Techteryx Ltd v (1) Aria Commodities DMCC (2) Mashreq Bank PSC (3) Emirates Nbd Bank PJSC (4) Abu Dhabi Islamic Bank PJSC [2025] DIFC DEC 001

OCTOBER 17, 2025 DIGITAL ECONOMY COURT - JUDGMENTS

Claim No. DEC 001/2025

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

TECHTERYX LTD.

Claimant

and

(1) ARIA COMMODITIES DMCC
(2) MASHREQ BANK PSC
(3) EMIRATES NBD BANK PJSC
(4) ABU DHABI ISLAMIC BANK PJSC

Defendants

Hearing :	30 July 2025
Counsel :	David Holloway and Daniel McCarthy instructed by Al Tamimi & Company for the Claimant Tom Montagu-Smith KC and George McPherson instructed by Quinn Emanuel Urquhart & Sullivan UK LLP for the Defendant
Judgment :	16 September 2025
Amended Judgment :	17 October 2025

AMENDED JUDGMENT OF H.E. JUSTICE MICHAEL BLACK KC

UPON the Order of H.E. Justice Michael Black KC dated 28 February 2025 transferring Case No. CFI-020-2025 to Case No. DEC-001-2025 and granting alia the following injunctions:

(a) a proprietary injunction prohibiting the First Defendant from disposing of, dealing with, or diminishing cash or assets to the value of the sum of USD 456,000,000 transferred to the First Defendant or the traceable proceeds thereof (the "Proprietary Order"); and

(b) a worldwide freezing injunction, prohibiting the First Defendant from removing from Dubai any of its assets which are in Dubai up to the value of USD 456,000,000 or in any way disposing of, dealing with or diminishing the value of any of its assets whether in or outside Dubai up to the same value (the "WFO")

AND UPON the Claimant's Application No. DEC-001-2025/2 dated 13 March 2025 to continue the Proprietary Order and the WFO

AND UPON the Order of H.E. Justice Michael Black KC dated 18 March 2025 continuing the Proprietary Order and the WFO on varied terms (respectively, the "Varied Proprietary Order" and the "Varied WFO") until a further return date hearing on 12 May 2025

AND UPON the Order of H.E. Justice Michael Black KC dated 14 April 2025 prohibiting the First Defendant from taking any steps in relation to the Securitization until after the Return Date on 12 May 2025 or further order of the Court (the "Securitization Injunction")

AND UPON the First Defendant's Application No. DEC-001-2025/10 dated 28 April 2025 to discharge the Varied Proprietary Order and the Varied WFO

AND UPON the Order of H.E. Justice Michael Black KC dated 16 May 2025 (as amended on 19 May 2025) directing that there be a further return date hearing commencing on 21 July 2025 (the "Final Return Date Hearing"), continuing the Varied Proprietary Order, the Varied WFO and the Securitization Injunction (together, the "Injunctions") until the Final Return Date Hearing (or further order of the Court) and permitting the First Defendant to serve rejoinder evidence in relation to the Final Return Date Hearing

AND UPON the First Defendant serving by way of rejoinder evidence in relation to the Final Return Date Hearing (among other evidence) a report from FTI Consulting dated 24 June 2025 prepared in accordance with the requirements of RDC Part 31 (the "FTI Report")

AND UPON hearing Counsel of the Claimant and the Counsel of the First Defendant at the Final Return Date hearing held on 22-24 July 2025 before H.E. Justice Michael Black KC

AND UPON the Court on 29 July 2025:

(a) deciding that the Injunctions shall remain in place until further order;

(b) providing a broad indication of its reasons by email dated 29 July 2025; and

(c) indicating that a judgment setting out the reasons in full (the "Judgment") will be provided to the parties in due course

AND UPON hearing Counsel of the Claimant and the Counsel of the First Defendant at a further hearing held on 30 July 2025 before H.E. Justice Michael Black KC (the "30 July Hearing")

AND UPON the First Defendant making an oral application at the 30 July Hearing for (a) permission to appeal pursuant to RDC 44.6(1) against the Court's decision of 29 July 2025 that the Injunctions shall remain in place; and (b) an extension of time pursuant to RDC 44.11(1) directing that its appellant's notice in support of any further application for permission to appeal from the Court of Appeal be filed within 21 days of the date on which the Judgment is handed down

AND UPON the Order of H.E. Justice Michael Black KC dated 7 August 2025

IT IS HEREBY ORDERED AND DECLARED THAT:

1. I direct that the following injunctions shall remain continued until further order of the Court:

(1) a proprietary injunction prohibiting the First Defendant from disposing of, dealing with, or diminishing cash or assets to the value of the sum of USD 456,000,000 transferred to the First Defendant or the traceable proceeds thereof; and

(2) a worldwide freezing injunction, prohibiting the First Defendant from removing from Dubai any of its assets which are in Dubai up to the value of USD 456,000,000 or in any way disposing of, dealing with or diminishing the value of any of its assets whether in or outside Dubai up to the same value.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 16 September 2025
Date of re-issue: 17 October 2025
At: 3pm

SCHEDULE OF REASONS

INTRODUCTION

Procedural History

1. This judgment is on the final Return Date for a without notice proprietary and freezing injunction originally granted on 28 February 2025 with a return date of 17 March 2025 (the First Return Date: **"FRD"**) in aid of proceedings in the High Court of The Hong Kong Special Administrative Region Court of First Instance Action No. 161 of 2023 (**"the HK Proceedings"**).

2. The final Return Date hearing took place over three days commencing on 22 July 2025. The Claimant (**"Techteryx"**) was represented by Mr David Holloway and Mr Daniel McCarthy; the First Defendant (**"DMCC"**) was represented by Mr Tom Montagu-Smith KC and Mr George McPherson. At the invitation of the parties on 30 July 2025 I made my order and gave brief oral reasons. I ordered that the proprietary and freezing injunctions granted on 28 February 2025 shall continue until further Order of the Court. These are the detailed reasons for my Order.

3. The HK Proceedings concern an alleged fraud in relation to the reserves held by a company issuing a form of cryptocurrency called a stablecoin. I use the expression *"cryptocurrency"* advisedly because neither this Court, nor, as far as I am aware, has any other common law court yet decided whether crypto coins are in fact *"currency"*. I will explain how this type of stablecoin was structured below, but in brief, a stablecoin is meant to be backed by some form of asset, often and in this case, a defined sum in a fiat currency (the US dollar). Stablecoins are likely to assume growing importance with the recent passage of the GENIUS Act in the USA.

4. The reserves held by a stablecoin issuer represent the sums paid by purchasers of the tokens (**"holders"**) and from which the holders are paid when they redeem the tokens. An issuer will assess the degree to which liquidity is required to meet redemptions and invest the balance. In the HK Proceedings it is alleged that the invested reserves were fraudulently misappropriated. While this Court will not be trying the substantive claim it will be necessary to consider whether there is a serious issue to be tried or good arguable case in the HK Proceedings, which in turn will require consideration of the legal characterisation of the reserves and the manner in which they were held and transferred.

5. In examining the HK Proceedings, the parties have agreed that I should assume that the common law rules applicable in Hong Kong are the same as those in England.

6. Following a hearing on 17 March 2025, the Order was varied, and the return date was adjourned to 12 May 2025 for a 3-day hearing. I gave detailed reasons on 24 March 2025 (**"FRD Judgment"**).

7. There were procedural variations to the FRD Order on 3 April 2025 and 7 April 2025.

8. On 14 April 2025 I made a without notice Order further amending the Order to prohibit the First Defendant from taking any steps in relation to the Securitisation of assets said to be derived from the stablecoin reserves (as to which see below) until after the Return Date, or further order of the Court (**"the Securitisation Order"**).

9. On 9 May 2025 I gave directions for the service of further evidence, vacated the second and third days of the 12 May hearing, retaining the 12 May itself for various applications and directions, and that the Return Date be adjourned to be heard at a further return date hearing on the first open date after 30 June 2025 with a time estimate of 4 days.

10. On 16 May 2025 I determined the applications and gave further directions, in particular that the Final Return Date Hearing shall commence on 21 July 2025 with a length of hearing of 4 days. On 19 May 2025 that Order was amended and on 21 May 2025 I gave my reasons for the Order dated 16 May 2025 as amended on 19 May 2025 (**"the 21 May 2025 Judgment"**).

11. In the 21 May 2025 Judgment, I provided a glossary of terms. I have updated it slightly to take account of terms used by the parties in evidence and in various documents and further evidence.

Glossary

12. In this judgment, I will adopt the following abbreviations:

THE PARTIES TO THE PROCEEDINGS	
Techteryx/C	The Claimant
DMCC/R1/Aria DMCC	The First Defendant
Mashreq	Mashreq Bank PSC, the Second Defendant
ENBD	Emirates NBD Bank PJSC, the Third Defendant
ADIB	Abu Dhabi Islamic Bank PJSC, the Fourth Defendant
OTHER RELEVANT PARTIES	
ABI	Aria Bio Industries FZE
ACFF/The Fund/Aria CFF	ARIA Commodity Finance Fund
ACM FZE	Aria Capital Management FZE (Dubai), investment manager of the Fund
ACM Ltd	ARIA Capital Management (Cayman) which is the holder of the management Shares in the Fund
AAFS Securitisation S.A.	The proposed “securitisation” agent for the Fund; an entity incorporated in Luxembourg.
ARIA East Africa	Aria Industries East Africa Limited (wrongly described as “Aria Bio Industries East Africa” in MWB-A-1 (Tanzania)
ARIA Bio Industries TZ	Aria Bio Industries International Limited (Tanzania)
ARIA Bio Industries SA	Aria Bio-Industries (Pty) Limited (South Africa)
ARIA Energy SA	Aria Energy Trading Pty (South Africa)
ARIA Cayman	Aria Commodities (Cayman) Limited
ARIA Commodities TZ	Aria Commodities International Limited (Tanzania)
ARIA AAAX	Aria AAAX Australia Pty Limited, (Australia)
ARIA US	Aria Commodities US LLC (USA)
ARIA Americas	Aria Commodities Americas LLC (USA), a direct subsidiary of ARIA US
ARIA Geneva	Aria Commodities Geneva SA (Switzerland)
ARIA Singapore	Aria Commodities (Singapore) Pte Limited
ARIA Glopet/Glopet	Glopet Capital Corp (Cayman)
Bara Coal	PT Bara Energi Makmur
Bara Coal Project	PT Bara Energi Makmur Coal, a project in East Kalimantan, Indonesia
Carbon Resilience	Carbon Resilience Pte Ltd, a Singapore-based private company
Mr Chok	Vincent Chok, a director and CEO of Legacy Trust and FDT
CIMA	Cayman Islands Monetary Authority
Crossbridge Capital/Crossbridge	Crossbridge Capital Asia Pte Ltd
Mr [Lorraine	Christian Boehnke De Lorraine-Elbeuf, Chief Executive Officer of Archblock LLC and a manager of TrueCoin LLC

Mr Gangell	Managing Director at Aria Bio Industries FZE
Glass Door	Glass Door Limited, a company receiving referral fees from DMCC
FDT	First Digital Trust Limited
Finaport	Finaport Pte Ltd
Mazars	FORVIS MAZARS Chartered Accountants L.L.C - Dubai Branch Auditors of the Fund
FZE	ARIA Bio FZE (Hamriyah Freezone)
GAL	Golden Ayn Limited
IFIT	IFIT Fund Services Greece
IMS	International Management Services Ltd
Kibo Energy	Kibo Energy PLC
Kibo Cyprus	Kibo Mining (Cyprus) Limited
Kibo Mozambique	Kibo Energy Mozambique Limited
Kibo Tanzania	Kibo Exploration (Tanzania) Limited
Legacy	Legacy Trust Company Limited
Ms Li	Li Jinmei, Sole director and UBO of Techteryx
MWB	Matthew William Brittain
Pinewood Resources/Pinewood	Pinewood Resources Limited
Salva Mining	Salva Mining Pty Ltd, mining interests valuers
Mr Sun	Justin Sun, alleged UBO of Techteryx
TrueCoin	TrueCoin LLC
Mr Van Vuuren	Non-executive director of ACFF
Mr Yai	Yai Sukonthabhund, Partner at Finaport; former director and CEO of Crossbridge; sole member and alternative director of Glass Door
LEGAL REPRESENTATIVES	
ATCO	Al Tamimi & Company, Techteryx's legal representatives
QE	Quinn Emanuel Urquhart & Sullivan UK LLP, DMCC's legal representatives
ORDERS AND APPLICATIONS	
WFO	The Order of 28 February 2025 as varied on 18 March and 14 April 2025 - both the proprietary injunction and the freezing order
Variation Order	Order dated 18 March 2025 amending the WFO
Fortification	The sum of USD 2 million directed to be paid as fortification to the cross-undertaking in damages in the WFO by the Variation Order
Securitization Injunction	Injunction made without notice on 14 April 2025 restraining DMCC from taking steps in relation to the Securitisation pursuant to Techteryx's Application No. DEC-001-2025/7

Continuation Application	Application No. DEC-001-2025/2 dated 13 March 2025 - Techteryx's application for continuation of the WFO until further order
Disclosure Application	Application No. DEC-001-2025/6 dated 17 April 2025 - Techteryx's application for disclosure of documents
SFC Application	Application No. DEC-001-2025/8 dated 24 April 2025 – DMCC's application that Techteryx provide security in respect of DMCC's costs of the proceedings
Attachments Withdrawal Application	Application No. DEC-001-2025/9 dated 25 April 2025 – DMCC's application that Techteryx file a request with the Dubai Courts to withdraw the Attachments
The Attachments	The precautionary attachments in respect of bank accounts held by DMCC with the Second to Fourth Defendants issued by the Dubai Courts on 28 March 2025 and 22 April 2025
Discharge Application	Application No. DEC-001-2025/10 dated 28 April 2025 – DMCC's application for discharge of the WFO
Adjournment Application	Application No. DEC-001-2025/11 dated 5 May 2025 – DMCC's application for permission to serve responsive expert evidence, fixing the time for service of rejoinder evidence and adjourning the Discharge Application
EVIDENCE	
Li-A-1	First Affirmation of Li Jinmei dated 25 February 2025
MWB-A-1	First Affidavit of Matthew William Brittain dated 14 March 2025
MWB-WS-2	Second Witness Statement of Matthew William Brittain dated 16 March 2025
MWB-A-2	Second Affidavit of Matthew William Brittain dated 19 March 2025
MWB-A-3	Third Affidavit of Matthew William Brittain dated 10 April 2025
MWB-WS-4	Fourth Witness Statement of Matthew William Brittain dated 23 April 2025
KO-WS-1	First Witness Statement of Karabeth Ovenden dated 23 April 2025
MWB-WS-5	Fifth Witness Statement of Matthew William Brittain dated 25 April 2025
RJ-WS-3	Third Witness Statement of Rita Catherine Jaballah dated 30 April 2025
KO-WS-2	Second Witness Statement of Karabeth Ovenden dated 30 April 2025
MWB-WS-6	Sixth Witness Statement of Matthew William Brittain dated 1 May 2025
Li-A-4	Fourth Affirmation of Li Jinmei dated 2 May 2025
RJ-WS-5	Fifth Witness Statement of Rita Catherine Jaballah dated 9 May 2025
RVV-A-1	First Affirmation of Ruan Van Vuuren dated 20 June 2025
DAG-WS-1	First Witness Statement of David Andrew Gangell dated 23 June 2025
MWB-A-4	Fourth Affidavit of Matthew William Brittain dated 23 June 2025
EXPERT REPORTS	
Kroll Report	Report from Kroll (office and authors undisclosed but probably Kroll Hong Kong) dated 1 May 2025 by financial advisory consultants Kroll on the Fund and related entities (for Techteryx)
Kroll Disclosure Report	Supplemental Report dated 9 May 2025 on documents disclosed per QE's letter of 30 April 2025 (for Techteryx)
Ogier Memorandum	Legal memorandum dated 1 May 2025 on Cayman law prepared by Ogier (Cayman) LLP (for Techteryx)
FTI Report	Report from FTI Consulting LLP (London) dated 24 June 2025 in reply to Kroll Reports (for DMCC)

Campbells Memorandum	Legal memorandum dated 23 June 2025 on Cayman law prepared by Campbells LLP (for DMCC)
HEARINGS	
First Return Date Hearing/FRD	17 March 2025
Second Return Date Hearing	12 May 2025
Final Return Date Hearing	22 - 24 July 2025
MISCELLANEOUS	
AIMM	Account Investment Management Mandate dated 31 March 2020 made between Legacy and Crossbridge
AML	Anti-Money Laundering
AUA	Assets under administration
ASA	Administrative Services Agreement that was entered into between the Fund and IFIT Fund Services dated 7 March 2019
ASOC	Amended Statement of Claim in the HK Proceedings
Client Agreement/CA	Client Agreement dated 28 September 2020 made between Techteryx and FDT
Court Law	Dubai Law No. (2) of 2025 Concerning Dubai International Financial Centre Courts
CSU	Confirmation of Subscription of Units
Custody Services Agreement/CSA	Custody Service Agreement dated 28 September 2020 made between Techteryx and FDT
Deed of Transfer	Deed of Transfer, Settlement and Release dated 23 May 2024 which was entered into between ACFF, DMCC and Carbon Resilience
Deed of Amendment	Deed of amendment of the Escrow Services Agreement dated 16 September 2022
DIMA	Discretionary Investment Management Agreement dated 18 March 2021 entered into between FDT and Finaport
DS	Distribution Statement
Escrow Account	Escrow account established by FDT on behalf of Techteryx pursuant to the Escrow Services Agreement
Escrow Amount	Funds that have cleared the banking system pursuant to terms of the Escrow Services Agreement
Escrow Services Agreement/ESA	Escrow Services Agreement dated 13 January 2021 made between Techteryx and FDT
The HK Proceedings	High Court of The Hong Kong Special Administrative Region Court of First Instance Action No. 161 OF 2023
Holders	Holders of TUSD
Initial Investments	USD 97 million of the Reserves invested in the Fund by Legacy between July and December 2020
KYC	Know Your Client
Legacy ESA	Escrow Services Agreement made between Legacy and TrueCoin on or about 17 May 2019 and re-executed on or about 27 June 2019 as amended by a Deed of Variation dated 24 March 2020
Legacy Proceedings	Proceedings brought by Techteryx against Legacy in relation to the Initial Investments in Hong Kong on 24 November 2023, HCA 1906/2023

M&A	the Fund's memorandum and articles of association as adopted by special resolution dated 17 January 2019
The Memorandum	Memorandum of Guidance as to Enforcement between the DIFC Courts the High Court of Hong Kong SAR PRC
MSA	Master Services Agreement dated 2 December 2020 between Techteryx and TrueCoin
PPM	Private Placement Memorandum
2019 PPM	Private Placement Memorandum issued by the Fund in June 2019
2020 PPM	Private Placement Memorandum issued by the Fund in May 2020
RDC	Rules of the DIFC Courts
SAA	Strategic Alliance Agreement dated 2 December 2020 between Techteryx and TrueCoin
SAF	Subscription Application Form
The Six Remittances/DMCC Payments	The second tranche of intended investments in the Fund
TUSD	TrueUSD, a US Dollar pegged stablecoin
UBO	Ultimate beneficial owner
WFO	Worldwide Freezing Order

Brief Background

13. While this judgment must be read with the FRD and 21 May Judgments to understand the full context it is necessary to repeat some of the background to make the Judgment comprehensible. The underlying issues are of some complexity, technically, factually and legally. The Final Return Date hearing occupied 3 days, and the hearing bundles were in excess of 14,000 pages.

14. Techteryx is a BVI company. Prior to 2020, a Delaware company, TrueCoin, carrying on business in California, began offering a stablecoin called TrueUSD (**"TUSD"**). A stablecoin is a form of crypto asset where the token value is pegged to a fiat currency – in this case the US dollar. One TUSD was worth one USD. Purchasers would obtain and could redeem (or *"burn"*) TUSD through the TrueCoin website. There was therefore a cash fund equivalent to the number of TUSD in circulation referred to by all parties as the **"Reserves"**. The Reserves would of course have to be liquid at least in part to meet any redemption requests.

15. The Reserves were held by Legacy Trust Company Limited (**"Legacy"**) (a Hong Kong company) under an Escrow Services Agreement (**"ESA"**) which provided that no more that 85% of the Reserves would be invested and investment decisions would only be made on the basis of signed investment proposals based on the advice of a licensed and regulated advisor. To that end, Legacy entered into an Account Investment Management Mandate (**"AIMM"**) with Crossbridge Capital Asia Pte (a Singapore company) (**"Crossbridge"**).

16. In December 2020, Techteryx entered into a Strategic Alliance Agreement (**"SAA"**) and a Master Services Agreement (**"MSA"**) with TrueCoin whereby Techteryx acquired certain assets from TrueCoin including TrueCoin's rights and interests in the Reserves. There are legal issues in particular as to whether the coinholders (**"Holders"**) remained beneficially entitled to the Reserves or whether Techteryx acquired beneficial ownership.

17. During negotiations, but prior to the SAA and MSA Techteryx, entered into an agreement for trust, fiduciary and custody services and a custody services agreement (**"CSA"**) with First Digital Trust Limited (**"FDT"**) (a Hong Kong company).

18. Techteryx says that without its consent in January 2021, TrueCoin, Legacy and FDT transferred the assets from Legacy to FDT. FDT was apparently the digital asset arm spun out of Legacy but remaining under the same management, notably, Mr Vincent Chok. Whether or not there was consent, very shortly thereafter Techteryx entered into an Escrow Services Agreement (**"the ESA"**) with FDT subject to the same terms as those that governed the agreement with Legacy. In March 2021, FDT entered into a Discretionary Investment Management Agreement (**"DIMA"**) with a Singapore company called Finaport Pte Ltd (**"Finaport"**).

19. There are allegedly links between Legacy, FDT, Crossbridge and Finaport on which Techteryx bases an allegation of fraudulent conspiracy.

20. Ostensibly on 8 March 2021, Techteryx passed a board resolution appointing a Mr de Lorraine (who is alleged to be implicated in the fraud) as Authorized Person to deal with FDT and approved an investment proposal to invest in Aria Commodity Finance Fund (the **"Aria Fund"**, **"ACFF"** or **"the Fund"**). The Aria Fund is a Cayman Fund that had apparently been recommended by Crossbridge based on a Fund Term Sheet for a Commodity Finance Medium Term Note. There is a discrepancy concerning the respective dates of the Board Resolution and the DIMA.

21. Of some significance was the investment proposal by Finaport which varied the Crossbridge proposal, disapplying the 15% liquidity requirement, removing the need for signed investment proposals based on the advice of a licensed and regulated advisor, and permitting Finaport to invest in Aria Fund.

22. In April 2021, on the joint instruction of Techteryx and Legacy, Legacy was instructed to transfer all Escrow Assets to FDT.

23. Between May 2021 and March 2022, FDT is said to have invested USD 468 million of the Reserves in Aria Fund in instruments called "Class C USD 3 YR 6% Coupon". Of those sums USD 456 million was in fact directly remitted to Aria DMCC (a Dubai freezone company) (**"the 6 Remittances"/"DMCC Payments"**).

Product	Reference	Units	USD	Settlement	Maturity	Subscriber	Recipient
Class C USD 3 YR 6% Coupon	SU011169	12,000	12M	31/5/21	27/5/24	FDT	Aria Fund
ditto	SREF/5812	10,000	10M	30/6/21	30/6/24	Legacy	Aria DMCC
ditto	SREF/5813	17,000	17M	ditto	ditto	Legacy	ditto
ditto	SREF/5818	100,000	100M	31/7/21	31/7/24	FDT	ditto
ditto	N/A	100,000	100M	31/8/21	31/8/24	FDT	ditto
ditto	SU011174	29,000	29M	ditto	ditto	FDT	ditto
ditto	SU011195	200,000	200M	31/3/22	31/3/25	FDT	ditto

24. The Managing Director of Aria DMCC is Mr Matthew William Brittain (**"Mr Brittain"/"MWB"**) and his wife was the sole shareholder. He is also the CEO and Chief Investment Officer of Aria Fund and the sole director and sole shareholder in Aria Capital Management, a Cayman company, the UBO and controller of Aria Fund.

25. There are considerable issues of fact as to why the 6 Remittances were not paid to the Fund but DMCC. MWB says this was at the request of FDT. Mr Chok denies this. MWB has said on different occasions they were loans by FDT to DMCC and an investment in DMCC. There are anomalies in the documentation regarding the payments. DMCC has been unable to show precisely how the money was used, what assets were purchased or what became of them. DMCC says this is a function of the lapse of time.

26. What DMCC does say is that towards the end of 2022/the beginning of 2023 FDT noticed that it had not been issued with shares in the Fund. MWB says that the position was regularised by what he called a *"Porting"* exercise. A new set of subscription documents was created, backdated to the dates of the original DMCC Payments. The DMCC Payments were then treated as loans from the Fund to DMCC and they also were repaid *in specie* by the transfer of assets from DMCC to the Fund. DMCC has been unable to demonstrate how this was done from original documentation but says, *"look at the end result"*: one can see a reduction in indebtedness of DMCC to the Fund and an increase in assets, one can see that FDT now holds shares in the Fund with the face value of the Remittances and the Fund's Auditors, Mazars, appear to have accepted the process.

27. Legacy and FDT are now the only investors in the Fund and MWB estimates that 80% of the Fund's assets are derived from the DMCC Payments. It is not known if that estimate is accurate.

28. For its part, Techteryx submitted that the Porting is a fiction first raised in the course of these proceedings to explain away the anomalies.

29. Aria Fund did honour some redemptions, but by no means all, and failed to pay coupon or repay the instruments on their maturity.

30. Techteryx issued the HK Proceedings on 19 December 2023 against FDT, Finaport, the Fund and DMCC. The proceedings alleged that the F d and DMCC were constructive trustees of the 6 Remittances. In the light of the submissions before me it will be necessary to analyse the pleaded claims in some detail.

31. The proceedings were amended to add TrueCoin and Mr de Lorraine as Defendants on 11 December 2024. I am told that permission to amend has been given but not permission to serve out of the jurisdiction. DMCC is contesting permission on various grounds. The amendments were substantial and added allegations of fraudulent conspiracy against DMCC and the Fund. In particular it was alleged that the Fund was at all material times a fraud and perpetrating a fraud, and any story or representation about investing in the Fund as a fund which makes genuine investments to generate returns was also fraudulent. The specific allegation of fraudulent combination did not include DMCC although there were allegations including all Defendants and damages were claimed against all Defendants.

32. DMCC is either unwilling or unable to pay the outstanding redemptions and coupon in cash and has suggested that the Fund will undertake a **"Securitisation"** of certain unidentified assets. MWB's first reference to securitisation was in MWB-A-1 in which a securitisation structure was described which allowed an investor to receive the income streams of the Fund's assets by the issuance of a bond, and so avoid the sale of such assets. The bond, which would grant the investor the right to cashflows over a period of time, would be 'asset-backed' against assets such as a bitumen plant in Hamriyah, United Arab Emirates. The value of the bond, once issued to the investor, could be realised by the investor by selling it in the market or to another investor. He said the scheme was illustrated in a presentation that he produced, but the presentation did not relate to securitising assets like manufacturing facilities or coal mines but commodity inventory. In MWB-A-3-MWB gave an update, he said that the assets held by the Fund (including its interests in the Tanzanian mining assets and coal reserves, represented by the preference shares) will be sold to a securitisation vehicle (a Luxembourg entity) in consideration for the issue of bonds to the Fund.

33. Techteryx claimed that this was an attempt to place the Fund's assets beyond enforcement, and I made the Securitisation Order on its application.

THE APPLICABLE PRINCIPLES OF DIFC LAW

Power to Grant Injunction

34. The power of the DIFC Courts to hear and determine applications for interim or precautionary measures related to applications and claims brought outside the DIFC is now found in Article 15(4) of Dubai Law No. (2) of 2025 Concerning Dubai International Financial Centre Courts (**"the Court Law"**).

35. Techteryx recognises that prior to the introduction of the Court Law the Court's jurisdiction and power to make interim orders was predicated on the theory that the relief was made to secure a judgment of the DIFC Court enforcing the judgment in the foreign proceedings. This was clearly stated in *Carmon Reestrutura v Cuenda* [2024] DIFC CA 003 (26 November 2024) [194]:

> *"The grant of a jurisdiction to recognise and enforce a foreign judgment must encompass, if only by implication, the grant of power necessary to prevent that jurisdiction from being thwarted. The DIFC Court has express jurisdiction to recognise and enforce foreign judgments. The jurisdiction is thwarted if a party defendant to a foreign proceeding which may yield such a judgment can dissipate its assets whether within the DIFC or otherwise."*

36. Techteryx submits that the Court's power is no longer *"tethered"* to the ultimate recognition of a foreign judgment, freestanding and unfettered. It points to a similar English provision - s.25(1) of the Civil Jurisdiction and Judgments Act 1982 and the commentary Gee, Commercial *Injunctions* (7th ed.), 6-003-4. Gee notes that section 25 as extended provides a discretionary jurisdiction to act in relation to substantive proceedings on the merits of a matter anywhere in the world for the sole purpose of seeking interim relief in relation to substantive proceedings anywhere else in the world.

37. This is disputed by DMCC. DMCC relies on Carmon at [202] where it is stated that the Court's powers to grant interim relief are available to prevent the Court's jurisdiction being thwarted including the jurisdiction to recognise and enforce foreign judgments. That jurisdiction may be thwarted if a party to a foreign proceeding seeks to dissipate its assets in advance of an apprehended judgment which might be susceptible to recognition and enforcement in the DIFC. DMCC submits that Article 15(4) has not changed the test but merely expressly stated what was an implicit power. The exercise of that power must be linked to a judgment ultimately enforceable in the DIFC.

38. DMCC points to the position at common law as set out by the Privy Council on appeal from the Court of Appeal of the Eastern Caribbean in *Convoy Collateral Ltd v Broad Idea International Ltd* [2021] UKPC 24 and the judgment of Lord Leggatt at [92]:

> *"In applying for a freezing injunction, the relevance of a cause of action, where there is one, is evidential: in showing that there is a sufficient basis for anticipating that a judgment will be obtained to justify the exercise of the courts power to freeze assets against which such a judgment, when obtained, can be enforced. That is the rationale for requiring the applicant to show a good arguable case; but there is no reason why the good arguably, case need be that the applicant is entitled to substantive relief from the court, which is asked*

to grant a freezing injunction. What in principle matters is that the applicant has a good arguable case for being granted substantive relief in the form of a judgment that will be enforceable by the court from which a freezing injunction is sought. It would be "a pointless insularity", in the phrase used by Hoffmann J in Bayer AG v Winter (No 2) [1986] FSR 357, 362 - or as Lord Nicholls said in Mercedes Benz [1996] AC284, 311D, "a pointlessly negative attitude, lacking a sensible basis" - to limit the remedy to cases where the judgment is being sought in the territorial jurisdiction where the injunction is needed to preserve assets against which the judgment can be enforced."

39. DMCC takes from that passage that the fundamental question is whether the applicant has a good arguable case for being granted substantive relief in the form of a judgment that will be enforceable by the court from which a freezing injunction is sought. DMCC develops its argument by noting that the DIFC Courts will enforce a monetary judgment of the Hong Kong High Court adopting the common law approach. This is helpfully summarised in the *"Memorandum of Guidance as to Enforcement between the DIFC Courts and the High Court of Hong Kong SAR PRC"* (**"the Memorandum"**):

(1) The Memorandum is concerned only with judgments requiring a person to pay a sum of money to another person (see also *Dicey, Morris & Collins on the Conflict of Laws* (16th ed.) 14-025 to 14-026 which states that a foreign judgment for a debt or definite sum of money may be enforced at common law by a claim but if, however, the judgment orders the defendant to do anything else, e.g. specifically perform a contract, it will not support an action, though it may be res judicata as to the issues of substance, with the consequence that there may be summary judgment as to liability on a fresh claim brought on the original cause of action.

(2) The HK High Court must have had jurisdiction according to the rules on conflict of laws applied by the DIFC Courts to determine the subject matter of the dispute.

Grounds for Injunction

40. There is less dispute about the principles governing the circumstances in which an injunction will be granted.

41. In the present case there are two Orders - a proprietary injunction and freezing order (**"WFO"**). The applicable principles are similar but there are differences.

