BRITISH VIRGIN ISLANDS
EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION

CLAIM NO: BVIHC (COM) 158 of 2010

BETWEEN:

CHEMTRADE LIMITED

Claimant

and

[1] FUCHS OIL MIDDLE EAST LIMITED
[2] FUCHS PETROLUB AG

Defendants

and

CLAIM NO BVIHC (COM) 89 of 2011

BETWEEN:

SHEIKH ABDULLAH ALI ALHAMRANI

Claimant

and

[1] SHEIKH MOHAMED ALI ALHAMRANI

[2] SHEIKH SIRAJ ALI ALHAMRANI

[3] SHEIKH KHALID ALI ALHAMRANI

[4] SHEIKH ABDULAZIZ ALI ALHAMRANI

[5] SHEIKH AHMED ALI ALHAMRANI

[6] SHEIKH FAHAD ALI ALHAMRANI

Substituted Defendants

Appearances:

Mr Victor Joffe QC and Mr Lynton Tucker for Chemtrade and for Sheikh Mohamed Ali Alhamrani, Sheikh Siraj Ali Alhamrani, Sheikh Khalid Ali Alhamrani, Sheikh Abdulaziz Ali Alhamrani, Sheikh Ahmed Ali Alhamrani and Sheikh Fahad Ali Alhamrani

Mr George Bompas QC, Mr Adam Holliman, Mr Jerry Samuel and Miss Dawn Smith for Fuchs Petrolub AG

Miss Elizabeth Jones QC, Mr Simon Hattan and Mr Oliver Clifton for Sheikh Abdullah Ali Alhamrani

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2012: 20, 21, 24-28 September; 1-5, 8-12, 15-19, 23-26, 29-31 October; 1, 2, 26, 27 November; 21 December

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JUDGMENT

(Agreement to transfer property, including shares - whether shares in company A included in offer – agreement subject to law of Saudi Arabia – principles of Saudi contractual interpretation considered – related Saudi law principles considered)
(Unfair prejudice – directors appointed by member of two member quasi partnership company refusing to attend board meetings – meetings accordingly inquorate – other member claiming unfairly prejudiced – whether unfair prejudice established - member transferring cash to itself and holding it pending resolution of dispute as to ownership of fellow member company – whether unfair prejudice – appropriate remedy where member appointed directors unable to participate in board meeting because no quorum – whether company to be wound up by reason of breakdown in trust and confidence between members)

[1] **Bannister J [ag]:** This is my judgment in two related cases which have been tried together. In the first, ('the ownership case'), the claimant, Sheikh Abdullah Ali Alhamrani ('Sheikh Abdullah') seeks declarations that the shares held by his six brothers[1] (whom I shall refer to collectively, without intending the slightest disrespect, in the manner in which they were referred to at trial, as 'the Brothers') in a Virgin Islands registered company called Chemtrade Limited ('Chemtrade') were comprised in an offer made by the Brothers to Sheikh Abdullah by a letter dated 12 April 2008 and so passed into his 'ownership' when he unconditionally accepted that offer on 5 August 2008. Certain ancillary declarations are also sought and Sheikh Abdullah seeks an order for the transfer and registration of those shares ('the Chemtrade Shares') in his name.

[2] In the second case, ('the unfair prejudice case'), Chemtrade seeks an order that the 50% shareholding which it holds in another Virgin Islands registered company called Fuchs Oil Middle East Limited ('FOMEL'), be purchased either by FOMEL itself or by the holder of the other 50% of FOMEL's shares, a German registered company called Fuchs Petrolub AG

[1] sadly, Sheikh Abdulaziz Ali Alhamrani ('Sheikh Abdulaziz'), the former fourth Defendant, died while here in the Virgin Islands to attend the trial. His estate is represented in the ownership case by the first Defendant, his elder brother Sheikh Mohamed Ali Alhamrani ('Sheikh Mohamed')

(Fuchs'). Alternatively, it asks for relief in the form of directions to be given for the future conduct of the affairs of FOMEL.

[3] Although I have referred to the ownership case as the first case, it was not the first to be commenced. The unfair prejudice case was started first in time, after Sheikh Abdullah had started proceedings in Saudi Arabia seeking from the Courts in the Kingdom ('KSA') relief similar to that sought in the ownership case. Sheikh Abdullah subsequently decided to seek to establish his ownership of the Chemtrade Shares in this jurisdiction and brought proceedings here against, initially, Chemtrade itself for that purpose. Chemtrade counterclaimed against Sheikh Abdullah and on 8 November 2011 the Brothers submitted to the jurisdiction of this Court and were substituted as Defendants in the ownership proceedings. They further undertook not to allege that the contract upon which Sheikh Abdullah relies as establishing his ownership of the Chemtrade Shares was governed by any law other than the law of KSA and that they would not, collaterally or otherwise, challenge a determination of this Court on the ownership of the Chemtrade Shares in any other jurisdiction.

[4] Sheikh Abdullah has made it clear in these proceedings that if he succeeds in the ownership case and thus becomes the beneficial owner of 87.5% of its issued share capital,[2] he will cause Chemtrade to abandon the unfair prejudice case. This is because he and Fuchs have made common cause in the matters raised in the unfair prejudice case since early 2010 or thereabouts and have made common cause in these proceedings. It makes sense, therefore, to reach a determination in the ownership case before going on to consider the unfair prejudice case and it is for that reason that I have referred to the ownership case as the first case.

The ownership case

Background

[5] Sheikh Abdullah and the Brothers are the surviving sons of the late Sheikh Ali Mohamed Alhamrani ('Sheikh Ali') a prominent and highly successful Saudi Arabian businessman, who died in 1976. Their mother died in July 2006. They have two sisters ('the Sisters') who have played no part in these proceedings. The Sisters held a one sixteenth share each in the property which forms the background to the ownership case and, as I understand the position, they have come to a separate arrangement with Sheikh Abdullah about their holdings with which I am not concerned. They do, however, figure to some extent in the narrative.

[2] success in the ownership case would confirm that the Brothers' 75% holding in Chemtrade had passed to him on 5 August 2008, but he is the beneficial owner of 12.5% in any event

[6] Sheikh Abdullah, the Brothers and the Sisters were together co-owners, in Sharia shares,[3] of an assortment of assets. It is with these assets that the ownership proceedings are concerned. Various of the siblings owned other assets in different shares, but those assets are outside the scope of the ownership case. The assets held by all the siblings jointly with each other were under the overall watch of personnel employed at the headquarters of the jointly owned businesses in Jeddah, referred to collectively as the General Accounts Department, which produced statements of account to the siblings as a group. The General Accounts Department has been referred to as the 'Sons' Account' and the expression appears also to have been used to describe the property which they were managing.[4] The Sons' Account included investments held offshore for the siblings by the trustees of certain Jersey trusts.

[7] Sons' Account financial statements for the year ended 31 December 2007, audited by Deloitte and Touche Bakr Abulkhair and Partners ('DTBA'), show that at that date the Sons' Account comprised a number of different classes of assets, including land and buildings, property and office equipment, motor vehicles, cash in till and at bank, and securities and bonds used in the jointly owned businesses.

[8] Under the heading 'Investments in companies at cost', these financial statements also list nine Saudi Arabian companies, some of which feature prominently in the narrative. One of these companies is Alhamrani United Company ('AUC'), which is the distributor for Nissan in KSA. Another, Alhamrani Trading and Import, deals in Nissan vehicles and spares in KSA and an associated company called Alhamrani Company for Investment in Trade ('ACIT') provided finance for vehicle and other purchases. The siblings' investment, through Chemtrade, in FOMEL[5] was included in those financial statements, but under a separate heading – 'Other companies.' The dividend which Chemtrade had received during the year of account was also accounted for in the 2007 financial statements for the Sons' Account.

The origin and development of the entities involved

[9] At this point it is probably a good idea to say a little about what led to the incorporation of FOMEL and the investment in it by the Alhamrani siblings through Chemtrade.

[10] In the late 1980's the Alhamrani family formed a joint venture with the well known Indian industrialist family, the Hindujas, to manufacture oil based lubricants in KSA. A company was formed called Arabian Gulf Oil Company ('AGOC'), in which AUC took a 70% stake and a Hinduja company called Gulf Oil took 30%. At this time AUC itself was 50% owned by a

[3] one eighth to each male sibling and one sixteenth to each of the females

[4] the same expression was used to refer to accounts at the National Commercial Bank in Jeddah ('NCB') which held the cash forming part of the Sons' Account

[5] described as 'Fox Oil Middle East Company'

Saudi family known as the Al-Suleyman family and 50% by members of the Alhamrani family.

[11] The Alhamrani family also had an interest, together with the Hindujas, in a Dubai based company referred to as GOIMEL. It marketed Gulf branded lubricants in the Middle East and came to be supplied with product from its own plant in the Jebel Ali free zone in Dubai.

[12] The family had first had dealings with Fuchs in about 1990, when Fuchs and the Alhamranis agreed to form a Saudi company carrying on business in KSA for the manufacture of lubricant grease. Fuchs had (and has) formidable expertise in the matter of lubricants and a joint venture company was formed between Alhamrani Industrial Group ('AIG') and Fuchs, called Alhamrani Fuchs Petroleum Products Company ('AFPPC'). Fuchs had an indirect 40% interest in AFPPC. AFPPC's grease plant was at Yanbu in KSA, adjacent to the AGOC plant, and there was a degree of interaction between the two enterprises.

[13] The Alhamrani/Hinduja joint ventures were unwound in 1995. The Alhamranis gave up their interest in GOIMEL and the Hindujas gave up their interest in AGOC. A Fuchs Swiss subsidiary ('Fuchs Switzerland') succeeded to secure the Hindujas' Gulf Oil 30% interest in AGOC, paying US$18.4 million for it, of which some US$16.6 million was effectively paid under the counter. AGOC would now be supplying Fuchs products in place of Gulf Oil products and would do so under a trade mark licence from Fuchs. AGOC's name was changed to Fuchs Petroleum Saudi Arabia ('FPSA').

