and fraudulently inflated by means of "fresh air" invoices; and

(iii) The true position was that Garold (which the Credit Committee had been informed was JFC Group's principal trading company) made substantial losses in 2010 and that the JFC Group as a whole made substantial losses in 2010

I would have rejected the application outright at the meeting, as I am sure would my fellow committee members"

404. Such matters would obviously have been important to any bank. Mr Shatalov did not attend the second meeting (that took place on 10 August 2011). However Mr Nikishaev did do so, and his evidence (at paragraph 10 of his statement) is that at the meeting on 10 August 2011 when the Loan was approved, he continued to believe that the financial information presented to the Credit Committee was accurate, and had he or his fellow Committee members known at the time of the matters identified in paragraph 11 of Mr Shatalov's statement, the application for the facilities would have been rejected.

405. As I noted in Section C.3, above, I found both Mr Shatalov and Mr Nikishaev to be honest and reliable witnesses, and they were not challenged in their evidence (including evidence in chief) as to their reliance on the Garold Representations. I accept their evidence in this regard.

406. In the above circumstances, I am satisfied, and find, that C did rely upon the Garold Representation when agreeing to the Loan, and that C would not have entered into the loan agreements or otherwise lent to JFC Russia had the Garold Representation not been made.

N.5 Mr Kekhman's knowledge as to the falsity of the Garold Representation

407. C's case as to Mr Kekhman's knowledge is pleaded at paragraph 12H of the Re-Amended Particulars of Claim which I have quoted in Section A.4 above. C invites me to find that Mr Kekhman knew that the accounts of JFC Group (including Garold) were inflated. I have already found in Section M.2, and for the reasons there identified, that Mr Kekhman knew, from Mrs Zakharova, the true financial position of the JFC Group at the time the false accounts were produced and so knew of the falsity of the accounts. I have also found that Mrs Zakharova would not have made the significant and serious decision to falsify the accounts without consulting with an obtaining the approval of Mr Kekhman, and that it is to be inferred that Mrs Zakharova did consult Mr Kekhman and obtain his approval for the production of the fraudulent accounts, and that they were produced on his instruction and with his approval.

408. For completeness, I will briefly address the matters pleaded at paragraph 12H. The matters set out in paragraph 12H(1), (3) and (4) are not in dispute. I have already addressed, and made similar factual findings in relation to the matters set out in paragraphs 12H(5), (6) and (7) in Section M.2 above. In relation to paragraph 12H(8) I have already identified in Section M.2 the basis for my finding of fact that Mr Kekhman knew both the true financial position of the JFC Group at the time the false accounts were produced and knew of the falsity of the accounts. However to the extent that this is an inference from primary fact rather than a fact, I am satisfied, and find, that it is to be inferred from the matters I have found in relation to the matters alleged at paragraphs 12H(1) and (3) to (7) that

Mr Kekhman knew that the accounts were inflated in the respects alleged. I have addressed the matters pleaded at paragraph 12H(2) (Mr Kekhman's exercise of control in relation to the dissipation of assets) in Sections G, I and L. My findings of fact in that regard further support the inference sought to be drawn, but such matters are not necessary for the drawing of the inference.

409. In the above circumstances Mr Kekhman knew of the falsity of the Garold Representations, and I so find.

N.6 The making of the Garold Representations on the Instructions of Mr Kekhman

410. C's case that the Garold Representations were made at the direction of Mr Kekhman or with his agreement is based on the facts pleaded at paragraph 12I of the Re-Amended Particulars of Claim which I have quoted in Section A.4 above. Many of these facts are not in dispute. For example 12I(2) (loans falling due – as already addressed above), 12I(4) (the Syndicated Loan secured with personal guarantees from Mr Kekhman, Mrs Zakharova and Mr Afanasiev), I12(5) (numerous applications for loans to other banks), 12I(6) (in the context of a loan application to Absolute Bank in relation to which Daria Vyuzhanina (copied to Ms Dakhina) sent an email to that bank on 6 July 2011 including substantially the same false accounting information as had been provided to C (the offer from the bank requiring security guarantees from Mr Kekhman, Mrs Zakharova and Mr Afanasiev)).

411. In relation to 12I(9)-(11) C relies upon the fact (which is not controversial) that Ms Dakhina, who provided the information to C by which the Garold Representations were made reported directly to Mrs Zakharova and to Mrs Zakharova's daughter Ms Osipova (per Mr Tchernenko's notes of his interview of Ms Dakhina, which evidence I accept), Ms Osipova in turn reporting to her mother (as is apparent from Mr Tchernenko's telephone notes of his call with Ms Osipova). It is submitted that it is to be inferred that Ms Dakhina provided the accounting documentations, which it is said (rightly) were an important step in the loan application (as shown by the evidence on reliance), upon the instructions of Mrs Zakharova, given either directly or through her daughter, in circumstances

where Mrs Zakharova had knowledge of the falsity of the accounts and therefore of the Garold Representations. Given Mrs Zakharova's knowledge and the relative position of Ms Dakhina and Mrs Zakharova, this is an inference that is justifiable on the facts, and one which I draw.

412. The more controversial facts are those that relate to the alleged involvement of Mr Kekhman himself. In relation to 12I(1) (that in 2011, and upon Mr Kekhman's instructions, JFC Russia was actively looking to raise fresh loans from banks and that in April 2011 Mrs Zakharova, on Mr Kekhman's instructions, stepped down as the General Director of JFC Russia so that she could concentrate on raising further finance for the JFC Group), I have already identified that by mid-2011 the JFC Group was experiencing significant financial difficulties, and I have accepted Mr Afanasiev's evidence (at paragraphs 39b-c of his third statement) that Mr Kekhman knew that, and that Mrs Zakharova had stepped down as General Director of JFC Russia for the very reason of seeking alternative financing (paragraphs 39e and 57 of Mr Afanasiev's third witness statement). This is the backdrop against which JFC Group was (as is common ground) actively seeking fresh loans in substantial amounts, and I have already addressed the loans being taken out and the need for further loans in Section N.1 above.