42. In each case it must first be shown that there is a serious issue to be tried. The test has been formulated in different words in the authorities but they are ultimately distinctions without a difference (*"good arguable case": Larmag Holding BV v First Abu Dhabi Bank PJSC* [2019] DIFC CFI 030, [10] ; *"a sufficiently arguable case for a proprietary remedy": Madoff Securities International Ltd v Raven* [2011] EWHC 3102 (Comm) [141]; *"good arguable case" and "serious issue to be tried" "should be equated": Dos Santos v Unitel SA* [2024] EWCA Civ 1109 [106]). *Dos Santos* [96] confirmed that the correct test as to what constitutes a good arguable case for the purposes of the merits threshold for the grant of a freezing injunction is that formulated by Mustill J in *The Niedersachsen* [1984] 1 All ER 398, namely *"a case which is more than barely capable of serious argument, and yet not necessarily one which the judge believes to have a better than 50% chance of success."*

43. In each case it is necessary to show that the balance of convenience favours the grant of an injunction (*Larmag Holding BV v First Abu Dhabi Bank, op cit*), in other words, will damages be an adequate remedy, or will the cross-undertaking in damages be adequate. If there is doubt about either the Court must try to assess whether granting or withholding an injunction is more likely to produce a just result (*National Commercial Bank Jamaica v Olint Corporation* [2009] 1 WLR 1405, [16]-[17]).

44. In each case it is necessary to show it is just and expedient or convenient or appropriate to grant the injunction (*Larmag Holding BV v First Abu Dhabi Bank, [25]; Globe Investment Holdings Limited v (1) Commercial Bank Of Dubai (2) Hortin Holding Limited (3) Lodge Hill Limited (4) Westdene Investment Limited (5) VS 1897 (Cayman) Limited* [2023] DIFC CFI 028 [40]). In *Globe* I summarised the factors derived from *ArcelorMittal USA LLC v Mr Ravi Ruia* [2020] EWHC 740 (Comm) directed in particular to injunctions in aid of foreign proceedings:

(1) whether the making of the order will interfere with the management of the case in the primary court, e.g. where the order is inconsistent with an order in the primary court or overlaps with it;

(2) whether it is the policy in the primary jurisdiction not itself to make worldwide freezing/disclosure orders;

(3) whether there is a danger that the orders made will give rise to disharmony or confusion and/or risk of conflicting, inconsistent or overlapping orders in other jurisdictions, in particular the courts of the state where the person enjoined resides or where the assets affected are located;

(4) whether at the time the order is sought there is likely to be a potential conflict as to jurisdiction rendering it inappropriate and inexpedient to make a worldwide order;

(5) whether, in a case where jurisdiction is resisted and disobedience to be expected the court will be making an order which it cannot enforce.

45. Further, it is well known that in practice banks will not permit any payment to be made once a WFO is imposed unless there is a court order or an agreement specifically sanctioning that payment which inherently undermines the ability to do business with third parties (*ArcelorMittal* [240]).

46. Techteryx points to a passage in *ArcelorMittal* at [75] which it says support the contention that fraud is a special case:

"There is no precise definition of what is meant by the phrase 'international fraud' found in the case-law, but I do not consider that it is confined to cases where the underlying cause of action is a claim in deceit or a proprietary claim relating to the theft of assets. If there is a strong case of serious wrongdoing comprising conduct on a large or repeated scale whereby a company, or the group of which it is a member, is acting in a manner prejudicial to its creditors, and in bad faith, then I see no reason why the English court should not be willing to intervene rather than to stand by and allow the conduct to continue and, to put the matter colloquially, to let the wrongdoer get away with it. In the present case, I would regard the attempted dissipation of Essar Steel's US$ 1.5 billion asset, in the face of the commencement of arbitration proceedings, as sufficient in itself potentially to warrant intervention under the 'international fraud' exception, or as constituting 'exceptional circumstances'. It is clear from Duvalier that the scale of the wrongdoing may be relevant to the question of whether the court should intervene: see per Staughton LJ at page 217. The other examples (Algoma, Numetal, DRI) of conduct, in different jurisdictions, which was fraudulent or prejudicial to creditors, reinforces the conclusion that there are exceptional circumstances applicable in the present case."

47. An additional requirement for the grant of a WFO is that there is a risk of dissipation. The applicant must produce evidence that shows that:

(1) the defendant has or may have assets which will be available to satisfy the judgment against him, if judgment is given in the claimant's favour; and

(2) there is a real risk that the judgment will not be satisfied by reason of an unjustifiable disposal of those assets (*Ithmar Capital Ltd v 8 Investment FZE* [2008] DIFC CA 001 (17 March 2008) [25].)

48. The risk of dissipation must be supported by *'solid evidence'*. It is not enough to establish a sufficient risk of dissipation merely to establish a good arguable case that the defendant has been guilty of dishonesty; it is necessary to scrutinise the evidence to see whether the dishonesty in question points to the conclusion that assets are likely to be dissipated. What must be threatened is unjustified dissipation. A freezing order is not intended to stop a corporate defendant from dealing with its assets in the normal course of business. If the defendant is not threatening to change the existing way of handling their assets, it will not be sufficient to show that such continued conduct would prejudice the claimant's ability to enforce a judgment (*Fundo Soberano de Angola v Jose Filomeno Santos* [2018] EWHC 2199 (Comm) at [86].)

Discussion

49. It will be rare that an injunction is sought in aid of foreign proceedings from the DIFC Courts against a respondent over whom the Court does not have jurisdiction (jurisdiction is conceded in this case) but it is open to the respondent to argue that any judgment in the foreign proceedings will not be enforceable in this Court.

50. The jurisdiction of this Court to enforce a foreign monetary judgment is succinctly described in the Memorandum in which it is stated at paragraph 6.4 that the HK High Court must have had jurisdiction, according to the rules on conflict of laws applied by the DIFC Courts to determine the subject matter of the dispute. The DIFC Courts will generally consider the HK High Court to have had the required jurisdiction only where the person against whom the judgment was given:

(1) was, at the time the proceedings were commenced, present in the jurisdiction of the HK High Court; or

(2) was the claimant, or counterclaimant, in the proceedings; or

(3) submitted to the jurisdiction of the HK High Court; or

(4) agreed, before commencement of the proceedings, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the HK High Court.

Essentially there must be presence before, or submission to the jurisdiction of, the foreign court, even if the foreign court asserts jurisdiction on other grounds.

51. If Article 15(4) of the Court Law does not require there to be a potential judgment enforceable in the DIFC, it will not matter whether any judgment in the HK Proceedings would be enforceable at common law in the DIFC.

52. Article 15(4) is silent as to any conditions for its operation and therefore must be interpreted.

53. I do not consider that the objective statutory intention of Article 15(4) was a radical departure from the principles articulated in *Carmon*. Prior to the Court Law the Rules of the DIFC Courts (**"RDC"**) contemplated that an application may be made in relation to proceedings which are taking place, or will take place, outside the DIFC (RDC 25.24(1)). In *Carmon* the Court of Appeal held citing the High Court of Australia (its apex court):

> *"201. The Court further cited Lord Nicholls and went on:*
> *"The power to make a freezing order in relation to an anticipated judgment of a foreign court, which when made would be registrable by order of the Supreme Court under the Foreign Judgments Act, is within the inherent power of the Supreme Court. That is because the making of the order is to protect a process of registration and enforcement in the Supreme Court which is in prospect of being invoked."*
>
> *202. The same logic applies to the scope of the power of the DIFC CFI to issue freezing orders. It has power to grant interim remedies under Pt 25 of the RDC, including freezing orders which extend to freezing orders restraining a party from dealing with any assets whether located within the jurisdiction or not - RDC 25.1 (6). Further, the Court may grant such a remedy whether or not there has been a claim for a final remedy of that kind - RDC 25.3. Those powers are available to prevent the Court's jurisdiction being thwarted. That includes its jurisdiction to recognise and enforce foreign judgments. That jurisdiction may be thwarted if a party to a foreign proceeding seeks to dissipate its assets in advance of an apprehended judgment which might be susceptible to recognition and enforcement in the DIFC.*
>
> *203. There is, of course, always a question of discretion as to whether a freezing order should be granted in such a case and, if so, the scope of the order. In many cases it would be expected that such a freezing order would be limited to assets within Dubai. While there is power to make a WFO, the question of discretion - whether such an order should be made - is one which requires careful consideration."*

54. It is clear that the Court of Appeal considered that the DIFC Courts had the power to make a WFO to prevent the jurisdiction of another court being thwarted by the dissipation of assets in advance of a judgment of that court that might be susceptible to recognition and enforcement in the DIFC. The Court of Appeal also counselled against judicial overreach.

55. The latter point highlights a policy consideration. Is it conceivable that the Dubai legislature would set up the DIFC Courts, courts in a financial freezone with a limited statutory jurisdiction, as a universal policeman where any party to proceedings anywhere in the world can seek an order restraining a counterparty from dealing with its assets where there is no other role for the DIFC Courts? I doubt that and consider that the wording of the Article militates against that conclusion.

56. The Article confers the power on the DIFC Courts *"to hear and determine applications for interim or precautionary measures related to … Applications, claims, or current or future arbitral proceedings brought outside the DIFC seeking suitable precautionary measures within the DIFC."* The words *"within the DIFC"* cannot mean that the precautionary measures are confined to assets within the DIFC, that would be to abolish the Court's jurisdiction to grant WFOs by a side-swipe. The words are clearly in contradistinction to *"outside the DIFC"* and reflect the words of the preceding sub- article which speaks of *"applications and claims that fall within the jurisdiction of the DIFC Courts"*. The words must mean seeking suitable precautionary measures within the jurisdiction of the DIFC Courts which includes the enforcement of foreign judgments (Article 31(4) of the Court Law).

57. I also consider that the guidance and reasoning in *Broad Idea* is an aid to interpretation of Article 15(4). In *Carmon* the Court Appeal recognised that the decision was *"of significance"*. They cited the observations that what mattered was the respondent to the injunction was in possession or control of assets that are or would be available to satisfy a judgment through *"some process of enforcement"* enforceable by the court from which a freezing injunction is sought. *Broad Idea* was followed (albeit with reservations concerning the differences in procedural regimes) in several DIFC Court of First Instance cases as I indicated in *Globe Investment Holdings* before (per the Court of Appeal) *"the Court in Sandra Holding took a wrong turning"*

58. In summary, I am of the view that Article 15(4) was intended to make plain and give a firm statutory basis to that which had hitherto had to be inferred from the combination of the Court's power to recognise and enforce foreign judgments and its power to grant interim remedies. I also consider that the intention was to confirm the DIFC Court's adherences to the widely-accepted principles of comity and international

common law described in *Broad Idea*.

59. It follows that there *is* a requirement that the assets enjoined should be available to satisfy a judgment through some process of enforcement in the DIFC Courts. At [95] Lord Leggatt said in *Broad Idea*:

> *"There is no difference in principle between a case where a freezing injunction is sought in anticipation of (i) a future judgment of a BVI court in substantive proceedings brought in the BVI, (ii) a future judgment of a foreign court enforceable by the BVI court on registration in the BVI, and (iii) a future judgment of a BVI court obtained in an action brought to enforce a foreign judgment. In each case the injunction, if granted, is directed towards the enforcement of obligations to satisfy judgments which do not yet exist. In each case the question is whether there is a sufficient likelihood that a judgment enforceable through the process of the BVI court will be obtained, and a sufficient risk that without a freezing injunction execution of the judgment will be thwarted, to justify the grant of relief."*

60. DMCC submits that none of the four criteria to establish the HK High Court's jurisdiction required for the enforcement of monetary judgment (as set out at paragraph 50 above) applies as DMCC is contesting the jurisdiction. This is apparent from DMCC's application in the HK Proceedings for:

(1) An Order that the ex parte Order dated 15 December 2023 (the **"Service Out Order"**), the Concurrent Amended Writ of Summons issued pursuant thereto on 22 December 2023 and/or service thereof on Aria, and all subsequent proceedings herein as against Aria, be set aside;

(2) A declaration that in the circumstances of the case the Court has no jurisdiction, or should not exercise any jurisdiction it may have, over Aria in respect of the subject matter of the claim, relief and/or remedy sought in this action;

(3) Further and/or in the alternative, an Order that the claims against Aria be stayed on the ground of *forum non conveniens*;

(4) Further and/or in the alternative, pursuant to Section 16 of the High Court Ordinance (Cap 4) and/or the Court's inherent jurisdiction, an Order that the action be stayed on such grounds and such conditions as the Court deems appropriate; and

(5) Costs of this Application and of this action be paid by the Plaintiff ("Techteryx") to Aria forthwith on an indemnity basis.

61. Techteryx contends that DMCC has made a voluntary appearance in the HK proceedings. It has filed applications, and multiple witness statements. It has been represented by a team of solicitors, and counsel. DMCC was under no obligation to do so. The appearance was in every sense voluntary. The appearance also went far beyond a mere protest of jurisdiction.

62. I am not persuaded, even on a good arguable case basis, that DMCC has submitted to the jurisdiction of the HK High Court as it seems to me that DMCC is unequivocally contesting the jurisdiction. Insofar as it has condescended on the merits it is only to support its submission that there is no serious issue to be tried which I understand to be a ground for discharge of the *ex parte* order for service out of the jurisdiction.

63. The present situation is that DMCC is currently a party to the HK Proceedings. DMCC has not addressed me on the merits of its claim to be discharged from those proceedings. Unlike the test of jurisdiction for the enforcement of a foreign judgment, that is a matter to be determined by the HK Courts. Given the current position, and my inability to assess whether DMCC will be successful in its application to contest the jurisdiction of the HK Courts, it seems impossible for me to find that there is no serious issue concerning DMCC's role in the proceedings.

64. Further, DMCC submits that injunctions and declarations may be capable of recognition and so be deployed to support a fresh claim for the same relief, but such a claim would not be for enforcement of a foreign judgment and so would require some other jurisdictional foundation.

65. Neither party addressed me specifically on alternatives to an action brought on a HK judgment or the form of any other process of enforcement.

66. I think however that DMCC is taking a deliberately narrow approach. The object of the policy of the *"Enforcement Principle"* as explained in both *Carmon* and *Broad Idea* is to prevent the jurisdiction of the primary court from being thwarted. It would do Techteryx no good if it merely identified and froze the sums allegedly held on constructive trust. At some point, if successful, Techteryx will have to seek an order for payment of sums found on the taking of the account in the form of restitution or equitable compensation. That, it seems to me, is the future judgment in respect of which this Court must consider whether there is a sufficient likelihood that a judgment enforceable through the process of this Court will be obtained, and that there is a sufficient risk that without a freezing injunction execution of the judgment will be thwarted so as to justify the grant of relief.

67. At paragraph (11) of the Prayer to the Amended Statement of Claim in the HK Proceedings (**"ASOC"**) Techteryx claims *"An order that the 4th Defendant do account to the Plaintiff as constructive trustee the said sums, together with their traceable proceeds, substitutes, income, or fruits and all such assets or part thereof"* (see paragraph 100 below). I consider that any order under this Prayer would be for a debt or definite sum of money immediately enforceable by action in the DIFC Courts.

68. It also is possible that this Court might have primary jurisdiction over a direct claim against DMCC. MWB says that when FDT made the subscription for investments in the Fund it warranted that it was the beneficial owner of the funds as opposed to subscribing on behalf of its customers. There is a tick-box for the two alternatives, and the former was ticked on the back-dated subscription forms but not on what is said to be the originals. The originals also contain a non-exclusive jurisdiction clause in favour of the courts of the United Arab Emirates, which as a matter of established DIFC jurisprudence, includes this Court. There may therefore be direct jurisdiction in this Court over a claim made by Techteryx on the basis that subscription agreements were made with DMCC by FDT on its behalf.

69. In my judgment the policy embodied in the Enforcement Principle means that one must look beyond the immediate relief claimed in the HK proceedings. It is thus possible, to paraphrase Lord Leggatt, there is no difference in principle between a case where a freezing injunction is sought in anticipation of a future judgment of the DIFC Court in substantive proceedings brought in the DIFC and a future judgment of the DIFC Court obtained in an action brought to enforce a foreign judgment: in each case the Court must determine (1) whether there is a sufficient likelihood that a judgment enforceable through the process of the DIFC Courts will be obtained, and (2) a sufficient risk that without a freezing injunction execution of the judgment will be thwarted, to justify the grant of relief. (1) requires an examination of the merits on the serious issue to be tried basis (including for a proprietary injunction and of particular relevance in the present case, a sufficiently arguable case for a proprietary remedy) and (2) requires consideration of the balance of convenience, just and expedient and (for a WFO) risk of dissipation. In short, the Court should consider whether there is a serious issue to be tried that there is a sufficient likelihood of a judgment in the HK proceedings enforceable in this Court by whatever means, not only just by an action on the judgment, but also (for example) by parallel proceedings in which the HK judgment might serve as a *res judicata*.

THE HK PROCEEDINGS

70. The HK Proceedings rely on what they call *"The TrueCoin Story"*. There are lengthy particulars at Annex 1 to the ASOC. I regret there can be no substitute for setting them out in full in this judgment and I append Annex 1 in its entirety as an image in the Appendix hereto.

71. It is not my place to comment on the pleading generally nor whether it satisfies the principles of English/Hong Kong practice governing allegations of fraud. I am however invited to examine it in detail so far as it makes allegations against DMCC. I agree that I must for two reasons: first, if I am to make an order at all in aid of the HK Proceedings I must understand what is claimed; and secondly, it is a pre-requisite to any order that Techteryx shall demonstrate that it has *"a good arguable case"*.

72. Travelling though the particulars in Annex 1 there is no allegation against DMCC that it was involved in the propagation of the TrueCoin Story.

73. At paragraph 10 of the ASOC it is alleged that FDT, Finaport, ACFF, TrueCoin and Mr de Lorraine (a manager of TrueCoin) represented in furtherance of and consistent with the TrueCoin Story, that the money was invested in the Fund as a fund focused on investing in liquid and principal-protected trade finance instruments. This was untrue. The money (or substantially most thereof) was not invested in the Fund, nor was the Fund focused on investing in trade finance instruments, still less in liquid and principal protected trade finance instruments.

74. It is further alleged that sums amounting to at least USD 450 million were not transferred to the Fund, but were instead diverted directly to accounts of DMCC in Dubai. The Fund itself admits it never received this money. DMCC turns out to be a company solely owned by the spouse of the controller of the manager of the Fund. Techteryx had no relationship or any dealings with DMCC. None of the Defendants, including the Fund, had given any explanation for any need to transfer substantial sums to some offshore accounts of an offshore entity. The diversion of funds and transfers were blatant misappropriation and money-laundering

75. I would add parenthetically that in fact it was the Fund that was based offshore in Cayman, DMCC is based onshore in Dubai as are the banking accounts into which the 6 Remittances were initially paid.

76. At paragraph 14 of the ASOC Techteryx summarised its case that it claimed *"against the Defendants for fraud, conspiracy, breach of trust, breach of fiduciary duty. breach of contract, and /or negligence"*. At this point in the pleading it is not asserted which cause of action is maintained against DMCC.

77. The Client Agreement, CSA and ESA are referenced at paragraph 39 of the ASOC. It is pleaded at paragraph 41 of the ASOC that pursuant to the ESA, FDT agreed to provide Techteryx with *"trustee, fiduciary, custody and other related services"*. Paragraph 42 continues that as a trustee and fiduciary, in its holding, management and investment of the Reserves pursuant to the ESA, FDT was subject to the statutory duty of care in section 3A of the Trustee Ordinance (the **"Statutory Duty of Care"**). As incidents of that duty, and as a result of the specific restrictions on FDT's power to invest the Escrow Amount pursuant to Clause 4.d of the ESA it is alleged that FDT was under certain duties.

78. At paragraph 51 of the ASOC Techteryx makes reference to two Private Placement Memoranda (**"PPMs"**) issued by the Fund in June 2019 and May 2020 (**"the 2019 PPM"** and **"the 2020 PPM"**) together with a Fund Fact Sheet issued in April 2020. In summary the Fund's business was described as short-term asset-backed trade finance usually between 15 and 120 days with an average duration of 42 days fully or substantially covered by credit insurance at Lloyds.

79. Paragraph 56 records that the 6 Remittances were paid to DMCC. The subscription forms set out in the ASOC all relate to investments in the Fund.

80. At paragraph 63 it is alleged:

> *"The Plaintiff has since discovered that the Fund is in fact not a genuine fund, that it never made genuine investments, and that even if there were any real investments, they were invested in a way which is contrary to that envisaged by the PPM and the Fund Fact Sheet. Indeed, the bulk of the money purportedly being invested on behalf of the Plaintiff in the Fund (US$ 456 million out of US$ 565 million) was not even paid to the Fund and never made it to the Fund."*

81. The particulars under the paragraph assert that MWB, as "the controlling mind" of the Fund and DMCC confirmed that:

> (1) The Fund's assets have been used to engage in trading of commodities including coal, grain, bitumen, middle distillates, grains, pulses and sugar;
>
> (2) Up to USD 100 million of the Fund's assets have been used to acquire a coal mining tenement in Tanzania, Africa in the name of ARIA Commodity Finance Funds (T) Limited and ARIA Commodities International Limited, each being private limited liability companies incorporated in Tanzania, and related parties and affiliates of the Fund and of each other, including DMCC;
>
> (3) Approximately USD 17 million of the Fund's assets have been used to acquire grain reserves in Western Australia in the name of ARIA AAAX Australia Pty Ltd, a private limited liability company incorporated in Australia, and a related party and affiliate of the Fund and DMCC;
>
> (4) The Fund's assets have also been used, in September 2022, to acquire a majority equity interest in a bitumen plant, bitumen refiner, tire recycling plant and storage terminal in the United Arab Emirates in the name of EBS GPG ARJA FZE, a company incorporated in the United Arab Emirates engaged in bitumen manufacturing and trading and wholly owned by DMCC and managed and controlled by Mr Brittain himself; and
>
> (5) The Fund has commenced a *"securitization process"* which once completed will see the majority of the Fund's receivables and/or inventory currently appearing on its balance sheet replaced by a number of commodity asset backed tradeable notes representing the coal mining tenement in Tanzania

82. Techteryx alleges that none of the Fund's investments has been supported by credit insurance, no insured trade or commodity finance instruments with short-dated maturities comprise any meaningful component of the Fund's assets and substantially more than 20% of the gross assets of the Fund is exposed to the creditworthiness or solvency of one counterparty (including its subsidiaries and affiliates).

83. The crux of Techteryx's case is at paragraphs 66 and 67 of the ASOC:

> "66. The 6 Remittances to Aria DMCC were blatant misappropriation and money-laundering:
>
> These remittances were substantial amounts out of the then total Reserves;
>
> They were made without the knowledge, authorization or approval of the Plaintiff;
>
> There were no legitimate reasons for them. The Plaintiff had no relationship or any dealings with Aria DMCC. None of the Defendants, including the Fund, had given any explanation for any need to transfer substantial sums to some offshore accounts of an offshore entity; Aria DMCC was a company held in the name of Ms Brittain, who stated herself to be a school teacher and who was, in fact, the spouse of Mr Brittain;

None of the 1st, 2nd, 5th and 6th Defendants, despite being experienced in financial matters, performed any or any proper due diligence on Aria DMCC or anti-money laundering checks before remitting substantial sums to the offshore accounts of an offshore entity.

67. In short, the Fund was at all material times a fraud and perpetrating a fraud, and any story or representation about investing in the Fund as a fund which makes genuine investments to generate returns was also fraudulent."

84. At paragraph 70 of the ASOC it is pleaded that each of the other Defendants must have known and in fact did know at all material times that the Fund was a fraud and perpetrating a fraud on the public and on the Plaintiff, that any story or representation about investing in the Fund as a fund which makes genuine investments to generate returns was also fraudulent, and all the Defendants must have known and did know that the TrueCoin Story was in fact false.

85. While the generality of the pleading would cover DMCC at paragraph 72 of the ASOC, it was alleged that TrueCoin, Legacy Trust, FDT, Crossbridge, Finaport, and the Fund acted together in the fraud and to injure, inter alia (sic), the Plaintiff. There are 21 particulars under the allegation none of which mentions DMCC, but at paragraph 73 it is alleged that the Defendants or any two or more of them conspired, agreed and combined together wrongfully to defraud and injure the Plaintiff to conceal such fraud and the proceeds of such fraud from the Plaintiff.

86. Paragraph 78 of the ASOC claims that in performing its duties as a trustee and fiduciary of the Plaintiff's funds, FDT acted in breach of the ESA and/or the Statutory Duty of Care and was thereby in breach of trust. Under particular (xii) it was expressly alleged that the 6 Remittances were unauthorized investments, and it was a breach of trust for FDT to pay any of the sums to either the Fund or DMCC and in no circumstances was there ever any authorization, express or implied, to transfer USD 456 million to DMCC.

87. The claims against the Fund and DMCC are addressed at paragraphs 86 to 90 of the ASOC headed *"PROPRIETARY CLAIMS AGAINST THE 3RD AND 4TH DEFENDANTS"*. Techteryx claims that the Fund and DMCC received trust property paid to them in breach of trust. Specifically, as against DMCC, it is said DMCC provided no value to FDT or Techteryx and in any event acted in bad faith. The Fund and DMCC are affiliated companies and part of the ARIA group of companies, whose ultimate controlling mind is MWB. DMCC, via MWB, knew or should be taken to have known that sums invested which were transferred to it by the Fund or which were directed by the Fund to be paid directly to it were being used otherwise than in accordance with the terms of the PPM.

88. Accordingly, it is said, Techteryx remains the beneficial owner of the 6 Remittances, and which the Fund and DMCC hold on constructive trust for Techteryx. The Fund and DMCC are claimed to be liable to return the same to Techteryx and to account for the same insofar as the monies are no longer in their possession.

89. In the Prayer Techteryx claimed against DMCC specifically:

(1) A declaration that DMCC holds and at all material times held an aggregate sum of not less than USD 456,000,000 transferred from FDT, together with their traceable proceeds, substitutes or fruits, on constructive trust for the Plaintiff;

(2) An inquiry as to what assets in the hands of DMCC represent the said sums;

(3) An order that DMCC do account to the Plaintiff as constructive trustee for the said sums, together with their traceable proceeds, substitutes, income, or fruits and all such assets or part thereof; and

(4) An injunction restraining DMCC from disposing of, dealing with or otherwise diminishing the value of the said sums, together with their traceable proceeds, substitutes, income or fruits.

90. There is also a general Prayer:

"Damages for fraud. fraudulent misrepresentation. and/or conspiracy (a) in the sum of (i) US$ 97 million. being the value of the Initial Investment Sums;(ii) US$ 468 million being the value of the Additional Investment Sums; and (iii) the expected/promised returns on the purported investments in the Fund; or (b) alternatively to be assessed".

91. FDT served an Amended Defence dated 17 January 2025. In the context of the present proceedings, it is only necessary to consider those paragraphs addressing the allegation that it held the sums under the ESA (**"the Escrow Amount"**) as trustee for Techteryx:

(1) Paragraph 8(4):

"Techteryx had no proprietary rights in the Escrow Amount (clause 6 [of the ESA])";

(2) Paragraph 8(6):

"FDT held the Escrow Amount 'to the order' of Techteryx (clause 3(a)(ii))".

(3) Paragraph 8(6):

"FDT was empowered and authorised by clause 4(d) to invest the Escrow Amount."

(4) Paragraph 8(10):

"Interest and income pursuant to investment was to accrue to Techteryx."

(5) Paragraph 9:

"Pursuant to the express terms of the CSA FDT was prohibited from acting with regard to property / the Escrow Amount/Reserves except on and pursuant to Techteryx's instructions" (repeated at paragraph 39(3)9(a)).

(6) Paragraph 10:

(a) "FDT provided Techteryx escrow services but not asset management or financial advisory services";

(b) "FDT executed investments purely as a functional intermediary between Techteryx and the Fund, pursuant to the express instructions and authorisation of Techteryx";

(c) "FDT was bound to act on Techteryx's instructions";

(d) "The parties did not intend for a trust to be impressed upon the Escrow Amount but intended instead to create a debtor and creditor relationship only (save, for the sake of completeness, that pursuant to clause 4(f) of the ESA, a resulting trust in favour of the Holders would be created on the occurrence of certain specified events)".

(7) Paragraph 16:

"In receiving, holding, and investing the Escrow Amount pursuant to the FDT Agreements and the DIMA, properly construed, FDT:

1. exercised no discretion

2. performed executory and functionary roles only, at the direction of Techteryx

3. dealt with Techteryx as debtor/ creditor

came under no trust obligations since no trust was impressed upon the Escrow Amount."

(8) Paragraph 18:

"It is denied that Techteryx has or had any proprietary interest in the 'US Dollar reserves 'of TrueUSD."

(9) Paragraph 26:

"The Escrow Services Agreement did not provide that FDT would provide trustee services in respect of the Escrow Amount/ Reserves."

(10) Paragraph 27(1):

"FDT was never a trustee of the Reserves, whether pursuant to the Escrow Services Agreement or otherwise."

(11) Paragraph 35(3)(a):

"Payments made to the 4th Defendant were materially the same / functionally equivalent to payments to the Fund/ 3rd Defendant, and were expressly instructed and/or authorised by Mr De Lorraine on behalf of Techteryx"

(12) Paragraph 45(1)

"It is denied that the Reserves / Escrow Amount are or were trust property and/or that FDT is in breach of trust, not least because payment of the Additional Investment Sums by FDT was expressly authorised and directed by Techteryx in advance and has been subsequently ratified by the Board Resolution."

92. Techteryx served its Reply to Defence of the 1st Defendant dated 9 August 2024. At paragraph 16 it pleads:

"Specifically, pursuant to the TrueCoin Terms of Use governing the purchase by Purchasers/ Holders of Tokens from TrueCoin (the "Terms of Use"), Tokens were purchased by Purchasers/ Holders as items of property using fiat currency as consideration. The Token Holders thereby gave up their legal and beneficial interest in the sums transferred in return for receiving the Tokens and consistent with that the Escrow Services Agreement provided for FDT to hold the currency and any substitute assets for it on trust for the Plaintiff."

93. Alternatively, Techteryx alleges at paragraph 17 that it held the beneficial interest in the Escrow Amount on sub-trust for the Holders:

> *"The nature of the rights of Token holders, whether they are (a) only contractual rights, or (b) also by way of sub-trust whereby the Plaintiff holds the beneficial interest in the Escrow Amount for the holders (reflecting the wording of Clause 5 [sic*] that the Plaintiff holds for the benefit of the holders and in that sense has no proprietary interest of its own), does not affect the holding, management and investment of the Reserves by the 1st Defendant under the Escrow Services Agreement as a trustee and fiduciary for the benefit of the Plaintiff. Similarly, such rights, if any, that the holders have against the 1st Defendant directly on redemption or otherwise do not affect the holding, management and investment of the Reserves by the 1st Defendant as a trustee and fiduciary for the benefit of the Plaintiff."*
>
> *[* I assume this is meant to be Clause 6]*

94. Analysing the pleadings, first, it is clear that there is no allegation against DMCC that it was involved in any fraudulent misrepresentation as to the *"TrueCoin Story"*.

95. Second, it is alleged that DMCC was involved in *"misappropriation and money- laundering"*.

96. Third, it is alleged that MWB was the controlling mind of both the Fund and DMCC.

97. Fourth, it is alleged that the Fund was a fraud and perpetrating a fraud, and any story or representation about investing in the Fund as a fund which makes genuine investments to generate returns was also fraudulent.

98. Fifth, there is a general allegation that that the Defendants or any two or more of them conspired, agreed and combined together wrongfully to defraud and injure the Plaintiff to conceal such fraud and the proceeds of such fraud from the Plaintiff. DMCC could be caught by this allegation.

99. Sixth, (contrary to DMCC's submission) it is alleged that DMCC was in knowing receipt of funds paid in breach of trust, the knowledge being that of MWB who knew that the sums invested were being used otherwise than in accordance with the terms of the PPM. Techteryx remains the beneficial owner of the 6 Remittances and DMCC therefore received the monies as constructive trustee for Techteryx.

100. Seventh, it is pleaded that DMCC are claimed to be liable to return the same to Techteryx and to account for the same insofar as the monies are no longer in their possession and this is reflected in the Prayer. DMCC may also be caught by the general Prayer for damages for fraud and conspiracy.

101. Eighth, I do not consider that the oblique reference in paragraph 17 of Techteryx's Reply to FDT's Defence (that Techteryx holds the beneficial interest in the Escrow Amount for the Holders by way of sub-trust does not affect the holding, management and investment of the Reserves by FDT as a trustee and fiduciary for the benefit of Techteryx) amounts to a positive case that Techteryx did hold the beneficial interest in the Escrow Amount by way of sub-trust for the Holders. On the contrary, it was a forensic point (properly pleaded by way of Reply) that even if Techteryx were to fail in its case that it did hold the beneficial interest in the Escrow Amount for itself, FDT would be still be liable because as against FDT, Techteryx would hold the beneficial title as agent or trustee for the holders whereas FDT would only hold the legal title. Such an argument would be contrary to Techteryx's case that the Holders gave up their legal and beneficial interest in the sums transferred in return for receiving the Tokens and as DMCC pointed out in oral submissions inconsistent with Techteryx's Terms of Use, Section 4 by which Techteryx did not guarantee any right of redemption or exchange of TUSD tokens for U.S. dollars and stated that it and its Banking Partner reserved the right to refuse to issue or redeem TUSD tokens for any reason.