[14] Also in 1995 FOMEL was incorporated, to fill the gap left by the Alhamranis having given up their interest in GOIMEL. A shareholders agreement was entered into between Chemtrade, which already belonged to the Alhamranis, and Fuchs Switzerland and Fuchs granted FOMEL a trade mark licence. Chemtrade agreed to subscribe for 60% of FOMEL and Fuchs Switzerland for the remaining 40%. Subsequently further money was subscribed, bringing each party's investment up to US$2.5 million, and the shareholdings were equalized as a result.

[15] At the end of 1996 the Alhamrani family bought the Al-Suleymans out of AUC. In 1998 AFPPC (the grease plant) and FPSA were merged to become Alhamrani Fuchs Petroleum Saudi Arabia Limited ('AFPSA'). The interests of the Alhamrani family in AFPSA were held by AUC (58%) and AIG (10%). Fuchs held the remaining 32%.

[16] Thus, at the time when disputes first broke out at the end of 1999 between Sheikh Abdullah, Sheikh Fahad and the Sisters on the one hand and the others of the Brothers on the other hand, AFPSA was a joint venture company with the Alhamrani family, through AUC and AIG, holding 68% and Fuchs (which had succeeded to the interests of Fuchs Switzerland), holding the remaining 32%. FOMEL was held in equal shares by the Alhamrani family, through Chemtrade and Fuchs (again in succession to Fuchs Switzerland). The terms of the trade mark licence agreement between Fuchs and AFPSA permitted AFPSA to market

Fuchs branded product only in KSA and the terms of the trade mark licence agreement between Fuchs and FOMEL permitted FOMEL to sell Fuchs products only elsewhere than in KSA. Although (with the exception of a very short period in 1997) all FOMEL's product was sourced from AFPSA, which blended the various lubricants on its behalf, there was no supply agreement between the two companies. That meant that (subject to arguments based upon the appropriate length of notice, which would have to be based upon a contract implied through course of dealing) AFPSA could cease to supply FOMEL overnight. Similarly, and subject again to similar arguments, AFPSA could vary the prices which it charged to FOMEL at whim.

[17] I shall have to consider the commercial relationship between AFPSA and FOMEL in a little more detail later, but at this stage it is sufficient to point out that, legally speaking, FOMEL was no more than one of AFPSA's *ad hoc* customers. There was no formal joint venture agreement between the two companies. The third important point to be aware of at the outset is that the fact that FOMEL was based in the Jebel Ali Free Zone in Sharjah meant that it did not pay KSA income tax or Zakat – which I understand to be a religious impost similar in nature to the tithe system familiar in Europe.

Family disputes

[18] In September 2000, with a view to settling the disputes referred to in paragraph [16] above, a Disengagement Agreement was entered into between the two parties. Broadly speaking, the so called 'Foreign Investments' and a company called Fibertech would go to Sheikh Abdullah's party and everything else would go to the others, led by Sheikh Mohamed. There is no doubt that the expression 'Foreign Investments', where it occurred in the Disengagement Agreement, was a reference to the assets of the Jersey trusts. It was necessary that all of these assets be valued in order to establish what, if any, balancing payment needed to be made and a body of independent accountancy professionals undertook this task. The schedule of assets which they had considered was before the Court. FOMEL was included for valuation in a list of family assets and liabilities under the control of Sheikh Mohamed and his party and appears in a section headed 'Interests in unlisted trading companies.' The Disengagement Agreement was declared void, for reasons which are not material to the present proceedings, at the end of 2003. The result was to leave the siblings holding the jointly owned assets as hitherto.

[19] Sheikh Abdullah did not take part in the siblings' businesses after the Disengagement Agreement, although he did continue to have oversight of the Jersey trusts. In his absence, as it were, five of the brothers set up a new company called Mohamed A Alhamrani & Co Intertrade Limited ('Intertrade') and it is clear that they used money from AUC to fund it. Sheikh Abdullah became aware of this and started proceedings in a division of the KSA commercial court (otherwise known as the 'Board of Grievances') for an order of sequestration over AUC's assets. The Board of Grievances made an order to that effect on

14 November 2007. A fortnight later someone realized that the order amounted or might amount to a breach of AUC's distributor agreement with Nissan, entitling Nissan to terminate. The sequestration order was suspended on 1 December 2007 by the appellate division[6] of the Board of Grievances. I shall refer to the Court in what follows as the Court of Appeal.

[20] At some point in late 2007 the Court of Appeal and the Chairman of the Board of Grievances began to explore the possibility of mediation. The experts on Saudi law called by the parties made clear that the Saudi Courts commonly intervene of their own motion in order to achieve settlement of disputes in a manner which is not familiar to the Courts of the BVI[7] (or to those of England, for that matter) and are ready to take an active role in promoting and achieving settlement. One unsatisfactory feature of the present proceedings was that I was not presented with coherent evidence[8] dealing with the practices and procedures of the Courts of KSA. Such evidence as I did receive has to be collected from casual references by the witnesses, both lay and expert, and from inferences drawn from what actually took place and from the documents put in evidence. That necessarily means that I have to be extremely careful to avoid transposing my own legal intuition upon the evidence of what took place leading down to the settlement with which I am concerned.

[21] A particular feature of the process is that the Court of Appeal met the two sides separately. On occasions it would allow the party attending such a meeting to take a copy of the minutes kept by the Court but on other occasions it refused to allow an interested party to do so. It follows from this that not only does this Court have a very restricted view of what took place at these meetings, but the other party to the process would have no right at the time to learn what had transpired at meetings attended in their absence by the other.

[22] What happened was this. On 11 December 2007 Sheikh Abdullah wrote to the Chairman of the Board of Grievances asking to be provided with the last eight years' balance sheets of the companies in which the parties were interested and with the last nine years' balance sheets for the Sons' Account (a total of 121). The Chairman sent the letter to Sheikh Mohamed and asked him to provide the documents. That he did not do, because Sheikh Abdullah had to write again to the Chairman on 20 January 2008 repeating his request, but this time attaching a list of the companies whose balance sheets he wanted to see. One of those companies was FOMEL.

[23] On 10 February 2008 Sheikh Abdullah, together with a lawyer representing the Sisters met with three judges of the Court of Appeal, who proposed what is sometimes referred to as a shotgun agreement. They suggested that Sheikh Mohamed, who, of course, had the current management of the companies and other assets, other than the Jersey trusts, and was thus

[6] Seventh Appeal Court

[7] although provision is made in the Civil Procedure Rules 2000 for the Court to take such a role

[8] i.e. evidence in the form of a step by step narrative exposition

better equipped for that task than Sheikh Abdullah, to value each separate Sharia share in the jointly owned assets, with Sheikh Abdullah and the Sisters having the choice of selling their shares to the Brothers or buying the Brothers out, in each case at a price equivalent to the Brothers' valuation. Sheikh Abdullah was permitted to make a copy of the minute which records that Sheikh Abdullah and the Sisters agreed to this proposal at the meeting. The minute records that they accepted the Court of Appeal's proposal that Sheikh Mohamed would value:

> *all the companies, partnerships, shareholdings, funds and all trades and investments in Saudi Arabia and abroad as registered in the financial statements*

and that Sheikh Abdullah and the Sisters would have the choice of either selling their shares or buying the shares of the Brothers

> *in all the partnerships mentioned above in Saudi Arabia and abroad*

[24] The authenticity of this document cannot be doubted since it was relied upon in the Royal Court in Jersey in the course of the litigation there over the Jersey trusts on 10 March 2008, long before the dispute about whether FOMEL was included in the Brothers' offer, which itself was not made until over a month later, had erupted.

[25] On 11 February 2008 Sheikh Mohamed attended on the Court of Appeal and a similar proposal was put to him. The following day he attended once more, together with Sheikh Siraj Ali Alhamrani ('Sheikh Siraj') and Sheikh Abdulaziz. Sheikh Siraj, who gives an account of this meeting in his witness statement, says that the judges did not specify what particular assets were to be included in the calculation. On its own, that is credible evidence which I accept. Attempts by the Brothers to obtain a copy of the minute of the meeting were unsuccessful, so that there is no documentary check on what was said. Certainly, it is admitted in the Brothers' defence in the ownership action that the Court of Appeal proposed a valuation of all assets in joint ownership both within and outside Saudi Arabia. Whatever precise words were used, it seems to me that at the very lowest the Brothers did not understand that Sheikh Mohamed was to value only assets situate within KSA, otherwise they would not, on 11 March 2008, have asked the Court of Appeal for permission to postpone the valuation of the property in the Jersey trusts on the grounds that valuation at that time was impracticable. They would not have needed to refer to the Jersey trust property at all. I find on a balance of probabilities that the proposal was put to them in similar terms to those contained in Sheikh Abdullah's copy of the minute of 10 February 2008.

[26] On 13 February 2008 Sheikh Mohamed instructed Mr Vaiz Karamat ('Mr Karamat'), group Finance Director, to arrange a valuation by DTBA. On 16 February Mr Karamat wrote to Mr Sajid, his then assistant, telling him to arrange a valuation *'for the whole group, every single*

asset', and then divide by eight shareholders. Property not owned in those shares was to be excluded. This evidence is not inconsistent with that of Sheikh Siraj when he says that no directions were given to Mr Karamat as to what precisely was to be included in the valuation.

[27] DTBA used the valuation which had been prepared for the purposes of the 2000 Disengagement Agreement as the starting point for their work, which concentrated on valuing the various companies which were to be the subject of the buy/sell process. Valuations of certain non-company owned lands would be carried out by a Mr Binmahfooz and other non-company assets would be valued in house. On 24 February 2008 DTBA representatives attended upon Sheikh Siraj and Sheikh Abdulaziz and made a preliminary presentation on the methodology which they proposed to use in the valuation process. Slides were shown referring to a valuation of 'the Alhamrani Group.' This slide material included reference to FOMEL. Chemtrade itself was never mentioned by name during the valuation process. The foreign investments/Jersey trusts, were not included in the valuation materials, because of the difficulty at that time of attributing a reliable value to them.