413. Given Mr Kekhman's own evidence that it was natural for him to be consulted about significant decisions (day 7 page 78 18 to 23), big projects or where there was a crisis (day 7 page 79 lines 12-14), or problems (day 8 page 20 lines 21-22) or "***when large sums of money needed**, or could be spent, then they would turn to me*" (day 7 page 79 lines 3 to 5) and given that he required that he should be consulted by Mrs Zakharova and his approval obtained before the taking of any "***Significant decisions, that's correct. Serious decisions. That is true***" (day 10 page 10 line 21 to page 11 line 4) (my emphasis), I am satisfied that he must, as part of his interaction with Mrs Zakharova, have discussed, in the context of a situation where a large sum of money was needed (US$150 million) and it involved significant and serious decisions (including the supply of accounts known by him to be false, as I have found) the application to C and what it entailed. In this regard there is also the evidence of Mr Afanasiev, which I have

accepted, that Mrs Zakharova's invariable practice was to obtain Mr Kekhman's approval before significant decisions were taken (Afanasiev third statement at paragraph 50), it also being the evidence from Ms Dakhina's interview notes that, "*Without K no key decision would be made*" (evidence which I also accept).

414. In relation to 12I(12) I have already found that Mr Kekhman knew about the Garold Fraud. He knew the accounts were not accurate. He was an experienced businessman who would know that such financial statements would be provided to any prospective lending bank including C (as is also Mr Afanasiev's evidence which I accept).

415. Ultimately, and whilst Mr Kekhman denied knowing exactly when Mrs Zakharova talked to him about discussions with C about the application for the Loan (which I do not find credible given the importance of the application), he accepted that when Mrs Zakharova was having talks with C she told him about them (*"Yes, she did"* – day 11 page 41 lines 7-9), though curiously Mr Kekhman was reluctant to admit that he knew it was a US$150 million loan (evidence I find incredible and do not accept given his knowledge of the need for substantial further finance and the evidence as to his interaction with Mrs Zakharova).

416. It is also clear that he had been informed of the request by C of a personal guarantee from him and that he had told Mrs Zakharova that he was unwilling to grant a personal guarantee though, once again, he was evasive about this, initially denying in cross-examination that he made clear to Mrs Zakharova that he was not willing to give a personal guarantee (day 11 page 45 line 5) saying *"that's not true"*, only to admit (when shown paragraph 44 of his second witness statement, that he had seemingly forgotten, in which he said, *"I had made it clear that I would not be providing any personal guarantee or security in that respect"*), that he did now recall telling Mrs Zakharova that he would not provide a personal guarantee (day 11 page 456 line 15). This is also reflected in Ms Sidorova's evidence (given to Mr Tchernenko via Ms Steinbrekher) that this refusal was relayed by Mrs Zakharova to C.

417. As to paragraph 1I(7), Mr Kekhman was also involved in approving the first US$100 million of the US$150 million loan. In this regard he accepts that he

signed a board minute approving that, although his evidence was that he did not read it, or know who was giving guarantees. I reject such evidence as further untruths. He signed every page, thereby acknowledging their content, and the guarantees were identified on the face of the agreement. Mr Kekhman also denies approving Mr Afanasiev's signature of the loan contracts, but he is not a witness of truth, and I prefer the evidence of Mr Afanasiev that he did so, and I so find. This is just one more example of Mr Kekhman seeking to distance himself from involvement in the fraud upon C.

418. In relation to 12I(13), I consider that it is inconceivable, given the significance of the decision to present false accounts for the JFC Group overstating receivable by over US$200 million, and materially mis-stating profits (of which Mr Kekhman knew as I have found), that Mrs Zakharova would have directed the presentation of those accounting documents to C (as I am satisfied she did) without having first obtained the direction and agreement of Mr Kekhman, and I infer that this was given in the light of the facts I have found, including Mr Kekhman's own evidence that it was natural for him to be consulted about significant decisions, big projects or where there was a crisis or where large sums of money were needed, and (most importantly) that he required that he should be consulted by Mrs Zakharova, and his approval obtained, before the taking of any significant or serious decision. The deliberate presentation of materially false accounts to a bank is, indisputably, a significant and serious decision. I would also refer, once again, to the evidence of Mr Afanasiev at paragraph 64 of his third statement in this regard, which I have already addressed and accepted, that *"It is inconceivable that Mrs Zakharova would have presented false accounts to Mr Kekhman without telling him of their falsity and equally inconceivable that she would have presented the false accounts to the Bank without his approval."*

419. In the light of the evidence that I have heard and the facts that I have found as aforesaid, I infer that Mr Kekhman directed that the Garold Representations be made knowing that they were false, and with the intention of inducing C to make the Loan.

420. Such inference of fraud by Mr Kekhman is far more likely than any other inference. Mr Kekhman's case that he had nothing to do with the (fraudulent)

Garold Representations and was unaware of them is not sustainable in the light of the evidence that I have heard, including that of Mr Kekhman himself, and the associated facts that I have found. I reject Mr Kekhman's evidence in this regard as untrue.

421. I would only add that my factual findings go beyond those identified at [64] of the judgment of Flaux J that I have already quoted (whilst also encompassing those pleaded and summarised at [61] of that judgment). However they encompass the matters identified in [64] specifically that (i) Mr Kekhman was well aware at all material times about the true financial position of the JFC Group and that his denial of such knowledge in his evidence was untrue, (ii) that his involvement in the management of the Group in 2010 and 2011 was greater than he was prepared to admit in his evidence, so that his evidence about that is also untrue, and (iii) that that involvement included involvement in the process of obtaining the loans from C. That being so I agree with the views expressed by Flaux J that these, in themselves, entitle the Court to draw the inference sought that the Garold Representation was made at the direction of Mr Kekhman and with the intention to induce C to advance the Loan, and I have done so, albeit that I do so having made the additional findings of fact that I have already set out which make the inference sought inevitable.

422. I would also endorse the views expressed by Flaux J at [65] which I adopt, and which are entirely apt on the findings of fact that I have made (though again my findings of fact go beyond such matters and render the inference inevitable that Mr Kekhman was party to the fraudulent Garold (mis)Representation):

> "Indeed, if that case is established by the bank at trial, it is difficult to see how an explanation of the fraudulent misrepresentations having been made which was consistent with Mr Kekhman's innocence would be sustainable. On this hypothesis, he would not have told the truth in respect of two critical aspects of his evidence and the obvious question is why he would do that unless he were trying to conceal his own involvement in the relevant wrongdoing. Furthermore, I accept Mr Gourgey QC's submission that on this hypothesis, Mr Swainston QC's suggestion that Mrs Zakharova was on some frolic of her own, engaged in fraudulent misrepresentations to the bank in order to cover up her own mismanagement and wrongdoing, is completely implausible. If Mr Kekhman was aware of the true financial position of the JFC Group, then there was nothing for Mrs Zakharova to

conceal from him. On the assumption that both Mrs Zakharova and Mr Kekhman were aware of the true position of the Group, it is inconceivable that, if she had found that a loan could not be raised without misrepresenting the accounts, she would have proceeded on a U.S. $200 million overstatement of the accounts without informing Mr Kekhman and procuring his approval. Indeed, on this assumption and the further assumption that Mr Kekhman maintained close control of the Group (in relation to both of which assumptions the bank's case has a real prospect of success) it is far more likely that it is he who instructed her to misrepresent the accounts rather than her thinking of the idea and seeking his approval. Either way, I consider that if the bank establishes its case at trial as to Mr Kekhman's knowledge and control, the court would be entitled to draw the inference that he was a party to the fraudulent misrepresentations."