102. It is only if the claim that DMCC became a constructive trustee and that Techteryx would be entitled to a proprietary remedy over the 6 Remittances and their traceable proceeds, substitutes, income, or fruits is a serious issue to be tried that Techteryx would be entitled to a proprietary order. Success in any claim for fraud or conspiracy would only sound in damages and could only support a WFO. The issue of whether DMCC became a constructive trustee of the 6 Remittances turns in the first instance on an analysis of the relations between FDT and Techteryx pursuant to agreements made between them.

MATERIAL TERMS OF THE CLIENT AGREEMENT, CSA AND ESC

The Client Agreement

103. SECTION 2, INTERPRETATION

> *""Service" means one or more trustee, fiduciary, custody services or other ad-hoc services and/or facilities made available to the Client u er Service Terms."*

104. SECTION 4, RELATIONSHIP BETWEEN FDT AND CLIENT, Clause 4.1

"Client is Acting as Principal. Notwithstanding that the Client may as between itself and a third party be effecting transactions for and on behalf of such third party, as between the Client and FDT, the Client shall be deemed to be and is transacting solely as principal The Client acknowledges, undertakes and agrees to be always primarily liable to FDT for all transactions."

CSA

105. SECTION 2, USE OF CUSTODY SERVICES

"The Client agrees and understands that this Custody Services Agreement is subject to the terms and conditions set forth in the Client Agreement. The terms and conditions set forth in this Custody Services Agreement are in addition to those set forth in the Client Agreement, and that the former shall prevail for matters specifically dealt with in this Custody Services Agreement in case of conflict. The Client further agrees and understands that the defined terms used in this Custody Services Agreement, if defined in the Client Agreement, shall have the meanings set forth in the Client Agreement."

106. SECTION 3, INTERPRETATION

"Cash" means all cash in any fiat currency received by the FDT from time to time for the account of the Client, whether by way of deposit or arising out of or in connection with any Property in the Custody Account. "Property" means, as the context requires, all or any part of any Securities, Digital Asset, Cash, or any other property that may have been delivered to FDT to be held by FDT on Client's behalf, in each case until such assets are, withdrawn pursuant to this Agreement."

107. SECTION 4, APPOINTMENT OF FDT AND ACCEPTANCE, Clause 4.2

*"**Setup of Accounts**. The Client hereby instructs and authorizes the FDT to establish on its books and records an account for the deposit of Property ("Custody Account") that the FDT may receive from the Client on the terms of this Agreement."*

108. SECTION 5, REPRESENTATIONS AND WARRANTIES, Clause 5.3

*"**By Client**. The Client represents and warrants as at the date this Agreement is entered into and for the period during which services under this Agreement are provided that: (i) if the Client is a natural person, it has the legal capacity to enter into and perform its obligations under this Agreement, or if the Client is not a natural person, it has been duly organised and is validly existing and in good standing, under the laws of its Jurisdiction of formation, and it has properly taken all corporate, limited liability, partnership or other action required to be taken with respect to the execution and delivery of this Agreement and consummate the transactions contemplated by this Agreement; (ii) it has good title to the Property and authority to deliver the Property to the FDT; (iii) there is no claim or encumbrance that adversely affects any deposit with any Clearance System or delivery of Properly, or payment of Cash made in accordance with this Agreement; (iv) except as provided in this Agreement, it has not granted any person a lien, security interest, charge or similar right or claim against Property; and (v) it has not relied on any oral or written representation made by the FDT or any person on its behalf other than those set forth in this Agreement."*

109. SECTION 6, CUSTODY ARRANGEMENTS, Clause 6.1

"Designation of Accounts. The FDT shall on its records identify each Custody Account in the name of the Client or such other name as the Client may reasonably designate. Custody Account is to be designated to show that the Property belongs to the Client and is segregated from the FDT's own assets and those of the other clients of FDT."

110. Clause 6.2

*"**Segregation of Assets**. The FDT intends that Property will be held in such manner that they should not become available to the insolvency administrator or creditors of the FDT.*
6.2.1. The FDT shall identify Property on its records In a manner so that it is readily apparent the Property (i) belong to the Client or its customers, (ii) do not belong to the FDT or any other clients of the FOT and (iii) are segregated on the books and records of the FDT from the FDTs and its other clients' assets."

111. Clause 6.3 Custody of Cash

"6.3.1. The FDT will hold Client's Cash deposits in one or more omnibus bank accounts (each an "Omnibus Account"), a fully segregated bank account established principally for the Client (a "Segregated Account"), and/or one or more omnibus or segregated money market accounts (each a "Money Market Account") (collectively, each a "Client Money Bank Account") at a depository institution (each a "Bank"). Each Client Money Bank Account is (i) in the name of the FDT, or in the case of a Segregated Account jointly in the name of Client and

FDT, and under FDT's control; (ii) separated from FDT's business or operating bank accounts; (iii) established specifically for the benefit of FDT's Clients; and (iv) a representation of a banking relationship, not a custodial relationship, between the FDT and the relevant Bank. The Client agrees and acknowledges that the Client Money Bank Accounts do not create or represent any relationship between the Client and any of the Banks

6.3.2. Client's Cash deposits are: (i) held across Client Money Bank Accounts, reflecting the exact proportion that all Clients' Cash deposits are held across the Omnibus Accounts, except in the case of a Segregated Account such funds are held exclusively for the relevant Client; (ii) not treated as FDT's general assets; (iii) fully owned by Client; and (iv) recorded and maintained in good faith on the Books of Account and reflected in a Ledger Account (i.e., the Cash Ledger of the Custody Account) so that Client's interests in the Client Money Bank Accounts are readily ascertainable."

112. SECTION 10, ACTIONS BY THE FDT AND ASSET SERVICES, Clause 10.1

*"**Custodial Duties Requiring instructions**. The FDT shall carry out the following actions only upon receipt of Instructions: (i) make payment for and/or receive any Property or deliver or dispose of any Property except as otherwise specifically provided for in this Agreement, (ii) deal with rights, conversions, options, warrants and other similar interests or any other discretionary corporate action or discretionary right in connection with Property, and (iii) except as otherwise provided in this Agreement, carry out any action affecting Property"*

113. SECTION 14, NOT AGENT FOR CLIENT'S CUSTOMERS; CLIENT'S DIRECT LIABILITY

"The Client agrees that it will not be relieved of its obligations as principal as the Client under this Agreement where (or if) the Client discloses that it has entered into this Agreement as agent, custodian or other representative of another person. Notwithstanding any requirement that accounts, documentation or agreements, or transactions be effected in the name of any customer of the Client or for any other beneficial owner acting directly or indirectly though the Client, the Client agrees that it shall be solely responsible as principal for all obligations to the FDT with regard to such beneficial owner account, agreements, or transactions. The Client agrees that its customers will not have any direct rights against the FDT, and the FDT shall have no liability to the Client's underlying customers."

ESA

114. RECITALS

*"**WHEREAS**, the Client and FDT entered into a client agreement dated 28 September 2020 (the '"Client Agreement") and custody agreement dated 28 September 2020 (the "Custody Agreement") whereby FDT agreed to provide trustee, fiduciary, custody and other related services to the Client subject to the terms thereof and all additional terms that the Client and FDT may agree from time to time on the provision of the relevant specific services."*

115. Clause 1

*"**Client Agreement & Custody Agreement Prevail**. This Escrow Services Agreement is subject to the terms and conditions set forth in the Client Agreement and Custody Agreement. The terms and conditions set forth in this Escrow Services Agreement are in addition to those set forth in the Client Agreement and the Custody Agreement and that the former shall prevail for matters specifically dealt with in this Escrow Services Agreement in case of conflict. The defined terms used in this Escrow Services Agreement, if defined in the Client Agreement and/or the Custody Agreement, shall have the same meaning set forth in the Client Agreement and/or the Custody Agreement."*

116. Clause 2

*"**Establishment of Escrow Account**. FDT shall establish an account for the Funds received from the Purchasers. For purposes of protection, communications and directives, FDT shall be the sole administrator of the Escrow Account but may rely on communications received from the Holders via software created, maintained and managed by the Client."*

117. Clause 3

*"**Escrow Period**. The Escrow Period shall begin with the earlier of (a) commencement of the delivery of a Token to a Purchaser and the corresponding receipt of Funds and (b) the transfer of any Funds held on behalf of Holders into the Escrow Account from any predecessor-in- interest. and shall terminate in whole or in part upon the earlier of (i) the date upon which there are no Funds in Escrow A ount as they have all been sent to cover redemptions by Holders; or (ii) the termination of this Escrow Services Agreement pursuant to Clause 10 herein. a. During the Escrow Period, the Parties agree, subject to the terms of this Escrow Services Agreement, that (i) FDT*

will act as an agent of the Client for the receipt of Funds from the Purchasers, (ii) upon receipt of the Funds, FDT will hold the Funds as a fiduciary of the Client, to the order of the Client subject to Section 4(f), (iii) upon the instruction of the Client, FDT shall redeem the Tokens in accordance with Clause 4 herein."

118. Clause 4

"Deposits into, and Redemptions from, the Escrow Account. Purchasers shall transmit
their data and Funds, via FDT's API's and technology systems, which may be integrated into the Client's software, directly to FDT. Purchasers will be directed to transfer Funds directly to FDT for deposit into the Escrow Account. FDT shall process all Escrow Amounts for collection through the banking system and shall maintain an accounting of each deposit posted to its ledger. All monies so deposited in the Escrow Account and which have cleared the banking system are hereinafter referred to as the "Escrow Amount." … FDT shall promptly inform the Client of any cleared incoming Funds deposited into and/or outgoing Funds transferred out of the Escrow Account for the Client's minting and/or redeeming of the Tokens (as applicable)…"

119. Clause 4.d

*"**Investment of Escrow Amount**. FDT shall have the authority and power to invest the Escrow Amount in accordance with the following: i. No more than 85% of the Escrow Amount may be invested (the "Investment*
Amount");
ii. FDT shall only be permitted to invest the Investment Amount in accordance with an investment proposal prepared separately from this Escrow Services Agreement and is signed by both Parties (the "Investment Proposal"); and
iii. FDT shall obtain proper advice on the portfolio of investments from licensed and regulated investment advisers who may also, subject to prior consent of the Client, be appointed by FDT to manage all or part of the portfolio in execution of the Investment Proposal."

120. Clause 4.e

*"**Reallocation**. Client may redirect Escrow Amounts to be transferred a different properly regulated escrow agent by providing written notice to FDT."*

121. Clause 4.f

*"**Redemption**. Subject to Clause 4(c) (Purchase and Redemption Minimums) and the applicable terms of agreement as may be entered between the Client and the Holders (including without limitation, the relevant Token acquisition documentations and/or other terms and conditions of similar substance, as the case may be), the Parties acknowledge that the Holders shall have the right to exercise their right of redemption following the occurrence of a Triggering Event.*

…

Effective immediately on the date of occurrence of the Triggering Event, a resulting trust shall deemed to have arisen and all of the Escrow Amount received by FDT up to that date shall be segregated from the other funds held by FDT, and shall deemed to be held in trust by FDT in its capacity as trustee (the "Resulting Trustee") in favour of the Holders (the "Resulting Trust"): Upon creation of "the Resulting Trust, FDT shall be vested with all powers incidental or ancillary to its capacity as Resulting Trustee and shall be entitled to apply the Escrow Funds, or any part thereof, as it deems fit to pay for the costs, fees or expenses necessarily incurred or accrued on the part of FDT upon such occurrence."

122. Clause 6

*"**Escrow Amount**. FDT shall hold and manage the Escrow Amount as a fiduciary for the benefit of the Client or its agents or designees. For the avoidance of doubt, the Client shall have no proprietary rights in the Escrow Amount and shall hold the Escrow Amount exclusively for the benefit of the Holders. Notwithstanding the above, FDT shall not be required to engage with the Purchasers and/or Holders directly and all such purchase and/or redemption requests of the Tokens shall first be made to the Client and to be further communicated to FDT by the Client. All interest and other income earned under this Escrow Services Agreement shall be allocated to the Client."*

123. Clause 8

*"**Escrow Fees; Compensation of First Digital**. FDT is entitled to escrow administration fees from the Client as set forth in Exhibit B; provided, however, FDT may not collect any fees, reimbursement for costs and expenses, or indemnification for any damages incurred by the Client from the principal balance of the Escrow Account."*

124. Clause 10

"Term and Termination. This Escrow Services Agreement will remain in full force during the Escrow Period and shall terminate upon the following:

a. As set forth in Clause 3.

b. Upon the mutual written agreement of both parties.

c. FDT's Resignation. FDT may resign by giving 90 days' advance written notice to the Client. The Parties shall cooperate in good faith to appoint a successor agent upon FDT's resignation and FDT's resignation shall not become effective until a successor FDT [sic] has been engaged by the Client. FDT shall cooperate in good faith in transferring the Escrow Account accounts and all necessary items to the successor FDT and take all such other actions reasonably necessary to affect an orderly transfer of Escrow Account accounts to the successor FDT.*

*d. The Client Termination. The Client may terminate this Escrow Service Agreement by giving three (3) [?] advance written notice to FDT. FDT shall cooperate in good faith in transferring the Escrow Account accounts and all necessary items to any successor FDT determined by the Client and take all such other actions reasonably necessary to affect an orderly transfer of Escrow Account accounts to the successor FDT." * "successor FDT" appears to mean "successor agent" as in the second sentence of sub-clause c.*

125. Clause 12

"Limited Capacity of FDT. This Escrow Services Agreement expressly and exclusively sets forth the duties of FDT with respect to any and all matters pertinent hereto, and no implied duties or obligations, other than those imposed by law or otherwise agreed to by separate agreement, shall be read into this Escrow Services Agreement against FDT. FDT acts hereunder as an escrow agent only and is not associated or affiliated with or involved in the business decisions or business activities of the Client or any Holders."

DO THE DOCUMENTS SHOW A GOOD ARGUABLE CASE AS TO TRUST?

126. It is important to emphasize that any views I may express on the meaning of the documents set out above and indeed everything that follows in this judgment are on the *"serious issue to be tried basis"* (the formulation preferred in *Dos Santos* at [131]) as set out *The Niedersachsen*. I operate under the usual interlocutory constraints that I am asked to opine on contested matters of contractual interpretation and disputed facts in the context of complex cross-border transactions on written evidence carefully crafted and selected by the parties in the absence of disclosure and untested by cross- examination. Parties intimately involved in the relevant transactions are not before me. I have heard no submissions on their behalf and am only taken to extracts from statements filed by them before the Hong Kong Court. It appears that as between the defendants to the HK Proceedings there may be disputes of fact in relation to matters that may have some significance in the determination of the issues before me.

127. I operate under the additional constraint that I am to examine matters through the lens of English law (as agreed between the parties) whereas they will be determined under Hong Kong law. It may be that Hong Kong law is materially similar to English law, but I note that at least in one (possibly important) respect it is different. Hong Kong law in relation to trusts is (at least in part) codified in the Trustee Ordinance (Cap. 29). I have only been taken to one provision of that statute and none of the surrounding judicial interpretation (if any).

128. Accordingly, anything I do say is necessarily provisional, based on both incomplete evidence and incomplete legal argument. Nothing I say is intended to, or could, have any impact on the final determination of any issue by the Hong Kong Courts.

129. In relation to the suite of documents executed between Techteryx and FDT, DMCC submits that they did not operate to make FDT a trustee of the Reserves / Escrow Amount. Consequently, even if those sums were wrongfully transferred to DMCC it would not be in breach of trust and DMCC could not be a constructive trustee. DMCC submit that on the true meaning and effect of the documents FDT legally and beneficially owned the Reserves, subject to its contractual duties to Techteryx. FDT agrees, and pleaded at paragraph 10 of its Amended Defence dated 17 January 2025 that the parties did not intend for a trust to be impressed upon the Escrow Amount but intended instead to create a debtor and creditor relationship only.

130. The focal point of both DMCC's and FDT's submissions is paragraph 6 of the ESA: *"For the avoidance of doubt, the Client shall have no proprietary rights in the Escrow Amount and shall hold the Escrow Amount exclusively for the benefit of the Holders"*. As was discussed in argument this seemed to contemplate that Techteryx was the trustee of the Escrow Amount for the Holders. If that were so, even if it was declared that as between Techteryx and FDT, Techteryx dealt as principal, it could not confer full legal and beneficial title on FDT as Techteryx would only possess legal title. In fact, it is Techteryx's case that the Holders relinquished their legal and beneficial rights in the sums paid into the Escrow Account in return for the Tokens and so there seems to be a mismatch between the parties' understanding of the transaction.

131. Techteryx says that the Client Agreement defines the services to be rendered as trustee, fiduciary and custody services and that as between Techteryx and FDT, Techteryx is acting as principal. *"Property"* is defined in the CSA to include cash. By Clause 6 of the CSA, Property will be held so as not to become available to the insolvency administrator or creditors of FDT. In particular it should be readily apparent the Property (i) belongs to the Client or its customers and (ii) does not belong to the FDT or any other clients of the FDT. Even where cash is not held in a segregated account it is not treated as FDT's general assets and is fully owned by Client. The terms of the CSA would appear to be inconsistent with FDT's ownership of cash deposited by Techteryx or the Holders.

132. Techteryx again points to the expression *"FDT agreed to provide trustee, fiduciary, custody and other related services to the Client"* in the first recital to the ESA as indicating a trust relationship. I consider there is nothing in this: the definition of Services in the Client Agreement was broad enough to cover services other than acting as a trustee and the recital does no more than refer back to the Client Agreement and CSA. The provisions are neutral; what is important is the interaction between the CSA and ESA.

133. Clause 1 of the ESA provides that the terms of the Client Agreement and CSA shall prevail over the terms of the ESA save where a matter is specifically dealt with in the ESA. Clause 2 states that FDT will establish the Escrow Account for the Funds received from the Purchasers of the Tokens. The ESA contains no provisions regarding the organisation of the Escrow Account. It would therefore appear to be governed by the terms of the CSA to the effect that it should be readily apparent the money in the Escrow Account (i) belongs to Techteryx or its customers and (ii) does not belong to the FDT or any other clients of the FDT.

134. Such an arrangement seems to be consistent with Clause 3.a of the ESA which designates FDT as the agent of Techteryx for the receipt of Funds from the Purchasers and the fiduciary of Techteryx to hold the Funds to its order. The chapeau of Clause 3 addresses termination of the Escrow Period and references Clause 10. Clause 10 sets out how FDT will transfer the Escrow Account accounts and all necessary items to a successor agent.

135. Consistent with an obligation to identify funds in the Escrow Account as belonging either to Techteryx or its customers, FDT was obliged by Clause 4 to maintain an accounting of each deposit posted to its ledger and promptly to inform Techteryx of any cleared incoming Funds deposited into, and/or outgoing Funds transferred out of, the Escrow Account for the minting and/or redeeming of the Tokens.

136. Clause 4.d of the ESA gives FDT a power to invest the Escrow Amount subject to the written consent of Techteryx and advice from licensed and regulated investment advisers appointed with the consent of Techteryx. The ESA is silent as to who would own the investments. Clause 10 speaks of transferring the Escrow Account accounts and all necessary items to any successor agent. Presumably "necessary items" includes the investments.

137. There is some indirect evidence that would indicate that FDT regarded itself as holding the investment in escrow for Techteryx. In her Fourth Affirmation at paragraph 35 Ms Li produces what she says is a document from FDT's portal. It is headed *"Account portfolio Summary"*. The Client Name is Techteryx. The Custody Number is 100032 which is the same number as allocated to Remittances Nos. 3, 4 and 6 (see paragraphs 236, 243 and 266 below). The Account Type is *"Bespoke – TUSD Escrow"* and the Statement Date is *"As at 02 May 2025"*. The document shows no cash in the account but there are other assets listed – all shares in either DMCC or the Fund. The document raises significant issues of fact as will be seen at paragraph 346 below.

138. Clause 4.e like Clause 10 (but presumably without terminating the ESA) enables Techteryx to redirect Escrow Amounts to be transferred to a different properly regulated escrow agent by providing written notice to FDT.

139. Clause 4.f figured prominently in DMCC's submissions because it imposes an express resulting trust in favour of the holders in certain circumstances ("Triggering Events"). DMCC argues that the drafters of the ESA were thus capable of saying there was to be a trust if that was what was intended and further a resulting trust in favour of the Holders would be inconsistent with a subsisting trust in favour of Techteryx. The Triggering Events were disability on the part of the Client (i.e., Techteryx), default by the Client incapable of remedy, seizure of the Client's assets, supervening absence of regulatory approval or illegality.

140. Clause 4.f figured prominently in DMCC's submissions because it imposes an express resulting trust in favour of the holders in certain circumstances ("Triggering Events"). DMCC argues that the drafters of the ESA were thus capable of saying there was to be a trust if that was what was intended and further a resulting trust in favour of the Holders would be inconsistent with a subsisting trust in favour of Techteryx. The Triggering Events were disability on the part of the Client (i.e., Techteryx), default by the Client incapable of remedy, seizure of the Client's assets, supervening absence of regulatory approval or illegality.

141. Clause 8 of the ESA forbids FDT from having recourse to Escrow Account for any sums due to it.

142. Clause 12 of the ESA declares that FDT acts as an escrow agent only.

143. On a bare reading of the ESA there appear to be multiple inconsistencies with the suggestion that FDT had absolute legal and beneficial title to the Reserves. It would seem that the Escrow Account must be maintained as a Segregated Account within the meaning of the CSA so that the Escrow Amount is identified as belonging to Techteryx or the Holders with a view to preventing the funds from becoming available to the insolvency administrator or creditors of FDT. This makes commercial sense – if it were the case that the funds belonged to FDT the entire business of Techteryx would depend on the continued solvency of FDT over which Techteryx would have no control. It is inconsistent with a debtor/creditor relationship between FDT and Techteryx

144. Other indicia of a relationship other than debtor/creditor are that Techteryx has at any time the right to transfer the Escrow Amount to a different escrow agent on written notice. FDT may only invest the Escrow Amount with the consent of Techteryx, and it would appear that in the absence of express provision in the ESA the investment will be held under the CSA subject to *"segregation of assets"*. FDT identifies itself as a fiduciary escrow agent and has no discretion as to how it deals with the Escrow Amount – it must accept Purchasers' Funds and pay out on Redemption. On termination of the ESA, FDT retains no interest in Escrow Amount.

145. On the other hand, clause 6 *does* expressly state that Techteryx has no proprietary rights in the Escrow Amount. The clause does *not* state that FDT has proprietary rights, but that might be inferred from the fact that the only other parties who may have proprietary rights are the Holders and a resulting trust in their favour only arises on the happening of the Triggering Events

146. Do the parties' submissions assist in resolving these anomalies? Techteryx refers to section 89 of the Trustee Ordinance:

> *"Trust funds to be kept separate*
> *All moneys, property and securities received or held by any trust company in a fiduciary capacity shall always be kept distinct from those of the company and in separate accounts, and so marked in the books of the company for each particular trust as always to be distinguished from any other in the registers and other books of account to be kept by the company, so that at no time shall trust moneys form part of or be mixed with the general assets of the company; and all investments made by the company as trustee shall be so designated that the trusts to which such investments belong can be readily identified at any time."*

147. Techteryx says that this means that any funds held by a registered trust company such as FDT in a fiduciary capacity are to be treated as trust moneys. DMCC says this only applies to monies designated as trust monies. First, in the absence of any learning on the Ordinance I feel unable to come to any view whether it deems all fiduciary relationships undertaken by trust companies to be trusts. My instinct is to doubt the proposition because there are clearly many forms of fiduciary duty that could not possibly amount to a trust (for example the fiduciary duties of a company director). Secondly, either way I do not think the section assists because the obligation to keep the Escrow Amount separate from the general assets of FDT seems to me already to be an obligation under the CSA and ESA when read together.

148. DMCC accepts that segregation of funds in an unmixed, separate fund may indicate that the intention was to create a trust. Mr Justice Bingham (as he then was) said in *"The Tiiskeri"* [1983] 2 Lloyds Rep 658 at 664:

> *"It is clear that if the terms upon which the person receives the money are that he is bound to keep it separate, either in a bank or elsewhere, and to hand that money so kept as a separate fund to the person entitled to it then he is a trustee of that money and must hand it over to the person who is his cestui que trust."*

If that is the true interpretation of the ESA, it would tend to indicate that the monies were impressed with a trust.

149. DMCC submits that there is no magic in the term 'fiduciary' and a 'fiduciary' is not equivalent to a trustee. As Lord Mustill said in Goldcorp Exchange Ltd [1995] 1 AC 74 at 98A-B, "To describe someone as a fiduciary, without more, is meaningless". DMCC suggests that FDT's fiduciary status is explicable by its designation as an agent. It is not necessary to impose a trust for FDT to discharge its duties as an agent. Indeed, DMCC submits that if there were a trust for the benefit of Techteryx FDT would be in effect divesting itself of all of its assets held on account and so rendering itself unable to redeem coin holders.

150. I am not sure the last point follows. Even if Techteryx were the beneficial owner of the Escrow Amount there is nothing to stop it from directing FDT to satisfy redemption demand by Holders. FDT is not a bank (nor does it purport to be) where the relationship is traditionally debtor creditor as between banker and customer (Foley v Hill (1848) 2 H.L. Cas. 28). FDT is a trust company which acts as custodian of its clients' assets (including cash). It seems to me entirely consistent with the function of a custodian to apply the assets held in accordance with the instructions of the owner of assets as recognised by Clauses 3.a.iii (redemption of Tokens on instructions of the Client), 4.d.ii (power to invest only with consent of Techteryx), 4.d.iii (consent necessary for management of portfolio by investment advisers), 4.e (transfer to a

different escrow agent), 6 (FDT acting as fiduciary for the Client), 10.d (termination and transfer of Escrow Account to successor agent – which is how FDT received the Escrow Account from Legacy) and 12 (FDT acts as an escrow agent only) of the ESA. None of those clauses supports the submission that FDT must be acting as principal in the application of its own funds in order to fulfil its functions under the ESA.

151. I do accept DMCC's submissions that the mere use of the word "fiduciary" is not determinative of a trust relationship nor of itself is indicative of proprietary rights. I also recognise that common law courts are slow to find trusts in purely commercial transactions. National *Stadium Project (Grenada) Corporation (Respondent) v NH International (Caribbean) Ltd (Appellant) (Trinidad and Tobago)* [2020] UKPC 25 was a dispute over the ownership of monies loaned to a developer. The main contractor for the project claimed that it was the beneficial owner of the funds in the context of *"a suite of detailed agreements"*. Lords Briggs and Sales (with whom Lords Reed and Lloyd-Jones agreed) held that the documents did not give rise to a beneficial interest to the funds in the contactor. At [38] they held:

> *"An objective approach to identification of intention where a trust is claimed is always appropriate, since a trustee and any beneficiary need to know what their obligations and rights are and need to ascertain this from the objective circumstances giving rise to the trust. It is especially important in a commercial context like the present, where the trust which is claimed to exist is enmeshed in and is said to arise out of a network of agreements put in place to accommodate the interests of a range of participants in the Project. All of those participants needed to be able to understand clearly what were the rights and obligations of themselves and others, in particular in respect of any credit risk they were required to accept when participating in the Project. To state the obvious, if certain contractors (in this case, NH or ICS) are able to assert a beneficial interest in a trust in respect of a substantial part of the funds made available for a development scheme, they will obtain preferential treatment as against other contractors if the scheme runs into difficulties and the funding entity becomes insolvent. In a context like this, a court will be astute to ensure that a trust relationship in respect of money held to fund the scheme is clearly indicated in the contractual documentation. A trust will not readily be found to exist if that would undermine or contradict what appears to be a network of purely contractual relationships providing on their face for personal rather than proprietary rights as between the participants."*

152. DMCC also draws my attention to § 22-015 of Snell's Equity (35th Ed.):

> *"It has been said that there is a "general disinclination of the courts to see the intricacies and doctrines connected with trusts introduced into everyday commercial transactions"(Neste Oy v Lloyds Banks Plc [1983] 2 Lloyds Rep. 658 at 665). The imposition of a trust, without strong evidence of an intention to declare one, would upset the usual proportionate distribution of assets in insolvency. So a simple advance payment of money for a particular purpose is generally not enough to indicate that the recipient was intended to hold on trust for the payer. It has been held that the relationship between a wine merchant and a customer did not create a trust of the moneys that the customer provided for a wine purchase. Nor were moneys paid to a bank in anticipation of a refinancing deal which did not materialise held on trust. (The disappointed payer may have a personal claim for failure of consideration but that does not give rise to a constructive trust over the proceeds of his payment.) If it can be shown that either party intended that the recipient should not have the free disposal of the money and that it should be applied solely for a specified purpose, then it may be impressed with a trust. An intention that the recipient was to hold the money unmixed as a separate fund is strong evidence to this effect."*

153. I note the emphasis in both passages on the situation where the fund-holder becomes insolvent. This is specifically addressed in section of 6 the CSA. DMCC says that by Clause 1 of the ESA it prevails over the CSA for *"matters specifically dealt with"* and that Clause 6 of ESA therefore overrides section 6 of the CSA. There is nothing in the ESA dealing with the ownership of Escrow Account on FDT's insolvency. I also note that it was clearly the intention that FDT should not have free disposal of the money and that it should be applied solely for a specified purpose, namely the redemption of the Tokens with a power to invest in the interim. I also note that the Escrow Account was an unmixed separate fund.

154. DMCC drew my attention to the definition of "cash" in the CSA and submitted that not all cash is "property" within the meaning of the agreement. "Cash" is said to be *"received by the FDT from time to time* ***for the account of the Client"*** and *"property"* means, as the context requires Cash that may have been delivered to FDT *"to be held by FDT* ***on Client's behalf"*** [my emphases]. Neither term is defined in the ESA.

155. DMCC submits that it all comes down to Clause 6 of the ESA, the money is not Techteryx's money, the money becomes FDT's money, not the Holders', not Techteryx's. In my judgment it is not as simple as that. The words in Clause 6 "For the avoidance of doubt, the Client shall have no proprietary rights in the Escrow Amount" are clear and unambiguous but they are arguably inconsistent with almost every other

equally clear express term of the CSA and ESA (I agree with DMCC that the Client Agreement is an "umbrella agreement" and not material to the consideration of these issues) including the rest of the clause itself. The notion that FDT holds funds of which it is the absolute owner both at the same time as fiduciary for the benefit of Techteryx and also exclusively for the benefit of the Holders is hard to understand.

156. Absolute ownership of the funds on the part of FDT is also arguably inconsistent with the clear commercial purpose of the transaction – namely, that FDT holds the funds for the specific purpose of paying Holders on redemption of the Tokens with no discretion to use the funds for any other purpose save that a proportion not required for liquidity purposes may be invested with the consent of Techteryx.

157. It is not for this Court finally to resolve these questions of interpretation. I am told that the HK Courts follow English principles of contractual interpretation: Law Ting Pong Secondary School v Chen [2021] HKCA 873 at [47]-[49] citing Lord Hoffman in the HK case of Jumbo King Ltd v Faithful Properties Ltd & Ors [1999] 3 HKLRD 757 at 726- 727:

> *"the overriding objective in construction is to give effect to what a reasonable person rather than a pedantic lawyer would have understood the parties to mean… [this] "involves having regard, not merely to the individual words they have used, but to the agreement as a whole, the factual and legal background against which it was concluded and the practical objects which it was intended to achieve"*

and the Court of Final Appeal in Eminent Investments (Asia Pacific) Ltd v DIO Corporation (2020) 23 HKCFAR 487 at [43]-[46] which itself adopted the guidance of Lord Hodge in Wood v Capita Insurance Services Ltd [2017] AC 1173 in which he suggested that the mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly for one of the parties, is not a reason for departing from the natural language, but on the other hand, negotiators of complex formal contracts may often not achieve a logical and coherent text.

158. It seems to me that Clause 6 of the ESA may, at least arguably, fall into the latter category. If that were found to be case, then adopting English principles of contractual interpretation, a court might adopt a so-called corrective construction or what Lord Hoffman called "rectification by construction" in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38 when considering the pleaded issue that the provisions of the CSA prevail over the second sentence of Clause 6 of the ESA (paragraph 25 of the Reply to the Defence of the First Defendant in the HK Proceedings).

159. Put another way, DMCC has not satisfied me that it is not reasonably arguable that the funds in the Escrow Account were beneficially owned by Techteryx. DMCC's skeleton argument seems to suggest that this was somehow a new case raised at the FRD hearing. I find this a surprising submission. It is expressly pleaded in the HK Proceedings against DMCC that the "Additional Investment Sums" (USD 456 million comprised the 6 Remittances) were paid to DMCC in breach trust and Techteryx "remains the beneficial owner".