[28] On 15 March 2008 DTBA presented their completed valuation to Sheiks Mohamed, Siraj and Abdulaziz. FOMEL (or half of FOMEL) was again included. The valuation valued the Group as a whole at SR2.3 billion. The half share of FOMEL represented by the Chemtrade shares was valued at SR75 million. Sheikh Mohamed then instructed DTBA to make deductions to some of the figures for reasons which are irrelevant to these proceedings. FOMEL was at no stage removed from the valuation, nor was its value ever reduced from that ascribed to it by DTBA. Importantly, Sheikh Mohamed also asked Mr Karamat, who attended the meeting, to calculate a figure per Sharia share which the Brothers could afford to pay if Sheikh Abdullah and the Sisters opted to sell, rather than buy. It is clear from the evidence that this affordable price was to take account of the cost of necessary bank borrowings to fund the purchase and the capability of the retained businesses to service the debt.

[29] On 25 March 2008 all of the Brothers except Sheikh Fahad attended a meeting with DTBA. Mr Karamat and Mr Sajid were also there, together with Mr Hardan, the Brothers' in house lawyer. The meeting was convened by Sheikh Siraj by an email of 23 March 2008 in which he said that the purpose of the meeting was to discuss the outcome of the DTBA valuation and agree on a price to be submitted to the Board of Grievances on 12 April 2008 (the deadline for submitting the offer).

[30] At the meeting DTBA produced figures, re-worked to take account of Sheikh Mohamed's deductions, giving an indicative value for the Group (including FOMEL) of SR1.4 billion (or SR175 million per male share, further adjusted, to take account of drawings from the Sons' account, to SR168 million per male share). At the same time Mr Karamat's workings showed that the affordable price per share, calculated on loan serviceability, was SR150 million. There is a dispute about the outcome of the meeting. Mr Sajid, who was called by

Sheikh Abdullah, told me that at the end of the meeting Sheikh Mohamed turned to the Brothers present and asked them if they agreed that the offer price should be SR150 million per share. Although he was cut off when about to give the response to that question he says in his witness statement that the price was agreed at the meeting. The Brothers' evidence was that while there was a general consensus that SR150 million was the right price, the figure was not finally agreed upon until some time later.

[31] The innocent reader might ask why it matters, but Ms Jones QC, who appeared, together with Mr Simon Hattan and Mr Oliver Clifton, for Sheikh Abdullah, wishes to establish that final agreement was reached at that meeting immediately after the end of the presentations because, she wishes to be in a position to submit, that will show that the Brothers reached their agreement with the settled intention of including FOMEL in the sale/purchase. Intention, she submits, is crucial from the perspective of Saudi law. I must therefore make a finding on this point. When this suggestion was put to Sheikh Mohamed he said that the Brothers would never have concluded an important family agreement in the presence of employees. Having listened to and watched Sheikh Mohamed give his evidence, on this point and generally, I have no hesitation in accepting what he says. I find that no concluded agreement on the price was reached between the attending Brothers in the presence of Mr Sajid. The agreement on the price and on the contents of the offer was reached between the time when DTBA and the Group employees withdrew from the meeting and 12 April 2008, when the offer was submitted to the Court of Appeal. The Brothers' evidence was that there was a succession of informal discussions during that period before final agreement was reached. Although Ms.Jones QC attacks that evidence in her closing submissions, I have no reason to doubt it and indeed that must be so, since advice will have had to be taken about the form and content of the offer letter itself before it could be submitted.

[32] Ms Jones relies, in support of her contention that agreement upon the offer to be made was concluded at the meeting of 25 March 2008, upon a draft unsigned minute which appears to have been created by Mr Hardan on his computer on 26 March 2008 and modified, last saved and printed on 30 March 2008. It was disclosed, for understandable reasons, only very shortly before trial. It purports to evidence a meeting on 25 March 2008 between all six brothers (it is accepted that Sheikh Fahad did not in fact attend) and to record an agreement to make an offer for all KSA assets of SR150 million per share, with the exception of lands inherited from the siblings' late mother and the property which included Sheikh Mohamed's residence. The document is unsigned. I do not think that it is possible for any reliance to be placed upon it for the purposes of establishing that a concluded agreement was reached between the Brothers at the meeting of 25 March 2008. None of the brothers could recall seeing this draft and none signed it. In the absence of any explanation from Mr Hardan, it seems to me that the document proves no more than that he drafted it. What he thought he was doing when he did so is not known and I am not prepared to speculate upon or draw inferences from a draft document in the absence of evidence from its maker.

[33] Ms Jones points to the fact that the draft minute refers to terms which were ultimately included in the offer letter to the effect that the land inherited from the siblings' mother and Sheikh Mohamed's house were to be excluded from the offer. This, it seems to me, points away from the document being an accurate record of what was agreed on 25 March 2008. Nobody suggests that there was any discussion of these matters on that day. Mr Hardan must have produced the draft after further discussion had taken place.

[34] On 12 April 2008 the Brothers submitted their offer letter to the Chairman of the Board of Grievances. A copy of Sheikh Abdullah's preferred translation of the offer letter is appended to this judgment, but it will be convenient for me to summarise its contents here:

> 1. After courtesies, the letter refers back to the decision ['conclusions'] of the Court of Appeal in February 2008 to entrust Sheikh Mohamed with the task of valuing the companies and funds which are jointly owned by the parties in dispute, in order that he might submit by 12 April 2008 the value of a single share
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> 2. The letter goes on to say that all the Brothers, headed by Sheikh Mohamed, took part in the work of compilation and valuation and that from the data thus arrived at they agreed that the price corresponding to all the shares of the partners is SR1.2 billion, giving a price for each of the Sisters' shares of SR75 million and a price for Sheikh Abdullah's share of SR150 million
>
> 3. The Brothers make clear that Sheikh Abdullah and the Sisters have the option of buying or selling at that price
>
> 4. They say that they arrived at this price solely on the basis of the data obtained from a fair valuation of the share, taking into account attendant rights and liabilities
>
> 5. They go on to say that 'it goes without saying' that the valuation was restricted to all the funds, properties and partnerships contained in the shares in the companies, real estates and movable property located inside KSA, in accordance with what is stated in Appendix 1
>
> 6. Appendix 1 contains, in its first section, a list of ten KSA companies, but that list does not include FOMEL or Chemtrade. Appendix 1 also contains a list of lands in Jeddah, Taif and Biljirshi. The letter mentions that title to certain of the listed lands may need to be corrected before completion
>
> 7. The letter explains the absence of any valuation of the foreign investments (i.e. the property held in the Jersey trusts) on the grounds

that that property is the subject of legal proceedings and states that upon resolution of that dispute the value of the shares in the foreign investments will be determined. It refers to a document said to have been drawn up by the 'competent Court' (i.e. the Royal Court in Jersey), which was attached to the letter as Appendix 2

8. The letter states that the purchasers, whoever they may be, must submit all guarantees to the authorities concerned and release the sellers from any obligations

9. Finally, the letter states that the ownership of certain land in Rawda is to be transferred to Sheikh Mohamed in any event.

[35] There are several points to notice about this letter, which was signed on behalf of the Brothers by Sheikh Siraj.

[36] First, it is addressed not to Sheikh Abdullah and the Sisters, but to the Chairman of the Board of Grievances.

[37] Secondly, it acknowledges that the task entrusted to Sheikh Mohamed by the Court of Appeal in February was to value the companies and funds owned by the parties in dispute, so that he could come back by 12 April 2008 and give the Court of Appeal the value of a single share.

[38] Thirdly, having mentioned that all the Brothers took part in the process of valuation, the letter conspicuously avoids stating the value of either the totality of the valued assets or of a single share in those assets. Instead, in each of the translations to which the Court has been referred, including that relied upon by Sheikh Abdullah, it states the *price* of each male and female share. In other words, it fails to comply with the proposal put forward by the Court of Appeal in February.

[39] Fourthly, the Brothers told the Court of Appeal that the price was arrived at solely on the basis of a fair valuation of assets. That was not strictly true. The Brothers had an asset valuation available to them, but the price offered, while it might be said, depending upon one's point of view, to have been broadly in the same region as the asset valuation, was a figure based upon affordability. In other words, as the letter said, it was a price rather than a value. That, of course, as turned out to be the case, cut both ways, but in this respect the letter involved a significant misdescription of the process that had been conducted by the Brothers.

[40] Fifthly, the letter not only omits Chemtrade from the list of companies in Appendix 1, it draws the attention of the Court of Appeal to the fact that the valuation was restricted to all the funds, properties and partnerships contained in shares in the companies, real estates and movable property located inside KSA in accordance with the contents of Appendix 1. That,

too, if read in accordance with the ordinary and common meaning of words, was not true. Chemtrade was on no sensible view 'located' in KSA. Its bearer shares were there and its administration was carried on from there, but it was a foreign company whose commercial activities were carried on and could only be carried on in territories other than KSA. It was non-resident for Saudi tax purposes and the evidence showed an anxiety amongst the family members that its non-resident status should not become open to challenge. Yet while Appendix 1 omitted Chemtrade, FOMEL had been included in the DTBA valuation.

[41] Finally, because of the nature of the process in which the Court of Appeal and the parties were engaged, neither Sheikh Abdullah nor the Court of Appeal had any means of testing the accuracy of the statements made in the offer letter – or if they had such means, they were never resorted to. Certainly, and importantly, neither the Court of Appeal nor Sheikh Abdullah ever saw any of the valuations prepared by DTBA, nor were they privy to the affordability calculation which determined the price.

[42] Following the submission of this letter to the Court of Appeal the Brothers began to have concerns that somehow or other Sheikh Abdullah, with or without the Sisters, might raise the funds to buy them out and they began to consider methods, which I do not need to spell out, intended to thwart that.