N.7 Loss and the Deceit Claim based on the Garold Representations

423. I have already found that C did rely upon the Garold Representation when agreeing the Loan, and that C would not have entered into the loan agreements or otherwise lent to JFC Russia had the Garold Representation not been made. Accordingly C's loss arising as a result of the deceit is the difference between the sums advanced and recoveries made (I address the question of recoveries made in Section P below).

N.8 Russian Law and Deceit

424. So far as the claim in deceit against Mr Kekhman is concerned there was ultimately no difference of any relevance between the expert evidence of Mr Kulkov, on behalf of C, and Mr Holiner on behalf of Mr Kekhman.

425. C's claim against Mr Kekhman is made under Article 1064 of the Russian Civil Code. Article 1064, under the heading "*General Principles of Liability*", provides as follows:

> *"Harm caused to the person or property of a citizen and also harm caused to the property of a legal person shall be subject to compensation in full by the person who has caused harm."*

426. C's claim against Mr Kekhman in deceit is actionable under Article 1064. As C's expert, Maxim Kulkov explains (and as I find) Russian law contains one common theory of general delict (tort) and the Russian Civil Code synthesises all torts into one omnibus general tort principle (Article 1064). The common core requirement

of all torts under Russian law is that an innocent person has suffered harm as the direct result of the conduct of another person.

427. The principle underlying this is set out in extracts from two Federal Commercial Court judgments which are set out in Mr Kulkov's first report at paragraphs 96 and 97 and which Mr Holiner accepted reflected the relevant principle.

428. In the first of the cases the following principle was stated as follows:-

> *"Obligations arising from causing harm are based on the principle of general delict under which everyone is prohibited from causing harm to property or a person and causing harm to another person is illegal if the person is not authorised to cause such harm"*

429. Accordingly the causing of harm by A to B is unlawful unless A can show that he has a lawful right to cause harm to B, which Mr Holiner accepted, and which I find to be the position. Mr Kulkov gives examples at paragraph 61 of his first report of a party A having a lawful right to cause harm to B. There is no suggestion that Mr Kekhman had a lawful right to harm C.

430. Where the harm has been caused by more than one person, then a claim against the joint tortfeasors arises under a combination of Articles 1064 and 1080 of the Civil Code. The latter provides under the heading "*Liability for Harm Caused Jointly*":-

> *"Persons who caused harm jointly shall be jointly and severally liable to the injured party"*

431. Mr Kulkov and Mr Holiner, are agreed (Joint Statement, Issue 1 paragraph 1), and accordingly I find, that in order to establish liability under Article 1064, four matters must be proved:-

(1) Harm suffered by the claimant;

(2) The defendant has committed an unlawful act or omission;

(3) A causal link between the unlawful conduct of the defendant and the harm suffered by the claimant; and

(4) The defendant is at fault.

432. In relation to these four elements for existence of liability under Article 1064, only the second element was the source of significant disagreement between the experts and the following is common ground between the experts (which I accordingly find):-

(1) The first and third elements must be proved by the claimant.

(2) As to the third element, the general approach to causation is that there should be a direct causal link between the harm and the unlawful conduct. It is common ground between the experts that the causation test to be applied is the general approach to causation as recently been addressed by the Russian Supreme Court. This stated (in the context of breach of contract claims) that when establishing causation losses should be deemed to arise as a result of the breach where in the ordinary course of business such unlawful conduct would cause such losses (Kulkov 1 paragraph 34). In the context of tort claims, this can be restated as follows:

> *"Where the occurrence of loss, compensation of which is claimed by the claimant is the ordinary consequence of the conduct of the defendant, then the existence of a causal relationship between such conduct and the losses proved by the claimant is assumed".*

(3) As to the fourth element, the burden of proof of absence of fault is on the defendant because it is presumed that the tortfeasor was at fault for the harm caused.

433. In relation to the fourth element (fault), Mr Kulkov's evidence (which I accept) is that whilst fault is not defined in Article 1064, the rule on fault is developed in the general principle of obligations under Article 401 which provides that a person:

> *"who fails to perform or improperly performs an obligation is liable in case of fault (intent or negligence).....A person is not considered to be at fault where with that degree of care and negligence which are required by the nature of the obligation and business customs, it took all measures for proper performance of such obligation."*

Mr Kulkov's evidence, which I accept, is that in any case where harm was caused intentionally or negligently, the tortfeasor is obliged to compensate the claimant.

434. The experts differ only in respect of the second element (unlawful act or omission) though the difference between them is of no relevance in relation to the claim under consideration, as appears below

435. In the opinion of Mr Kulkov (1) this is presumed, and (2) the burden is on the defendant to establish that he was lawfully permitted to cause harm to the claimant. He explains that in accordance with general delictual principle, any harm caused to a person or property is deemed to be unlawful unless otherwise provided by law. In cases where the defendant's conduct has caused harm to the claimant, the burden is on the defendant to prove that he had the legal right to commit the conduct complained of, or that there was a lawful justification for it.

436. In contrast, Mr Holiner contends even where harm is proven, if there is a prima facie lawful basis for the alleged conduct or the defendant invokes a lawful justification defence, it is up to the claimant to prove that the defendant acted unlawfully. Mr Holiner accepts that where harm is proven, D must at least advance a prima facie lawful justification. That is a prima facie right to cause harm to C. It is not suggested in the present case that Mr Kekhman had a prima facie lawful basis for the conduct that I have found, nor has he invoked a lawful justification defence, and it is unnecessary for me to resolve this difference between them. If I had to have done so, I would have preferred the view of Mr Kulkov on the basis that it accords with the general delictual principle that any harm caused to a person or property is deemed to be unlawful unless otherwise provided by law.