160. I am therefore satisfied that there is a serious issue to be tried as to whether or not the suite of agreements entered into by Techteryx with FDT constituted FDT a trustee of the funds held in the Escrow Account for the benefit of Techteryx.

161. It follows that for present purposes it is both unnecessary and unwise (given that this is not trial court) for me to consider the alternative case that Techteryx may have been a sub-trustee for the Holders or that a constructive trust arose by reason of specific wrongdoing.

NEXT STEPS

162. It is accepted by DMCC that the arguable existence of a trust relationship between FDT and Techteryx is the threshold requirement for a proprietary claim, however it is said to be a necessary requirement but not sufficient. Techteryx must go on to establish that the monies were paid to DMCC in breach of trust in order to show a serious issue to be tried.

163. DMCC says that breach of trust cannot be established because:

(1) The investments in the Fund were authorised as was the transfer of the USD 456 million to DMCC;

(2) MWB had no knowledge of the contractual scheme said to give rise to the alleged breach of trust or the alleged absence of authorisation; and

(3) DMCC gave value for the receipt of the USD 456 million by way of valid subscription in the Fund and was a bona fide purchaser for value.

164. If breach of trust is established, DMCC says that Techteryx must go on to show a sufficiently arguable case for a proprietary remedy. Albeit under the rubric of the WFO DMCC submits that there is no pleaded case in knowing receipt to found equitable proprietary relief.

165. .. .. proprietary injunction is not justified, a WFO may still lie based on personal claims against DMCC. DMCC identifies two claims made in the HK Proceedings, claims for deceit and conspiracy. It suggests that neither is properly pleaded nor capable of being made out.

166. In addition, it must be shown that DMCC has or may have assets which will be available to satisfy any judgment, if judgment is given in the Claimant's favour and that there is a real risk that the judgment will not be satisfied by reason of an ***unjustified*** [original emphasis] disposal of those assets.

167. For both forms of injunction is then necessary to go on to consider the balance of convenience and whether it is just and convenient/expedient to grant an injunction.

BREACH OF TRUST

The Facts

168. Prior to the involvement of Techteryx in the TrueCoin business on 27 June 2017 TrueCoin entered into an Escrow Services Agreement with Legacy which was amended in immaterial respects on 24 March 2020. That Escrow Agreement contained a similar term to Clause 4.d of the ESA (paragraph 119 above), namely that:

(1) No more than 85% of the Escrow Amount may be invested;

(2) Legacy/FDT was only be permitted to invest the Investment Amount in accordance with an Investment Proposal signed by both Parties; and

(3) Legacy/FDT had to obtain proper advice on the portfolio of investments from licensed and regulated investment advisers who may also, subject to prior consent of the Client, be appointed by Legacy/FDT to manage all or part of the portfolio in execution of the Investment Proposal.

169. On 31 March 2020 Mr Chok made a *"Revised Investment Proposal"* to TrueCoin (for the attention of Mr de Lorraine). He noted that Legacy had appointed Crossbridge as Investment Manager. The letter continued as follows:

"We enclose herein the Account Investment Management Mandate (the "Mandate") proposed by Crossbridge, which contains a revised investment proposal in Schedule 3 (the "Revised Investment Proposal") for your perusal and confirmation.

In the Revised Investment Proposal, Crossbridge has recommended, amongst other things, to subscribe for the Aria Commodity Finance Fund (the "Fund"), which has 95.4% of the invested sum insured by Lloyds (based on 90% insurance on principal and 90% insurance on the 6% yield). We enclose herein the material information on the Fund for your perusal and confirmation. If you would like further information regarding the Fund, Crossbridge is available at your disposal to discuss.

In light of the nature of the Fund as a structured product, together with other structured products that Crossbridge may from time to time recommend subscribing for in accordance with the Revised Investment Proposal, Crossbridge has drafted clause 3(e) in the Mandate to ensure the risks inherent in such structured products are well understood."

170. The AIMM dated 31 March 2020 was to be signed on behalf of Crossbridge by Yai Sukonthabhund (**"Mr Yai"**).

171. Schedule 3 contained the Investment Strategy:

(1) Twenty per cent (20%) of funds shall be held in daily liquidity instruments;

(2) Crossbridge may hold up to a maximum of one hundred per cent (100%) of the Assets in short-to-medium term instruments (less than two year) on a diversified basis;

(3) Crossbridge is permitted to hold Assets in structured products & funds as set out below:

(a) Aria Commodity Finance Fund; or

(b) Any other funds or structured products in the discretion of Crossbridge upon first giving reasonable information regarding such fund or structured products to the Client;

(4) Maximum Assets held by each instrument: 50%;

(5) Maximum Assets with a Single Issuer: 50%;

(6) Maximum Assets longer than 2-year Maturity: 50%;

(7) Liquidity: Our goal would be to maintain a short-to-medium term position in order to preserve a rather liquid portfolio.

172. Attached to the Investment Strategy was a *"Commodity Finance Medium Term Note"* Term Sheet issued by the well-known bank OCBC, on Aria headed paper. There are substantial issues of fact as to whether OCBC ever issued that or any similar notes in conjunction with Aria, that I cannot resolve, but for immediate purposes the relevance is that what was proposed was an asset-backed, credit insurance-backed, commodity finance note issued by a "AA" rated bank.

173. In June 2019 the Fund had issued a Private Placement Memorandum ("PPM"). The *"General Investment Objective"* of the Fund was stated to be:

> *"The ARIA Commodity Finance Fund's (the "Fund") investment objective is to provide a total return primarily from income and specifically a defined annual return, which is Class specific, distributed periodically. The Fund pursues its investment objective primarily by investing in trade finance, structured trade, export finance, import finance, supply chain financing and project financing of entities, including sovereign entities ("trade finance related securities"). Trade finance related securities will be located primarily in, or have exposure to, global emerging markets. Trade finance transactions refer to the capital needed to buy or sell, import or export, products or other tangible goods. Project finance transactions are typically used to build something tangible or to expand existing plant capacity to produce more goods for trade; and the Fund typically invests in project finance deals when the project has been largely completed and goods are being produced for export (i.e., transactions are of a short-term nature). Furthermore, the Fund will acquire a principal protection facility, which seeks to afford 90% protection of the capital value of the Fund at the end of the 1, 3 or 5 year terms for Class A and C Shares meaning 12 month rolling Classes, or the '2022' and '2024' Shares. Such indemnities are provided by 'A' rated financial institutions. The '2029 Shares' will include both a fixed annual return and 'carry' as defined as 30% of the increase in the valuation of any 'physical' or real assets, such as farmland, acquired for the Class over the investment term."*

174. Under *"Investment Strategy"* it was stated:

> *"Under normal market conditions, the Fund's investment program will consist primarily of investing in trade finance related securities. It is the Adviser and Sub -Adviser's (each as defined below) intent to focus the Fund's investments in trade finance related securities.*
>
> *The Fund seeks to provide investors with a portfolio that exceeds the 1 -Month London Inter -bank Offered Rates (LIBOR) with low volatility and low correlation to stock and fixed income market returns as well as commodities. The Fund's investments are expected to consist primarily of loans, or similar instruments used directly or indirectly to finance domestic and international trade and related infrastructure projects. These are expected to include, but not be limited to, facilities for pre-export finance, process and commodities finance, receivables financing, letters of credit and other documentary credits, promissory notes, bills of exchange and other negotiable instruments."*

175. Under *"Investment Restrictions"* it was stated:

> *"Under normal market conditions, the Fund will invest at least 80% of its net assets, plus the amount of any borrowings for investment purposes, in trade finance related securities. Up to 20% of the Fund's assets may be invested in other types of fixed -income securities and money market instruments."*

176. There was a more detailed section headed *"Investment Policy"*. The *"Investment Objective and Strategy"* was described as follows:

> *"The Fund's investment objective is to provide total return primarily from income and capital growth. While there is no assurance that the Fund will achieve its investment objective it endeavours to do so by following the strategies and policies described in this Prospectus.*
>
> *The Fund pursues its investment objective primarily by investing in trade finance, structured trade, export finance, import finance, supply chain financing and project finance assets of entities, including sovereign entities ("trade finance related securities"). Trade finance related securities will be located primarily in, or have exposure to, global emerging markets. Under normal circumstances, the Fund anticipates that approximately 75% or more of its assets may be invested in trade finance related securities of companies or other entities (including sovereign entities) located primarily in or having exposure to global emerging markets. Trade finance transactions refer to the capital needed to buy or sell, or import or export, products or other tangible goods. Project finance transactions are typically used to build something tangible or to expand existing plant capacity to produce more goods for trade; and the Fund typically invests in project finance deals when the project has been largely completed and goods are being produced for export (i.e., transactions are of a short term nature). Under normal circumstances, the Fund intends to hold its positions through to maturity. There are no limits on the Fund's average-weighted maturity. However, under normal conditions, the Fund, excluding 2029 Shares, anticipated to have an average dollar weighted maturity of not more than 36 months. The Fund's investments in trade finance related securities are often unrated but may also be below investment grade (or "junk" investments).*

… The Fund's investments are expected to consist primarily of loans, or similar instruments used to finance domestic and international trade and related infrastructure projects. These are expected to include, but not be limited to, facilities for pre-export finance, process and commodities finance, receivables financing, letters of credit and other documentary credits, promissory notes, bills of exchange and other negotiable instruments. The Fund may engage in such investments by way of purchase, assignment, participation, guarantee, insurance, derivative or any other appropriate financial instrument. The Fund may invest without limitation in securities and obligations for which there is no readily available trading market or which are otherwise illiquid, including trade finance securities and other fixed-income or derivative instruments. The Fund may also take positions in traditional assets including bonds, (investment-grade or noninvestment-grade (otherwise known as "junk bonds")) debt securities, equities, foreign exchange instruments, as well as derivatives for the purposes set forth below. Derivative investments made by the Fund are included within the Fund's 80% policy and are calculated at market value…. the Fund will invest at least 80% of its net assets, plus the amount of any borrowings for investment purposes, in trade finance related securities. Up to 20% of the Fund's assets may be invested in other types of fixed -income securities and money market instruments as described in this Prospectus. It is the Fund's Adviser's intent to focus the Fund's investments in trade finance related securities. Because the Fund refers to trade finance related securities in its name, it will notify Shareholders at least 30 days in advance of any change in its investment policies that would enable the Fund to normally invest less than 80% of its net assets, plus the amount of any borrowings for investment purposes, in trade finance related securities.

…

Insured Risks

The Fund will engage in comprehensive structured credit insurance products to protect against a number of named perils. In the first instance, the insurance policy(ies) are engaged with to indemnify the Insured (the Fund), in the Policy Currency for the Claim Amount, up to but not exceeding the Maximum Limit of Liability, (90% of the capital value of the Fund at policy inception date), caused by the failure of the Obligors or counterparties, to honour their obligations of payment to the Insured, (the Fund), on the respective Due Date(s) provided always that such Due Dates occur during the Policy Period. PLEASE NOTE CLASS B SHARES DO NOT BENEFIT FROM THE 90% INDEMITY [sic] ON THE CAPITAL VALUE OF THE FUND AND SUBSCRIBERS DO NOT BENEFIT AS INSURED PARTIES (OR FIRST LOSS PAYEES) AS CLASS A SUBSCRIBERS ARE.

…

Special Investments

The Fund may temporarily depart from its principal investment strategies by investing its assets in shorter term debt securities and similar obligations or holding cash. It may do this in response to unusual circumstances, such as: adverse market, economic, or other conditions (for example, to help avoid potential losses, or during periods when there is a shortage of appropriate securities);to maintain liquidity to meet Shareholder redemptions; or to accommodate cash inflows. It is possible that such investments could affect the Fund's investment returns and/or the ability to achieve the Fund's investment objectives."

177. It is notable that the PPM stated that *"The Fund is a newly formed company and has no prior operating history. Investment in the Fund is speculative and involves a high degree of risk."*

178. After the Revised Investment Proposal in April 2020, the Fund issued a *"Fund Fact Sheet"*. The *"Fund Info"* was that its *"Investment Objective"* was *"Asset backed, trade finance"* with Structured Credit Insurance from Lloyds of London, Chubb and Liberty Mutual. Its strategy was stated to be:

"• Connecting global producers and investment grade consumers of soft commodities, including corn, wheat, ethanol and soybeans.

• The strategy is to act as a financial intermediary between buyers and sellers of goods, meaning short term asset backed lending usually between 15 and 120 days.

• Transactions and the principal are supported by credit insurance from A rated credit insurers such as Lloyds of London, Chubb and Liberty Mutual. Up to 80% of global trade is supported by trade finance in some form or other."

179. Under *"Credit Enhancement"* it was said:

"• Lloyds Comprehensive Structured Credit Insurance

• er 1 Trading Counteries [sic] Parties such as: Mitsui, Total, Toyota, Marubeni, Sojitz

• A Rated LC & confirmation Bank LC with 'Back to Back' Contracts with no Price Risk

• Short Duration Asset Backed transactions and self liquidating positions

• Commodity verification with global Independent inspection agencies: Control Union & SGS

• IMR – Interest Maintenance Reserve Account: 1.3x next 12 month's distributions.

• LLR – Loan Loss Reserve Account: 2.5% of AUM

• All counterparties are approved by structured credit insurance provider.

• Individual credit limit exposures on counterparties

SHORT DURATION Average trade - 42 days Self liquidating, asset backed short duration credit exposures

CAPITAL PRESERVATION Low Empirical Default Rates - Portfolio diversification and disciplined risk management approach

HISTORIC NET RETURNS Higher Income Returns - Capacity to pay high yielding rates

without moving up the credit risk curve"

180. There followed a *"TRANSACTION SUMMARY: DOCUMENTATION PROCESS"*:

"• Independent Inspection Agency verifies the cargo quality.

• The Ship's Captain signs off on the cargo (B/L, commercial invoice), which are sent to the buyer's bank along with inspection certificates

• Under UCP 600, by meeting the contractual terms of the contract (as verified by independent inspection certificates), the Buyer's bank is obliged to pay the L/C, (even if the cargo doesn't arrive at destination).

• Contractual obligation is to meet the specification at Load Port. Once the goods have passed the 'Ship's rail', i.e. are loaded and specification, quality and quantity have been verified by the inspection agency the risk is then transferred to the Buyer.

• Whilst payment is due, and risk has passed to the buyer, title does not pass until payment has cleared from the purchaser.

• Emirates NBD – SMART Trade institutionally verifies and processes all transactions with facility to discount L/Cs providing an additional checking mechanism."

181. In May 2020 the Fund issued a second PPM. There was a significant difference in the description of the *"General Investment Objective"* in the second PPM:

"The ARIA Commodity Finance Fund's … investment objective is to provide a total return primarily from income and specifically a defined annual return, which is Class specific, distributed periodically. The fund pursues its investment objective primarily by investing in trade finance, structured trade, export finance, import finance supply chain financing ("trade finance related securities"). Trade finance related securities will be located primarily in, or have exposure to, global emerging markets. Trade finance transactions refer to the capital needed to buy or sell import or export products or other tangible goods. The Fund will acquire a structured credit insurance policy from an investment grade counterparty which provides 90% indemnity for non-payment against approved obliger's of the Fund, subject to specific exclusions as specified in the Policy Documents."

182. The significant difference was that the objective no longer included project financing of entities, including sovereign entities, typically used to build something tangible or to expand existing plant capacity to produce more goods for trade. The section headed *"Investment Policy"* also omitted reference to project finance. The section included new detailed subsections:

(1) a selection of representative commodity transactions conducted by the Fund and its Investment Manager in the last three years (two in number);

(2) the *"Ongoing Role of the Investment Manager and Adviser"*;

(3) *"Eligible Assets Criterion and Transaction Overview" –*

> *"The primary strategy of the Fund is to act as 'principal' to transactions originated and advised by the Investment Manager and any appointed Investment Advisor, whereby it acquires a Commodity from a Commodity Seller and simultaneously sells the Commodity to a Commodity Buyer, habitually on a self liquidating Letter of Credit basis, or for certain pre -approved counterparties on an open account basis, (see Representative Transactions. In such circumstances, (each a "Commodity Transaction"), the rights to payment are directly with the Fund as seller and buyer to its counterparties, being the Commodity Buyer and Commodity Seller respectively."*

(4) "Description of Credit Support Providers".

183. Between July and December 2020 Legacy invested USD 97 million of the Reserves in the Fund (**"the Initial Investments"**). Those investments are the subject of separate proceedings brought by Techteryx in Hong Kong on 24 November 2023, HCA 1906/2023 (**"the Legacy Proceedings"**).

184. In September 2020 Techteryx entered into the Client Agreement and CSA with FDT. In December 2020, Techteryx acquired certain assets from TrueCoin including TrueCoin's rights and interests in the Reserves pursuant to the SAA and MSA. In January 2021 Techteryx entered into the ESA with FDT and the Reserves were transferred to FDT.

185. On 18 March 2021 FDT entered into the DIMA with Finaport under which Finaport was appointed by FDT pursuant to Clause 4.d of the ESA to manage the portfolio. Finaport produced an Investment Proposal to FDT although it is not clear when. DMCC indicate in their skeleton argument for the Final Return Date hearing that Mr Yai was also the principal of Finaport as well as of Crossbridge.

186. The Finaport investment Proposal (albeit in similar format) was markedly different from that produced by Crossbridge:

(1) No longer was there any obligation to hold any cash for liquidity purposes;

(2) There were no concentration restrictions either in relation to specific instruments or specific issuers;

(3) The restriction on assets with longer than 2-year maturity was removed.

187. There is no explanation for these changes, but they meant that Finaport was able to recommend and FDT was able to invest 100% of the Escrow Account in the Fund.

188. As noted at paragraph 23 above, between May 2021 and March 2022, FDT claims to have invested USD 468 million of the Reserves in the Fund. In fact, of those sums USD 456 million was paid directly to DMCC in the form of the 6 Remittances.

189. MWB exhibits a number of internal messages between Mr de Lorraine and Techteryx concerning investments on the Slack communications platform that were exhibited to an affidavit of Mr de Lorraine's in the Legacy Proceedings. On 8 July 2021 Mr de Lorraine wrote to a "Maria", whom MWB assumes is Maria Gu, Head of Operations at Tron Group. Tron Group is said to be a company owned or controlled by a Justin Sun (**"Mr Sun"**), who is also said to be behind Techteryx.

*"**Alex de Lorraine** 16:12*
We have 1bn sitting at 0% at the moment. I would love to invest that. Could I please get the go ahead? Ideally I want to do 200M for a 60-90 day term. That would really increase our earnings.
***Marla** 17:03*
I think thats cool. Lets do it. Do you it confirmed today?
***Marla** 17:18*
Heyhey i got justins approval. Please go ahead. Thanks"

190. There was no single investment of USD 200 million in July 2021 but there was a USD 100 million investment on 31 July 2021 and a USD 100 million investment 31 August 2021. Neither (as will be seen below) was for a 60-90 day terms.

191. There is a document dated 8 March 2021 headed *"TECHTERYX LTD (a Business Company incorporated in the British Virgin Islands) ('Company') WRITTEN RESOLUTIONS OF THE DIRECTOR OF THE COMPANY MADE IN LIEU OF MEETING PURSUANT TO THE MEMORANDUM AND ARTICLES OF ASSOCIATION OF THE COMPANY ('Articles')"*. It bears the header *"[DRAFT FOR TECHTERYX PERUSAL ONLY] [SUBJECT TO TECHTERYX COUNSEL/COMPANY SECRETARY INPUT) Company No.: 2042156."*

192. The document recited the making of the Client Agreement ("CA"), CSA and ESA with FDT, describing the ESA as "an ancillary agreement" to the CA. It recited clauses 4(d)(ii) and (iii) of the ESA and the making of the DIMA with Finaport on 18 March 2021 and the supply of the Finaport Investment Proposal to FDT. The Finaport Investment Proposal was attached to the document and was said to be reviewed by the Directors of Techteryx.

193. The document contained the following resolutions:

(1) the following persons be added as Authorized Persons ('Additional Authorized Persons') with immediate effect to give Instructions to FDT on behalf of the Company which include without limitation, instructions in respect of the Investment Amounts and/or other execution-b ed investment instructions relevant to the CA. CSA or ESA (as the case may be), unless revoked by the Board otherwise:-

(a) Cindy Louie [I am not told who she is but she has a "tusd.cash" email address]; and

(b) Mr de Lorraine;

(2) any actions and Instructions given by Alex De Lorraine on behalf of the Company to FDT in connection with the Investment Amount prior to the execution of these resolutions hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such actions and Instructions had been presented to for approval and approved by, the Directors prior to such action being taken;

(3) the form and substance of the enclosed Investment Proposal be and hereby approved and adopted fully; and for the purpose of clause 4(d)(ii) of the ESA, any Director of the Company; any Additional Authorized Persons referred above or such other person(s) as authorized by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to execute the Investment Proposal;

(4) in connection with or to carry out the actions contemplated by the foregoing resolutions, any Director of the Company, any Additional Authorized Persons referred above or such other person(s) as authorized by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to take such steps and do such things as they deem necessary, appropriate, desirable or expedient to give effect to the foregoing resolutions, which include without limitation, the signing, making, executing or delivering to FDT and any other relevant persons including Finaport all such agreements, documents, instruments, certificates, approvals, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, approvals, consents or waivers, as either of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution or delivery of such of the foregoing to be conclusively evidenced thereby;

(5) any and all actions of the Company, or the Director(s), or any officer(s) (including for the avoidance of doubt, Alex De Lorraine or person(s) authorized by the Company taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, the Directors prior to such action being taken.

194. The document is signed by Yiying Jiang as Director. I have no information about this person.

195. It is common ground between the parties that the date cannot be right as it refers to events after 8 March 2021, namely the making of the DIMA with Finaport on 18 March 2021 and the supply of the Finaport investment Proposal to FDT. The pleaded case of Techteryx is that it was prepared 8 months after its apparent date and presented for signature in or around November 2021.

196. By November 2021 all but the last of the 6 Remittances had been made.

197. Techteryx accepts that it did give authority to Mr de Lorraine to act as its authorised representative, but it pleads that Mr de Lorraine was in breach of his fiduciary duties as agent of Techteryx, grossly negligent and guilty of fraudulent misrepresentation as well as of conspiracy.

198. The last of 6 Remittances was made on 31 March 2022. On 24 February 2022 Mr de Lorraine wrote on Slack to Maria:

"Good morning @Maria I have a question for you and I guess Justin. At the moment we are investing between 20-30% of the cash. There is an allocation of another 200M of the Aria funds for 6% but if I were to shift money from let's say Prime Trust over then we would have about 38% of the money invested. What do you think? Too risky? If we stick to the max of 30% rule we can invest another 70M which I intent to do but I did want to ask if you and Justin are comfortable of going a little higher while we can."

199. On 25 February 2022 there was the following exchange:

*"**Maria 13:57** Justin has 2 questions for the investment*
Aria ... is it risky? What kind is this investment?
08:31
2. How much should we keep for the customer to mint redumption [sic]?
then we can decide if the 38% is okay
13:57
He would like some data

Alex de Lorraine 14:00
Aria is triple insured, they are basically funds that deal with trade finance of organisations like the WHO, or countries. We are just extending the amount we have with them. We can get out within 90 days and we have staggered the past investments to allow for flexibility. On average we only need 15% in cash we are just super conservative and keep it above 70% at the moment. Hope that helps

…

Maria 14:07 So we can bump to above 70%, but we are currently at 30% cap, and you were asking is move it up to 38% ok? correct?

…

Alex de Lorraine 14:10

At the moment we have 70% or more in cash but we only really need 15% in cash ... So we have plenty of room

…

Maria 14:19

He approved. Said 38%is ok"

200. This is an important exchange and there is much that is unclear about it which will likely only become clear on a full trial of the proceedings. The ESA permitted FDT to invest 85%. The Finaport Investment Proposal allowed investment of 100% of the Escrow Account. Mr de Lorraine was telling Maria/Mr Sun that only 30%-38% of the cash was invested. At paragraph 66(f) of Li-A-1 Ms Li says that from 1 July 2020 onwards, there was not sufficient Reserves in cash and equivalent assets to back the amount of outstanding Tokens. It is pleaded at paragraph 68 of the ASOC that the initial USD 97 million invested by Legacy accounted for around one third of the Reserves and that with the further USD 468 million this accounted for almost the entirety of the Reserves kept with FDT. At paragraph 72 of the ASOC it is said that the USD 468 million was almost half of the Reserves. I infer that the sums placed with Legacy and FDT were not the totality of the Reserves and this might explain Mr de Lorraine's reference to one billion at paragraph 189 above. However, the concentration limits in the Legacy and FDT ESAs applied only to the funds held by them.

201. What does appear to be consistent is that Aria Fund was stating, and Mr de Lorraine was repeating, that the Fund's strategy was to invest in short-term asset-backed, insurance-backed, independently verified commodity trade finance transaction with large institutions. There was no suggestion that it was providing long term project finance to related entities.

The Claimant's Case

202. As noted at paragraph 73 above Techteryx alleges that FDT, Finaport, the Fund, TrueCoin and Mr de Lorraine represented that the money was invested in the Fund as a fund focused on investing in liquid and principal-protected trade finance instruments which was untrue.

203. As noted at paragraph 80 above Techteryx alleges that even if there were any real investments, they were invested in a way which was contrary to that envisaged by the PPM and the Fund Fact Sheet. It was noted that none of the Fund's investments had been supported by credit insurance from A rated (or any) credit insurers; no insured trade or commodity finance instruments with short dated maturities comprised any meaningful component of the Fund's assets; the Fund did not notify shareholders 30 days in advance or at all of any intention to depart from the investment policies and restrictions contained in the PPM; and substantially more than 20% of the gross assets of the Fund is exposed to the creditworthiness or solvency of one counterparty (including its subsidiaries and affiliates).

204. It is alleged at paragraphs 66 and 67 of the ASOC (see paragraph 83 above) that there were no legitimate reasons for payment of the 6 Remittances to DMCC and the Fund itself was a fraud and perpetrating a fraud, and any story or representation about investing in the Fund as a fund which makes genuine investments to generate returns was also fraudulent. I have expressed some reservations that the Fund was created for fraudulent purposes and its books have been audited by well-known international auditors. What precisely was shown to the auditors and how diligently they undertook their task will no doubt be the subject of detailed examination in due course, but for present purposes I will focus on the allegation that the Fund was perpetrating a fraud. Techteryx pleads that each of the other Defendants must have known and did know that the Fund was perpetrating a fraud on Techteryx in that (amongst other things) any representation about investing in the Fund as a fund which makes genuine investments to generate returns was fraudulent (i.e. false) (ASOC paragraph 70, paragraph 84 above).

205. Techteryx alleged that TrueCoin, Legacy Trust, FDT, Crossbridge, Finaport, and the Fund acted together in the fraud. Under paragraph 72 of the ASOC are particulars from which Techteryx alleged that their involvement, knowledge and intention may be inferred. In particular it is alleged that it defied common and commercial sense for the Reserves to be invested in the Fund and was inexplicable for FDT, Finaport, TrueCoin and Mr de Lorraine to recommend that USD 468 million be invested in the Fund. It is alleged that failure to conduct due diligence and monitoring is inexplicable and shows that they were already aware of the truth and the fraud and were indeed part of it. Techteryx says the inference of fraud is supported by the way in which investments were documented (this is, in my view, a central issue which I will address below).

206. The pleading of fraudulent conspiracy does not mention DMCC.

207. Individually, Techteryx alleges that FDT acted in breach of trust and was grossly negligent. It is alleged that DMCC and the Fund received trust property from FDT paid to them in breach of trust (see paragraph 87) which they hold on constructive trust for Techteryx. It is pleaded that DMCC (in the person of MWB) knew or should be taken to have known that sums invested which were transferred to it were being used otherwise than in accordance with the terms of the PPM.

Discussion

208. There are considerable issues of fact surrounding the treatment of the monies when received by DMCC which I will address, but for initial consideration is whether there is a serious issue to be tried that that FDT made the payment to DMCC in breach of the trust that I have found arguably existed as between FDT and Techteryx

209. The essential facts are as follows:

(1) The Legacy ESA imposed a limit of 85% on the Escrow Amount to be invested. There had to be an Investment Proposal signed by TrueCoin and Legacy on proper advice from regulated investment advisers;

(2) The Crossbridge Investment Proposal was for investment in short-to-medium term instruments 20% of which were to be daily liquidity instruments. It appears that investment in the Fund was said to be medium term from the draft note annexed to the Proposal;

(3) The Fund Fact Sheet and May 2020 PPM indicated that Fund was engaged in asset-backed, fully insured commodity trade finance transactions of short duration. Its business appeared to be highly liquid;

(4) The FDT ESA in January 2021 retained the obligations that no more than 85% of the Escrow Amount may be invested and only on the basis of an investment proposal prepared signed by both parties made with proper advice on the portfolio of investments from licensed and regulated investment advisers;

(5) Between May and August 2021 FDT made 5 of the 6 Remittances. It appears that FDT did not provide Finaport's investment proposal to Techteryx. It does appear that during this period Mr de Lorraine was representing to Techteryx via Mr Sun that the investments were to be of 60-90 day duration. This was not true as will be seen in the next section of this judgment;

(6) It is Techteryx's case that it did not see the draft resolution (and presumably the Finaport Investment Proposal) until November 2021. The Investment Proposal in short allowed FDT to invest 100% of the Escrow Amount in illiquid long-term investments. Not only was this in breach of the ESA, it made no commercial sense as (at least a proportion of) the Escrow Amount had to be available to meet redemption of the Tokens;

(7) I was initially of the view that the date of the Resolution may simply have been an innocent typographical error, but on close examination I am more inclined to believe that it was deliberately backdated to a point in time before the transfer of all Escrow Assets to FDT in April 2021 and the commencement of the 6 Remittances;

(8) The Resolution in substance purports retrospectively to absolve Mr de Lorraine and FDT from any liability for the investments made without compliance with the ESA. DMCC points to evidence filed by Mr de Lorraine in the Legacy Proceedings in which he said that he acted in accordance with Techteryx's instructions and on Techteryx's approval and that Techteryx knew about the investments into, and about any investment risk related to, the Fund all along and approved investments;

(9) Mr de Lorraine's evidence appears to be contentious. I have no information concerning how the Resolution came be signed on behalf of Techteryx or what was known to Techteryx, but I do note in relation to final Remittance, Mr de Lorraine was representing that the Fund was *"triple insured"* and *"We can get out within 90 days"* neither of which were true;

(10) DMCC also refers to the Defence of Legacy in the Legacy Proceedings. Legacy pleads (without more) that Techteryx instructed and authorised investments in the Fund after certain of the alleged breaches had taken place. This is in response to paragraph 34 of the Amended Statement of Claim and I cannot see any immediate relevance to the issues under current consideration.

(11) Added to all of this, the 6 Remittances were not paid to the Fund, they were paid to DMCC without the knowledge of Techteryx. The monies were not used to invest in asset-backed, fully insured commodity trade finance transactions of short duration. Instead (while the precise audit trail remains obscure) the monies ended up financing long term infrastructure projects undertaken by subsidiaries of the Aria Group: a form of business deliberately omitted from the second PPM. Even the first PPM said that the Fund typically invests in project finance deals when the project has been largely completed and goods are being produced for export (i.e., transactions are of a short-term nature), which was not the case at least in relation to some of the investments. Nor did the first PPM say that the Fund would be financing projects undertaken by the Aria Group itself.

210. In my judgment those facts support serious issues to be tried as to the pleaded allegations that FDT acted in breach of trust in making 6 Remittances to DMCC and that both Finaport and Mr de Lorraine conspired with FDT to invest the money in a manner that was known to be unauthorised and procured the consent of Techteryx by misrepresentations they must have known were untrue. DMCC submits that it is an absolute defence to the breach of trust claim that investments in the Fund were authorised as was the transfer of the USD 456 million to DMCC. It is far from clear to me that, even if the Resolution were effective retrospectively to clothe FDT and de Lorraine to make the first 5 Remittances, FDT was authorised to invest in DMCC. Put another way, the obvious issues concerning the circumstances in which the Resolution came to be made and the representation in the Slack messages mean that it cannot be said that the breach of trust claim is unarguable and that it does not raise serious issues to be tried.

THE 6 REMITTANCES

Introduction

211. The bulk of the evidence adduced before this Court concerns the 6 Remittances and where the money went.

212. It seems to me that much of the evidence (or at least the fine detail) is not of immediate relevance but may become relevant when considering asset disclosure under the injunctions or in relation to any tracing claim ordered by the Hong Kong Courts. The immediate issues to be considered comprise:

(1) How the receipt of monies were treated by DMCC. This is relevant to DMCC's knowledge any breach of trust and potential liability as constructive trustee;

(2) Broadly, how the money was used. This is relevant to DMCC's argument that it is a bona fide purchaser for value and Techteryx ultimately got what it bargained for, namely shares in the Fund; and

(3) Overall consideration of the merits.