[43] As the Brothers had feared, however, on 19 May 2008 Sheikh Abdullah wrote to the Court of Appeal stating that he had decided to buy the Brothers' shares (and those of the Sisters if they were willing to enter into a separate agreement to that end). At the same time, he reserved his right to claim anything omitted from the 'statement' attached to the offer letter. This can only be a reference to Appendix 1. He asked for an assurance that the power of attorney used to make the offer letter extended to completing the sale/purchase[9] and for time to carry out due diligence – referring specifically to certain of the Saudi companies in this context. There were other stipulations in this letter which I do not need to mention.

[44] The Brothers then attempted to put obstacles in the way of Sheikh Abdullah's intended purchase by either getting the Group's bankers to declare that Sheikh Abdullah would not be acceptable to them as general manager of the Group or by persuading them to write letters saying that they would call the Group's loans unless they were provided by Sheikh Abdullah with equivalent security. They also resisted his attempts to carry out due diligence. It appears that at this time Sheikh Abdullah was on a bankers' black list for reasons with which I am not concerned. The Brothers were, for this reason, initially confident that he would not be able to raise the purchase price himself, but they had concerns that he might have, or find, a backer who would put him in funds to do so, so they tried to persuade the Court of Appeal to stipulate that no third party was to be involved in the purchase.

[9] the matter was subsequently attended to

[45] On 25 June 2008 Dr Al Twaijiri the Brothers' lawyer, asked the Court of Appeal to include a stipulation that each of the Group's bankers must execute a release of each of the Brothers from liability under guarantees given by them to the banks. I have to say that this seems to me to have been an entirely reasonable condition and one which, on a natural reading of the offer letter, they had already stipulated for, but, as will be seen, that view did not commend itself to the Court of Appeal.

[46] On 7 July 2008 Sheikh Abdullah wrote to the Court of Appeal addressing Dr Al Twaijiri's letter of 25 June. Miss Jones QC places reliance upon the fact that in that letter he describes himself as purchasing *11* companies, but given the general confusion which seems to have reigned at this time I do not think that it is possible to put too much weight on that. For instance, although AFPSA was on the list, none of its shares would be transferred to Sheikh Abdullah, and only a majority interest was to be indirectly acquired by him.

[47] On 24 July 2008 the Brothers learnt that Sheikh Abdullah had been taken off the black list.

[48] On 28 July 2008 Dr Al Tawijiri wrote to the Court of Appeal making suggestions for the manner of payment and completion and asking it to impose a two week deadline for Sheikh Abdullah and the Sisters to complete, in default of which he asked the Court to oblige them to sell their shares to the Brothers.

[49] Sheikh Abdullah abandoned his attempts to carry out due diligence and on 5 August 2008 he attended the Court of Appeal and told it that he was waiving any right to do so. He deposited the purchase money in the form of cash and bank guarantees with the Court and asked the Court of Appeal to order the Brothers to transfer the sold assets to him.

[50] On 10 August 2008 Sheikh Siraj and Sheikh Abdulaziz attended on the Court of Appeal and complained that Sheikh Abdullah had failed to procure their releases from the bank guarantees. They asked that in these circumstances he should instead be compelled to sell his share to them.

[51] On the same day or the following day the Court of Appeal issued its ruling on this impasse. It has been referred to in these proceedings as 'Judgment 1080.' In the judgment the Court of Appeal described the events of February 2008 as culminating in a 'reconciliation' which was to be effected by 'disassociation.' The Arabic word is *'takharuj'*, said by Sheikh Abdullah's Saudi law expert to be the word used to describe an exit from a partnership by selling one's share to continuing partners. Judgment 1080 mentioned the Court's proposal for Sheikh Mohamed to assess an equitable value of all the jointly owned companies and real estate. This assessment would, said the Court of Appeal, assess the subject matter of the sale at a price which would be the same whoever was the purchaser or the seller, because it would be done in accordance with the valuation arrived at by the Brothers. The Court then referred to the Brothers' agreement to the proposal, which was to include an assessment of all the companies and other property in which the parties were partners. The

Court referred to the Brothers' as having agreed to assess the properties at an equitable price, so that either party could buy the other out for 'the amount at which Siraj and his brothers had assessed the property' and went on to say that the Brothers gave 'the required assessment' on 12 April 2008. Judgment 1080 then sets out the offer letter in full, including the whole of Appendix 1.

[52] Judgment 1080 goes on to describe Sheikh Abdullah's acceptance of 19 May 2008 and refers to the fact that the Brothers had supplied Sheikh Abdullah with the last balance sheet for each of the companies listed in the first section of Appendix 1. Next, the Court referred to Dr Al Twaijrii's attempt, in his letter of 25 June 2008, to make completion of the sale conditional upon releases by the banks of the guarantees given to them by the Brothers and his later pressure for speedy completion. The Court then referred back to Sheikh Abdullah's acceptance of the Brothers' offer in which, said the Court of Appeal 'they had assessed the value of all the companies and real estate which [the siblings] owned within KSA' at SR150 million per male share and stated that the purchased items were the assets included in Appendix 1.

[53] Pausing there, what the Court of Appeal did not know was that the SR150 million figure was not the Brothers' assessment of the value of all jointly owned property within KSA, but rather the price which they were prepared to pay for a one-eight share in the assets, based only tenuously, if at all, upon DTBA's valuation of the listed assets plus the shares in Chemtrade.

[54] After some further remarks, the Court of Appeal found on the facts that the 'reconciliation had already occurred by Sheikh Abdullah's purchasing all the Brothers' shares in what is shared between them – companies and anything else inside KSA' mentioned in Appendix 1. The Court of Appeal described this as having happened 'by means of the Court.'

[55] The Court then proceeded to deal with the concerns which had been raised by Dr Al Twaijiri. It said, first, that his concerns about payment had been met on the facts. As far as the request to provide releases by the banks from the Brothers' obligations to the banks under their guarantees was concerned, the Court concluded, by a process of reasoning about which I have received no evidence and with which I am not directly concerned, that the Brothers must be content with a personal obligation on the part of Sheikh Abdullah, implied from his acceptance of the offer letter, to save them harmless from their guarantee obligations. The Judgment went on to say that completion would not affect Sheikh Abdullah's right to claim *his share* in any property which did not figure in Appendix 1.

[56] Finally, the Court of Appeal (1) approved the conciliation made between Sheikh Abdullah and the Brothers 'and obligating them therewith' and (2) ordered the Brothers to deliver up the sold assets in exchange for the cash and guarantees.

[57] Once the Brothers found out about the judgment they took steps to appeal it.[10] Their principal ground was the refusal of the Court of Appeal in Judgment 1080 to make completion conditional upon release of their bank guarantees. In order to prepare the ground for this, they took steps to convince various banks to insist upon taking fresh guarantees from them, although on terms, in some cases, which meant that they would never be enforced, in order to strengthen their case on appeal. Miss Jones QC makes much of these matters, but I do not intend to go into them in any detail since they are irrelevant to the question of ownership.

[58] In Judgment 1220 the Court of Appeal delivered its judgment rejecting the appeal on 22 October 2008 and reaffirmed its original order. The judgment takes matters no further forward, but I need to mention one particular passage in it, since Miss Jones QC relies upon it for an argument which she runs to the effect that the Brothers' offer letter was made pursuant to a previous obligation that arose on 12 February 2008, when the Brothers agreed to take part in the valuation process. The first argument addressed in Judgment 1220 was that the earlier judgment was premature because the parties had yet to reach a concluded agreement. The Court of Appeal dealt with that remarkable submission by outlining the steps taken in the reconciliation process, beginning with the events of February 2008. It describes how the Brothers' representatives, on being told on 12 February 2008 of the Court of Appeal's 'suggestion' of the valuation and buy/sell proposal, withdrew to consider the period which they were to be allowed for preparing their valuation and returned to 'convey their approval on the foregoing' and agreed that the valuation would be provided within a period of two months. The Court of Appeal said no more in this passage from its Judgment 1220 than that the Brothers, on 12 February 2008, approved of the Court of Appeal's 'suggestion.' It was not saying that they became subject, on that date, to any legal obligation. It was saying no more than that they agreed on that date to participate in a process. As Sheikh AlGasim, Sheikh Abdullah's expert on Saudi law accepted, the Brothers were not bound by that to enter into any particular contract, or even to contract at all.

[59] After Judgment 1220 had been delivered, the Brothers caused AFPSA to pay a SR20 million dividend and FOMEL to declare a dividend of US$6 million, of which Chemtrade's US$3 million was paid directly into the Sons' Account and from there to the individual brothers on about 27 October 2008. Sheikh Abdullah clearly has grounds for complaint in relation to these withdrawals of cash from AFPSA at this particular time, but the facts themselves are of no assistance in deciding the question of ownership.

[60] Because the Brothers would not hand over the sold assets, the Ministry of the Interior enforced the judgment, so far as possible, by seizing the Group's premises and what remained of their contents and giving possession to Sheikh Abdullah on 3 December 2008.

[10] technically, it was a reconsideration by the same Court, but with the constituency increased by a further two judges

The shares in the sold companies were transferred by administrative act[11] and the lands, after problems of title in relation to some of them had been resolved, were ultimately transferred. The employees of those companies, other than any who may have preferred to leave, will have continued to work for the companies by which they were employed. Those employees included the bulk of the employees of FOMEL itself, which continued to be run, as before, from the Group's headquarters in Jeddah. These FOMEL dedicated employees were paid in fact by AFPSA, although their salaries were recharged to FOMEL.

[61] There are complaints that before the seizure documents, including the Chemtrade bearer shares, were removed from the Group's premises. None of these matters, which appear to be largely substantiated, if not admitted, helps me with the ownership issue.