437. In the present case the harm that C has suffered has been caused by Mr Kekhman's instruction as to the making of a fraudulent representation to C (the Garold Representation) and Mr Kekhman cannot, and does not point to any right to cause C harm. Even if he could have done so, the exercise of such a right would be unlawful since Mr Kekhman would, in a case of fraud, be said to have acted in conscious bad faith. As Mr Holiner accepted, if a defendant exercises a right to cause harm but does so in bad faith (an abuse of rights), such act will be unlawful.

438. Ultimately (and in response to questions put by the Court) Mr Holiner accepted (and I find) that if it is proved that the defendant has committed a fraud on the claimant and he suffers loss, that is going to give rise to liability under section 1064:

> *"[Q] But if fraud was proved then there is going to be liability under [Article] 1064.*
>
> A. *Yes, I would agree that if it is proved that defendant commits a fraud upon the claimant and he suffers loss then that is going to give rise to liability, yes."*

439. In the present case, and as I have found, C has established that it was induced to enter into the loan agreements with JFC Russia as a result of the Garold Representation and that the same was made on the direction of Mr Kekhman, and accordingly C is entitled to compensation from Mr Kekhman for its loss under Article 1064. The harm it has suffered is the "*ordinary consequence*" of Mr Kekhman's conduct and indeed was its intended consequence. The compensation to which C is entitled is the sums advanced less recoveries made (addressed in Section P below). As set out in Section P, this consists of the sums advanced of US$140 million plus □305,732,000 less recoveries of US$5,895,278.81 plus interest, and C is entitled to judgment against Mr Kekhman in such sums.

440. In the light of my judgment in relation to the Garold Representation claim, the Security Representation claim is academic – C's is entitled to recover all the sums claimed in the context of the Garold Representation claim. However as I have heard full argument on such claim, I set out my findings in respect of such claim below.

N.9 The Security Representation

441. C alleges that JFC represented to C that there was no pledge of the holding company (JFC BVI) shares (the Security Representation as pleaded and defined at paragraph 13F of the Particulars of Claim).

442. In this regards C says (by reference to paragraph 26(3) of Mr Tchernenko's statement) that at the first meeting with C on 19 May 2011 Ms Sidorova informed the JFC Group that it must provide all information about the existing credit

portfolio and, in providing this information, it was essential that any existing security (such as guarantees or pledges over any property) granted by the JFC Companies, the owners of the JFC Group and any third parties was reflected.

443. As I have already addressed in Section N.2 above, I am satisfied that at the meeting the question of what security could be provided on the part of the JFC Group of companies as well as of JFC owners, including personal guarantees from the owners was raised, and that in response Ms Osipova said that she would raise the matters with her managers. I am also satisfied that in that meeting Ms Osipova or Ms Dakhina informed C's representatives that there was already a negative pledge obligation in favour of the lenders under the syndicated loan (Ms Dakhina thereafter sending Ms Sidorova and Ms Steinbrekher an email on 23 June 2011 setting out clause 21.4 (the negative pledge obligation)). However as also addressed in Section N.2 above, I am not satisfied that C has demonstrated that Ms Sidorova at that meeting expressly asked the JFC representatives to provide details of all security including pledges provided.

444. What is clear is that C did require financial information in relation to JFC's loans and security. Whether or not the nature of the financial information required was specifically discussed in the 19 May 2011 meeting, as I have already addressed in Section N.2 on or around 7 June 2011 a draft Excel spreadsheet was sent to JFC as a template for JFC to provide information as to its other loans and security. The last column on this spreadsheet was headed, "*Type of security and pledge value*". Mr Nikishaev confirmed (when re-examined by Mr Gourgey), that this was the table that the credit department sent to the prospective borrowers so that they can fill it in and reflect their financial indicators and whether they have any loans from other financial institutions (day 6 page 67 lines 11 to 15). It therefore contemplated that information would be provided in relation to the type of security and pledge value.

445. On 17 June 2011, JFC sent to C lists of group consolidated figures for 2010 for revenues (US$718.4 million), financial expenses, costs, fixed assets, accounts receivable (US$253.2 million) and accounts payable, and loans as of 31 December 2010 and 31 May 2011. Included were completed tables of debts and securities entitled "*Breakdown of loan debts of the JFC Group of Companies*"

one as of 31 December 2010 and the other as of 31 May 2011. They were not in identical format to the Excel spreadsheet sent on 7 June 2011. However in the middle of the various columns was a column entitled "*Security*", and in the completed entries under this column it identified sureties (guarantees) given in relation to each of JFC's loans, including personal guarantees by the owners of the shares in the parent company.

446. It is necessary to consider why C was seeking financial information in relation to JFC's loans and security – the obvious reason is that it would be highly relevant to its lending decision as such loans and security (including any pledges of shares) would impact upon its own exposure and available recourse in the event of default – this was certainly so of pledges of foundation shares in the JFC parent company. The importance of any such pledges to a bank such as C is recognised in paragraph 44 of Mr Kekhman's Written Closing Submissions (albeit in the context of a denial that there was any such request) where it is said that *"It is extraordinary that no specific request for information as to the nature and amount of the value of security in relation to the very large Sberbank Loan was ever made."*

447. It is against the backdrop of the obvious relevance of any pledge (as would be apparent both to C and to those acting on behalf of JFC) that C's draft Excel spreadsheet of 7 June 2011 is to be considered with its column headed, *"Type of security and pledge value"* and the tables of debts and securities completed by JFC are to be considered.

448. In the context of the matters set out above, C's request (in the draft Excel spreadsheet) seeking *"Type of security and pledge value"* is to be understood, and I have no doubt was understood by JFC employees, as seeking detail of any security and any pledges, not only in relation to JFC itself, but any other security or pledge impacting upon C's security in respect of the proposed loan. It is clear that it was understood by JFC employees as extending beyond security provided by the borrower JFC Russia and other group companies, because in relation to the Sberbank loan, the entry provided, "*Sureties by NFC JFC CJSC, Cargo JFC CJSC, V.A. Kekhman, Yu.V. Zakharova, A.S. Afanasiev*" and thus the entry disclosed various personal guarantees, including by Mr Kekhman and therefore

did not merely record security provided by the borrower JFC Russia or other group companies. In this context the pledge of Mr Kekhman's foundation's shares in the JFC parent company was not mentioned – yet it was a form of security for the Sberbank loan, and of obvious relevance to a prospective lender (just as were the personal guarantees that were notified).