213. The FRD and 21 May judgments identified a number of anomalies in the documentation issued by DMCC which MWB has sought to explain. In MWB-A-3 at paragraph 58, MWB said that he produced a complete set of the subscription forms relating to the Remittances and their subsequent "Porting" to the Fund. I will address "Porting" separately, but it is right that since I now have a full set of documents I should revisit the treatment of the payments.

Remittance/DMCC Payment No.1 – USD 10 million 30 June 2021

214. By a Subscription Application Form (**"SAF"**) dated 24 June 2021 reference ACD_BIT_5642_06_21, Legacy applied for USD 10 million worth ARIA Commodities – Class B 6.0% 3 YR USD shares in DMCC. This was said to be a subsequent investment. The signature on the form is illegible. The Subscriber reference is 100424.

215. In the *"SUBSCRIPTION TERMS AND REPRESENTATIONS AND WARRANTIES OF SUBSCRIBER"* section 6 there are tick boxes *"If the subscriber is the beneficial owner" or "If the subscriber is subscribing for or on behalf of customers."* Neither is ticked.

216. On 11 July 2021, DMCC issued a Confirmation of Subscription of Units (**"CSU"**) stating:

(1) Your reference – Custody Account 100424;

(2) Our reference - SREF/5812;

(3) Designation - ACD_BIT_5642_06_21;

(4) Fund - Class B 6.0% 3 Year USD.

217. It is odd (and unexplained in these proceedings) that in June 2021, Legacy should be the investor not FDT as the ESA was in January 2021 and the Escrow Account was transferred by April 2021.

218. There also exists another set of documents: SAF dated 30 June 2021 for USD 10 million invested in ARIA Commodity Finance Fund - Class C USD 3 YR 6.00% with the same references ACD_BIT_5642_06_21 (SREF/5812), by Legacy, this time with Mr Chok's email address. Again, this was said to be a subsequent investment. Again, the signature on the form is illegible.

219. In section 6 of the Terms, the box *"If the subscriber is the beneficial owner"* is now ticked. This is important because MWB relies on this to support his evidence that he had no knowledge that FDT/Legacy was investing on behalf of Techteryx.

220. There is a Fund CSU also dated 30 June 2021 in similar terms of the DMCC CSU save that the product is Class C 6.0% 3 Year USD.

221. MWB explains these documents as follows in MWB-A-1 at paragraphs 31-32:

> *"31. In around December 2022, FDT identified that no holding was recorded in the Fund in relation to the DMCC Payments. As a result, FDT requested the Administrator of the Fund to regularise the position, by 'Porting' the DMCC Payments into the Fund. This would have involved the Administrator amending its register relating to the Fund so that it recorded holdings in the Fund corresponding to the quantum of the payments made. 32. A suite of documentation was then executed, mirroring the documentation that would have been executed at the time of the DMCC Payments, on the basis that each Payment represented an investment in the Fund from the date it was made."*

222. The NAV per unit also changes from USD 100 to USD 1,000. At paragraph 33 MWB explained:

> *"In respect of the DMCC Payments, new Subscription Forms were created to record the position (MWB2, pages 63-79). As a consequence of the increase in value of the total holdings in the Fund, it was necessary also to restructure the share capital, so that each 1,000 units held was replaced by a holding of 100 units (MWB2, pages 80-81). This change was backdated so that the effective date of the corporate action was 1 June 2021, prior to the date when the FDT DMCC Payments were made."*

223. The Financial Statements of the Fund do not reflect any restructure of the share capital in June 2021. For the year ending 20 June 2021, it stated under *"Share Capital"*:

> *"The authorised share capital of the Company is the aggregate of: EUR 40,000 split into 100 voting, nonredeemable, non-participating shares with par value EUR 0.01 each (designated as "Management Shares") and 29,999,900 redeemable participating non-voting Shares with par value EUR 0.001 each; and 10,000,000 redeemable participating non-voting Shares with par value USD 0.001 each.*
>
> *Management shares do not have a right to dividends. On a winding up of the Fund, management shares rank only for a return of the nominal amount paid up thereon provided the Fund has sufficient assets after settlement of all obligations to creditors and the holders of redeemable participating shares. As at June 30, 2021, the management shares was held by ARIA Capital Management."*

224. It is stated under *"Subsequent Events"* that subsequent to the balance sheet date of June 30, 2021, the Fund received additional subscriptions totalling to USD 512,293,868 for newly issued redeemable participating shares which would increase the Fund's capital and may impact its capital structure. However, there is no reference in the next year's financial statements to a restructure taking place and being back- dated to the previous year. The corresponding entry in June 2022 financial statements is identical terms save that the date in the last sentence is 2022.

225. The second set of documents were thus a back-dated "mirror suite" purporting to show that the original investments were not in DMCC, but the Fund, created in around December 2022. This is the so-called "Porting" of the investments from DMCC to the Fund.

226. There is a Distribution Statement (**"DS"**) dated 4 August 2021 in similar terms to the DMCC CSU (i.e. Class B shares) showing coupon due in the sum of USD 50,000. I understand this was not paid, it is Techteryx's case that coupon was not paid (see paragraph 29 above). MWB disputes this and says that coupon was paid to FDT and Legacy until what he calls the "AML issues" arose (see paragraph 302 below and following).

227. There is another DS dated 29 October 2021 in similar terms to the DMCC CSU showing coupon due in the sum of USD 150,000.

228. A further DS dated 31 January 2022 shows coupon due of USD 150,000. It is in the same terms the previous ones.

229. The situation changes with the DS dated 30 April 2022 which shows coupon of USD 150,000 due in respect of Class C shares although it is still issued by DMCC to Legacy. In MWB-A-3 MWB acknowledges at paragraph 63 that this was prior to the Porting process. The DSs for July 2022 and October 2022 for respectively UD$ 150,000 and USD 138,333.33 respectively also refer to Class C shares.

230. The documents then show a redemption request from Legacy dated 11 October 2022 in respect of the DMCC B shares in the sum USD 9,250,000 and another dated 18 October 2022 in the sum of USD 750,000. The former coincides with an entry dated 18 October 2022 in a bank account with ADIB which does not show the account number, account holder or payee and later with an entry dated 10 November 2022 that shows Legacy as the payee. It is not explained why there are two payments or why payments are being made to Legacy and not FDT.

231. There is no explanation why two redemption requests were made.

232. To complicate matters further there is a redemption statement dated 24 October 2022 from the Fund for Class C shares bearing the refere e consistently used. It also states that the Maturity Value is USD 100 million.

233. None of this makes any sense. I do not recollect that it has been suggested that this investment was redeemed, but if that were the case it would make even less sense. The investment would have been redeemed before the Porting process, consequently there would be no reason to create the backdated mirror set of documents as there would be no holding to port.

Remittance/DMCC Payment No.2 – USD 17 million 30 June 2021

234. Remittance No.2 follows the same pattern as No.1 in all material respects save that the redemption of the Class B DMCC shares by Legacy dated 18 October 2022 was apparently requested in 2 tranches, USD 2.5 million and USD 14.5 million. The former corresponding to a payment on 24 November 2022 from an ADIB account which does not show the account number, account holder or payee. The latter to a payment on 31 October 2022 of USD 9.3 million without those details and another on 3 November 2022 of USD 5.2 million that does identify the account holder as DMCC. There is no explanation why two redemption requests were made.

235. The comments at paragraphs 232 and 233 above apply with equal force.

Remittance/DMCC Payment No.3 – USD 100 million 30 July 2021

236. There is an SAF for USD 50 million of ARIA Commodities - Class B 6.0% 3 YR USD shares. It is said to be an initial investment made by FDT. The boxes relating to whether the subscriber is the beneficial owner subscribing for or on behalf of customers are not ticked. The start date is 15 July 2021, and it signed (illegibly) on 19 July 2021. There is a second identical SAF save that it is signed on 20 July 2021. They both reference Mr Chok on behalf of FDT and reference Custody Account No. 100032.

237. There is a CSU reflecting those details but in the total sum of USD 100 million dated 25 July 2021.

238. The backdated mirror suite comprises:

(1) SAF for USD 100 million ARIA Commodity Finance Fund - Class C USD 3 YR 6.00% now said to be a subsequent investment. The subscriber is the beneficial owner is the beneficial owner is now ticked. The signature is 15 July 2021, i.e. before the “real” signatures; and

(2) CSU reflecting the SAF showing the NAV per unit as USD 1,000

239. There is no explanation why the dates of the mirror documents are different from the original documents.

240. There are DSs dated 29 October 2021 and 31 January 2022 in respect of Class B DMCC shares, but the designation changes to Class C (i.e. Fund) shares in DSs dated 30 April 2022, 31 July 2022 and 31 October 2022. The NAV per unit is still shown as USD 100. This was before the Porting process and so it is difficult to understand why there is a change in the shares.

241. There then follow *“NAV Statement and Quarterly Distribution Record ARIA Commodity Finance Fund”* forms dated 31 January 2023, 30 April 2023, 31 July 2023 and 31 October 2023. Those documents show Class C shares and a NAV per unit of USD 1,000.

242. Finally, DMCC produces a Redemption Request Form addressed to the Fund in respect of USD 400 million Class C shares. The redemption date is shown as 13 February 2023, i.e. prior to the last three NAV statements, but the signature is dated 15 February 2024.

Remittance/DMCC Payment No.4 – USD 100 million 31 August 2021

243. Remittance No.4 is first found in a SAF dated 5 August 2021 for USD 100 million DMCC Class B shares. The reference is ACD_TER_5821_08_21. It is said to be an initial investment. The Subscriber is FDT with Mr Chok’s email and reference *“Custody Account No: 100032”*, the same as that for Remittance No.3. The boxes relating to whether the subscriber is the beneficial owner subscribing for or on behalf of customers are not ticked. The signature date is 5 August 2021.

244. There is a CSU dated 11 August 2021 with a NVA per unit of USD 100.

245. The backdated mirror suite comprises:

(1) SAF for USD 100 million ARIA Commodity Finance Fund - Class C USD 3 YR 6.00% now said to be a subsequent investment. The subscriber is the beneficial owner box is now ticked. The signature is 9 August 2021; and

(2) CSU reflecting the SAF showing the NAV per unit as USD 1,000.

246. There is no explanation why the dates of the mirror documents are different from the original documents.

247. [illegible] documents follow the same pattern as set out at paragraphs 240 and 241 above.

Remittance/DMCC Payment No.5 – USD 29 million 31 August 2021

248. Remittance No.5 is in two tranches.

249. The first is a SAF for USD 17 million ARIA Commodities – Short Term Special Opportunities 0.70%. It is dated 5 February 2021. The reference is ACD_SOY_5594_02_21. It is said to be an initial investment. The subscriber is Legacy with Mr Chok's email, reference Custody Account No.: 100024. The boxes relating to whether the subscriber is the beneficial owner subscribing for or on behalf of customers are not ticked. The subscriber signature is dated 2 February 2021.

250. The second is a SAF for USD 12 million ARIA Commodities – Short Term Special Opportunities 0.70%. It is in similar terms, but the subscriber signature is dated 8 February 2021.

251. In his First Affirmation in the HK Proceedings at paragraph 14(e) Mr Chok said that the payment was made from Legacy Trust (and not FDT) because this subscription was a rollover from a previous investment made by Legacy Trust. All existing subscriptions in the Fund held by Legacy in escrow for TrueCoin pursuant to the Legacy ESA were transferred to FDT and held on escrow for Techteryx pursuant to the FDT ESA. The principal amounts of the original subscriptions were therefore legally under FDT' s custody.

252. There is an letter dated 13 August 2021 jointly from Legacy and FDT to DMCC, it is headed:

> *"Re : Joint instructions to ARIA Commodities Fund : ARIA Commodities – Short-Term Special Opportunities 0.70%*
> *Our ref. : Account 100024*
> *Your ref:*
> *(a) Confirmation of Subscription of Units (Ref: ACD_SOY_5594_02_21);*
> *(b) Maturity Confirmation 5th August 2021 (Ref: SU0502221) (both together, the "ARIA Subscriptions")"*

It states:

> *"This letter is prepared jointly by First Digital Trust Limited ("FDT") and Legacy Trust Company Limited ("LTC") and refers to the enclosed ARIA Subscriptions under reference ACD_SOY_5594_02_21 and SU0502221. Pursuant to a binding arrangement together with joint instructions to LTC and FDT, it was agreed that the ARIA Subscriptions (along with other assets) shall be held under the escrow and/or custodial care of FDT in substitution of LTC. By virtue of the foregoing, and for operational simplicity purposes, we hereby jointly write to authorize and instruct you to undertake all works and actions necessary to effectuate the above referred arrangement, which may include without limitation, the re-designation of the ARIA Subscriptions principal investment to the amount of US$29 million along with all accrued interests thereto (as originally subscribed under the account of LTC) to FDT. Any subsequent dealings post redesignation shall be instructed by FDT to you solely."*

I would observe that this letter seems odd in that it is to DMCC yet Mr Chok says that at all times he thought the investments were in the Fund (see paragraphs 290 and 291 below).

253. The mirror SAF is for USD 29 million in relation to an entirely different product - ARIA Commodity Finance Fund - Class C USD 3 YR 6.00% but with a similar reference, ACD_SOY_5594_02_21 (SU011174). The subscription date is now 31 August 2021, and the signature is dated 12 August 2021. The subscriber is the beneficial owner box is now ticked.

254. There is a mirror CSU dated 31 August 2021. The reference is SU011174. It is for USD 29 million ARIA Commodity Finance Fund - Class C USD 3 YR 6.00%. The NAV per unit is shown as USD 1000.

255. There is an original CSU dated 29 October 2021. The Subscriber is different - 100424, the same as Remittances Nos. 1 and 2. The reference is the same as the mirror documents SU011174 (albeit reference did not appear in the original SAFs) but the designation is different ACD_BIT_5642_06_21. The product is different from the SAFs - Class B 6.0% 3 Year USD. The NAV per unit is shown as USD 100. There is a CSU in the same terms dated 31 January 2022.

256. There are CSUs dated 30 April 2022 and 31 July 2022 in similar terms save that the product is identified as Class C, i.e. Fund, shares. The NAV per unit was shown as USD 100. This was therefore before the Porting process, but apparently showing Fund shares.

257. There are a NAV Statement and Quarterly Distribution Record ARIA Commodity Finance Fund dated 31 October 2022, 31 January 2023, 28 February 2023, 30 April 2023 and 31 July 2023 in similar terms to the previous but the NAV per unit was shown as USD 1000. I do not understand why the change occurred between 31 July and 31 October 2022.

258. There are 2 redemption requests from FDT to DMCC in respect of ARIA Commodities Class B 3 Yr 6.0% Class USD in the sums of USD 4 and 4.05 million dated 18 October 2022 reference SU011174. There is no explanation why two redemption requests were made. There is a payment advice from ADIB which indicates a payment of USD 4 million on 17 November 2022 to Legacy not FDT. There is an ADIB bank

statement of DMCC showing a payment to an unidentified payee on 7 December 2022.

259. The payments are reflected in a Redemption Statement dated 31 October 2022 reference SU011174 for Class B 6.0% 3 Year Class USD shares. This was therefore pre-Porting but the NAV per unit is shown as USD 1000.

260. The NAV Statement and Quarterly Distribution Record ARIA Commodity Finance Fund dated 31 January 2023 shows redemption but in respect of the Fund shares when the redemption was in respect of DMCC shares.

261. There is a redemption request from FDT for USD 11.1 million dated 23 January 2023 reference SU011174 for ARIA Commodity Finance Fund Class C 3 Yr 6% Class shares. The payments identified as associated with the redemption are:

(1) 3 February 2023, USD 4.6 million to Legacy not FDT;

(2) 9 February 2023, USD 6.1 million to an unidentified payee;

(3) 8 March 2023, USD 2.9 million to an unidentified payee;

(4) 13 March 2023, USD 400,000 to FDT for redemption;

(5) Total USD 14 million not 11.1 million.

262. No explanation is given as the rather random amounts of the request and payment or the timing of the latter, nor why USD 4.6 million was paid to Legacy in the light of the instructions at paragraph 252 above.

263. The NAV Statement and Quarterly Distribution Record ARIA Commodity Finance Fund dated 28 February 2023 shows a reduction of USD 8,155,000. This is not consistent with the redemptions said to have been paid on 3 and 9 February 2023.

264. There is a redemption request from FDT for USD 2.9 million dated 1 March 2023 reference SU011174 for ARIA Commodity Finance Fund Class C 3 Yr 6% Class shares. The payments at sub-paragraphs 261(3) and (4) above are again referenced, making payments of USD 14 million against redemptions sought of USD 14 million. The NAV Statement and Quarterly Distribution Record ARIA Commodity Finance Fund dated 30 April 2022 is consistent with redemptions having been paid in the sums of USD 14 and 8.05 million, i.e. USD 6.95 million.

265. There is a redemption request from FDT for USD 6.95 million dated 23 March 2023 reference SU011174 for ARIA Commodity Finance Fund Class C 3 Yr 6% Class shares. There is an entry of DMCC's ADIB bank account for USD 6.95 million paid to an unidentified payee on 1 May 2023. The NAV Statement and Quarterly Distribution Record ARIA Commodity Finance Fund dated 31 July 2023 shows a subscription valuation of USD 3.3 million for SU011174. This cannot be right as the payment on 1 May 2023 should have reduced the balance to nil.

Remittance/DMCC Payment No.6 – USD 200 million 31 March 2022

266. The SAF in respect of Remittance No.6 is for USD 200 million ARIA Commodities - Class D 6.0% 3 YR USD. It is dated 9 March 2021 with reference SU011195. It is said to be an initial investment made by FDT for Custody Account No: 100032. The same as Remittance No.3. The boxes relating to whether the subscriber is the beneficial owner subscribing for or on behalf of customers are not ticked. The subscriber signature is dated 15 March 2022. This is reflected in a CSU dated 16 March 2022 showing a NAV per unit of USD 100.

267. The back-dated mirror SAF is for ARIA Commodity Finance Fund - Class C USD 3 YR 6.00%. It is said to be a subsequent investment. The subscriber is the beneficial owner box is now ticked. The signature is dated 17 March 2022. It is reflected in a CSU dated 31 March 2022 showing a NAV per unit of USD 1000.

268. There is a DS dated 30 April 2022 showing a NAV per unit of USD 100 but for Class C USD 3 Yr. 6%. The change in NAV per unit takes place in the DS of 31 July 2022. The DS dated 31 October 2022 is in the same terms. The statements begin to be in the form *"NAV Statement and Quarterly Distribution Record ARIA Commodity Finance Fund"* from 31 January 2023, albeit the designation of the shares is unchanged. It is followed by statements dated 30 April 2023, 31 July 2023 and 31 October 2023.

Porting

269. In MWB-A-1 MWB said,

> *"23. The reason why payments were made directly to Aria DMCC rather than to the Fund (as they had been prior to that date) was because the subscriber, First Digital Trust Limited ("FDT"), had raised an issue with respect to the payment of sums to Glassdoor (a related entity of FDT), which obtained introducers' commission in relation to investments made in the Fund. This commission comprised an initial percentage subscription fee when the investment was made and quarterly trailer distribution fees of 1% per annum thereafter, calculated as a percentage of the total value of all subscriptions.*

24. FDT complained that the Fund was taking too long to pay this commission on to Glassdoor. FDT therefore proposed that sums be paid directly to Aria DMCC, which would be able to make the payments to Glassdoor more expeditiously."

270. In his First Affirmation in the HK Proceedings Mr Chok says that it is untrue that FDT proposed that the 6 Remittances be paid to DMCC (instead of the Fund) to expedite payment of a commission to Glass Door. MWB does not explain how payment to DMCC rather than the Fund might lead to more expeditious payments to Glass Door.

271. Mr Chok denies that Glass Door is a related entity of FDT. It is a mere client having opened a custody account with Legacy. He says that there are at least three degrees of separation between FDT and Glass Door - (1) Glass Door and its corporate secretary, Legacy Company Secretaries Limited; (2) Legacy Company Secretaries Limited and him, as its shareholder / director; and (3) him and FDT, by virtue of his shareholding and directorship.

272. In the Legacy Proceedings, Mr Yai states that he was employed as CEO and Responsible Officer of Crossbridge until around May 2021. In 2021, he left Crossbridge and joined Finaport. He refers to the DIMA with FDT. He denies that he controls either Crossbridge or Finaport. He is however the only person involved in the day-to-day operations of Glass Door, authorised signatory and alternate director. He says he retained Legacy to act as company secretaries and to provide custodian services pursuant to agreements not produced to me.

273. Mr Yai had a personal agreement with Glass Door whereby Glass Door would pay him a fee for introducing clients. I would have thought that this would have formed part of his duties as the person running Glass Door.

274. On 11 March 2020 Glass Door signed an Introduction Services Agreement with the Fund whereby Glass Door would be paid a fee for introducing capital into the Fund. Glass Door introduced Legacy to the Fund in March 2020. Glass Door received fees from both the Fund and DMCC in respect of payments by both Legacy and FDT. Techteryx calls these *"secret payments"*. It is right that Mr Yai was at the material times an employee of Finaport which was meant to be giving independent investment advice to FDT and Techteryx. Finaport was advising that 100% of the Escrow Amount be invested in the Fund contrary to the earlier advice from Crossbridge and in breach of the FDT ESA.

275. It is arguable that Mr Yai was subject to a conflict of interest, but I do not consider that it is necessary to investigate it further for present purposes. There are clearly serious issues to be tried about the relationships between the Fund, DMCC, FDT and Glass Door that relate to the question of why the 6 Remittances were paid to DMCC rather than the Fund and why Finaport made the Finaport Investment Proposal.

276. In MWB-A-1 MWB addressed what was done with the money when first received:

"28. The DMCC Payments were sent by Aria DMCC to several of its trading entities and to finance third-party borrowers. Aria DMCC is continuing to investigate precisely how each Payment was ascribed.

29. Subject to confirming the allocation of each DMCC Payment, I am able to say that the Payments were sent to various trading entities including within the Aria Group used for (among other things) trade financing, commodity transactions, the purchase of cargo vessels, bitumen refineries and project financing of a wind and solar renewables platform as well as the other assets described in paragraph 18 above. By way of example, loans in the approximate sum of US$ 100,000,000 were sent to Aria Bio FZE and used for the development of the Hamriyah Production Plants described in paragraph 18(a) above.

30. As regards trade finance facilities, the final DMCC Payment of US$ 200,000,000 was principally deployed to fund a facility in the sum of US$ 150,000,000 to Aria Australia. This loan was routed via a loan from Aria DMCC to a United States entity in the Aria Group, which advanced the sum to Aria Australia via a separate loan. The facility was then used by Aria Australia to purchase substantial quantities of grain. In order to facilitate the on-sale of this grain, Aria Australia entered into a 5 year port agreement with CBH, the largest Australian grain bulk handling port operator, giving it the right to reserve monthly slots (laycans) with the port operator in Australia to deliver 500,000 to 600,000 tonnes of grain annually (the "Port Agreement")."

277. The assets described at paragraph 18 were:

(1) A series of production plants in the Hamriyah Free Zone, developed by Aria Bio FZE including (1) a bitumen facility; (2)a refinery and distillation plant; (3) an extrusion plant; and (4) terminal storage (the "Hamriyah Production Plants").

(2) Two mining concessions in Tanzania used to extract coal deposits, developed by Aria Tanzania and Aria East Africa;

(3) A waste-lead battery plant in Tanzania used to recycle old car batteries, costing approximately USD 8 to 10 million;

(4) Port developments in Tanzania (Tanga), Australia and Latvia (Liepaja);

(5) Five cargo vessels used to distribute agricultural goods (including grain) and fuel, acquired at a cost of between USD 4 and 8 million (called the Balkan Mamara, Balkan 1, Mriya, Arabian Energy and MV Volgo Balt 232);

(6) A grain facility in Liepaja, Latvia costing approximately USD 1.5 million;

(7) Wind and solar assets in Queens land, Australia (now valued at around USD 125 million).

278. MWB gave more details of the use of the 6 Remittances in MWB-A-2 at paragraph 25:

"(a) Aria AAAX trade finance facility. I refer to paragraph 30 of my First Affidavit. The loan was made by the Fund to Aria AAAX (using the DMCC Payments) and not, as stated in paragraph 30 of my First Affidavit, made by Aria DMCC (see asset documentation in MWB4). While the total value of the loan facility was up to US$175m (not US$250m as stated in paragraph 30 of my First Affidavit), I believe only US$100m was ultimately drawn down.

(b) Fees payable to Glassdoor (c. US$15.5m). I refer to paragraph 23 of my First Affidavit. Glassdoor claimed and was paid introducers' commission in relation to the DMCC Payments (see MWB4 pages 2-10).

(c) Loans made to Aria Bio FZE (formerly EBS GPS Aria EZE) (US$80m

–

US85m). I refer to paragraph 29 of my First Affidavit. Whilst further analysis is still needed, I believe that the total value of the loans, advances and funding support provided by Aria DMCC to Aria Bio FZE for use in the development of the Hamriyah Production Plants may be slightly lower than the figure there given (US$100m) (see asset documentation in MWB4).

(d) Trade finance facility made to a Ukrainian entity (c. US$50m). The Fund entered into an agreement to provide a standalone trade finance facility to Aria Commodities Ukraine ("Aria Ukraine") for the purpose of purchasing grain (the loan being financed by the DMCC Payments) (see asset documentation in MWB4). Aria Ukraine is wholly owned by a third party individual and is not part of the Aria DMCC Group or the Aria Cayman Group. Details of Aria Ukraine are set out in page 37 of the Updated Asset Disclosure List.

(e) Other trade finance facilities (c. US$16.5m). Aria DMCC and/or the Fund entered into trade finance facilities with the following entities (some of which were identified in paragraph 18 of my First Affidavit) in the following approximate amounts: Mass Capital (US$7m); Brazil Biofuels (US$2.2m); Avo Veg Health Kenya (US$2.45m); Mercancia Continental (US$5m) (see asset documentation in MWB4).

(f) Loan made to Carbon Resilience to purchase wind and solar assets in Queensland, Australia, as referred to in paragraph 18(g) of my First Affidavit. Two loans in the total sum of US$18m were made to the Singaporean entity, Carbon Resilience, for the development of renewable energy resources in Australia. This included a US$10m loan from Aria DMCC (a loan of US$ 8m being provided by the Fund) (see asset documentation in MWB4).

(g) Development cost of two Tanzanian mining concessions (c. US$ 25m). Aria DMCC provided funding for the development of the mining concessions referred to in paragraph 18(b) of my First Affidavit (see asset documentation in MWB4).

(h) Trading of physical and financial contracts (c. US$ 60m). Aria DMCC spent a significant amount originating grain from the Baltics and Northern European grain suppliers, as well as transfers to fund brokerage accounts for hedging and investment purposes.

(i) Expenditure in relation to acquisition and/or development of the following fixed assets including land and production facilities:

(i) Grain silo in Liepaja, Latvia (through 50% ownership of Baltic company) (US$ 1.65m, converted from EUR 1.5m) (as referred to in paragraph 18(f) of my First Affidavit);

(ii) Land in Eyre Peninsula, South Australia (via loan to Peninsula Ports, secured by mortgage) (US$ 2m);

(iii) Bitumen storage terminal in Durban (US$ 4.5m) (also described as the Durban import terminal at paragraph 55 of my First Affidavit);

(iv) Waste-lead battery plant in Tanzania (US$ 8.5m) (as referred to in paragraph 18(c) of my First Affidavit);

(v) Port in Tanga land, Tanzania (US$ 400,000) (see paragraph 18(d) of my First Affidavit);

(vi) Performance bond to protect against failure to book laycans or to perform under the Port Agreement referred to in paragraph 30 of my First Affidavit (US$ 2m);

(vii) Purchase of vessels (c. US$ 20m). Aria DMCC paid for the purchase of four vessels (as described in paragraph 18(e) of my First Affidavit). With the exception of MT Prosper (subsequently renamed MV Arabian Energy) whose purchase was originally financed by Aria Bio FZE (see paragraph 75 below), the remainder of the vessels have been conveyed to Kierstone Shipping and now form part of the

securitised assets held by the Fund (see paragraph 49(a) of my First Affidavit).

(k) Distributions (c. US$ 28m). Aria DMCC has made payments of approximately US$ 28m as a return on the capital invested by the DMCC Payments, at a 6% coupon rate.

(i) Redemptions (c. US$ 57m). I refer to paragraph 38 of my First Affidavit. Of the sums invested by the DMCC Payments, Aria DMCC has returned the sum of US$ 57m by way of redemptions (see MWB4 pages 11-13).

This would appear to account for some USD 437 million excluding redemptions, of which items (d) and (e) are said to be trade finance in the sum of USD 56.5 million.

279. DMCC commissioned a Forensic Accountancy Expert Report dated 24 June 2025 from FTI Consulting (**"FTI"**). FTI was able to identify that the 6 Remittances actually comprised 15 payments from FDT and Legacy to DMCC, totalling USD 456 million. They were made to three bank accounts of DMCC, as follows:

(1) two payments totalling USD 29 million were made to Emirates NBD Bank PSC (**"ENBD"**) account number 0515772100902 (the **"ENBD Account"**) in February 2021;

(2) 12 payments totalling USD 227 million were made to Mashreq Bank PSC (**"Mashreq"**) account number 019000065359 (the **"Mashreq Account"**) between June and August 2021; and

(3) 1 payment of USD 200 million was made to Abu Dhabi Islamic Bank PJSC (**"ADIB"**) account number 19012559 (the **"ADIB Account"**) in March 2022.

280. FTI identified the following receipts in the ENBD Account from Legacy totalling approximately USD 29 million:

(1) an amount of USD 16,999,985.00 was received into this account on 2 February 2021 with transaction description *"INWARD REMITTANCE TT REF: 2824948033FS USD 16999985 LEGACY TRUST COMPANY LIMITED SHORT TERM 0.70 PERCENT, LEGACY TRUSTCOMPANY LIMITED"*; and

(2) an amount of USD 11,999,985.00 was received into this account on 8 February 2021 with transaction description *"INWARD REMITTANCE TT REF: 6886598039FS USD 11999985 LEGACY TRUST COMPANY LIMITED SHORT TERM 0.70 PERCENT - TC LEGACY TRUST COMPANY LIMITED"*.

281. FTI summarised all onward payment in excess of USD 1 million as follows:

Category	Number of payments	Amount (USD)
Payment to Legacy Trust	1	12,077,890
Payments to other accounts of Aria DMCC	3	13,000,000
Payments for which I cannot identify the beneficiary	1	1,000,000
Total	**5**	**26,077,890**

282. FTI identified the following receipts in the Mashreq Account from Legacy and FDT, totalling approximately USD 260,660,000:

(1) an amount of USD 26,999,995.00 was received into this account on 29 June 2021 with transaction description *"FUND TRANSFER SHA/001154219 LEGACY TRUST COMPANY LIMITED /RFB/SWF OF 21/06/29 SRN:P202106290013602"*;

(2) an amount of USD 29,999,995.00 was received into this account on 30 June 2021 with transaction description *"FUND TRANSFER SHA/001154219 LEGACY TRUST COMPANY LIMITED /RFB/SWF OF 21/06/30 SRN:P202106300012194"*;

(3) 10 amounts of USD 9,999,995.00 were received into this account on 24 July 2021. Their transaction descriptions all refer to *"FIRST DIGITAL TRUST LIMITED"* and Class B USD 3 year 6.0% fund;

(4) an amount of USD 3,660,000.00 was received into this account on 3 August 2021 with transaction description *"FUND TRANSFER OUR/701530034117 LEGACY TRUST COMPANY LIMITED SRN:6554627215FS"*;

(5) an amount of USD 99,999,995.00 was received into this account on 5 August 2021 with transaction description *"FUND TRANSFER SHA/1504143313 FIRST DIGITAL TRUST LIMITED CLASS B 6.0 3 YR USD SRN:P202108050022997"*.

(1) would appear to be Remittances Nos. 1 and 2, (3) Remittance No.3 and (5) Remittance No.4.