[62] Despite enforcement of the judgment in this way, the Brothers did not receive the purchase price until after 13 September 2009, which clearly placed them under very considerable financial pressure. They had lost their livelihoods with the companies. The root of the problem appears to have been (1) Sheikh Abdullah's complaints that he had not got what he paid for and (2) interminable delays in transferring the sold lands, which the Brothers say, and I accept, was due in large part to Sheikh Abdullah's persistent refusal to attend, or to send his representative to attend, meetings to sort out various conveyancing issues. The Brothers also say that the official at the Ministry of the Interior who was dealing with the matter took Sheikh Abdullah's side. In the end it proved necessary for an approach to the Deputy Minister himself, Prince Ahmed, whereupon the log jam was speedily resolved. I shall have to come back in a moment to the machinery by which the Ministry ascertained that the process of completion had been fully effected and that the Brothers were entitled to receive the price, but it is necessary first to refer to some intervening events in the narrative.

[63] On 1 April 2009 Sheikh Abdullah wrote to Prince Naif, Minister of the Interior, making a number of complaints against the Brothers. For present purposes, the most significant of them was that the Brothers had failed to transfer their Chemtrade shares to him, but he also complained that they had failed to transfer 'One Stop' to him. The first allegation was correct, but the second resulted from a misconception. One Stop was the name given to part of AFPSA's business comprising a series of service stations run by AFPSA in KSA. They appeared to be in separate ownership because their employees, who were not Saudi nationals, were sponsored, as I understood it, by other Alhamrani group companies. All that was required was for the sponsorships to be unwound and transferred, as was duly done. It would, of course, have been impossible for the KSA authorities to have effected a transfer of the Chemtrade shares by administrative act and in any case, being bearer shares, they could be transferred only by delivery.

[11] the transfer of one such company was delayed through the need to obtain the signature of a member of the Royal Family

[64] On 5 April 2009 the Brothers instructed their lawyer, Mr Hamdan, to write to Chemtrade's registered agent, Trident Trust Company (BVI) Ltd ('Trident'), to tell it that changes in the FOMEL directorship were contemplated, with Sheikhs Mohamed and Siraj, who were FOMEL's Chemtrade appointed directors, resigning in favour of Sheikh Abdullah and with the current shareholders in Chemtrade transferring their shares to Sheikh Abdullah. He asked Trident to explain what was required to effect these changes and to supply him with appropriate documentation in draft. Trident complied.

[65] On 27 April 2009 Mr Stefan Fuchs ('Mr Fuchs') and Mr Alf Untersteller ('Mr Untersteller') the two Fuchs appointed members of the FOMEL board,[12] wrote to Sheikh Mohamed and Sheikh Siraj calling a board meeting of FOMEL for 18 May 2009. One of the proposed agenda items was 'discussion of FOMEL ownership (prospects and ways to manage the situation).' Mr Fuchs explained in evidence that he and Mr Untersteller had heard various rumours and wished the position to be clarified. Sheikh Siraj replied to Mr Fuchs on 10 May 2009 as follows:

> 'Dear Stefan
> Subject:Fuchs Oil Middle East Ltd.
>
> I am in receipt of your letter dated 27th April, 2009, referring to the above subject. I regret to inform you that we will not be able to meet in the capacity of Board Directors of the aforementioned company – Fuchs Oil Middle East Co – for we were forced to transfer the assets and all shares of CHEMTRADE and therefore the "Company" to Sheikh Abdullah A. Alhamrani.
>
> On the other hand, I believe the relationship we built for the past two decades is a solid relation far beyond a normal business relation. Together we have witnessed growth and success and set the stage to grow even further, it is unfortunate that we had to part for extenuating circumstances.
>
> Accept our apologies for any inconvenience the above may have cause, wishing you continued success and good health.'

[66] Sheikh Siraj eventually accepted that he had discussed the invitation to attend the board meeting with Sheikh Mohamed, who was abroad at the time and who, he said, had instructed Sheikh Siraj to 'answer them and apologise nicely.' His explanation for the letter was that at that time the Brothers feared that they would be compelled to sacrifice Chemtrade, in other words to cave in to Sheikh Abdullah's demand for transfer of the Chemtrade shares, in order to secure payment of the purchase price, which still remained outstanding. I cannot accept this explanation. Sheikh Siraj speaks impeccable and elegant English and it is clear from the terms of the letter that he then believed that Chemtrade had

[12] they were also a member of Fuchs' Group Management Committee

formed part of the sale. I find that Sheikh Mohamed shared that belief at that time. Indeed, there is other material from Sheikh Mohamed in May and June 2009 which corroborates the fact that, while he appreciated that they remained directors and shareholders of FOMEL as a matter of law for the time being, he accepted that they were going to have to resign and transfer their holdings in due course.

[67] On 18 May 2009 Sheikh Siraj met Mr Fuchs in a hotel in Jeddah. Mr Fuchs made a note to his father, Dr Manfred Fuchs, telling him that Sheikh Siraj had told him that Sheikh Abdullah had 'assumed the shares in the Alhamrani Group' and that as a consequence FOMEL, too, would be transferred to him. Sheikh Siraj said that he told Mr Fuchs the exact opposite, but in my judgment Mr Fuchs' note must be accepted at face value.

[68] Miss Jones QC says that these materials show that the Brothers knew that Chemtrade had been part of the subject matter of the sale. I cannot accept that submission, but I accept that they show that such was their belief when they made their various statements in May/June of 2009. The correspondence with Trident reinforces the point.

[69] Sheikh Abdullah wrote again to Prince Naif on 17 June 2009 making various complaints, including the Brothers' failure to transfer the Chemtrade shares.

[70] It appears that by the end of June 2009 the Brothers began to question their previously held belief. In the Jersey proceedings Sheikh Abdullah's Jersey lawyers wrote to Bedell Cristin, acting for the Brothers, complaining that the Brothers had failed to perform the bargain comprised in the buy/sell agreement in not transferring Chemtrade and One Stop. Bedell Cristin replied on 24 June 2009 saying that they were not included in the sale because they were not Saudi companies. Bedell Cristin were right in saying that neither Chemtrade nor One Stop was a Saudi company, but One Stop, as I have explained, was included in the sale because it was part of AFPSA's business in Saudi Arabia. Whether Chemtrade was included in the sale is the question in the ownership case, but it is clear that issue had been joined on the point when Bedell Cristin wrote its letter.

[71] Sheikh Abdullah says that he never saw Bedell Cristin's letter.

[72] On 29 July 2009 Sheikh Abdullah wrote again to Prince Naif complaining about the Brothers' failure to convey various parcels of land and to transfer their shares in Chemtrade. On the same day Sheikh Siraj and Sheikh Ahmed met the Deputy Minister of the Interior. They accepted that various lands appearing on the balance sheets of certain of the transferred companies but which were registered in the names of others should be transferred with the companies, against receipt of the price. As for Chemtrade, they made the point that it was registered outside the Kingdom and was therefore not a 'Fuchs branch.' It should be explained that AFPSA was frequently referred to as 'Fuchs.' They are recorded in a minute of the meeting as having gone on to say that if Sheikh Abdullah could produce evidence that it was a Fuchs branch, they would 'verify' it.

[73] On 5 August 2009 Sheikhs Siraj, Abdulaziz and Ahmed met with Prince Ahmed, Deputy Minister of the Interior. Their position at that meeting was that the judgment applied only to what was inside KSA.

[74] On 12 September 2009 Sheikh Abdulaziz signed an acknowledgement on the part of the Brothers that the company lands registered in the names of others, together with the One Stop sponsorships, would be transferred. The Ministry of the Interior thereupon released the cash and guarantees to the Brothers and issued what has been referred to as a Handing Over Report. The subject of the Report was stated to be the delivery of the purchase price 'provided for in Judgment 1080.' There then follow five 'Recitals.' The first states that the parties had had no problem with respect to the contents of Appendix 1, from which it followed that they were 'clear for both parties and implementable.' The Court of Appeal had included them in Judgment 1080, which sanctioned the arrangement and obliged the parties to perform their obligations under it. The Recital continued by stating that Appendix 1 was unambiguous. There was therefore nothing outstanding to prevent completion. If either party had complaints 'beyond the statements included within [Judgment 1080]', it could bring separate proceedings to resolve them.

[75] Recital 2 confirmed that title to 'the companies stated in the judgment had been transferred (with the exception of that where the signature of a member of the Royal Family was awaited).

[76] Recital 5 stated that a telegram had been received from Prince Naif confirming that a telegram had been received from the Minister of Commerce and Industry confirming in its turn that the companies listed in Judgment 1080 had been transferred.

[77] The document concluded by recording that in light of the materials referred to in the Recitals, the purchase price had been handed over on 13 September 2009.[13]

Legal considerations

[78] The parties were agreed that the question whether the Brothers became obliged in 2008 to sell their Chemtrade shares to Sheikh Abdullah has to be decided in accordance with Saudi law. They also agree that that means that, having received evidence of Saudi law from the witnesses who appeared before me, I have to apply that law to the agreement (or judgment) whose meaning I am called upon to decide and reach a conclusion as close as possible to the likely decision of the Saudi Court if faced with the same question. Finally, they agree that if an issue arises in the course of that process which is not dealt with in the expert evidence before the Court, I have to resolve that issue on the assumption that on that question Saudi law is identical with the law of the Virgin Islands.

The expert evidence

[13] there is some confusion as to the precise date

[79] Sheikh Abdullah called as his expert witness of Saudi law Sheikh Abdulaziz AlGasim ('Sheikh AlGasim'). Although he has a higher legal qualification, has been a judge in a Sharia Court and is a Sharia law adviser to a number of significant Saudi institutions and enterprises, he had never given expert evidence before this case. In his written report he deals first with the question whether there was a contract between Sheikh Abdullah and the Brothers. Having first given the basic principles for determining, as a matter of Saudi law, whether a contract has been concluded, which could have come straight out of the pages of Chitty, he concludes, on the basis of passages taken from Judgment 1080 and from what he calls 'acknowledgements' on the part of the Brothers, that there was. In cross examination, he maintained that a binding contract had been concluded when Sheikh Abdullah accepted the Brothers' offer of 12 April 2008 by his letter of 19 May 2008. That acceptance was not, in the view of Sheikh AlGasim, conditional. Judgment 1080 had 'authenticated' that contract.