449. What was being stated in the tables is also to be viewed in the context of the fact that on 19 May 2011 and 30 June 2011 (as I have found) JFC told C that JFC was subject to a negative pledge clause from the syndicate and on 23 June 2011 Ms Dakhina emailed C the terms of that clause. Furthermore it will be recalled that on 2 August 2011 Ms Dakhina sent C further information consisting of the end of Q2 balance sheet and profit and loss report and schedule of loans and securities granted (updated from the previous data which was to end of 2010), and the list of loans excluded the pledge from the security listed on the Sberbank loan.

450. In providing the information that it did in the tables (in response to a request for details of *"Type of security and pledge value")* including by providing details of personal guarantees, set against the backdrop that I have identified and its communications with C as also identified, I consider and find that JFC was representing that it had provided disclosure of all relevant security and pledges, and that there were no other pledges, including no pledge of the holding company (JFC BVI) shares (i.e. the Security Representation). Accordingly I am satisfied and find that the Security Representation was made. That representation continued until the loan was granted on 2 September 2011.

N.10 The fraudulent nature of the Security Representation and Mr Kekhman's knowledge and instruction

451. The Sberbank pledge was of obvious importance to any bank as I have already identified. The negative pledge clause in the syndicated loan was mentioned in the meetings, and the relevant clause was provided to C. It was a reason why no pledge could be given to C, but it also implied (consistent with what was stated in the tables) that no pledge such as the pledge of Mr Kekhman's foundation's shares in the JFC parent company, had been granted.

452. I reject the suggestion, made on Mr Kekhman's behalf, that the Security Representation might have been made without any deliberately false or dishonest intent. That is an unrealistic suggestion that fails to give any or any proper regard to the obvious importance of such information and the knowledge of JFC employees of the pledge. It was something that should have been disclosed given its obvious importance and can only not have been disclosed as a result of a conscious decision not to disclose it. It is not realistic to suggest that it could be a simple omission.

453. Ms Dakhina, Ms Osipova and Mrs Zakharova knew of the pledge, and given its obvious importance to any lender (as identified above) the decision not to refer to the pledge can only have been deliberate. Such conclusion is entirely consistent with, and corroborated by, a much later email on 23 February 2012 from Ms Yakovleva to Mrs Zakharova and Ms Dakhina commenting on questions from C, her answers being in red: "***Yulia Vladimirovna [Zakharova], we did not disclose to anyone the information about the pledge of JFC Group Holding shares (Sberbank and Saint Petersburg)***" (bold and underlined emphasis in original). Such emphasis indicates an acknowledgment that JFC employees were aware that the pledge had not been "*disclosed*" (which is the language of a decision not to provide such information), and were aware of the significance of the same (hence the emphasis by use of bold underlined text).

454. A decision not to disclose such matters was, on any view, not something that any JFC employee would do without that being on the instruction, and with the consent, of Mrs Zakharova, who in turn would not have made such a significant or serious decision without what she was doing being on the instruction of, and with the consent of, Mr Kekhman, as to which the findings I have made at Section N.6 above in the context of the Garold Representation are equally apt and applicable in relation to the Security Representation. In addition to the evidence of Mr Afanasiev, which I have accepted, as identified in Section M.2 above (including, in particular that in paragraphs 50 and 64 of his third statement), it was Mr Kekhman's own evidence that it was natural for him to be consulted about significant decisions (day 7 page 78 18 to 23) , big projects or where there was a crisis (day 7 page 79 lines 12-14), or problems (day 8 page 20 lines 21-22)

or *"when large sums of money needed, or could be spent, then they would turn to me"* – day 7 page 79 lines 3 to 5, and he required that he should be consulted by Mrs Zakharova, and his approval obtained before the taking of any *"Significant decisions, that's correct. Serious decisions. That is true"* (day 10 page 10 line 21 to page 11 line 4). The decision not to disclose the Sberbank loan to C was a significant or serious decision that would only have been made on Mr Kekhman's direction and with his approval, and I infer from the findings I have already made as to the relationship between Mr Kekhman and Mrs Zakharova that the Security Representation was made on Mr Kekhman's direction and with his approval. Equally when giving such direction and approval Mr Kekhman knew he had pledged his shares to Sberbank (as he accepts) and accordingly he knew that the Security Representation was untrue.

N.11 C's reliance on the Security Representation

455. It is accepted on Mr Kekhman's behalf that if the Security Representation was made (as I have found it was) it was untrue (given the Sberbank pledge) and that it was made with the intention of inducing the loan (paragraph 6 of the Agreed Facts). It is, however denied that C in fact relied upon the Security Representation when deciding to make the loan.

456. That denial must be set against the backdrop of the acceptance that the Security Representation was made with the intention of inducing the loan (so it was the intention of the representor that it would be relied upon), and the fact that the existence of the pledge of Mr Kekhman's foundation's shares in the JFC parent company would be of obvious importance to any lender (it gave a co-lender, Sberbank, an additional lever that would place Sberbank in a better position than C in the event of an insolvency or anticipated insolvency). In this regard Sberbank had been granted a pledge over 49% of the shares and there was a very high likelihood (approaching a certainty by the time the Loan was granted) that the pledge would be increased above 50%.

457. Mr Shatalov's evidence in both his witness statement (paragraph 15) and in his oral evidence when cross-examined (day 6 pages 45-46) was that he seriously doubted that the credit department would have taken the application forward to

the Credit Committee had they known about the Sberbank pledge, and even if they did, that he and his fellow members of the Credit Committee would have considered it to be a *"barring factor to any positive decision"* on the loan. Mr Nikishaev's evidence was to like effect (paragraph 11 of his statement). Such evidence is credible, I found both witnesses to be honest and reliable in the evidence they gave and I accept it. It is true that the security department documentation referred only to the syndicated loan guarantees, and that the Credit Committee did not ask for information in relation to security on the Sberbank loan (about which both Mr Shatalov and Mr Nikishaev were cross-examined), and it is true that C did not persist in demanding that Mr Kekhman provide a personal guarantee, but the fact is that the Sberbank pledge was important information which by its very nature was likely to influence any lender, and I find the evidence of C's witnesses that it would have been a barring factor to any positive decision as entirely credible and I accept it. In such circumstances I am satisfied and find that C did rely upon the Security Representation when agreeing to the Loan and that C would not have entered into the loan agreements or otherwise lent to JFC Russia had the Security Representation not been made.