283. FTI summarised all onward payment in the ADIB Account in excess of USD 1 million as follows:

Category	Number of payments	Amount (USD)
Coupon payment to First Digital Trust	1	4,541,127
Payments to Legacy Trust in respect of Glass Door invoices	2	2,666,392
Deposits to North Dimension for FX hedging	2	13,000,000
Loan to Carbon Resilience	1	10,000,000
Deposits to North Dimension for future trades	2	8,000,000
Payment to Forever Shipping for purchase of ship MV Balkan Marmara	1	5,602,500
Payment to Voyager Chartering Trade and International Marine Services LP for purchase of ship MV Mriya S and services rendered	1	3,044,707
Payment to SEI Investments for commission on behalf of Aria CFF	1	2,601,015
Payment to UAB Agorodeo for investment in Baltic Cape Silo	1	1,851,773
Loan to Avoveg Health Kenya Limited	1	1,450,000
Payments for which I have identified the beneficiary and the purpose	**13**	**52,757,512**
Payment to Legacy Trust	1	1,628,000
Payment to First Digital Trust	1	1,218,000
Payments to other accounts of Aria DMCC	6	31,904,882
Payment to Aria CFF	1	5,000,000
Payments to Aria Commodities Ukraine	8	69,925,500
Payments to Aria Real Asset Income Fund	4	51,877,053
Payments to Aria Commodities US	6	48,000,000
Payments to EBS GPG Aria FZE	5	25,708,048
Payment to Aria Sicav	1	4,517,646
Payment to Aria Capital Management	1	1,598,659
Payments to Louis Dreyfus Company	3	5,569,188
Payment to UAB Agorodeo	1	1,844,589
Payment to Asia Pacific Fee Agro	1	1,845,864
Payment to Agro Bord EOOD	1	1,289,070
Payment to AC Volga	1	1,200,000
Payments for which I have only identified the beneficiary	**41**	**252,766,498**

284. FTI identified one receipt in the ADIB Account from FDT. USD 199,999,963.56 was received into this account on 16 March 2022 with trans ion description *"0255000074FF:-CHAS FIRST DIGITAL TRUST LIMITED CLASS D 6.0."*. This correlates to Remittance No.6.

285. FTI summarised all onward payment in excess of USD 1 million as follows:

Category	Number of payments	Amount (USD)
Coupon payments to Legacy Trust	7	9,520,000
Coupon payment to First Digital Trust	1	1,500,000
Redemption payments to Legacy Trust	3	33,007,986
Payments to Legacy Trust in respect of Glass Door invoices	2	2,318,333
Payments to IG Limited for hedging	3	30,000,000
Salary payment	1	1,211,554
Payments for which I have identified the beneficiary and purpose	**17**	**77,557,873**
Payments to First Digital Trust	5	5,400,000
Payments to other accounts of Aria DMCC	11	31,974,371
Payment to Aria CFF	1	16,055,323
Payment to Aria Commodities-USA LLC	1	20,000,000
Payments to EBS Aria GPG Aria FZE	2	2,600,000
Payments to Aria Commodities International Limited	2	2,500,000
Payment to Aria Private Clients Limited	1	1,170,639
Payment to Aria Industries East Africa Limited	1	1,000,000
Payments to IG Limited	4	16,000,000
Payments to FTX Digital Markets Ltd	4	8,700,640
Payment to StoneX Financial Limited	1	2,000,000
Payment to Quality Commodities International	1	1,000,000
Payments for which I have only identified the beneficiary	**34**	**108,400,333**
Payments for which I cannot identify the beneficiary	20	23,592,957
Subtotal of payments which were not refunded	**71**	**209,551,163**
Payments which were subsequently refunded to the account	9	46,819,524
Total	**80**	**256,370,687**

286. It is not possible to identify which (if any) payments were used to fund investments in asset-backed, credit-insured short term commodity finance transactions.

287. In MWB-A-4 MWB says that the Fund has consistently obtained comprehensive non- payment insurance from reputable insurers. He exhibited the policies for the period from 8 November 2019 to 1 April 2026. It is not possible to understand those polices without (at least) copies of the *"Master Sales Contracts"* and Letters of Credit opened thereunder (which have not been disclosed) but it does seem fairly clear that they would not insure inter-company loans.

288. Continuing from paragraph 33 of MWB-A-1, MWB says,

> *"34. Thereafter, the DMCC Payments were recorded as holdings in the Fund, from the date on which the payments were made. I believe the share register maintained by the Fund Administrator recording holdings in the Fund was adjusted accordingly, and I have requested a copy of the share register from the Administrator in relation to this period (see paragraph 12 above).*

35. The other consequence of revising the structure of the holdings was that Aria DMCC handed over its assets to the Fund so that the Fund held the assets directly (with the Fund loaning amounts to Aria DMCC). After the 'Porting' process, therefore, the Fund held Aria DMCC's mining interests in Tanzania and the Hamriyah Production Plants."

289. MWB explained this further in MWB-A-3:

"45. By way of explanation of paragraph 35 of my First Affidavit:

(a) Prior to the Porting process:

(i) Aria DMCC made available trade finance facilities (which is consistent with the 2020 PPM), funded by the DMCC Payments and the Fund. This is explained in paragraphs 19-20 and 29-30 of my First Affidavit. In relation to these transactions, Aria DMCC was the lender.

(ii) The DMCC Payments were recorded as trade finance loans made by FDT to Aria DMCC, from which Aria DMCC funded trade finance facilities (intra-group and to third parties) (see paragraphs 25 and 26 of my First Affidavit).

(iii) If the loan was funded out of monies provided by the Fund, those monies were provided by the Fund to Aria DMCC pursuant to a separate loan agreement (MWB6, pages 160-176). The monies owing from Aria DMCC to the Fund pursuant to this loan agreement were recorded as 'an intercompany receivable' in the NAV Statements produced by the Administrators to the Fund. Under the loan agreement between the Fund and Aria DMCC, Aria DMCC was entitled to repay loans in specie by transferring assets to the Fund (see clause 3.7). This was also consistent with the terms of the 2020 PPM, which in broad terms permits the Fund to gain exposure to trade finance related securities (as defined) 'by way of purchase, assignment, participation, sub-participation, guarantee, insurance, derivative or any other appropriate financial instrument,' and also allows the Fund to redeem subscriptions in kind (LJI, pages 333 and 367).

(b) As a consequence of the Porting process undertaken at the request of FDT and Legacy Trust to formalise Fund subscriptions, the DMCC Payments were reclassified as payments into the Fund in exchange for Fund shares. This took effect from the date they were originally made, and from that date, loans have been made by the Fund to Aria DMCC (rather than loans having been made directly from FDT to Aria DMCC). The resulting intercompany receivable, reflecting the position of the DMCC Payments as loans between the Fund and Aria DMCC, was then reduced by the investments originally made by Aria DMCC with the DMCC Payments (consistently with the 2020 PPM) in recognition of the fact that such loans were repayable in specie by transferring assets to the Fund.

(c) In its asset disclosure schedule, Aria DMCC is listed as the 'asset holder' of the Hamriyah Production Plants, as a consequence of its 100% ownership of the shares in Aria Bio FZE. Aria Bio FZE is the legal owner of the underlying assets, acquired through loans from the Fund. These investment assets were purchased with the assistance of funding agreements from the Fund and will be repaid in specie by transferring the assets to the Fund, and so are effectively beneficially held by the Fund at this time.

(d) As explained below in paragraphs 88 to 90 below, and set out in Aria DMCC's asset disclosure schedule, the Fund is the beneficial owner of the Tanzanian mining interests.

46. Therefore, this process resulted in the Fund taking into its ownership investment assets previously held by Aria DMCC."

290. Mr Chok denies that the 6 Remittances constituted *"unsecured loans"* or *"loans"* to DMCC as described by MWB at 26 of MWB-A-1:

"Pursuant to the Trade Finance Facility, FDT provided the DMCC Payment to Aria DMCC by way of loan, which Aria DMCC then on-lent to different trading entities in the Aria Group."

291. He admits that in late 2022, FDT became aware of the fact that the 6 Remittances were booked under DMCC. Notwithstanding that NAV statements provided by the Fund had an *"Intercompany Receivable"* from DMCC listed as part of its assets, FDT immediately raised the concern with the Fund and Finaport, and requested the Fund and/or the Fund Administrator to regularize the position and ensure that the 6 Remittances were subscribed to the Fund in accordance with the subscription application forms. It was the Fund and/or Finaport who determined the appropriate mechanism to do so was to execute the mirror *"suite of documentation"*.

292. The only documents produced to substantiate the Porting are the mirror documents. MWB does produce a loan agreement between the Fund as Lender and DMCC as borrower dated 1 October 2022, but it appears to be before the Porting process. From the material produced it is not possible to understand the precise mechanism whereby in late 2022 what were said to be recorded as loans from FDT to DMCC (notwithstanding the original form seems to have been the subscription for shares) were converted into shares in the Fund and how loans from the Fund to DMCC were retrospectively created.

293. Both parties have adduced expert evidence on Cayman law. Techteryx obtained a report from Ogier. Ogier observes that it appears that:

"Aria Commodities DMCC is one of the "investments" made by the Fund. The 2020 PPM states that the Fund: "pursues its investment objective primarily by investing in trade finance, structured trade, export finance, import finance, supply chain financing and project finance assets of entities, including sovereign entities ("trade finance related securities")." We are instructed that there is no documentation to suggest or confirm: (aa) that DMCC is a "trade finance related security"; or (bb) that the Fund's strategy may be to invest in related/affiliated parties (which Aria Commodities DMCC seems to be). Further, even if it was the case that lending money to Aria Commodities DMCC was an investment made by the Fund as part of its strategy, it would be wholly unusual and a glaring red flag if the Fund directed subscription monies directly into an account in the name of one of the entities it is investing in as part of its investment strategy. It simply does not make sense or align with the stated strategy (we would expect to see investment related documentation before a fund makes an investment / loan to an entity as part of its strategy) or the stated management structure of the fund (which provides that the investment strategy is implemented by the investment manager – so usually onward investments of funds raised through the issue of shares (i.e. subscription proceeds) would be made by the investment manager).

…

We are instructed that there is a funds transfer form showing redemption proceeds from the Fund being paid from Aria Commodities DMCC. In the same way that it is wholly unusual (and a red flag) that subscription proceeds are paid to the Aria Commodities DMCC account, it is unusual and unclear (and another red flag) as to why redemption proceeds would also flow from that account. It suggests that perhaps the money flows into and out of the Aria Commodities DMCC account and never actually makes it to the Fund account at all."

294. In his Affirmation in the Legacy Proceedings, MWB said that the Fund loaned subscription monies to DMCC as part of its investment strategy:

"Pursuant to the terms of the 2020 PPM and the powers and provisions of the Aria AOA, the invested funds would be advanced as working capital loans to commodity trading entities which would in turn make investments in trade finance related securities (as defined in the 2020 PPM). Returns on investments generated by those entities would then flow to Aria via repayment of the loans with interest, at an amount sufficient to cover the coupon rate payable under the respective classes of shares issued under the 2020 PPM. Aria Commodities DMCC ("DMCC") is one such entity, being licensed by the Dubai Multi Commodities Centre registration authority to conduct and engage in trading in various commodities."

295. DMCC instructed Campbells who replied to Ogier:

"To the extent any "red flags" require comment we make the following observations:

i. With respect to paragraph 3.12(b)(i) and whether "…Aria Commodities DMCC is one of the "investments" made by the Fund…" and the subsequent selective quotations of the 2020 PPM in the Ogier Memo we note the following more fulsome quotations from the 2020 PPM:

(a) regarding the Fund's Investment Strategy: "…primarily of investing in trade finance related securities" and "…[t]he Fund's investments are expected to consist primarily of loans, or similar instruments used directly or indirectly to finance domestic and international trade and related infrastructure projects. These are expected to include, but not be limited to, facilities for pre export finance, process and commodities finance, receivables financing, letters of credit and other documentary credits, promissory notes, bills of exchange and other negotiable instruments…" and "[t]he Fund reserves the right to change the types of investments and its techniques for making investments if it believes that such changes are appropriate in view of the current or expected market situation, whether business or economic." (emphasis added); and

(b) defines "trade finance related securities" as "trade finance, structured trade, export finance, import finance, supply chain financing and of entities…" (emphasis added),

we therefore do not agree that this is a "red flag"."

296. It is not necessary for me to decide between the views of these two well-respected Cayman law firms. The differences between them demonstrate serious issues to be tried. I would however say that Ogier highlights the absence of evidence about how DMCC and the Fund dealt inter se whereas Campbells' opinion was more theoretical in terms of looking at what the Fund *could* do.

297. In his First Affirmation in the HK Proceedings (before these proceedings) MWB made no mention of the 6 Remittances having originally been investments in DMCC, the different classes of share subscribed for or the Porting. He simply stated:

"From May 2021 to March 2022, FDT invested sums in Aria by way of transfer (the "FDT Funds") primarily from FDT's bank account in New York. The sums were received into Aria's bank accounts in the Cayman Islands and the United Arab Emirates. As acknowledged at paragraph 42 of the First Li Affirmation, FDT received, in return, subscriptions (the "FDT Subscriptions") for "Class C USD 3 YR 6% Coupon" shares (i.e., the Shares) in ACFF, with a stated maturity of three years."

298. In his Second Affirmation he said:

"As part of the subscription process, FDT Funds were advanced to Aria's bank accounts including (at FDT's request) those held in the name of DMCC. FDT - as subscriber- received Shares in ACFF in return for its investment."

299. If not misleading, the ambiguously interchangeable use of "Aria" for the Fund and DMCC is economical with the truth as now asserted by MWB and as appears from the documents now produced by him. That is to say, that upon the receipt of the 6 Remittances DMCC issued shares that were swapped for shares in the Fund as part of the Porting process. I would note that my attention has not been drawn to any documentation showing how the swap was achieved from the point of view of DMCC. Indeed, I note that DMCC is not organised as a fund as was the Fund and that Note 1(b) to its financial statements for the year ended 30 September 2021 (which were signed off on 3 November 2022, i.e. after all the Remittances) records:

b) The share capital of the Company is AED 50,000 (equivalent to USD 13,615) divided into 50 shares of AED 1,000 (each share equivalent to USD 272) each fully paid. The shares were held by the following:
***Name of the shareholder** Ms. Cecilia Teresa Brittain, National of United Kingdom*
***No. of shares** 50*
***Value (AED)** 50,000*
***Value (USD)** 13,615*

It does not appear that DMCC was able to, or did, issue redeemable shares in the same way as the Fund.

MWB Knowledge

300. I have already indicated that DMCC is wrong to suggest that Techteryx does not plead that DMCC knew that the monies did not belong to FDT and were being invested on behalf of Techteryx (paragraph 99 above).

301. Having said that, I consider the pleading issues (including the submission by DMCC that fraud is not adequately pleaded: *Three Rivers DC v Bank of England* (No.3) [2003] 2 AC at [51-53] per Lord Hope, [161] per Lord Hobhouse and [184] per Lord Millett) are for the Hong Kong Courts. I am unaware of the principles applied in Hong Kong and the pleadings may still (if deemed necessary) be capable of amendment or further particularisation. In my judgment when considering an interim injunction in aid of freezing proceedings the Court should take a broad view on the evidence presented to it to determine to it when determining the serious issues arising.

302. In MWB-A-1, MWB seeks to explain why the Fund ceased honouring redemption requests:

"39. As regards the balance of the redemptions:

(a) In May 2023, Kroll contacted the independent directors of the Fund for further information and documentation in relation to FDT's holdings in the Fund (MWB2, pages 82-85)

(b) Kroll 's email identified that FDT was holding shares in the Fund on behalf of another entity (Techteryx), which was prohibited by the terms of subscription. I believe this was the first occasion that it became known that Techteryx held an interest in the Fund.

(c) Despite requests, FDT would not provide further information in relation to the identity of the ultimate beneficial owner of the shares it held in the Fund, apparently on behalf of Techteryx.

(d) In the absence of this information, the Administrator of the Fund halted the process of redemption.

40. By email dated 29 March 2024, the Fund Administrator asked FDT to provide further information in relation to AML/KYC matters (MWB2, page 85). The email stated that FDT had "identified Techteryx as the beneficiary of the shares, and provided the details of Ms. Li Jinmei as the UBO of Techteryx". The Fund then asked whether the shares were being held by Ms Li Jinmei on behalf of any other individual or legal entity.

41. By email dated 9 April 2024 in response FDT provided no further information in response to the questions raised about Ms Li Jinmei's status as the alleged UBO of Techteryx (MWB2, page 85). That email was the last communication received by the Administrator from FDT.

42. No further sums have been redeemed, with the consequence that the DMCC Payments represent holdings of USD400,000,000 in the Fund."

303. He expanded on the statement that FDT holding shares in the Fund on behalf of another entity was prohibited by the terms of subscription in MWB-A-3. He said (paragraph 80) that FDT's failure to respond to the Fund's AML questions as to the ultimate beneficial owner of Techteryx, which could cause FDT to be a 'Prohibited Person' as defined in the 2020 PPM, so the Fund was entitled to pause the processing of requested redemptions. The May 2020 PPM describes an *"Prohibited Persons"* as *"Any investor who does not meet the criteria of an "Eligible Investor" as set out in the section headed "Eligible Investors"*. In that section there is an extensive definition of *"Prohibited Persons"*. MWB does not identify which applies to FDT and it is not immediately obvious to me. Counsel's submissions merely repeat MWB's evidence in support of an assertion that *"The Fund is legally entitled to pause redemptions under the 2020 PPM"*.

304. The most relevant provision I can find unaided is *"Any prospective Investor acting in any fiduciary capacity may be required to certify the number of beneficial owners for whom Shares are being purchased"*. I cannot see how this would entitle the Fund to refuse to honour redemption requests, if anything undisclosed beneficial ownership would appear from the section of the PPM to be grounds for rejecting an investment, not retaining it.

305. Further, I do not know if FDT accepts that it would not provide further information in relation to the identity of the ultimate beneficial owner of the shares it held in the Fund, nor indeed, given the unusual manner in which the investments were made, whether the Hong Kong Courts will find that the terms of the PPM were incorporated as terms of the material contracts.

306. At paragraphs 66 and 67 of MWB-A-3 MWB claimed that at the time of the DMCC Payments, he had no knowledge of Techteryx or Techteryx's alleged interest in investments made by FDT and Legacy Trust in the Fund, as a result of the DMCC Payments. So far as he was aware, FDT and Legacy Trust were investing in their own names, and had made declarations to that effect in the subscription forms signed by them.

307. Reliance on the declarations of beneficial ownership by FDT in the Subscription Forms is the foundation of the KYC/AML concerns justifying the cessation of redemptions and the retention of USD 400 million of the remittances on DMCC's case. It is however now known that FDT did not make those declarations, rather they were included by the Fund or Administrator when creating mirror documents.

308. In fact, there is significant evidence that MWB knew at all material times that Legacy/FDT were not investing their own money:

(1) When Mr Yai introduced Legacy to MWB as a source of capital it is inconceivable that MWB did not ask, and Mr Yai did not tell him the nature of Legacy's business – which would in any event have been reasonably apparent from its name. It is equally inconceivable that MWB would not have done even the most cursory due diligence, even if he disregarded KYC/AML requirements, which surely would have revealed that Legacy was a trust/escrow company investing money on behalf of is clients. It is perhaps even more inconceivable that Mr Chok would not have told him;

(2) In fact in the email of 13 August 2021 referred to at paragraph 252 above Legacy and FDT jointly informed DMCC that "the ARIA Subscriptions (along with other assets) shall be held under the escrow and/or custodial care of FDT in substitution of LTC.";

(3) It is noteworthy that the subscription documents in respect of each of the Remittances refers to *"Custody Account"* numbers;

(4) I am willing to accept that MWB may not have known of the involvement of Techteryx in the business of TrueCoin, but it appears he did know that Legacy was making investments on behalf of TrueCoin. There is a series of subscriptions between June and December 2020 (shortly after Mr Yai says he introduced Legacy to the Fund) the CSUs of which state *"Your Reference: TrueCoin 100024"*. The reference number is the same as that for Remittance No.5.

309. There is also somewhat more contentious evidence:

(1) Mr Chok has stated publicly,

"So, in the beginning, when we started the whole process down, the due diligence, the CEO, of course, the fund manager was Matt Brittain, and that's who was in charge of the ARIA Commodity Fund. And Alex De Lorraine had, you know, several conversations with Matt Brittain on the whole process. So after his wife, you know, that was a part that we weren't aware of at all. So we did not know that until, like, everybody found out at the same time. But I think they did try to correct it by consolidating all of those back into the fund. So this was something that was completely a Matt Brittain Aria Fund function of their own internal structuring. So yes, it's something we were not aware of. It was not disclosed to us.

…

…So, Alex, yeah, Alex De Lorraine was the, I think at the time, he was the man, the person in charge of Truecoin that placed and gave instructions to invest the underlying reserve of TUSD…."

MWB says of this statement,

"I do not understand how Mr Chok made the public comments he did regarding Aria DMCC and the Fund. FDT was apprised of my wife's then status as shareholder of Aria DMCC. Also, as I have already explained, the process of recording the DMCC Payments as subscriptions in the Fund was specifically at the request of FDT and Legacy."

(2) There was apparently a meeting with MWB on 24 November 2022 at which three representatives of Techteryx were present. Techteryx has produced a minute, but its provenance is unclear. MWB recalls the meeting and two of the representatives but says that the Techteryx representatives did not identify themselves as such.

310. In the circumstances, weighing the totality of the evidence adduced to date, I find it hard to accept that MWB thought that Legacy and FDT were investing their own funds. If that is found to be the case it raises a serious issue to be tried as to whether MWB is seeking to manufacture a justification for refusing to redeem USD 400 million of the Remittances. That case may be reinforced by DMCC's admission that it cannot pay redemption requests absent a "fire sale" of illiquid assets or the Securitisation process (paragraph 46, MWB-A-1) to which I will turn next.

Securitisation

311. In MWB-A-1 MWB explained the proposed Securitisation:

"44. Given the unresolved AML/KYC questions about the status of Techteryx's beneficial ownership of shares in the Fund, the Fund took the view that it would be preferable if it could find a way of (1) addressing FDT' s concerns about its holdings in the Fund; and (2) permitting FDT to redeem those holdings.

45. As investment manager to the Fund, I was tasked with formulating a proposal that would address this risk while enabling FDT to redeem the investment of US$400,000,000 it held in the Fund, on behalf of Techteryx.

46. The proposal I devised was a scheme to securitise the assets of the Fund. I explain the scheme in a presentation I first made to the Fund in or around May 2023 (MWB2, pages 86-103). The idea behind the proposal was as follows:

(a) If the Fund wanted to realise funds to meet redemptions, one option would be sell the asset it owned and return the proceeds to investors. The disadvantage of this approach was that it would involve a ' fire sale' that was likely drastically to reduce the value realised.

(b) An alternative option was to devise a securitisation structure which allowed an investor to receive the income streams of the Fund's assets by the issuance of a bond, and so avoid the sale of such assets.

(i) The bond, which would grant the investor the right to cashflows over a period of time, would be ' asset-backed' against assets such as the Hamriyah Production Plants.

(ii) The value of the bond, once issued to the investor, could be realised by the investor by selling it in the market or to another investor.

(c) As a result, any bond so issued could operate as a replacement in kind for a cash redemption.

47. Given the unanswered AML/KYC concerns raised by the Fund in relation to Techteryx, the Fund could not proceed with the securitisation proposal, without obtaining (1) appropriate professional advice that realising redemptions in this way did not give rise to any potential AML concerns ; and (2) extensive valuation reports and related evidence to support the restructuring, a process which has taken some time.

48. The Fund duly obtained the requisite information, advice (over which legal professional privilege is not waived) and reports and started implementing the securitisation proposal in 2024, so that the totality of the remaining holdings represented by the DMCC Payments could be redeemed by FDT.

49. As matters currently stand:

(a) Of the total assets represented by the holdings in the Fund (US$ 495,000,000), assets with a total value of $US42 000,000 have been securitised.

(b) Prior to the Order on 28 February 2025, the Fund anticipated that a further substantial portion of the Fund's assets (c. US$ 400,000,000) would be securitised within six weeks. These assets comprise:

(i) The two coal concessions in Tanzania (see paragraph 18(b) above) , valued at US$ 225,000,000 and US$ 65,000,000, respectively;

(ii) The wind and so lar assets in Queensland, Australia (see paragraph 18(f) above), valued at US$ 125,000,000

c) As a consequence of the Order, the securitisation process has had to be paused, as it is not possible to implement the necessary asset restructuring without breaching paragraph 7 of the Order.

50. The Securitisation Agent has confirmed to me that, if the securitisation process is permitted to proceed to allow the holdings represented by the DMCC Payments to be redeemed, that process is around six weeks away from delivery.

312. I noted in the FRD Judgment that the presentation referred to at paragraph 46 of MWB- A-1 was *"an undated general marketing proposal for Aria Fund to offer securitised notes representing trade finance rather than loaning money directly to third-party borrowers. The presentation does not on its face appear to be linked to the requested redemptions by FDT."* I would accept that the presentation appears to be something under consideration in the normal course of the Fund's business but MWB's claim that he devised it to enable FDT to redeem the USD 400 million held by the Fund (or DMCC) appears questionable.

313. It is wholly unexplained how the Securitisation would meet the *"unresolved AML/KYC questions"*. Presumably the same issues would arise with the holding of the bonds or notes as with the shares.

314. I have had reservations that the Securitisation for the purposes of enabling redemption by FDT would be in normal course of Fund's business. I do note that the PPM states:

"In circumstances where the Fund is unable to liquidate securities positions in an orderly manner in order to fund redemptions, or where the value of the assets and liabilities of the Fund cannot reasonably be determined, the Fund may take longer than the time periods mentioned above to effect settlements of redemptions or may even suspend redemptions. At the discretion of the Board, but subject to any alternative provisions, limits or restrictions in this regard as may be set out elsewhere in this Memorandum and/or in the Articles of Association of the Fund, the Fund may settle redemptions in kind, may accept only a part of the redemption requested, may gate redemptions and may extend the duration of the redemption notice period if the Board deems such an extension as being in the best interest of the Fund and the non -redeeming Shareholders."

Subject to the Hong Kong court finding that the terms of the PPM were actually incorporated in any bargain between FDT, DMCC and/or the Fund, I do not understand this provision to have been invoked. If it were, I would anticipate considerable dispute whether as a matter of Cayman law (which is likely to govern the PPM) the criteria necessary to enable the Fund to settle redemptions in kind have been satisfied.

315. The Chronology is important. MWB-A-1 was dated 14 March 2025. In MWB-A-3 dated 10 April MWB gave further details:

"106. Since the First Return Date Order was made on 18 March 2025, varying the Proprietary Order to permit Aria DMCC to operate in the ordinary course of its business, the following steps have been taken in relation to the securitisation referred to in paragraphs 43-50 of my First Affidavit.

107. First, the securitisation agent, AAFS Securitisation S.A. (the "Securitisation Agent"), a Luxembourg entity, has been engaged to prepare the necessary documentation in order to implement the securitisation.

108. Second, the Securitisation Agent has requested relevant information, which is required to produce the term sheets for the bond issue. The process of collating this information is well underway and will be provided to the Securitisation Agent shortly.

109. In terms of next steps, my present expectation is that the assets held by the Fund (including its interests in the Tanzanian mining assets and coal reserves, represented by the preference shares) will be sold to the securitisation vehicle (a Luxembourg entity) this month, in consideration for the issue of bonds to the Fund (to be issued through Euroclear). I anticipate it will take a further 14 days from completion to issue such bonds. The Carbon Resilience interests will follow, once the necessary regulatory approvals have been obtained.

110. Based on the above timetable, I currently expect that a significant proportion of the securitisation will be completed by the Return Date Hearing. Once complete, the Fund will be in a position to redeem the existing subscriptions by the issue of such bonds, subject to the Fund's service providers gaining sufficient comfort from a legal and regulatory perspective, that the outstanding AML matters referred to in paragraphs 79 to 80 can be addressed."

316. Alarmed by the suggestion that a significant proportion of the Securitisation would be completed by the Return Date Hearing Techteryx sought an undertaking from DMCC not to take further steps in relation to the Securitisation before the Return Date by letter dated 11 April 2025. DMCC refused to provide an Undertaking by letter of the same date stating that their position is that the Order as varied does not

prevent the Securitisation from progressing and is within the ordinary course of business exception. Techteryx therefore applied to me without notice to DMCC on 14 April 2025 and I granted an Order amending the Injunction restraining DMCC from taking any step in relation to the Securitisation until after the Return Date, or further order of the Court.

317. On 17 April 2025 Techteryx sought disclosure of, amongst other things, any documentation which evidences the steps taken by DMCC in relation to the proposed Securitisation as set out in paragraphs 46 – 50 of MWB-A-1 and paragraphs 106 – 110 of MWB-A-3 including any correspondence with the Securitisation Agent. There was a hearing of that and several other applications on 12 May 2025. I declined to order disclosure of further Securitisation documentation and gave my reasons in the 21 May Judgment.

318. In the 21 May Judgment, I stated after reciting certain undertakings given by MWB:

"33. The Final Return Date is now 21 July 2025 and so the Securitisation Injunction prohibits DMCC from taking any steps in relation to the Securitisation before that date. I note the limited terms of MWB's undertakings, namely that DMCC will use its best endeavours to ensure that the Fund will not take any further steps in relation to the Securitisation either, prior to the 12 May 2025 hearing. I also note that QE have now clarified that the undertakings will expire upon the handing down of this Judgment. They are therefore now for all intents and purposes of no effect, and I disregard them.

34. It is arguable that the undertakings did no more than state DMCC's obligations under the WFO and Securitisation Injunction in that DMCC is restrained from causing, permitting or encouraging any third party presently with custody or control of the assets in any way disposing of, dealing with or diminishing the value of the same, but the undertaking provides helpful clarification.

35. MWB is careful to point out that he gave the undertakings for and on behalf of DMCC, and not in his capacity as investment manager to the Fund, which is not a party to these proceedings. It is true that the Fund is not a party to the proceedings – whether the Fund holds or controls the assets in accordance with the direct or indirect instructions of DMCC is a matter to be addressed on the Final Return Date.

*36. **It is also unclear as to whether the Securitisation relates to assets owned by DMCC or the Fund**. In MWB-WS-4, MWB produced documents relating to the Securitisation. I have not (yet) heard submissions on their intended effect, but a simple perusal shows that there is no mention of the Fund. DMCC is described as the "Initiator" in the documents. I will address the evidence in more detail below.*
*37. It may also be academic in any event. In MWB-WS-4, MWB suggest that the assets are owned by the Fund but **as yet no evidence has been produced as to the application of the Six Remittances or the transfer of any assets from DMCC to the Fund. It may therefore be the case that none of assets sought to be securitised belong to the Fund**.*

…

73. Mr Holloway argues that further disclosure in relation to the Securitisation is relevant to onward dealings and the risk of dissipation as DMCC is indicating that it still wishes to proceed. He noted that in MWB- A-1 the purpose of the Securitisation was stated to allow FDT to redeem – not in cash but for some form of bond. Techteryx says that in response to its application DMCC has produced 2 documents a "Securitisation Engagement Letter" and "Securitization Sheets".

74. Those documents:

(1) Describe DMCC as "the Initiator";
(2) Are signed by MWB;
(3) Describe products that appear to be preference or ordinary shares relating to DMCC's business or debenture bonds – it is far from clear;
(4) Describe both MWB and his wife as UBOs of DMCC. Techteryx points out that MWB has said in MWB-A-3 that his wife had ceased to be UBO of DMCC by around 24 July 2024; and
(5) Make no mention of the Fund.

75. DMCC says that it has disclosed other relevant documents, namely Board resolutions authorising the issue of preference shares in favour of the Fund in respect of the two Tanzanian mines and documentation showing the Fund's ownership of the wind and solar assets in Queensland.

76. The former appears to be a resolution of KIBO Mining (Cyprus) Ltd to issue 65 million Ordinary (not preference) non-voting, r eemable, 75% revenue-linked, participating shares of EUR 0.001 per share to the Fund. There is no indication that the Fund was to pay the consideration of EUR 65,000. I can see no explanation as to how this document is linked to the Securitisation.

77. The latter also appears to have no link with the Securitisation. In the absence of any explanation, I cannot see how the documents demonstrate the Fund's ownership of the wind and solar assets in Queensland. While the Deed of Transfer, Settlement and Release dated 23 May 2024 has been redacted it appears to show that DMCC and the Fund have lent money to a Singapore Company, Carbon Resilience Pte Ltd and that the shareholders in that company transferred its ownership to FA AR Real Asset Income Limited, a Liechtenstein company. MWB signed on behalf of FA AR Real Asset Income Limited. There is also a Nominee Agreement made between the Fund and FA AR Real Asset Income Limited dated 23 May 2024 whereby the Liechtenstein company agreed to act as the nominee for the Fund in its ownership of Carbon Resilience Pte Ltd by reason of undisclosed "regulatory and licensing considerations". The Nominee Agreement states that the Fund had effected the purchase of the Carbon Resilience Pte Ltd renewable assets and project platform through the Deed of Transfer, Settlement and Release dated 23 May 2024. That does not appear to be accurate, FA AR Real Asset Income Limited received the shares in Carbon Resilience Pte Ltd and possibly may have done so on a bare trust for the Fund but the Nominee Agreement seems to have been executed after the Deed of Transfer, Settlement and Release and so it could not have done so as the Fund's nominee under the Nominee Agreement.