[80] Sheikh AlGasim then moved to the question of contractual interpretation under Saudi law. He accepted in cross examination that if the meaning of a contract is clear and certain, then there is no room for external evidence of intention. However, he says in his Report that the contract which he has identified is ambiguous. It is plain that by that he did not mean that the contract is ambiguous on its face. His reasoning in the relevant passage in his Report starts from the undoubted fact that in the February meetings the Court of Appeal proposed a valuation of all assets in common ownership, whether inside Saudi Arabia or abroad. The next step is for him to say that it is not possible from the offer letter to tell whether Chemtrade was included in the sale or not and that the contract was accordingly ambiguous. In cross examination, however, Sheikh AlGasim accepted that no contractual relationship had been formed before 19 May 2008 and that all that had happened before the Court of Appeal in February 2008 was that agreement had been reached upon machinery for settlement. At that stage, he accepted, the parties were free to enter into a contract or not.

[81] Sheikh AlGasim goes on in his Report to expound the principles which Saudi law uses in order to resolve ambiguity. The search is for the objective intention of the parties. In conducting that search, Saudi law will take into account not only the contextual matrix, background and aim of the contract, but also the parties' subsequent acts and statements. Both experts were in agreement about this, although Dr Al-Ghazzawi, who gave evidence for the Brothers, was more qualified in his view about purposes for which post-contractual admissions or dealings could be used as an aid to construction.

[82] Having identified this ambiguity, Sheikh AlGasim concludes that the intention of the parties was to include Chemtrade. In reaching that conclusion he relies in his Report upon the following *indicia*.

[83] First, he says (although he gets the date wrong) that AFPSA and FOMEL had been operationally merged. Next, that FOMEL was the only export outlet for AFPSA. He mentions a number of particular incidents of the relationship between the two companies

and ends up by saying that the Saudi Court would conclude on the basis of the close relationship between AFPSA and FOMEL that the Brothers' shares in Chemtrade were included in the offer letter. He does not explain why a Saudi Court would conclude from the interrelationship between AFPSA and FOMEL that it was the intention of the Brothers to offer their shares in Chemtrade to Sheikh Abdullah.

[84] Next, he refers back in his Report to the discussions with the Court of Appeal over 10/12 February 2008 and points, correctly, to the Court's suggestion that the buy/sell process should effect a partnership exit[14] in all companies in common ownership.

[85] Having pointed out that the DTBA valuation included the Chemtrade shares (which he says, without giving any reasons, indicates the Brothers' intention to include them in the offer) he relies upon 'the appropriateness of the price.' It is not clear how Sheikh AlGasim reached the conclusion that the price, which he does not mention, was appropriate or why it should follow that Chemtrade was among the assets sold.

[86] Sheikh AlGasim's next point is that after the transaction had been completed the Brothers handed over AFPSA's offices to Sheikh Abdullah and that those offices included the managerial apparatus of FOMEL. In cross examination, however, he accepted that this point was of no significance, since the offices, etc, had been seized, not handed over. In the Report, he relies in addition upon the supposed fact that no steps were taken by the Brothers to disentangle the two businesses or to attend meetings of the FOMEL board following the sale. This ignores the fact that they attempted to call meetings of the FOMEL board in late 2009 and early 2010. In any event, he moves on to rely heavily upon Sheikh Siraj's letter of 10 May 2009, which he says must be taken to have been made as agent for all the Brothers. Sheikh AlGasim goes on to stress the importance, in Saudi law, of acknowledgements and says that Saudi law does not permit a party to resile from an acknowledgement. In cross examination, however, he accepted that an acknowledgement, or confession, made to a third party rather than to the counterparty in point was of less evidential weight.

[87] In cross examination Sheikh AlGasim relied, in addition, upon what he alleged was the heading to the list of ten companies in Appendix 1, which he said read as 'all the companies owed by Sheikh Ali, the Brothers' father.' In fact, that is wrong. The cross heading is absent altogether from the version of the offer letter relied upon by Sheikh Abdullah, although it does appear in the version of the offer letter relied upon by the Court of Appeal in Judgment 1080. The heading in the English translations is 'Companies owned by the Sons of Sheikh Ali.' just as the heading to the section of Appendix 1 dealing with real property is 'Lands owned by the Sons of Sheikh Ali.' Dr Al-Ghazzawi confirmed that the definite article was absent in the Arabic original.

[14] *'takharuj'*

[88] I can safely pass over some of the next sections of Sheikh AlGasim's Report and move on to his reliance upon the statement, contained in the offer letter sent to the Court of Appeal on 12 April 2008, to the effect that the price had been arrived at solely on the basis of data obtained from a fair valuation of the share. He says that that statement would be regarded as evidence that the offer included the Chemtrade shares. No reasoning is given to support this proposition.

[89] Sheikh AlGasim then goes on to dismiss the Bedell Cristin letter of 24 June 2009 as insignificant in comparison with the other *indicia* upon which he relies. He turns next to the question whether movable property, including the Chemtrade bearer share certificates, was included in the sale, despite finding no mention in Appendix 1. He says that movable property did in fact pass, which, in his view shows that the parties must have intended that the Brothers' Chemtrade shares were included in the offer letter. Sheikh AlGasim does not really deal in his Report with the next question put to him (whether the Chemtrade bearer shares were movable property within the meaning of the offer letter and thus to be treated as sold when Sheikh Abdullah accepted it). Instead, he repeated his contention that the *indicia* upon which he had relied as showing that the Chemtrade shares were included in the offer showed that the share certificates, too, must be treated as within it. In cross examination, however, he insisted that Chemtrade was a company within KSA, because it had offices there.

[90] In his Report Sheikh AlGasim says that Judgment 1080 stated that the sale included all joint assets and companies and repeats earlier arguments why the offer included the Chemtrade shares. He goes on to confirm that the root of the Brothers' obligations to Sheikh Abdullah is his acceptance of the offer letter and not Judgment 1080.

[91] In Part D of his Report Sheikh AlGasim reverts to a topic, earlier foreshadowed, that the interrelation between AFPSA and FOMEL engaged the principle of Saudi law encapsulated in the proposition 'What belongs to a thing passes with a thing.' In order for it to be appreciated how it is said that this principle applies, it is necessary for me to break off for a moment and say a little more about the relationship between the two companies.

[92] A striking feature of the way in which the two companies were beneficially owned at the material time was that the Alhamrani family owned 68% of AFPSA and only 50% of FOMEL. Fuchs from time to time suggested equalizing these holdings, but Sheikh Mohamed would not agree to the proposal. As FOMEL's business began to gather pace, the parties were left with a decision how to capitalize it. Remarkably, they decided that rather than putting their hands in their pockets, AFPSA would supply it at cost or thereabouts and provide commercial infrastructure *gratis*. Although there had been earlier suggestions for a merger between the two companies and a diametrically opposed suggestion for a complete delinkage, neither of these possibilities bore fruit. Instead, in 2006 there was carried out what has been referred to as an operational merger. FOMEL's offices and presence in

Sharjah was reduced to the minimum necessary for keeping a presence there for tax purposes and all FOMEL staff operated out of AFPSA's offices in Jeddah. As I understood it, staff dedicated to FOMEL's operations were paid out of AFPSA's pocket initially, but the cost was charged to FOMEL.

[93] Since the lubricants sold by FOMEL were manufactured and packed in KSA, with AFPSA attending to shipping and, by and large, invoicing and receivables, many customers of FOMEL accounted directly to AFPSA. Accounts between the two companies were settled from time to time and for a period a system was put in place whereby either party paid interest to the other if settlements were made later than thirty days in the case of AFPSA or if FOMEL paid for product earlier than its thirty day credit limit required.

[94] As I have already said, AFPSA could not sell Fuchs branded products on its own account elsewhere than in KSA and FOMEL could not sell within KSA, but was restricted to a number of other Mid Eastern and North African territories. FOMEL's business was originally carried out on a distributorship basis, whereby FOMEL sold to regional wholesalers, but over time problems with the collection of receivables prompted a move away from distributorships towards licences, a system which involved either former distributors or new entrants, as it were, building their own regional production plants under licence from Fuchs. The resulting royalty payments were smaller than profits on direct sales, but the system[15] had the advantage of ensuring more reliable payments. This royalty system did not replace direct distribution from KSA in its entirety, since the licensees do not, at any rate at this stage, manufacture the more specialized products, which still need to come from KSA and in any event not all territories have converted to the MENA system.

[95] Such, more or less, was the shape of the business when the offer letter was accepted by Sheikh Abdullah in May 2008. A mass of evidence was adduced in an attempt to prove that it was (a) impossible (Sheikh Abdullah and Fuchs) or (b) simple (the Brothers) to separate the two businesses. For reasons set out in more detail in my judgment in the unfair prejudice case, I find that it was then possible to separate the companies, although it would have involved commercial and administrative upheaval and FOMEL would have lost, in its direct sales business, its unwritten and consequently unenforceable preferential trading terms with AFPSA. It would also have lost the benefit of a supply of high quality Saudi base oil[16], which Mr Unterstellier told me, and I accept, is the gold standard for this type of manufacture. Sheikh Abdullah, rather spiking the efforts of his own Counsel in this respect, referred to FOMEL as a paper company and to its profits as false (because they derived from over generous terms of trade). He even adumbrated a claim to recover them, although it was clear that no such claim has actually been brought. As he vividly asked, why should he bear 68% of the losses when Fuchs takes 50% of the profits. Furthermore, Sheikh

[15] known as the MENA ('Middle East North Africa') system
[16] the basic ingredient for the manufacture of lubricants

Abdullah does not seem to have thought that it was in any way commercially problematic when he marketed some of his AFPSA holding in late 2011 independently of FOMEL. In short, Sheikh Abdullah's view appeared to be that while FOMEL needed AFPSA, AFPSA could do without FOMEL.