N.12 Loss and the Deceit Claim based on the Garold Representations

458. I have found that C did rely upon the Security Representation when agreeing the Loan, and that C would not have entered into the loan agreements or otherwise lent to JFC Russia had the Security Representation not been made. Accordingly C's loss arising as a result of the deceit is the difference between the sums advanced and recoveries made (I address the question of recoveries made in Section P below).

N.13 Russian Law and Deceit

459. In the present case, and as I have found, C has established that it was induced to enter into the loan agreements with JFC Russia as a result of the Security Representation and that the same was made on the direction of Mr Kekhman and with his approval, and accordingly C is entitled to compensation from Mr Kekhman for its loss under Article 1064. The harm it has suffered is the "*ordinary consequence*" of Mr Kekhman's conduct and indeed was its intended

consequence. The compensation to which C is entitled is the sums advanced less recoveries made. As set out in Section P this consists of the sums advanced of US$140 million plus □305,732,000 less recoveries of US$5,895,278.81 plus interest, and C is entitled to judgment against Mr Kekhman in such sums.

O. The Dissipation Claim

460. In the light of my finding that C's claim in respect of each of the Garold Representations claim and the Security Representation claim succeeds, the dissipation claim is academic (as the sums claimed are not in addition to those that C claims and is entitled to in relation to the Garold Representations and the Security Representation). However it has been fully argued before me and I will accordingly address it below.

O.1 The pleaded case

461. This alternative claim against Mr Kekhman under Articles 1064 and 1080 of the Russian Civil Code is in relation to alleged wrongful dissipations by JFC Russia and the guarantors (in particular Garold) of assets, which were carried out after the loan from C was in contemplation in mid-May 2011. It is C's case that Mr Kekhman caused dissipation of assets of the JFC Group and diversion of business away from the JFC Group, in each case, it is said, in favour of companies which it is said are beneficially owned by D, so as to defraud C as a creditor both of JFC Russia and of the various guarantor companies within the JFC Group (including JFC BVI, Garold and Whilm) (as advanced at paragraphs 30 to 33 and 49 to 50 of the Particulars of Claim). It is said that the result of such conduct was to reduce substantially the recoveries that C would otherwise have made by enforcing the Loan Agreements and the Guarantees. Such loss is quantified by C as some US$18,531,000.

462. The alleged dissipation involved many complex series of transfers between numerous companies (within the various groups of companies in which it is said Mr Kekhman was beneficially interested and controlled). The fact of the various transfers (which are identified in the first and second expert reports of Mr Misiura is not in dispute). It is C's case that there is no evidence that the transfers were for value and that these transfers were dissipations carried out on the instructions of

Mr Kekhman with the intention of defrauding creditors including C, in favour of companies said to be beneficially owned and controlled by Mr Kekhman.

463. As already noted in Section A.1, the dissipation claim is pleaded in terms of an unlawful means conspiracy (by reference to the elements of such a claim under English law) because at one stage such a claim was pleaded under English law. Thus it is advanced in terms of "*on dates unknown in or about 2011 and/or early 2012*" Mr Kekhman (with the BVI Companies and/or with JFC Russia or with Mrs Zakharova) wrongfully and with the predominant intention, alternatively with the intention, to injure C by unlawful means conspired and combined together to defraud C by (a) causing the BVI Companies to dissipate their assets and (b) causing the transfer of assets and diversion of corporate opportunities out of the JFC Group with the intention to interfere with the economic interests of C by unlawful means, by making it impossible for the BVI Companies or JFC Russia to repay the monies advanced by C. It is C's case that the dissipation took place on instructions from Mr Kekhman to Mrs Zakharova (at least until February 2012) which were then passed to JFC staff to implement (See Further Information response 1).

464. C's case is that on such facts (if proved) Mr Kekhman is liable to it under Articles 1064 and 1080 of the Russian Civil Code. For his part Mr Kekhman denies that he was a party to any alleged unlawful means conspiracy, or that he is under any liability under Russian law in respect of the matters alleged if proved.

O.2 The sums claimed

465. The sums claimed are addressed in Mr Misiura's second report, and total US$14,578,000 in respect of potential dissipations by Garold (paragraph 4.2.4 Misiura 2) and US$3,953,000 in respect of JFC Russia (including US$1,234,000 relating to payment to Maroc Fruit Board) a total sum claimed of US$18,531,000.

O.3 The dissipations

466. The dissipation claim is pleaded at paragraphs 28 to 56 of the Particulars of Claim, paragraphs 20 to 31 of the Reply and responses 1 to 4 in the Further

Information dated 22 June 2015. The following transactions were said to amount to wrongful dissipation:-

(1) $19.5m payments by Garold made up of:

a. US$8.37 million paid by Garold to Malbec, Ategra and Colant in September – November 2011;
b. US$4.34 million paid by Garold to Ategra and Colant in September – November 2011;
c. US$783,000 paid by Garold to Gepson on 13 June 2012;
d. US$5 million paid by Garold to Biany in October 2011(said not to have been returned to the JFC Group);
e. US$1.3 million paid by Vidya to Maxum Link in 2011;
f. US$650,000 paid by Garold to Malbec and on to Kronos via Lambera, and to CJSC New City via Tavrosun in September 2011.

(2) Business diverted to a parallel structure of companies the following:

a. Prometey – purchase and sale of bananas in 2011;
b. INT Charterlink and Apus– freight services business of Whilm (and its subsidiary Vidya) diverted in 2011 - including US$73 million paid to Charterlink for freight in October 2011 to April 2012; US$3.15m paid to Charterlink of freight in October – December 2011; and US$1.15m paid by Vidya to Charterlink in December 2011;
c. Tradement and/or Cetus – fruit sales belonging to Garold in 2011.

(3) US$16 million paid by Prometey to various companies in 2011 which money it is said must have come from JFC Russia.

O.4 The nature of the dissipations and Mr Kekhman's involvement

467. The fact of the various transfers (which are identified in the first and second expert reports of Mr Misiura) is not in dispute. It is C's case that there is no evidence that the transfers were for value and that these transfers were dissipations carried out on the instructions of Mr Kekhman with the intention of

defrauding creditors including C, in favour of companies said to be beneficially owned and controlled by Mr Kekhman.

468. I have already found that Mr Kekhman was involved in all major decisions at JFC. I am satisfied that he benefitted from the dissipations in favour of the Other Companies and LQ Companies as addressed in Sections F, H and L. The relevant transfers of assets were made on the instructions of JFC staff including Ms Dakhina and Ms Osipova. These were staff reporting to Mrs Zakharova until February 2012. I am satisfied that these employees would not have made the transfers without instructions from Mrs Zakharova who in turn would not have given such instructions without her having in turn acting on the instructions of Mr Kekhman, and I so find.