*78. **I agree with Mr Holloway that there is still confusion over who owns the assets purchased with the Six Remittances**. In my judgment of 17 April 2025, I found that it appeared that MWB had chosen to withhold evidence of the Securitisation that had already taken place giving rise to the possible inference is that he does not wish to disclose the ownership of the assets alleged to have been purchased with the funds alleged to be the Claimant's (or that of the coin holders held by the Claimant on their behalf). I found that the situation was perhaps exacerbated by the revelation in MWB-A-3 that FDT and Legacy are the only investors in the Fund which fed into my concern that the hurry to complete the Securitisation before the Return Date may be regarded as evidence of a risk of dissipation in that it had no apparent commercial purpose nor affected any third party. **I was concerned about the complete lack of evidence about the ownership structures of the various assets purchased with monies remitted by FDT and Legacy**. I was concerned about the lack of any detail of the Securitisation and the ambiguity of such evidence as had been adduced. I was concerned by the timing. **There was no evidence as to why the Securitisation needed to be completed before the Return Date and no third-party interests were involved**.*

…

80. The position is reiterated in DMCC's skeleton argument for the 12 May hearing at paragraph 160:

"… The Fund is not a party to these proceedings. The assets to be securitised are owned by the Fund, not DMCC. Mr Brittain provides investment advice to the Fund, but in a role which he dispenses as an officer of ACM FZE, the investment manager to the Fund. Given these matters, the effect of the 14 April Order cannot be to restrain either the Fund or Mr Brittain (in his capacity as investment adviser) from taking steps in relation to the Securitisation."

81. I disagree. Based on the facts set out above at paragraphs 27 to 41 above, while reaching no conclusion on the point at this time, it may be said that that it would be artificial to create any distinction between the Fund and MWB on the one hand, and DMCC on other, as MWB appears to be the directing mind and will, signatory and ultimate beneficiary of every transaction undertaken by the Fund and DMCC. Further, as I indicated in my Judgment of 24 April 2025, while I declined to decide on an ex parte basis whether or not the Securitisation is in DMCC's ordinary course of business, I did consider the Securitisation to be an unusual transaction. **Thus, there remains a serious issue as to whether the Securitization would fall within the "ordinary course of business" exception**.*

82. My current (and necessarily provisional) view is that MWB would be well-advised to consider that to proceed with the Securitisation before the Final Return Date could well expose the Fund and himself personally to accessory liability for breach of the WFO and the Securitisation Order. As I have not been given any legitimate reason why the Securitisation cannot wait until the Final Return Date, I will (at this stage) assume in his favour that MWB will act in a responsible manner and is not trying to place the assets derived from the Six Remittances beyond the reach of the courts who will ultimately decide the ownership of those assets nor that of any other court which may be called upon to enforce their judgments.

83. It is for that reason, and that reason alone, that I do not consider that it is necessary (at this stage) to order further disclosure of Securitisation documentation."

[This is a typographical error and should have read 24 March 2025] [emphasis added]*

319. On 23 June 2025, in MWB-A-4 MWB stated that:

"14. Aria DMCC's involvement in the Securitisation has been limited. Aria DMCC had a historic relationship with AAFS, a securitisation agent with experience of commodities related securitisations. As a result, earlier this year, when AAFS ran its KYC/AML checks at the outset for the Securitisation, Aria DMCC was named as the "Initiator" of the Securitisation (i.e. the entity that would have been responsible for paying fees to the securitisation agent). This had also been the case in the previous securitisations of assets belonging to the Fund (as explained further below). As before, the assets which were proposed to be securitised would have been assets belonging to the Fund, namely: (a) the Fund's interests in the commodity reserves, attributable revenues and mining licences of Kibo Exploration (Tanzania) Limited ("Kibo Exploration") and Pine Wood Resources Limited, held via their holding companies Kibo Mining (Cyprus) Limited ("KMCL") and Kibo Energy Mozambique Limited ("Kibo Mozambique"); and (b) the Fund's beneficial interest (via its nominee, Real Asset Income Fund) in the ordinary shares of Carbon Resilience Pte Limited, a Singaporean company which owns renewable energy assets in Queensland, Australia.

…

16. Counsel for Techteryx submitted at the ex parte hearing on 14 April 2025 that the Securitisation "plainly is not an ordinary course of business transaction" [MWB10/20]. However, whether this statement refers to Aria DMCC or the Fund (which is not a party to these proceedings), in either case it is incorrect, since there have been several previous securitisations of assets belonging to the Fund where Aria DMCC has acted as "Initiator"."

320. At the Final Return Date hearing DMCC submitted that there is no evidence that DMCC owns the assets to be securitised or how any interest could be traced into existing assets after so much time.

321. As noted at paragraph 212 above much of the detailed evidence about assets is likely to be more relevant to the Hong Kong Proceedings than these especially if the Hong Kong Courts were to grant a tracing remedy. I agree that there is no evidence that DMCC owns the assets to be securitised. This is because, as noted on several previous occasions, DMCC has failed to disclose how the assets purchased with the Remittances were transmitted into the ownership of the Fund. I do not believe a single document has been disclosed. FTI's analysis does not assist.

322. While avoiding an inappropriate dive into the granularity of the issues raised that will only be resolved (if at all) by the Hong Kong Courts, as to the Kibo and Carbon Resilience assets, leaving aside whether or not they were purchased with the proceeds of the Remittances, there are serious questions as to their valuation. While they were the subject of substantial submissions at the hearing, I cannot possibly find that the values attributed to those assets are unarguably established.

323. What that means is that there is no way of knowing (and there is no independent evidence on the point) whether, if those assets were securitised, the resulting bonds or notes would have any value and if so what, whether they would be investment grade or "junk". I entertain considerable doubts that on any basis they could be regarded as the equivalent of a cash redemption.

324. The Securitisation would also create very significant if not insuperable problems if the Hong Kong Court did grant a tracing remedy in respect of the funds that were used in their purchase.

325. Given that the sole reason asserted for the Securitisation is to pay the redemptions and that, as noted in my 21 May Judgment, no third parties are involved (a situation that would change dramatically if the Securitisation went ahead), that Techteryx (assuming it is arguably the beneficial owner of any shares in the Fund) objects strongly to the Securitisation, that it is not clear whether the Fund has the power to offer redemptions in specie, that it is not clear whether the resulting bonds or notes would have any value and if so, what value, and that the Securitisation would render any tracing remedy more difficult if not impossible, I am of the view that the Securitisation would not be in the normal course of business.

326. I accept that the Fund is not a party to these proceedings, but on the evidence before me MWB is the UBO of both DMCC and the Fund, and the person who appears to have the day-to-day conduct of their affairs. It appears that assets are transferred between the two by him at will and without formality. He gives every appearance of being the controlling mind of both entities. As I noted in the 21 May Judgment there is therefore a risk that if he caused the Fund to proceed with Securitisation and this Court were persuaded that it was done to place assets beyond the reach of the Court if called upon to recognise and enforce any judgment of the Hong Kong Courts (by whatever means), there might be unfortunate consequences for him.

327. DMCC has filed evidence from a Mr Ruan van Vuuren. He states that he and a Mr Michael Crothers are professional non-executive direc s of the Fund. There is no evidence that either of them has been involved in the matters it has been necessary to examine in these proceedings. His evidence may not unfairly be termed *"generic"* save in one interesting respect. At paragraphs 19 and 20 of his Affirmation he

states that when compiling the 2021 financial statements Mazars had to consider any material subsequent events. He says that Mazars needed to consider:

> *"ACFF received an additional c. US$ 512m in subscriptions from investors. This included US$ 456m in payments subscribers FDT and Legacy Trust ("Legacy") initially made to Aria Commodities DMCC for the functional equivalent of ACFF subscriptions, but which were then requested by the subscribers to be formally recorded as subscriptions in ACFF, with the corresponding amount of shares issued;"*

328. He shares the expression *"functional equivalent"* with FDT which uses it at paragraph 35(3)(a) of its Amended Defence in the Hong Kong Proceedings. I have no idea what the phrase means and neither Mr van Vuuren nor FDT provides any explanation. It seems unlikely that its use by both of them is a coincidence.

329. Mazars did not use the phrase; they said nothing about the investment initially made to Aria Commodities DMCC for the functional equivalent of ACFF subscriptions, but then requested by the subscribers to be formally recorded as subscriptions in ACFF. Mr van Vuuren seems to be repeating MWB's disputed narrative. He does not say he had any first-hand involvement. What Mazars did say was:

> *"Subsequent to the balance sheet date of June 30, 2021, the Fund received additional subscriptions totalling to USD 512,293,868. These subscriptions were for newly issued redeemable participating shares. The additional redeemable participating shares will increase the Fund's capital and may impact its capital structure.*
>
> *Further, following the balance sheet date of June 30, 2021, and up to the issuance date of these financial statements, the Fund had redemptions totalling to USD 170,964,806 from its redeemable participating shares."*

330. Mazars seem to have believed that it was a straightforward subscription for newly issued redeemable participating shares as was initially attested by MWB in the Hong Kong Proceedings.

331. Mr van Vuuren went on to say that *"Mazars reviewed the relevant subscription and redemption documentation related to the above events."* If Mazars had seen the documents analysed at paragraphs 214 to 268 above – and they should have seen all of them given that they did not sign off on the 2021 financial statements until three years later on 8 August 2024 – I cannot believe that they would have produced such an anodyne note. A possible implication is that Mazars were not provided with the full picture. It is likely that if Mazars knew about the Porting exercise they would have mentioned it.

332. The Securitisation is also relevant to DMCC's argument that FDT (and ultimately – if necessary- Techteryx) got what they bargained for, namely shares in the Fund. It was the commercial purpose of the investments to use a proportion of the Reserves not likely to be needed immediately for the redemption of Tokens in order to generate income. Long term illiquid investments made no commercial sense and was not what was envisaged in the PPMs, the Fact Sheet, the Legacy Revised Investment Proposal, the ESA and as represented by Mr de Lorrainne in the Slack messages. That is however what the Finaport Investment Proposal resulted in, without any margin to meet Token redemptions. The idea was to be able to access the funds in the short to medium term. There is no evidence that the Securitisation will convert the illiquid into liquid assets save MWB's assertions. There is little evidence how the process will work and none as to the value of any bonds or whether they will be investment-grade or junk. There is a serious issue to be tried as whether FDT/Techteryx did in fact get what was bargained for.

Discussion

333. There has been a great deal of debate about the reality and value of the Fund's assets. To the extent necessary to consider the Securitisation I have already made some observations. The submissions that the Fund documents are obscure and that the valuations cannot be supported are also made in support of the *"fund is a fraud"* allegation (see paragraph 83 above).

334. It is not strictly necessary for me to consider this argument. The Fund is not a party to these proceedings. The relevance of the allegation is the proposition that since DMCC and the Fund both appear to be under the sole control of MWB and mutually porous with regard to their assets, DMCC must be implicated in any fraud perpetrated by the Fund.

335. Since, however, I have held that there are serious issues to be tried in relation to whether FDT holds the Escrow Amount on trust for Techteryx and whether the monies were transferred to DMCC in breach of trust, that may suffice for present purposes.

336. While I have expressed reservations during the course of these proceedings that the evidence supports an implication that the Fund was established for fraudulent purposes, that does not mean that it did not (as is pleaded) perpetrate a fraud in concert with DMCC.

337. One is bound to ask why the Escrow monies were paid to DMCC in breach of the ESA and the Investment Proposal. MWB may or may not have had any knowledge of either. Clearly, he had relations with Messrs Yai and Chok and it will be for any eventual trial to determine what information passed between them. Even leaving aside the inconsistency with the ESA, the Investment Proposal was to invest in the Fund not DMCC. DMCC is not an investment fund nor is it licenced to receive investments, only to make them.

338. MWB has maintained that FDT requested that the monies be paid to DMCC and Mr van Vuuren repeats both this suggestion and FDT's pleaded case that payment was the payment to DMCC was the *"functional equivalent"* of payment to the Fund. While I am loath to hold that the phrase is meaningless it is hard to understand what it does mean in this context. It appears to me to be intended to mean that payment to DMCC was in effect payment to the Fund. This is not a position ever taken by MWB in his various explanations why and how the monies were paid to DMCC.

339. As to why the monies were paid to DMCC, MWB says that it was in order to facilitate quicker payments to Glass Door. On the other hand, it is DMCC's case that the payments to Glass Door were perfectly proper payments by the Fund in accordance with the PPM in which DMCC would have no role. It is not explained why or how payment to DMCC would accelerate payment to Glass Door, nor does it seem either an adequate or legitimate reason for diverting payment of nearly half a billion dollars from its intended recipient. This appears to be another example of the interchangeability of DMCC and the Fund in the way they were run by MWB. The liabilities to Glass Door were those of the Fund not DMCC but FTI's analysis has identified that sums were paid by DMCC out of the 6 Remittances to Glass Door.

340. FDT denies that it requested MWB to remit the monies to DMCC instead of the Fund in order to assist Glass Door. It and Glass Door also deny (as alleged by MWB) that they are associated companies save to the extent that the Legacy Group is a service provider to Glass Door. MWB asserts that after FDT found out that it had not received shares in the Fund, it complained and the position had to be *"regularised"*. It is unclear to me whether MWB is saying that FDT was told that it had been issued with shares in DMCC or it was told nothing. Either way, on MWB's evidence he and the Administrator created backdated subscription forms and confirmations. This narrative sits uneasily with the suggestion that FDT actually requested that the monies be paid to DMCC.

341. The closest account given by MWB that came to suggesting that the payments to DMCC were *"functionally equivalent"* to an investment in the Fund was that which he originally gave in the HK Proceedings in his First Affirmation on 3 June 2024. He simply stated,

> *"From May 2021 to March 2022, FDT invested sums in Aria by way of transfer (the "FDT Funds") primarily from FDT's bank account in New York. The sums were received into Aria's bank accounts in the Cayman Islands and the United Arab Emirates. As acknowledged at paragraph 42 of the First Li Affirmation, FDT received, in return, subscriptions (the "FDT Subscriptions") for "Class C USD 3 YR 6% Coupon" shares (i.e., the Shares) in ACFF, with a stated maturity of three years."*

Another reading is that he was trying to give the impression to the Hong Kong court that the 6 Remittances were made to the Fund and the Fund issued FDT with shares in the normal way, which would of course be quite untrue.

342. Either way, MWB did not persist in that account. In these proceedings on 14 March 2025 at paragraph 26 of MWB-A-1 he said,

> *"Pursuant to the Trade Finance Facility, FDT provided the DMCC Payment to Aria DMCC by way of loan, which Aria DMCC then on-lent to different trading entities in the Aria Group."*

There is no evidence that FDT ever intended or did provide the 6 Remittances to DMCC as loans. MWB went on to say at paragraph 31:

> *"In around December 2022, FDT identified that no holding was recorded in the Fund in relation to the DMCC Payments. As a result, FDT requested the Administrator of the Fund to regularise the position, by 'porting' the DMCC Payments into the Fund."*

He seems to be saying that the Porting was FDT's idea. There is no evidence to support that allegation nor is it expressly suggested elsewhere. What the statement does seem to indicate is that MWB did not tell Mr Chok/FDT that the money had gone to DMCC but as will be seen this too may be doubtful.

343. The third iteration of MWB's account is in MWB-A-3 in April 2025. In this account the monies were originally invested in DMCC not loaned and FDT were allotted shares in DMCC. There is no evidence those shares ever existed, were allotted to FDT or FDT was told that it had been allotted shares in DMCC. The shares in DMCC were then swapped for shares in the Fund by way of the Porting. The mechanism of the Porting remains unexplained. Ogier have identified some of the issues that may arise under Cayman law:

> *"3.14 Brittain 1 notes that in December 2022, FDT identified that there was no shareholding recorded in the Fund register in relation to t DMCC Payments and this is reflected in the copy of the share register produced at MWB2, page 31, which is dated 30 April 2021. The register at MWB6, page 675 records FDT as first subscribing for shares on 31 May 2021.* ***It is unclear from the register what the***

subscription price was and whether this is the only issuance of shares to FDT.

3.15 There are some technical and procedural issues here:

(a) Firstly, Brittain 1 suggests that the share capital was restructured to consolidate shares so that every 1,000 shares were consolidated into 10 shares. This requires a shareholder resolution to be passed by the holder of the management shares under section 13 of the Companies Act and Article 22.1 of the M&A to be effective. According to the May 2020 PPM, ARIA Capital Management Ltd. holds the management shares. **We have not seen any resolutions to confirm that this has in fact occurred. If this has not occurred, then the Company may not have had enough authorised share capital (ie 'headroom') to issue the shares. This may mean some or all of the shares were not technically issued with respect to the DMCC Payments and as such, the subscription contract failed to complete.**

(b) Second, under the Companies Act, the register of members needs to record the date on which the name of the person was entered onto the register and section 38 of the Companies Act makes clear that **entry on the register of members is a pre-requisite of membership of a company.** *Accordingly, membership cannot commence before entry of the name of the member on the register of members and as such,* **backdating to an earlier date is a potential breach of sections 38 and/or 40(1) of the Companies Act.**

(c) Third, **the issue of shares by the Fund to FDT would need to have occurred in accordance with the mechanics in the M&A and the 2020 PPM, including as to subscription price (see page 67 of the 2020 PPM). This does not appear to have been the case.** *The commensurate amount of shares would need to be issued as consideration is being paid into the Fund.* **Shares should not have been issued at a discount or premium or to the detriment of other shareholders to recreate the economic position that FDT would have been in had the DMCC Payments been made to the Fund instead of Aria Commodities DMCC at the time of the initial payment on 31 May 2021**, *particularly if the DMCC Payments were not treated as co-mingled with the Fund's legal portfolio and subject to the same profits and losses over that approximate 18 month period.* **It is not clear on the face of the register or without seeing the accounts what has purportedly occurred.**

…

3.23 Section 40(1) of the Companies Act provides that the Fund must keep a register of members which contains the names and addresses of the Fund's shareholders, a statement of the number and category of shares held by each shareholder, and of the amount paid or agreed to be considered as paid, on the shares of each shareholder; whether each relevant category of shares held by a shareholder carries voting rights under the Articles and, if so, whether such voting rights are conditional, the date on which the name of any person was entered on the register as a shareholder; and the date on which any person ceased to be a shareholder. Additionally, the Fund is permitted to maintain one or more branch registers of such category or categories of members as the Fund may determine from time to time. A duplicate of the branch register of members must be kept in the same place where the principal register of members is kept. Most commonly, the principal register of members would be maintained at the office of the administrator and a branch register of management shares would be maintained by a fund's registered office with a duplicate branch register of management shares sent to the administrator.

3.24 It is relevant to note that **the share registers which have been provided (MWB2 - page 31, MWB3 - page 1 and MWB6 - pages 675 to 676) do not provide an accurate and complete picture of the historical capital activity of the Fund. It is not possible to determine when the purported share consolidation occurred and whether the authorised share capital has been breached** *(as set out in section 3.15(a)) or how many tranches of shares, or the number or issue price of shares that have been issued to a member (as set out in section 3.15(c)). We would however expect the Fund to be able to produce a register of members as at any particular date that members held certain shares and/or to evidence historical capital activity. We note further that (i)* **MWB2 - page 31, MWB3 - page 1 do not comply with section 40 of the Companies Act and to the extent there are additional classes of shares held in the Fund**, *a "Class C USD 3 TY 6.00%" register (such as MWB6 – pages 675 to 676), would not appear to comply with section 40 of the Companies Act on the basis that the share register appears to be a list of Class C USD 3 TY 6.00% shareholders rather than a full register of members; (ii) the* **Fund would have been required to keep a record of any historical capital activity of the Fund as part of its obligations to keep proper books of account** *under section 59 of the Companies Act; and (iii)* **the shareholdings of members as at any particular time in which the member held shares would have been required to be reflected in the share register as at that time;"** *[emphasis added]*

344. There is evidence of a fourth possibility. On 18 April 2022 MWB wrote to Mr Chok subject line *"11% Redemption and Share Class Switch Confirmation"*. He enclosed a Redemption Request Form in respect of DMCC Class B 3 Yr 11.0% USD shares. Nowhere else in the papers befor ne is there reference to such shares. He said, *"In line with previous exchanges, please find attached the TS for the most recent subscription." "TS"* must mean Term Sheet. The attachment to the email is entitled *"ARIA DMCC TS 6% March 2022 FDT.pdf"* and a

document entitled Term Sheet follows. It was said that the issuer was ARIA Commodities, and the Eligible Assets were *"Asset backed collateralised commodity trades"* with Insurance Rating *"'A' and 'AA' respectively"*. MWB continued *"Moreover, we are pleased to confirm the transition of all FDT and Legacy Subscriptions across DMCC and CFF, to the 6% Classes as of 1st May 2022. We'll follow up shortly with any relevant switch forms."* None of these documents has been produced nor is there any reference to them in MWB's evidence. Mr Montagu-Smith suggested that it was an error to describe the Term Sheet as a DMCC document. There is no evidence to suggest that it was an error and even if it were, it would be inconsistent with the account of the Porting as the switch would have occurred some 7 months prior to date given by MWB in evidence.

345. Mr Montagu-Smith suggested that the email related to Remittance No.6 ("the last one"). That was for 6% and not 11% (that would indicate there were two swaps one in May and one December 2022) and in Class D not Class B or C. Also, the dates do not quite match up. The original Remittance No.6 was signed on 15 March 2022 and incepted on 9 March 2022. It is not suggested that the original subscription was backdated as well as the Ported version. To make the situation even more confusing there is a Distribution Statement for April 2022 which refers to Class C shares.

346. The whole Porting narrative appears to be inconsistent with FDT's Account Portfolio Summary as at 02 May 2025 (see paragraph 137 above). That shows FDT still holding the original (quaere non-existent) shares in DMCC said to be purchased with Remittances Nos. 3 and 4. It shows nil holdings in respect of Remittance No.5 for the original investment albeit under two different designations. It does show investments in Class C Fund shares but with different references from those on the Ported documents. It also shows investments in Class D Fund shares, which as Ogier observe, are not shown on any Share Register produced by the Fund.

347. In a letter dated 7 April 2025 the Fund Administrator (IFIT Fund Services (Greece)) states that:

> *"We enclose a register for the period 30 April 2021 to 31 March 2025 of the Class C USD 3 YR 6.00% KYG0541M2905 Shares. We confirm that at this time there are no other subscribers or classes of shares outstanding in the Fund."*

The use of the words *"at this time"* does not assist as to whether there have been other classes of share in the past. It also means that the register does not provide a record of any historical capital activity of the Fund.

348. The Account Portfolio Summary may also indicate that FDT consciously invested the Escrow Amount in DMCC notwithstanding Clause 4.f of the ESA and the Finaport Investment Proposal.

349. One possible reason why the payments were directed to DMCC rather than the Fund is found in the Financial Statements of DMCC for the year ended 30 September 2021. At paragraph 54 of MWB-4-A. MWB said,

> *"Given Techteryx's sustained attack on the reality of the Fund's investments, I have provided FTI with the documents that will be referenced in their report. These are exhibited at Bundle DMCC accompanying this affidavit. I understand that the documents shall be addressed in the report which FTI is preparing and so I say nothing further about them here."*

350. Within the Bundle DMCC are to be found the Financial Statements of DMCC for the year ended 30 September 2021. The Auditor's Report states:

> *Material Uncertainty Related to Going Concern*
>
> *We draw attention to note 2 (e) in the financial statements, which states that the Company has incurred a loss of USD 196,493 for the period ended 30 September 2021, and as at that date the accumulated losses are USD 196,493 and its current liabilities exceeded current assets by USD 94,705,799 and it had net deficit of USD 182,878 in equity funds.*
>
> *These events or conditions indicate that a material uncertainty exists that may cast significant doubt on the Company's ability to continue as a going concern. However, the shareholder has agreed to continue with the operations of the Company and has agreed to provide continuing financial support to enable the Company to discharge its liabilities as and when they fall due. Accordingly these financial statements have been prepared on a going concern basis. Our opinion Is not further modified with respect to this matter."*

351. Thus, in the year ended 30 September 2021, DMCC needed USD 94.7 million to meet its current liabilities. This may account for the diversion of funds away from the Fund to DMCC. FTI was supplied with this document. It noted that the document had not been supplied to Techteryx's expert forensic accountant (Kroll) and made no comment on the deficit.

352. FTI has sought to identify some (but not all) uses to which the monies were put. The majority were payments to associated companies including a relatively small amount to the Fund. It is unclear how these payments have been treated. If the payments were loans to the Fund's portfolio companies those companies would then be indebted to DMCC. It appears that the contrary is suggested, namely that the

payments to DMCC were treated as loans from the Fund to DMCC which DMCC repaid by transferring assets to the Fund (i.e. repayment in specie). In MWB-A-3 MWB stated at paragraph 45(b):

> *"As a consequence of the porting process undertaken at the request of FDT and Legacy Trust to formalise Fund subscriptions, the DMCC Payments were reclassified as payments into the Fund in exchange for Fund shares. This took effect from the date they were originally made, and from that date, loans have been made by the Fund to Aria DMCC (rather than loans having been made directly from FDT to Aria DMCC). The resulting intercompany receivable, reflecting the position of the DMCC Payments as loans between the Fund and Aria DMCC, was then reduced by the investments originally made by Aria DMCC with the DMCC Payments (consistently with the 2020 PPM) in recognition of the fact that such loans were repayable in specie by transferring assets to the Fund."*

353. No documentary evidence has been provided to demonstrate this. The only document produced is a Loan Agreement between DMCC and the Fund whereby the Fund granted a facility to be drawn down by Loan Notes. No Loan Notes have been produced. Further what has been provided is inconsistent. The Fund NAV statements show the receivables on the loan facility to DMCC as follows (figures USD millions):

DATE	RECEIVABLE	REMITTANCES
30 April 2021	76.785	
30 June 2021*		27
30 July 2021	186.331	
31 August 2021		100
29 October 2021**	209.075	129
31 January 2022	166.115	
31 March 2022		200
29 April 2022	316.284	
29 July 2022***	209.224	
31 October 2022****	152.389	
31 January 2023	119.768	
28 April 2023	297.465	
31 July 2023	286.908	
31 October 2023	303.126	
31 January 2024	309.697	
30 April 2024	316.085	
31 July 2024	197.510	
31 October 2024	No entry	
31 October 2025	No entry	
* According to the Fund's Financial Statements the receivable on 31 June 2021 was 47.91 ** According to DMCC's Financial Statements on 30 September 2021 the sum due to related parties was 316.684. The related parties are not identified. *** According to the Fund's Financial Statements the receivable on 31 June 2022 was 285.171 **** According to DMCC's Financial Statements on 30 September 2022 the sum due to related parties was 469.481		

There does not appear to be any relationship between the balance on the loan account as between DMCC and the Fund and the Remittances nor does there appear to be a pattern consistent with a reduction in the loan on a transfer of assets from DMCC to the Fund.

354. In closing submissions Mr Montagu-Smith pointed out that the reductions in the DMCC receivable coincided with the transfer of assets from DMCC to the Fund. Like almost everything else in this case the evidence is not quite so clear. I take as an example the transfer of DMCC's interest in Carbon Resilience Pte Limited to the Fund (valued at USD 125 million). Mr Montagu-Smith was unable to explain how the interest was originally held by DMCC. In MB-A-4 paragraph 14(b) MWB referred to the proposal to securitise *"the Fund's beneficial interest (via its nominee, Real Asset Income Fund) in the ordinary shares of Carbon Resilience Pte Limited, a Singaporean company which owns renewable energy assets in Queensland, Australia."* He footnotes that sentence back to paragraphs 92 to 97 of MWB-A-3.

355. In MWB-A-3 he said that Fund's ownership interest arises through an EU domiciled nominee, Real Asset Income Fund and he refers back to paragraphs 66 to 67 of MWB- A-2. The Revised Asset Disclosure List exhibited to MWB-A-2 shows a payment at item 453 of USD150,000 by DMCC (not the Fund) to Real Asset Income Fund in Zurich. The date of the payment is not given and of course Switzerland is not in the EU.

356. There is a document dated 23 May 2024. By that document the shareholders in Carbon Resilience agree to transfer their shares to FA AR SPC Real Asset Income Limited (a Liechtenstein Company, Liechtenstein is also not in the EU) in return for the cancellation of a loan from the Fund of USD 8 million and a loan from DMCC of USD 10 million (said to be made from the Remittances) and USD 100,000. I do note that in DMCC's Revised Asset Disclosure List the USD 10 million loan is said to be from the Fund not DMCC. The loans are also shown as current which is inconsistent with the completion of the share transfer document. There is also a suggestion that the share transfer is still subject to foreign investment approval which means that it should not be shown as an asset of the Fund valued at USD 125 million or at all.

357. No documents are produced showing:

(1) How DMCC is said to have acquired or held the shares in Carbon Resilience before the transfer to the Fund;

(2) How DMCC transferred the shares in Carbon Resilience to the Fund;

(3) How the Fund is said to hold the shares in Carbon Resilience;

(4) the relationship between the Fund and Real Asset Income Fund;

(5) relationship between the Fund and Real Asset Income Fund and FA AR SPC Real Asset Income Limited;

(6) How these transactions translate into a transfer USD 125 million (as appears from the Fund's NAV statements) from DMCC to the Fund.

358. Putting it perhaps too colloquially, Mr Holloway described the valuations of the shares in the Fund in NAV statements as *"cooked up"*. It is however fair to say serious issues arise as to the reliability of the NAV statements consequent on the Porting exercise.

359. The factual issues were ventilated more extensively before me. I fear I may already be close to transgressing the admonition in the authorities to avoid a mini-trial when investigating whether there are serious issues to be tried. Notwithstanding, I consider that the foregoing factual analysis more than supports the conclusions that the manner in which the investment of the 6 Remittances was made was highly irregular and that there are serious issues to be tried as to whether the monies were diverted from the Fund to DMCC in order to support liquidity within the Aria Group rather than used for the purposes stated in the Fund documentation.

360. The change from the Crossbridge to the Finaport Investment Proposals calls for an explanation, in particular since it appears that the principal players, Messrs Chok and Yai, remained involved throughout. There does not appear to be good reason for abandoning the liquidity requirements or concentration limits. Further, the Finaport recommendation was inconsistent with the ESA, but that did not seem to trouble FDT. It may be the case that FDT was also content to remit the monies to DMCC and if so, that too was a breach of the ESA in that DMCC was not a recommended investment.

361. It is possible to infer from the evidence before me that (as Techteryx alleges) Messrs Brittain, Chok, de Lorraine and Yai did agree that all of the Funds in the Escrow Account would be used to assist the Aria Group. That would be consistent with the change in the Investment Proposal and FDT's breach of the ESA. It might also explain why Glass Door (a company of which Mr Yai was the sole member) was to receive some USD 15 million in commissions from DMCC/ACFF when he was supposed to be providing independent advice to FDT and Techteryx in the choice and management of investments made with the Escrow Amount. The suggestion by FTI that the Fund had the mandate to use agents in the PPM is no explanation and in fairness FTI did say that they do not know why the payments were made.

362. It would also be consistent with what appear to be misrepresentations made by Mr de Lorraine in the Slack messages concerning the nature of the investments. 363. In my brief reasons given on 30 July 2025 I stated that I found MWB's evidence internally inconsistent, evasive and opaque. I repeat that observation. I find it hard to accept that he thought that Legacy and FDT were investing sums on their own account rather than on behalf of their client. If the Fund had carried out any KYC/AML procedures it would have become immediately apparent that the funds being used were held in an escrow account. If the Fund carried out none, that would be further support for the irregularity of the transactions.

363. In my brief reasons given on 30 July 2025 I stated that I found MWB's evidence internally inconsistent, evasive and opaque. I repeat that observation. I find it hard to accept that he thought that Legacy and FDT were investing sums on their own account rather than on behalf of their client. If the Fund had carried out any KYC/AML procedures it would have become immediately apparent that the funds being used were held in an escrow account. If the Fund carried out none, that would be further support for the irregularity of the transactions.

364. It seems improbable that Legacy or FDT asked for the monies to be remitted to DMCC rather than the Fund. The reason given by MWB does not make much sense. It does however appear from the 13 August 2021 letter and FDT Account Portfolio Summary that FDT was aware that funds were being invested in DMCC albeit for classes of shares that would seem not to have existed. This supports the suggestion that Messrs Brittain, Chok, de Lorraine and Yai did agree that all of the Funds in the Escrow Account would be used to assist the Aria Group.

365. The so-called Porting exercise remains obscure notwithstanding (or perhaps because of) MWB's various accounts of what occurred. What is undeniably true is that MWB has produced documents to this Court that he accepts were created after the event and do not constitute a truthful record of what occurred on their apparent dates. On the current state of the evidence it is not easy to envisage an explanation of the various subscription, confirmation, distribution and redemption documents that is consistent with an honest explanation.