[96] A great deal of effort was put into an attempt by Sheikh Abdullah's Counsel, not greatly assisted by their Client's observations, to demonstrate that FOMEL was what they insisted on calling the 'export arm' of AFPSA. They relied in this respect upon a reference in some Alhamrani Group promotional material to FOMEL as AFPSA's 'marketing arm', which seems to be a third thing altogether, but whether it is export arm or marketing arm the attempt throws no light upon the matters in dispute. It is a mere label without legal significance. Apart from that, to the extent that it attempts to characterize FOMEL as exporting on behalf of AFPSA (which is what 'arms' of this sort are generally supposed to do) it is seriously misleading. As one of the witnesses said, AFPSA did export, but exclusively to FOMEL, which, to the extent that it sold on, sold on at a profit to itself alone. FOMEL was a customer of AFPSA with a completely separate identity, commercially as well as legally.

[97] I can now return to Sheikh AlGasim's reliance upon the principle 'What belongs to a thing follows the thing.' Rules of this character are familiar in many legal systems. They were originally developed to deal with homely problems like ownership of the progeny of sold livestock or ownership of the crops growing in a sold field and may be relevant on transfers of land in determining what incidents pass with it. Sheikh AlGasim gives no examples of the principle being engaged when shares in a company are sold. Dr Al-Ghazzawi, who gave expert evidence on the Brothers' side, positively asserted that it was not and I prefer his evidence that the rule can have no application otherwise than in the type of situation for which it was plainly designed. In any case and for the reasons which I have given, FOMEL did not 'belong' to AFPSA. Even it did, it would have no effect on the Chemtrade shares, which belonged neither to AFPSA nor to FOMEL, but to the Brothers.

[98] Sheikh AlGasim deals next with the handing over report. In his opinion, the handing over report is at best neutral, because it is silent on ownership of the Chemtrade shares and if anything against the Brothers, because in Sheikh AlGasim's view it confirms that Sheikh Abdullah was free to make claim to the Chemtrade shares and did not positively state that he was in any way barred from doing so. In any case, Sheikh AlGasim characterizes the handing over report as the work of the executive branch rather than a judicial act or decision and thus ineffective as any sort of judicial precedent. In cross examination he said, plainly correctly, that it created no rights.

[99] Next, Sheikh AlGasim expresses the opinion that the Sharia principle forbidding persons fraudulently to deprive others of their assets applies in the present case, because unless the Brothers transfer the Chemtrade shares to Sheikh Abdullah they will have both received their value and retained their property in them. Like much of Sheikh Abdullah's case, this

proposition assumes what is required to be proved. If the Brothers did not agree to sell Chemtrade shares, they will not be unjustly enriched if they retain them. If it turns out that they did agree to sell, then they will be compelled to transfer them. What is before the Court is a serious dispute about whether the Brothers did agree to transfer the shares. Fraud has nothing to do with it.

[100] Finally, Sheikh AlGasim was asked whether the fact that in late 2011 Sheikh Abdullah took steps to market all or part of his 68% holding in AFPSA might affect any of Sheikh AlGasim's views . He said that it did not.

[101] The Brothers' Saudi law expert was Dr Belal Al-Ghazzawi. He has a doctorate in Comparative Islamic Law, Cum Laude, from Al Azhar University, Cairo. He is a Master of Law (Maritime Law) of the King Abdul Aziz University, Jeddah and a Bachelor of Law and Sharia of Kuwait University. He is a member of the American Bar Association, of the International Bar Association, of the American Arbitration Association and the International Chamber of Commerce and is a nominated qualified arbitrator in the Panel of GCC Commercial Arbitration Centre. He is Managing Partner of a Saudi law firm with a practice in international trade and commerce. The firm is associated with Herbert Smith LLP.

[102] In his Report Dr Al-Ghazzawi characterizes Judgment 1080 as arranging a settlement between the Brothers and Sheikh Abdullah, the terms of which were that Sheikh Abdullah buys from the Brothers all the assets, properties and companies' shareholdings listed in pages 7, 8 and 9 of the judgment. In cross examination he accepted that a contract had been concluded between the parties and that Judgment 1080 confirmed that contract. The assets intended to be the subject of the sale are described by Dr Al-Ghazzawi as all in KSA and as not encompassing any asset located outside Saudi Arabia.

[103] Dr Al-Ghazzawi goes on to say that non-listed assets are expressly excluded by the judgment from the buy/sell process. It can be said immediately that in expressing that view Dr Al-Ghazzawi was mistaken. The expressly excluded assets he is referring to were the assets comprised in the Jersey trusts. That error makes paragraphs 2.4 and 2.5 of his Report unsound, but does not, in my judgment, invalidate his other conclusions.

[104] Dr Al-Ghazzawi says that the terms of the judgment show that (I paraphrase) its effect was restricted to the assets listed in Appendix 1, while leaving open the question of ownership of assets not so listed. He described the Saudi judicial process of construction of a contract for sale and purchase as requiring the Court to look for the specified subject matter of the agreement and for the price specified. If the Court was unable to determine each of those specifics, it would not declare a contract valid. Here the Court of Appeal plainly had no such difficulty, because Judgment 1080 confirmed the contract. FOMEL/Chemtrade was excluded from the subject matter of the agreement because it was not specifically included.

[105] Dr Al-Ghazzawi was asked to say in his Report whether the Chemtrade bearer shares were to be treated at the time of the buy/sell process as situated in KSA or in the BVI. His response was that there was no Saudi authority on the *situs* of bearer shares, since they are unknown to Saudi company regulations. He did say, however, that there was no Saudi authority to the effect that the *situs* of a bearer share would be established in a manner different from that used to establish the *situs* of a registered share. He went on to say that the Saudi law definition of movable property does not include bearer shares, although he cited no authority for that proposition. He said that under Saudi law the fact that bearer shares in a foreign company were situated in KSA would not mean that the company would be treated as a local entity. Irrespective of where they might be situated, the bearer shares in a BVI company are tied solely to the BVI company and subject to the jurisdiction of the BVI. In cross examination, however, Dr Al-Ghazzawi accepted that bearer shares were movable property in the sense that they were pieces of paper, but in his opinion they stood as symbols[17] for the companies which had issued them, like title deeds to real property. The bearer shares in question in the present case were shares of a company having no existence in KSA. The fact, he says, that neither the bearer shares nor Chemtrade itself are referred to in Judgment 1080 means that the Chemtrade shares are excluded from the buy/sell process.

[106] So far as concerns the subject matter of any contract between Sheikh Abdullah and the Brothers, Dr Al-Ghazzawi says that the listing of the assets in Appendix 1 is determinative. If, however, an ambiguity arose, then Saudi law would admit evidence of the circumstances pertaining at the time the offer was made and accepted and also evidence of subsequent conduct in order to ascertain the intention of the parties. In the present case, however, subsequent evidence would be of limited value, since subsequent conduct was ordinarily considered only where a subsequent contractual variation was being asserted. So he says that the Saudi Court would give little weight to the letter of 10 May 2009, the handing over report or the conduct of Sheikhs Mohammed and Siraj (or, presumably, lack of it) both before and after the handing over report. In case of ambiguity, the evidence would be admissible but of only limited relevance.

[107] So far as the letter of 10 May 2009 is concerned, Dr Al-Ghazzawi says in his Report that as a matter of Saudi law it determines nothing. What Sheikh Siraj meant by the letter is a question of fact which Dr Al-Ghazzawi declined to comment upon. In cross examination, however, Dr Al-Ghazzawi agreed that a party may not resile from a confession made in the course of civil proceedings, but he could not accept that the letter of 10 May 2009 was a confession at all. He said that it was an assertion which was contrary to the facts, given as a reason for not attending a meeting. It was inconsistent with the findings of a judgment which had been confirmed on appeal and was not evidence that the Chemtrade shares had been sold.

[17] that is my word, not Dr Al-Ghazzawi's, but it catches the tenor of his evidence upon the point

[108] Dr Al-Ghazzawi recognizes the principle of 'what belongs to a thing passes with the thing' but says that it would have no application in a context such as the present. In cross examination Dr Al-Ghazzawi expanded a little upon this by illustrating it with the example of an easement appurtenant to property passing with the property upon its sale. He went on to say that even if it were permissible to treat FOMEL as part of AFPSA, that would have no impact upon the Chemtrade shares, which are owned by the siblings, not by AFPSA. He stated categorically that Saudi law would not permit a man who had specifically purchased company A to claim that in some way it followed that he had also purchased company B along with it unless company B was also specifically referred to in the contract.[18]

[109] On the question of unjust enrichment, Dr Al-Ghazzawi says in his Report that it applies whenever anyone receives a benefit without legal cause. He adds that a sale of AFPSA without FOMEL would not engage the principle.[19] Dr Al-Ghazzawi goes on to say that if Sheikh Abdullah were to be given Chemtrade as part of property transferred for a price of SR1.2 billion, in circumstances where Chemtrade had been separately valued by DTBA for an additional SR75 million, it would be Sheikh Abdullah rather than the Brothers who would be unjustly enriched. He says that the unjust enrichment principle cannot assist Sheikh Abdullah in these proceedings.

[110] In cross examination Dr Al-Ghazzawi was asked about the impact upon the parties' bargain of the fact that in February 2008 the Court had asked them to arrange a settlement covering all jointly owned property both within and without KSA. His answer was that it was not relevant for the purposes of the Court delivering Judgment 1080 whether the agreement dealt with all jointly owned assets worldwide. The Court dealt with the agreement that the parties had actually reached.