469. I am satisfied that the wrongful dissipations by JFC Russia and the guarantors, including Garold, after the Loan was in contemplation (mid-May 2011) were made with an intention to injure C by putting money out of C's reach of enforcement, and inducing JFC Russia and the guarantors to breach their obligations to C, and that Mr Kekhman conspired with Mrs Zakharova and the relevant JFC companies to dissipate such assets.

O.5 Loss and the Dissipations Claim

470. Had the dissipations not been performed there would have been greater sums available in Garold and JFC Russia at the time of its insolvency. As identified above the loss has been quantified by Mr Misiura in the sum of US$18,531,000.

O.6 Russian Law and the Dissipations Claim

471. I have already addressed the relevant principles of Russian law in relation to a claim under Article 1064 of the Russian Civil Code, which it will be recalled provides, *"Harm caused to the person or property of a citizen and also harm caused to the property of a legal person shall be subject to compensation in full by the person who has caused harm."*

472. Mr Kulkov and Mr Holiner are agreed (Joint Statement, Issue 1 paragraph 1) (as I have already found), that in order to establish liability under Article 1064, four matters must be proved:

(1) Harm suffered by the claimant;

(2) The defendant has committed an unlawful act or omission;

(3) A causal link between the unlawful conduct of the defendant and the harm suffered by the claimant; and

(4) The defendant is at fault.

473. In relation to the first of these, and harm suffered by C, C has suffered harm as a result of Mr Kekhman's conduct in procuring the transfer of assets and the diversion of business from Garold and JFC Russia with intent to defraud creditors because C would have made greater recoveries in respect of its loans had the dissipations not taken place. Accordingly this requirement is satisfied.

474. In relation to the second requirement that the defendant has committed an unlawful act or omission. The experts are agreed that the causing of harm to another is prima facie unlawful, and therefore once a claimant has discharged its burden of proving that the defendant's conduct has caused it harm, such conduct is presumed to be unlawful unless there is a lawful justification for it (Issue 2A areas of agreement). It will be recalled that there is a difference between the experts in relation to the second requirement. In the opinion of Mr Kulkov (1) this is presumed, and (2) the burden is on the defendant to establish that he was lawfully permitted to cause harm to the claimant whereas, in contrast, Mr Holiner contends that even where harm is proven, if there is a prima facie lawful basis for the alleged conduct or the defendant invokes a lawful justification defence, it is up to the claimant to prove that the defendant acted unlawfully, though Mr Holiner accepts that where harm is proven, D must at least advance a prima facie lawful justification - that is a prima facie right to cause harm to C.

475. So far as the dissipation claim is concerned, it is not suggested that Mr Kekhman had a prima facie lawful basis for the conduct that I have found, nor has he

invoked a lawful justification defence. In such circumstances it is again not unnecessary for me to resolve this difference between the experts, although as already addressed in Section N.8 above, if I had to have done so, I would have preferred the view of Mr Kulkov on the basis that it accords with the general delictual principle that any harm caused to a person or property is deemed to be unlawful unless otherwise provided by law. On the facts of this case Mr Kekhman has not identified, still less established, that he had a lawful right to cause harm to C. Even if he had, the exercise of such a right in circumstances where it was to defraud creditors would necessarily amount to bad faith and as such would be unlawful.

476. In relation to the third requirement, namely a direct causal link between the unlawful conduct of the defendant and the harm suffered by the claimant (Issue 2B Areas of Agreement), in the present case there is a direct causal link between the unlawful conduct of Mr Kekhman and harm suffered by C. In this regard the conduct that I have found would be expected in the ordinary course of events to cause harm to the creditors of JFC Russia and Garold including C (indeed as I have found it was intended so to do), and did cause such harm.

477. In relation to the fourth requirement that the defendant be at fault, Mr Kekhman was at fault in intentionally causing harm to creditors including C.

478. I would only add that after the conclusion of the hearing, Fishman Brand Stone, Mr Kekhman's solicitors, wrote a letter dated 19 January 2018 enclosing a Second Supplementary Report of Drew Holiner ("Holiner 3") on Russian law and seeking directions in relation to the admission of the same which was responded to in a letter of PCB Litigation dated 26 January 2018 and accompanying Claimant's Submissions objecting to the admission of the same. I ordered that Mr Kekhman have permission to serve Holiner 3, without prejudice to the right of the Claimant to argue thereafter as to (i) its relevance or otherwise to the existing pleaded issues and (ii) the Claimant's objection to any new defence or defences sought to be advanced by Mr Kekhman. C served a further report of Mr Kulkov in response ("Kulkov 3") and following an exchange of further skeleton arguments I heard oral argument on the issues arising at a further hearing on 21 February 2018.

479. Prior to that further hearing it appeared that Holiner 3 was being relied upon by Mr Kekhman to suggest that as a matter of law a claim under Article 1064 in respect of the actions of a controller of a company that harms a creditor as a result of the dissipation of the assets of the company was not available against the creditor. If such an argument was being advanced I am satisfied that that would have amounted to a new defence that had not been pleaded previously.

480. However at that hearing Mr Stuart disavowed that Mr Kekhman was advancing any new defence by reference to Holiner 3, and did not seek permission to amend the existing Defence. Had a new defence been run, and had permission been sought to amend, I would have considered it far too late to do so, the experts having given their evidence, the trial having concluded, and the experts not having been recalled. As it was, it is fair to say that the arguments advanced by Mr Stuart changed somewhat during the course of the hearing.

481. From Mr Stuart's oral submissions, it was apparent that the proposition being asserted was that when considering whether there had been causation of harm under Article 1064 a dissipation of assets of a company by the defendant causing harm indirectly to the creditor did not satisfy the requirement of causation (it appears as a matter of law). However I am satisfied from the evidence that Mr Holiner himself gave when cross-examined that the question of causation was one of fact. Thus on day 13 at page 140 lines 2 to 20 Mr Holiner confirmed that he agreed with what Mr Kulkov had stated at paragraph 34 of Kulkov 1:-

> *"Q. As I say it sets out at paragraph 34, the second paragraph underlined:*
> *"In determing the causal relation between the breach of obligation and the loss it is necessary to take into account inter alia the fact to what consequence in the ordinary course of business such a breach might lead. Where the occurrence of losses, compensation of which is claimed by the creditors, the ordinary consequence of the breach of obligation committed by the debtor then the existence of causal relation between such breach and the losses proved by the credit is assumed"*
> *So what that, I suggest to you, shows is that if you satisfy that test on the facts of a particular case then causation is assumed, causation is established; do you agree?*
> *A. I would add or subtract nothing from that statement."*

482. In the present case I am satisfied and have found, that there is a direct causal link between the unlawful conduct of Mr Kekhman and harm suffered by C. In this

regard the conduct that I have found would be expected in the ordinary course of events to cause harm to the creditors of JFC Russia and Garold including C (indeed as I have found it was intended so to do), and did cause such harm.