366. It is unnecessary at this stage of the proceedings to go into the minutiae of how the money was applied once received by DMCC. The money (or at least the majority of the money) does not appear to have been applied in the manner contemplated by the Fund documents or as represented by Mr de Lorraine. There do appear to be serious questions concerning what was done with the money as both the asset list produced by DMCC and the Fund NAV statements do not seem to support the valuations of certain of the assets said to have been funded by the Remittances.

367. Mr Montagu-Smith was highly critical of the ASOC. I have not found the ASOC easy to parse. Its clarity is obscured by its self-referential nature and, arguably, by a tendency to elide allegations that would be more accessible if separately, plainly and distinctly pleaded. Ultimately, it is not for me to resolve any ambiguities in the pleading particularly since it may still be work-in-progress, but for present purposes I accept that I must have regard to what appear to be the clearly pleaded claims.

368. Much of the material placed before me was directed to the allegations that the Fund was a fraud and/or was perpetrating a fraud. Mr Holloway submits that the Fund's asset values are inflated, and this is evidence of fraud. I accept that there are triable issues relating to the valuation of the Fund's assets, but I do not feel able to go as far as to say that supports allegations of fraud against DMCC. The allegation of fraud against DMCC may not be as fully pleaded as the English authorities might require. It is however neither appropriate nor necessary for me to consider that further. It is not appropriate as I do not know (and counsel were unable to inform me) if Hong Kong pleading practice follows that of England. It is unnecessary because it is common ground that if the Remittances were subject to a constructive trust in the hands of DMCC a tracing claim (and therefore a proprietary injunction) might be appropriate.

369. The pleaded claims against DMCC are at their clearest at paragraphs 86, 88 and 89 of the ASOC:

> *"86. As set out in paragraph 56 above, the [Fund] and [DMCC] received from [FDT] trust property, namely the Additional Investment Sums, which [FDT] paid to them in breach of trust.*
>
> *…*
>
> *88. Further, in receiving the 6 Remittances from [FDT], [DMCC] provided no value to [FDT] or [Techteryx] and in any event acted in bad faith. The [Fund] and [DMCC] are affiliate companies and part of the ARIA group of companies, whose ultimate controlling mind is Mr. Brittain. [DMCC], via Mr. Brittain, knew or should be taken to have known that sums invested which were transferred to it by the [Fund] or which were directed by the [Fund] to be paid directly to it were being used otherwise than in accordance with the terms of the PPM.*
>
> *89. Accordingly, [Techteryx] remains the beneficial owner of the Additional Investment Sums, which the [Fund] and [DMCC] hold on constructive trust for the Plaintiff. The [Fund] and [DMCC] are liable to return the same to Techteryx and to account for the same insofar as the Additional Investment Sums are no longer in their possession. Techteryx avers that, as the [Fund] directed the payments to be*

made to DMCC, the [Fund's] liability extends to the whole of the Additional Investment Sums and that [DMCC] is liable in respect of the sums which were paid to it."

370. In my judgment the ASOC raises (or at least arguably raises) two bases upon which it may be said that DMCC held the 6 Remittances as constructive trustee:

(1) Constructive trustee of sums paid in breach of trust; and

(2) Knowing receipt.

371. The threshold point in relation to each is that I have found that there was arguably a trust relationship between FDT and breach of that trust in remitting money to DMCC.

372. The elements of the former are helpfully summarised in DMCC's skeleton argument. DMCC states that first type of constructive trust is an *'institutional constructive trust'; see Westdeutsche Landesbank Girozentrale v Islington L.B.C.* [1996] AC 669 at 714- 715:

"…the trust arises by operation of law as from the date of the circumstances which give rise to it: the function of the court is merely to declare that such trust has arisen in the past. The consequences that flow from such trust having arisen (including the possibly unfair consequences to third parties who in the interim have received the trust property) are also determined by rules of law, not under a discretion."

373. DMCC then refers to *Lewin on Trusts* (20th ed.) ¶42-025 and notes that in order to be entitled to an equitable proprietary remedy in respect of such a trust, it is necessary to satisfy the following requirements:

(1) There is property subject to a trust (the **"Trust Requirement"**);

(2) The property is transferred;

(3) The transfer is in breach of trust (the **"Breach Requirement"**); and

(4) The property (or its traceable proceeds) is received by the defendant.

374. I have found that the Trust Requirement is arguably satisfied in the present case. Clearly the 6 Remittances were paid to DMCC satisfying (2) and (4). DMCC argues that the Breach Requirement is not satisfied because Mr de Lorraine was granted authority by the Board Resolution to give instructions to FDT to make investments in the Fund and his actions were ratified. I have addressed the Board Resolution at paragraphs 191 to 210 above. It is of course the case that Techteryx alleges that the Board Resolution was procured by Mr de Lorraine acting in breach of fiduciary duty, with gross negligence and in fraudulent conspiracy with TrueCoin. I found that the obvious issues concerning the circumstances in which the Resolution came to be made mean that it cannot be said that the breach of trust claim is unarguable and raise serious issues to be tried. There are a couple of stand-out points: first, on any view the Resolution did not authorise Mr de Lorraine to direct FDT to invest in DMCC; and second, if the back-dating of the Resolution was deliberate (as may be the case) paragraph 3.3 of the Resolution ratifies *"any actions and Instructions given by Alex De Lorraine on behalf of the Company to FDT in connection with the Investment Amount prior to the execution of these resolutions"*, that is 8 March 2021. Since that date is prior to the payment of the 6 Remittance the Resolution would be ineffective to ratify the instructions issued for their payment.

375. In my judgment the first ground for a constructive trust is made out on a serious issue to be tried basis.

376. The elements of knowing receipt are also described by Lewin at ¶42-023-5:

(1) There is property subject to a trust;

(2) The property is transferred;

(3) The transfer is in breach of trust;

(4) The property (or its traceable proceeds) is received by the defendant;

(5) The receipt is for the defendant's own benefit; and

(6) The defendant receives the property with knowledge that the property is trust property and has been transferred in breach of trust, or if not a bona fide purchaser of a legal estate without notice, retains the property, or deals with it inconsistently with the trust, after acquiring such knowledge.

377. I have addressed (1)-(4) above. (5) is straightforward. (6) requires some consideration as Lewin says, this has been the most controversial aspect of the law concerning knowing receipt.

378. Lewin refers to the definition of knowledge in *Baden v Société Général pour Favoriser le Dévéloppement du Commerce et de l'Industrie en France SA* [1993] 1 W.L.R. 509 at 575–583 where Peter Gibson J. accepted a classification of knowledge into five types namely:

(1) actual knowledge;

(2) wilfully shutting one's eyes to the obvious;

(3) wilfully and recklessly failing to make such inquiries as an honest and reasonable man would make;

(4) knowledge of circumstances which would indicate the facts to an honest and reasonable person; and

(5) knowledge of circumstances which would put an honest and reasonable person on inquiry.

379. *Lewin* states that once the knowledge of an individual is treated as being the knowledge of the company in relation to some transaction on the basis that they are its directing mind and will, the company will continue to be affected with that knowledge for the purposes of any subsequent stages of the same transaction.

380. *Lewin* continues:

(1) A distinction needs to be drawn between the degree of knowledge which has to be established on the one hand and proof of that knowledge on the other hand. Knowledge may be proved affirmatively or inferred from circumstances. The persuasive burden of proof, on a balance of probabilities, falls on the claimant, but the court will infer knowledge if the facts established indicate on a balance of probabilities that the person sought to be made liable had the requisite degree of knowledge. Thus, if the facts point on a balance of probabilities to a defendant having actual knowledge, the court may infer actual knowledge.

(2) The court may also infer actual knowledge if the claimant establishes the circumstances set out in types (4) or (5) of the Baden classification and the defendant does not give evidence or offer any explanation of his conduct. Thus, proof of knowledge within types (4) or (5) of the Baden classification may shift the evidential burden to the defendant, and so, if that burden is not discharged, suffice to establish actual knowledge. Knowledge must not be confused with the means of knowledge.

(3) The general rule established in *Bank of Credit and Commerce International (Overseas) Ltd v Akindele* [2001] Ch. 437 at 455, CA is that *"the recipient's state of knowledge should be such as to make it unconscionable for him to retain the benefit of the receipt"*. It is not, however, necessary to show that the defendant is dishonest.

(4) If it is shown that the defendant had actual knowledge of the trust and of all the circumstances which made the payment or transfer a breach of trust or fiduciary duty, it is no defence that the defendant was subjectively unaware that as a matter of law those circumstances involved a breach of trust or fiduciary duty.

381. Issues concerning inferences to be drawn as to the state of party's knowledge are eminently fact-sensitive. The allegation made by Techteryx are that Mr Chok, Mr Yai, Mr de Lorraine and MWB were well known to each other from at least March 2020. In March 2020 Mr Chok issued Crossbridge's Revised Investment Proposal (signed by Mr Yai) recommending investment in the Fund. There must have been contact between Messrs Chok, Yai and MWB at that time. As already noted, if MWB carried out any due diligence, it would have disclosed that Legacy/FDT were investing funds held in an escrow account. It is odd that Messrs Chok and Yai should perform a volte face on the advice given to Techteryx, that Mr de Lorraine should misrepresent the nature of the investments in the Fund and that it was felt necessary to produce a retrospective Board Resolution in order to ratify the instructions given by Mr de Lorriane to FDT to make unauthorised investments in DMCC. There is evidence that FDT knew that the investments were being made in DMCC and not the Fund as recommended and as mandated in the ESA. It is also significant that MWB bases his assertion that he thought that Legacy/FDT were investing their own money solely on a document created by or for him and that this document is used as the reason to refuse to pay redemptions.

382. All of the forgoing give colour to Techteryx's case that Mr Chok, Mr Yai, Mr de Lorraine and MWB were fully aware and in agreement to act together *"in fraud and to injure"* Techteryx. I need only find that it is *"a case which is more than barely capable of serious argument, and yet not necessarily one [which has] a better than 50% chance of success" (The Niedersachsen)* – which I do. The finding of such an agreement would involve the question of MWB's knowledge as the directing mind of DMCC and whether in particular he was aware of the relevant circumstances or had knowledge which would indicate the facts to an honest and reasonable person or knowledge of circumstances which would put an honest and reasonable person on inquiry. It would also preclude DMCC from asserting that it was a *bona fide* purchaser for value without notice.

383. In my judgment the second ground for a constructive trust is therefore also made out on a serious issue to be tried basis.

Conclusion

384. If follows from the foregoing that I conclude there are serious issues to be tried that DMCC holds the 6 Remittances on constructive trust for Techteryx.

385. I must now consider whether to continue the proprietary and WFO injunctions in the light of that finding.

THE INJUNCTIONS

Introduction

386. Before considering the criteria for the continuation of the proprietary and WFO injunctions I will consider DMCC's submissions that the injunction should be discharged because of non-disclosure and an absence of clean hands on the part of Techteryx.

Non-Disclosure

387. Very sensibly DMCC limited the claimed non-disclosures from the 10 (my count) or 13 (per Mr Holloway) canvased in its skeleton argument to 4, namely:

(1) Techteryx positively misstated the position in relation to the Fund's audited accounts, falsely stating that the Fund has not produced any audited or unaudited financial statements for several consecutive years;

(2) Techteryx did not disclose its own pleaded case in the HK/Legacy Claim that its own authorised representative (Mr de Lorraine) authorised each of the DMCC Payments;

(3) Techteryx did not identify that in the Legacy Proceedings Techteryx was seeking to rescind the SAA, which was the agreement pursuant to which Techteryx acquired its alleged interest in the Reserves. That was a highly material omission as it was wholly inconsistent with Techteryx retaining any proprietary entitlement to trace into the payments made to FDT;

(4) Techteryx entirely misrepresented the test for enforcement of a Hong Kong judgment. This misstatement had two aspects.

(a) Common law rules; and

(b) Proprietary relief.

388. During the course of argument, I observed that I thought that the fourth allegation was, by far, the weakest as it was an issue of law and there were different views upon it.

389. In *Globe Investment Holdings Limited v (1) Commercial Bank Of Dubai (2) Hortin Holding Limited (3) Lodge Hill Limited (4) Westdene Investment Limited (5) VS 1897 (Cayman) Limited* CFI [2023] CFI 028, 4 July 2023, [94] I adopted the observation of Carr J (as she then was) in *Alexander Tugushev v Vitaly Orlov, Magnus Roth, Andrey Petrik* [2019] EWHC 2031 (Comm) [7] as general principles governing allegations of non-disclosure:

"i) The duty of an applicant for a without notice injunction is to make full and accurate disclosure of all material facts and to draw the court's attention to significant factual, legal and procedural aspects of the case;

ii) It is a high duty and of the first importance to ensure the integrity of the court's process. It is the necessary corollary of the court being prepared to depart from the principle that it will hear both sides before reaching a decision, a basic principle of fairness. Derogation from that principle is an exceptional course adopted in cases of extreme urgency or the need for secrecy. The court must be able to rely on the party who appears alone to present the argument in a way which is not merely designed to promote its own interests but in a fair and even-handed manner, drawing attention to evidence and arguments which it can reasonably anticipate the absent party would wish to make;

iii) Full disclosure must be linked with fair presentation. The judge must be able to have complete confidence in the thoroughness and objectivity of those presenting the case for the applicant. Thus, for example, it is not sufficient merely to exhibit numerous documents;

iv) An applicant must make proper enquiries before making the application. He must investigate the cause of action asserted and the facts relied on before identifying and addressing any likely defences. The duty to disclose extends to matters of which the applicant would have been aware had reasonable enquiries been made. The urgency of a particular case may make it necessary for evidence to be in a less tidy or complete form than is desirable. But no amount of urgency or practical difficulty can justify a failure to identify the relevant cause of action and principal facts to be relied on;

v) Material facts are those which it is material for the judge to know in dealing with the application as made. The duty requires an applicant to make the court aware of the issues likely to arise and the possible difficulties in the claim, but need not extend to a detailed analysis of every possible point which may arise. It extends to matters of intention and for example to disclosure of related proceedings in another jurisdiction;

vi) Where facts are material in the broad sense, there will be degrees of relevance and a due sense of proportion must be kept. Sensible limits have to be drawn, particularly in more complex and heavy commercial cases where the opportunity to raise arguments about non-disclosure will be all the greater. The question is not whether the evidence in support could have been improved (or one to be approached with the benefit of hindsight). The primary question is whether in all the circumstances its effect was such as to mislead the court in any material respect;

vii) A defendant must identify clearly the alleged failures, rather than adopt a scatter gun approach. A dispute about full and frank disclosure should not be allowed to turn into a mini-trial of the merits;

viii) In general terms it is inappropriate to seek to set aside a freezing order for non-disclosure where proof of nondisclosure depends on proof of facts which are themselves in issue in the action, unless the facts are truly so plain that they can be readily and summarily established, otherwise the application to set aside the freezing order is liable to become a form of preliminary trial in which the judge is asked to make findings (albeit provisionally) on issues which should be more properly reserved for the trial itself;

ix) If material non-disclosure is established, the court will be astute to ensure that a claimant who obtains injunctive relief without full disclosure is deprived of any advantage he may thereby have derived;

x) Whether or not the non-disclosure was innocent is an important consideration, but not necessarily decisive. Immediate discharge (without renewal) is likely to be the court's starting point, at least when the failure is substantial or deliberate. It has been said on more than one occasion that it will only be in exceptional circumstances in cases of deliberate nondisclosure or misrepresentation that an order would not be discharged;

xi) The court will discharge the order even if the order would still have been made had the relevant matter(s) been brought to its attention at the without notice hearing. This is a penal approach and intentionally so, by way of deterrent to ensure that applicants in future abide by their duties;

xii) The court nevertheless has a discretion to continue the injunction (or impose a fresh injunction) despite a failure to disclose. Although the discretion should be exercised sparingly, the overriding consideration will always be the interests of justice. Such consideration will include examination of i) the importance of the facts not disclosed to the issues before the judge ii) the need to encourage proper compliance with the duty of full and frank disclosure and to deter non-compliance iii) whether or not and to what extent the failure was culpable iv) the injustice to a claimant which may occur if an order is discharged leaving a defendant free to dissipate assets, although a strong case on the merits will never be a good excuse for a failure to disclose material facts;

xiii) The interests of justice may sometimes require that a freezing order be continued and that a failure of disclosure can be marked in some other way, for example by a suitable costs order. The court thus has at its disposal a range of options in the event of non-disclosure."

390. The case was followed by the English Court pf Appeal in *Mex Group Worldwide Ltd v Ford* [2024] EWCA Civ 959 at [119]. It added at [128]:

"Accordingly, those preparing this sort of attack in the future should ensure that they concentrate their efforts on alleged failures of disclosure which are clear-cut and obviously important. Quality not quantity should be the watchword. The failure to follow that course, as happened both before the judge and again on appeal, means that there is a real risk that the best points become buried in an avalanche of trivia. I do not believe that the judge was best served by the presentation of the points in this way; indeed, I consider that proper assistance to this court only arrived on the third day of the appeal hearing, when Mr Kalfon put his submissions on full and frank disclosure into some semblance of order and importance."

391. As to the audited financial statements –

(1) DMCC alleges that Techteryx positively misstated the position in relation to the Fund's audited accounts, falsely stating that *'the Fund has not produced any audited or unaudited financial statements for several consecutive years' in its Ex Parte* Skeleton Argument dated 27 February 2025 at paragraph 24 (it was in fact paragraph 25). The statement was based on Li-A-1 at paragraph 67.

(a) The injunction was originally granted on 28 February 2025 with the FRD of 17 March 2025. The statement was incorrect as there were audited financial statements for the year ended 30 June 2021 dated 30 November 2023. In Li-A-2 dated 14 March 2025 at paragraph 18, Ms Li stated,

> *"In relation to these 2021 financial statements, regrettably paragraph 67 of my first affirmation in these proceedings stated that there are no audited financial statements or periodic unaudited financial statements of the Fund in existence, including in particular for the financial year end December 2021. Whilst this reflected what has been pleaded by Techteryx in paragraph 64(iv) of the Amended Statement of Claim in the Hong Kong proceedings (Exhibit LJ1 page 660)18 and reflected Techteryx's view that the documents referred to in paragraph 17 above, including the 2021 accounts, were unqualified and unsatisfactory, the affirmation should have referred to the documents in paragraph 17 above for completeness and was therefore inaccurate. I would like to take this opportunity to make a correction herein and I apologise to the Court for this inaccuracy."*

(b) DMCC described the apology as *"mealy-mouthed"*. While expressions like that may play well to the gallery, they do not assist the Court. DMCC also submitted that there was no explanation how the mistake came to be made, and it must be inferred that it was a deliberate attempt to mislead the Court. It seems to me there was an explanation. Ms Li was (or whoever drafted her evidence) was reflecting what was said in the ASOC dated 11 December 2024 but it does look like that the financial statements were supplied to Ogier by Campbells a year earlier. The statement that the Fund had not produced any audited or unaudited financial statements for several consecutive years was therefore not accurate in that the failure only related to years ended 2022 and 2023.

(c) The point was raised at the FRD, and I referred to both the pleadings in HK and the corrected position. I accepted that the discharge application should be adjourned at that time, and it was not until 28 April 2025 that DMCC issued its Discharge Application. That application did state as a ground for discharge that the Claimant misrepresented and/or did not disclose relevant evidence and thereby presented a case which was based on false and/or misleading and/or incomplete evidence as summarised in the evidence of the First Defendant at paragraphs 155 to 169 of MWB-A-3. Paragraphs 159 to 160 referred to the misstatement.

(d) I am not satisfied that the misstatement was deliberate. I follow DMCC's own submissions when looking at the allegations of fraud made against it - It is not open to a court to infer dishonesty from facts which have not been pleaded, or from facts which have been pleaded but are consistent with honesty. Deliberate misstatement is dishonesty. The facts here may also be consistent with honest error given that different legal teams are involved in Cayman, Hong Kong and Dubai.

(e) Further, while the error is unfortunate the terms of my judgment of 18 March 2025 indicates that I was more concerned with the absence of financial statements for the period when the Remittances were actually made. As I said at paragraph 51 *"This was of course before the Six Remittances were received. Apparently audited financial statements for the subsequent years have not yet been prepared/produced."*

(f) In the circumstances I do not consider in my discretion that the error is one that would justify the discharge of the Orders made. In my view it is in the interests of justice that the Orders be maintained, particular as there is risk of the injustice to Techteryx if the Order would otherwise be continued but is discharged leaving DMCC free to dissipate assets.

(g) I do not however consider that the failure of disclosure should go unmarked and will hear submissions in due course on applicable sanctions.

(h) DMCC also complains about the allegation in Techteryx's skeleton argument that DMCC is in breach of section 8.2 of the Cayman Mutual Funds Act and has been since 31 December 2022. I observed in argument that I thought this complaint was a *"blind alley"* as it was based on the expert evidence of Ogier which itself was predicated on basis that no extension for filing with the regulator had been granted and that no evidence has been led by DMCC that an extension had been granted. It does not appear to me to be a non-disclosure.

392. As to rescission of the SAA and MSA claimed the Legacy Proceedings - at paragraph 44P of the ASOC in those proceedings Techteryx claims to be entitled to rescind the SAA and MSA. The Prayer seeks rescission of the SAA from the Closing Date. DMCC submits that this was a highly material omission as it was wholly inconsistent with Techteryx retaining any proprietary entitlement to trace into the payments made to FDT. Mr Holloway (on instructions) denied that rescission ab initio was being sought. It is not the case that Techteryx is claiming that it has rescinded the SAA or that rescission has been granted. It is a claim with which Techteryx may or may not proceed and which may or may not succeed. I do not consider that there was any need to disclose the claim in the Legacy Proceedings at the without notice hearing. If I needed confirmation of this view, it is to be found in the fact that this is not even one of the instances of non-disclosure identified in MWB-A-3 and therefore not subject to the Discharge Application.

393. The suggestion that Techteryx did not disclose its own pleaded case in the HK/Legacy Claim that its own authorised representative (Mr de Lorraine) authorised each of the DMCC Payments is a culpable failure is unsustainable. This is a prime example of what Carr J described as a case *"where proof of nondisclosure depends on proof of facts which are themselves in issue in the action"*. Additionally, this too is not even one of the instances of non-disclosure identified in MWB-A-3. Even if it were, Mr de Lorraine's role and the Board Resolution were discussed at length during the without notice hearing.

394. DMCC did not press the suggestion that Techteryx entirely misrepresented the test for enforcement of a Hong Kong judgment. It was right not to so as the issues turn on competing submissions of law.

395. All in all, it appears to me that DMCC has adopted the *"scatter-gun approach"* deprecated by Carr J and its initial position was what the English Court of Appeal described as an *"avalanche of trivia"*. I find no grounds for discharging any Order that I may make on the grounds of non-disclosure.

Clean Hands

396. DMCC's allegations of want of clean hands are even less promising than its allegations of non-disclosure. DMCC makes the assertion that *"it is clear that C is prepared to lie on oath in evidence presented to this Court about the identity of its own beneficial owner in order to obtain the orders it seeks. That is contrary to the 'clean hands' principle."*

397. There is no evidence to support this statement. The suggestion appears to be that Ms Li is not the UBO of Techteryx as she says she is in her Affirmations and the true UBO is Mr Sun. At best the evidence is that Mr Sun has a significant role in the running of the company and he tried to *"gate-crash"* the FRD hearing undoubtedly seeking to mislead the Court as to his identity. I find that conduct quite bizarre. If Mr Sun is in some way associated with Techteryx he could simply have attended the hearing a party representative. The Court does not look favourably on attempts to mislead, and such conduct risks a finding of contempt in the face of the Court and a fine under Article 35 of the Court Law. It is however a leap from that conduct to a finding that Mr Sun is the UBO of Techteryx and therefore Ms Li perjured herself in her Affirmation

398. I well understand why DMCC makes the allegation. DMCC claims the reason why it ceased making payment of redemption requests was because of AML/KYC concerns (see paragraphs 302ff above) about the beneficial ownership of Techteryx when FDT had represented that it was investing on its own behalf. There are serious issues as to the genuineness of that claim when DMCC is relying on the mirror documents, the originals did not contain any suggestion that FDT was investing on its own account and there is other evidence indicating that MWB knew that FDT/Legacy were investing their clients' money from custody accounts.

399. In my judgment the allegation of want of cleans hands is a *"bootstraps"* exercise designed to reinforce the justification for DMCC/Fund's failure to honour the redemption requests particularly in the light of the admission that the request cannot be honoured absent a "fire-sale" of assets.

400. While considering *"clean hands"* I should mention Techteryx's forensic accounting experts, Kroll. Mr Monatgu-Smith was highly critical of their lack of objectivity and how they appeared to be advocates for Techteryx. He suggested that I should discount their evidence or at least treat it as submission as opposed to independent expert testimony. In argument I referred to the difficulties that arise where a single person or practice is both advising and testifying expert. In the present case Kroll has been responsible for generation of much of the evidential material relied on by Techteryx in support of its allegations. It will be noted that I have not in this judgment placed any reliance on any opinions expressed by Kroll.

Sufficiently Arguable Case

401. The first criterion which is shared between proprietary injunctions and WFOs is the requirement for a good arguable case or a serious issue to be tried. In addition, for proprietary injunctions the case also needs to be sufficiently arguable that a proprietary remedy is appropriate (see paragraph 42 above).

402. I have found that there are serious issues to be tried that DMCC holds the 6 Remittances on constructive trust for Techteryx (paragraph 384 above). It follows that there is a sufficient likelihood for present purposes that the Hong Kong Courts might give a judgment enforceable in this Court ordering DMCC to disgorge the payments or their fruits (see paragraphs 66 to 69 above).

Balance of Convenience

403. s is also a shared criterion (see paragraph 43 above).

404. In *Larmag* this Court cited Lord Hoffman in *National Commercial Bank Jamaica v Olint Corporation*:

"The purpose of such an [interlocutory] injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result. As the House of Lords pointed out in American Cyanamid Co v Ethicon Ltd [1975] AC 396, that means that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted."

405. The Court went on:

"In practice, however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. This is an assessment in which, as Lord Diplock said in the American Cyanamid case [1975] AC 396, 408:
"It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them.""

406. It does not appear that damages would be an adequate remedy for Techteryx. The proposed Securitisation shows that neither DMCC nor the Fund is in a position to pay the redemption requests. On the other hand, when considering DMCC's application for Security for Costs, I noted that Techteryx had not provided any information about its assets. I cannot therefore find that the cross-undertaking would provide DMCC with an adequate remedy. It is therefore necessary to look at the balance of convenience.

407. As Lord Diplock emphasized it is a multi-factorial consideration with differing weight to be attached to each factor. In the context of the present case, I am most strongly influenced by the concern that the actions of DMCC could cause irremediable prejudice to Techteryx. There is at least a good arguable case that the proposed Securitisation was designed to hamper the enforcement of any judgment. I am not persuaded that it was necessary to proceed with the Securitisation with haste or at all (see paragraphs 315 to 318 above). There are inconsistencies around MWB's evidence concerning the Securitisation. He said that it was devised by him to enable the Redemptions to take place, but the document produced by him to support this statement did not support it (see paragraph 312 above). The proposed structure of the Securitisation remains vague and lacking in detail. It is not even clear which entity owns the assets to be securitised.

408. If the sole purpose of the Securitization is to enable FDT to redeem, there is no need to proceed with it before the HK Proceedings are resolved, particularly since no third parties are involved because the Fund has no shareholders other than FDT/Legacy. Accordingly, if Techteryx were ultimately successful all of the assets held by the Fund may belong to Techteryx. Any transfer of assets out of the Fund would therefore prejudice Techteryx.

409. Of course, I recognise that the Fund is not a party to these proceedings, but there is considerable confusion as to the ownership of assets that seem to pass freely without formality between the Fund and DMCC and MWB is in control of both. The Fund may therefore hold assets on behalf of DMCC and so they may fall within the Order. Consequently, I believe there is utility in an Order against DMCC alone as it carries with it the risks of accessory liability for breach of the Order on the part of MWB and the Fund in the event of non-compliance.

Just & Expedient

410. I identified two areas of concern to be addressed under this criterion. First, where the Court is making an Order in aid of foreign proceedings, the need for deference to the primary court (see paragraph 44 above). Secondly, interference with the ability to do business with third parties.

411. As to the former, it is not suggested that were I to continue the Order it would interfere with the HK Proceedings, give rise to disharmony or confusion and/or risk of conflicting, inconsistent or overlapping orders in other jurisdictions, or create a potential conflict.

412. As to the latter, the Order is not directed to preventing the day-to-day trading of the portfolio or subsidiary companies of DMCC or the Fund. On the contrary, it is in all parties' best interests that the trading companies keep trading and thereby do not diminish their value. The Order is directed to preventing the alienation of the ownership interests in those entities so as to frustrate enforcement.

413. I note the evidence of David Andrew Gangell Managing Director at Aria Bio Industries FZE (**"ABI"**), dated 23 June 2025, who says he reports to the Senior Leadership Team DMCC. He complains that

"ABI's operations have therefore been significantly adversely affected since its ability to operate its Mashreq Bank accounts was impaired in April 2025. ABI continues to be unable to remit payments from these accounts. I understand from Aria DMCC that these restrictions were Mashreq Bank's response to Techteryx obtaining a freezing injunction over the assets of Aria DMCC (and not ABI). Nevertheless, the effect has been that ABI has been unable to (i) meet contractual obligations to make payments to vendors, (ii) procure goods and services at competitive prices, and (iii) receive supplies of key raw materials, due to a lack of liquidity. This has resulted in operational issues such as having to delay deliveries to clients, and in some cases losing sales completely due to uncertainty around access to working capital. ABI has also been affected by the adverse media coverage which is causing consternation among our counter- parties."

He gave no further details.

414. This issue was addressed by me in my Order of 21 May 2025, i.e. before Mr Gangell's evidence, in relation to DMCC's application that I direct Techteryx to discharge the attachments granted by the Dubai Courts based on the Injunction. I said,

"150. I am not persuaded that I should make any order directing Techteryx to seek withdrawal of the Attachments. I do not feel that I have a sufficiently full picture of the bank accounts involved or the effect on the business of either DMCC or FZE. It seems to me that the issue (if any) lies with the Bank Defendants. Techteryx has secured from the Dubai Courts an exception to the Attachments for payment in the ordinary course of business and the Dubai Courts have communicated that to the Banks.

151. I am surprised not to have been shown any correspondence with the Banks concerning their failure to comply with the Dubai Courts' Orders or relating to any specific payments that have been blocked.

152. Consequently, I do not consider that I have the evidential basis on which to make an Order. Even if I did, I would retain a discretion whether to make an Order or not. DMCC's asset disclosure has hitherto been incomplete and opaque, I would therefore be wary of (as Mr Holloway put it) handing DMCC a "a get out of jail free card" without a fuller understanding of the ramifications.

153. In any event, I would regard total discharge of the Attachment as disproportionate. The SKAT case may be distinguished from the present in that not only was Sir Jeremy not dealing with a proprietary injunction, it appears that the attachment in that case did not make allowance for the payment of ordinary business expenses whereas it does in the present. The appropriate remedy in the present case would therefore be to take steps to make the Banks aware of their obligations either before the Dubai Courts or this Court."

415. Those observations remain valid. I therefore see no reason to find that continuation of the Order would be unjust or inexpedient because of the Bank Defendants' interpretation of the attachment granted by the Dubai Courts.

Risk of Dissipation

416. As noted at paragraphs 47 and 48 above an additional requirement for the grant of a WFO is that there is a risk of dissipation. The applicant must produce "solid evidence" that shows that:

(1) the defendant has or may have assets which will be available to satisfy the judgment against him, if judgment is given in the claimant's favour; and

(2) there is a real risk that the judgment will not be satisfied by reason of an unjustifiable disposal of those assets as opposed to dealing with assets in the normal course of business.

417. The first criterion is satisfied by MWB-A-2 and its exhibits. The affidavit indicates assets valued in excess USD 400 million. This is supported by DMCC's balance sheet as of 30 September 2022.

418. As to the second criterion, I have expressed grave reservations about MWB's evidence to this Court. It seems calculated to obfuscate and confuse. It is riddled with internal inconsistences and anomalies. There is a good arguable case that he has not been frank in his account of the manner in which the 6 Remittances were dealt with on receipt, how the Porting worked, what became of the assets purchased with the Remittances and by whom they are held. I am left with the impression that there is a real risk that he would cause DMCC to dispose of its assets in a way to frustrate the enforcement of any judgment.

CONCLUSION AND DISPOSAL

419. I direct that the following injunctions shall remain continued until further order of the Court:

(1) a proprietary injunction prohibiting the First Defendant from disposing of, dealing with, or diminishing cash or assets to the value of the sum of USD 456,000,000 transferred to the First Defendant or the traceable proceeds thereof; and

(2) a worldwide freezing injunction, prohibiting the First Defendant from removing from Dubai any of its assets which are in Dubai up to the value of USD 456,000,000 or in any way disposing of, dealing with or diminishing the value of any of its assets whether in or outside Dubai up to the same value.