483. I am also satisfied that there is nothing in Holiner 3, or in the written or oral submissions made before me at the further hearing, which impacts upon the findings I have made in relation to Russian law, or Mr Kekhman's liability thereunder, in relation to the dissipation claim.

484. Mr Kekhman is accordingly liable to pay compensation to C for the loss it has suffered, and in the amount claimed, namely US$18,531,000 (albeit that this sum is subsumed within the amount recoverable in relation to the Garold and Security Representation claims).

O.7 The alleged impact of the English bankruptcy on the Dissipation Claim

485. As already foreshadowed in Section A.1 above, by way of defence to the claim for losses suffered by C as a result of the conspiracy, Mr Kekhman seeks to rely upon section 281 of the Insolvency Act 1986 in the context of the fact that he was made bankrupt by the English court on his application on 5 October 2012 and automatically discharged on 5 October 2013. Section 281(1) of that Act provides that the discharge of a bankrupt releases the bankrupt from liability for all debts provable in the bankruptcy subject to certain exceptions.

486. In this regard section 281(3) of that Act provides:

> *"Discharge does not release the bankrupt from any bankruptcy debt which he incurred in respect of, or forbearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which he was a party."*

487. It is common ground that the word "*fraud*" encompasses deceit, and in consequence it is accepted that there is no discharge in respect of the claims based on deceit (the Garold Representation and Security Representation claim). However it is contended, on behalf of Mr Kekhman, that "*fraud*" means deceit (and nothing else) and that conspiracy and/or procuring breach of contract under Article 1064 of the Russian Civil Code is not "*fraud or fraudulent breach of trust*" with the result that Mr Kekhman has been discharged from any such liability.

488. I reject that contention which is contrary to existing case law. I consider that the exception extends to any debts of the bankrupt resulting from his actual dishonesty. In this regard I agree with the analysis of HHJ Simon Barker QC in *Templeton Insurance Ltd v Brunswick* [2012] EWHC 1522(Ch), and what was stated by him at paragraph [55]:

> "In my judgment, a 'fraudulent breach of contract' or a 'fraudulent breach of fiduciary duty' is as capable of coming within the meaning of the word 'fraud' at s.281(3) as is the tort of deceit. The purpose of s.281(3) as a qualification to s.281(1) is to prevent a person from using the process of bankruptcy or invoking his bankruptcy and discharge therefrom as a medium for becoming free from debts and liabilities resulting from his actual dishonesty. In other words, s.281(3) is an anti-avoidance and preservative provision aimed at continuing the rights of a creditor who has been defrauded by the bankrupt. Thus, 'fraud' as the gateway to the application of s.281(3) and a route through the barrier imposed by s.281(1) is not satisfied by establishing 'fraud' in the equity sense ('against conscience' or 'unconscionable'). To pass through the gateway and remain on the road to recourse against the discharged bankrupt, a creditor must prove 'fraud' in the common law sense; this is not to be understood as restricting access only to bankruptcy debts founded in the tort of deceit, but rather as a reference to debts tainted by actual dishonesty."

489. I have found Mr Kekhman to be party to a conspiracy to defraud C by the dissipation of the assets of the JFC Group, and as such his conduct is dishonest and his consequent liability to C is "*tainted by actual dishonesty*" and falls within the rubric of "*fraud*" in section 281(3) of the Act. Accordingly he was not discharged from his liability to C.

P. Credit for Recoveries

490. C acknowledges that it must give credit for any recoveries it has made, and accordingly gives credit for recoveries made from the sale of South American assets seized from JFC in the amount of US$5,895,278.81. However at paragraph 64 of Mr Kekhman's Written Closing Submissions, under a heading entitled *"Failure to give sufficient credit for the South American Assets seized by C"* it is said Mr Kekhman *"does not accept that that figure is accurate and this issue was tested by way of cross-examination of C's relevant witness. Mr Afanasiev estimated the true value at US$40 million"*. There is no pleaded case of any failure to mitigate, and if such a case was to be advanced it should have been pleaded and Mr Kekhman did not seek or obtain permission to amend his

Defence. The actual figure recovered was not challenged in cross-examination, and absent a properly pleased case on failure to mitigate the point is not available to Mr Kekhman. In any event the obligation to mitigate is a low one, the matter was not addressed in the witness statements (as it would have been had the point been pleaded), nor was there any detailed exploration of the matter with the relevant witnesses (Mr Tchernenko and Mr Afanasiev). Had the point been available to Mr Kekhman, the evidence I have heard would not have justified a finding of a failure to mitigate.

491. There was a different issue which was pleaded by Mr Kekhman, namely an allegation that C breached an implied obligation in the guarantees of the BVI companies by assisting Mr Afanasiev to abstract JFC assets (Defence paragraph 10(3) and Schedule paragraph 44). The alleged legal consequence of any such matter was never spelt out, but in any event there is no witness or documentary evidence of wrongdoing, and no such allegation of wrongdoing was put to Mr Afanasiev. It does not appear in Mr Kekhman's Written Closing Submissions. If relevant, I am not satisfied on the evidence that there was any such wrongdoing, and this plea does not assist Mr Kekhman.

Q. Conclusion

492. In the above circumstances C's claim succeeds in relation to each of the Garold Representations and the Security Representation, and C is entitled to judgment in respect of the same for US$140million plus □305,732,000 less recoveries of US$5,895,278.81 together with interest. C's claim also succeeds in relation to the dissipation claim in the sum of US$18,531,000 (albeit that this sum is subsumed within the amount recoverable in relation to the Garold Representations claim and/or the Security Representation claim).

493. I trust the parties will be able to agree an Order consequential upon my judgment including as to interest and costs, but I will hear from the parties in the event of any failure to agree in respect of any consequential matters.