Conclusions on the ownership issue

[111] My conclusions upon this part of the case must be based in large part upon my assessment of the expert evidence. As between the two experts and with the exception of paragraphs 2.4 and 2.5 of his Report, I prefer the evidence of Dr Al-Ghazzawi. Not only is he the better qualified, but his evidence, particularly in cross examination, was far more authoritative, coherent and better structured than that given by Sheikh AlGasim. Miss Jones QC says that I should treat his evidence with caution, pointing out that his answers given after the short adjournment were much longer than his replies given during the morning. That is true, but the reason for that was that Dr Al-Ghazzawi was plainly becoming exasperated with Miss Jones' refusal to take no for an answer. I had complete confidence in what Dr Al-Ghazzawi told me and complete confidence that he was giving me his independent opinion upon the

[18] Dr Al-Ghazzawi was not referring to subsidiaries

[19] it is clear from the earlier parts of the Report referred to above, that Dr Al-Ghazzawi was using FOMEL as shorthand for Chemtrade

questions put to him, both in his Report and in cross examination. By contrast, I found Sheikh AlGasim's evidence partisan and generally less compelling.

[112] The whole foundation, as expounded in his Report, of Sheikh AlGasim's evidence that material outside the four corners of the offer letter would be admissible in a Saudi Court to identify the parties' intentions was based upon the contention that because the Court of Appeal in February 2008 was looking for a settlement covering all jointly owned property, both within and outside the Kingdom, the terms of the offer letter were ambiguous, because it did not enable the reader to know whether or not Chemtrade was included in the offer. Although his acceptance of the fact that the parties were free to contract or otherwise following the February meetings with the Court of Appeal largely destroyed the factual basis for this proposition, it is inherently specious, because it is based upon an *a priori* assumption that Chemtrade ought to have been among the assets sold. Without that assumption, there is no ambiguity at all. An otherwise unambiguous contract may require to be rectified to include property not referred to within it, but no claim for rectification is made in this case. As elsewhere, Sheikh AlGasim is relying upon what is required to be proved as a step in reasoning.

[113] I prefer the evidence of Dr Al-Ghazzawi that there is no ambiguity in the offer letter or in Sheikh Abdullah's acceptance of it to the evidence of Sheikh AlGasim, not only because of the authoritative manner in which it was given but also because, unless the word 'ambiguous' has some special definition for the purposes of Saudi law, which no one suggested is the case, it is plainly correct. It is not possible to read the offer letter as amounting to anything other than an offer to sell property in KSA listed in Appendix 1. Chemtrade was neither listed in Appendix 1 nor situate in KSA. The offer letter flagged up to the Court of Appeal (and thus to Sheikh Abdullah) that the offer was confined to assets within the Kingdom.

[114] Miss Jones QC attempted an argument that Dr Al-Ghazzawi did find an ambiguity in the offer letter because he misunderstood that foreign investments referred to the Jersey trusts. That was a mistake in understanding the nature of a particular exclusion. It does not detract from his repeated insistence that there is no ambiguity in the identity of the property sold.

[115] Miss Jones QC also relies upon the undoubted fact that no movables were listed in Appendix 1 as showing that it is inherently incomplete. That argument is not supported by the evidence of Sheikh AlGasim and shown to be unsound by the evidence of Dr Al-Ghazzawi. The same goes for the failure of Appendix 1 to correspond precisely with the parcels of land which were actually transferred. The fact that some descriptions of certain of the listed property may have been defective in certain respects does not mean that they are ambiguous. The evidence showed that the parties had no difficulty in understanding which parcels of land were being referred to, or, if not specifically referred to, were to be included by implication or necessity.

[116] Miss Jones QC submits that the list does not allow for a third category – property not in KSA and not in the Jersey trusts but not for sale or purchase - but I see no reason why the offer letter needed to make provision for an empty set. It is plain from its terms that the Chemtrade shares are not included. Miss Jones QC, referring to the transcript of day 27 of the proceedings at page 32, lines 11-14, said that Dr Al-Ghazzawi recognized that Judgment 1080 was ambiguous. Whatever Dr Al-Ghazzawi meant when he gave his answer in that passage, he did not mean that the *agreement* was ambiguous. He expressly says that it was not. The whole tenor of his evidence was that the agreement, confirmed by the judgment, was for the sale of specific property at a specific price.[20] Miss Jones QC says that Dr Al-Ghazzawi merely asserted, but could not explain, in what respects Judgment 1080 was clear and unambiguous. That is a little like complaining that someone is unable to explain why he considers that a line is straight rather than curved.[21]

[117] I therefore accept the evidence of Dr Al-Ghazzawi that as a matter of Saudi law there is no room for the admission of external evidence in an attempt to ascertain the intention of the parties as to the Chemtrade shares. I accept his evidence that the letter of 10 May 2009 will not bear the weight which Sheikh Abdullah seeks to put upon it. As Dr Al-Ghazzawi said, it is simply wrong. Not only that, it is not an acknowledgement, admission or confession of anything. It was not made in proceedings then on foot, nor was it made to Sheikh Abdullah or to any representative of his. Sheikh Siraj told me that he made a mistake. I accept that evidence.

[118] In any case, I fail to understand how the supposed acknowledgement is supposed to operate. I see how it might be relied upon to clear up an ambiguity, but in the absence of ambiguity it cannot operate to add to the subject matter of the sale. That would be to deprive the Brothers of valuable property for no consideration – which takes one back to Sheikh AlGasim's fallacious argument about unjust enrichment, robustly disposed of by Dr Al-Ghazzawi in his Report.[22]

[119] As to the principle "what belongs to a thing follows the thing,' as I have already said, I accept the evidence of Dr Al-Ghazzawi on that point.

[120] Sheikh AlGasim gave no coherent evidence about the bearer shares. It is fair to say that Dr Al-Ghazzawis evidence has varied rather between his Report and his evidence in cross examination, but the core of his evidence is that the fact that bearer share certificates in a foreign company were situated in Saudi Arabia would not cause a Saudi Court to treat the company itself as present within the Kingdom and that the presence of the certificates within Saudi Arabia would not, as a matter of Saudi law, override the fact that Chemtrade was not

[20] see transcript, day 27, at pages 137, line 19 to page 138 line 9; page 141, lines 3 to 9.
[21] Euclid *defines* a straight line, but that is a different exercise
[22] see paragraph [109] above

included as one of the companies offered for sale in the letter of 12 April 2008. I accept that evidence, having no reason to reject it.

[121] Miss Jones QC says that all of this is wrong. She submits, first, that the proposal made by the Court of Appeal in February 2008 that Sheikh Mohamed should value all jointly owned property both in Saudi Arabia and abroad must inform any interpretation of the contract concluded upon Sheikh Abdullah's acceptance of the offer. She says that the purpose of the Court's proposal was to encourage reconciliation by way of complete and worldwide disassociation, similar in all respects to a retiring partner selling his partnership share to the continuing partners, and to mend the rift which was affecting the performance of the Alhamrani Group, of which, she says, FOMEL was part. She says, and Dr Al-Ghazzawi agreed with her, that this context must be taken into account when interpreting the offer letter.

[122] Miss Jones QC says that, because the settlement was grounded in and was supposed to give effect in the Court of Appeal's February 2008 proposal, Appendix 1 cannot be determinative of what was offered. The offer, she submits, must necessarily have been for all the property the subject matter of the DTBA valuation, since it was the expectation of the Court of Appeal that that would be what the Brothers would be offering for sale or purchase. Since it is the fact that FOMEL was included in the DTBA valuation, it must follow, she submits, that it was included in the offer. Indeed, that was one of the *indicia* relied upon by Sheikh AlGasim in his attempt to resolve what he considered to be an ambiguity in the offer letter. The argument fails because I have accepted the evidence of Dr Al-Ghazzawi that neither the offer letter nor Judgment 1080, which confirmed it, was affected by ambiguity, so that the intention of the parties is to be gathered from its terms alone, but in deference to the great skill with which the submission was advanced, I shall deal with it as a free standing argument and on the assumption that the specific terms of the offer letter must yield to context.

[123] The difficulty, I think, with Miss Jones' argument, even accepting it at its very broadest, is that it does not fit the facts. What the Court of Appeal proposed in February was that the Brothers should value all jointly owned assets worldwide and offer to buy or sell *at that value*. As I have already pointed out, while the offer letter told the Court of Appeal that the SR1.2 billion *price* had been arrived at solely on the basis of a fair value of assets, the price had in fact been arrived at by a two stage process which started with value and ended by considering price. The offer letter did not provide, as the Court of Appeal had requested that it should, a value for all the jointly owned assets in Saudi Arabia and abroad, nor did it provide the value of a particular share.

[124] If the Brothers had complied with the Court of Appeal's proposal, excepting only the then impossible to value Jersey trust property, they would have offered everything in the DTBA valuation, including the Chemtrade shares, for sale or purchase at a figure of SR1.34 billion,

or SR168 million per male share. Sheikh Abdullah, on electing to purchase, would have been obliged, according to the terms of the Court of Appeal's February proposal, to pay the six Brothers a total of SR1.01 billion. Instead, he paid them only SR900 million. The argument advanced by Miss Jones QC falls down, in my judgment, because it relies upon one side of the equation embedded in the February proposal while taking no account of the other. The facts are that the Brothers did not offer what the Court of Appeal had proposed and Sheikh Abdullah did not pay what the Court of Appeal had proposed. The offer letter was something different, both as to subject matter and as to price.

[125] In other words, it is not possible, in my judgment, to treat the eventual purchase by Sheikh Abdullah of the property listed and described in the offer letter at the price quoted in the offer letter as the culmination of a seamless process beginning on 12 February 2008 and ending on 19 May 2008. The bargain struck was, quite simply, not what the Court of Appeal had in mind in February, although that does not appear to have concerned the Court when it ordered its enforcement in Judgment 1080. The Court of Appeal could not have known that the price offered was less even the equivalent of the DTBA valuation of the property listed in Appendix 1,[23] but it was fully aware that the subject matter of the sale/purchase was restricted to property situated within KSA.

[126] Sheikh Abdullah is attempting to rely upon a document (the DTBA valuation) which he did not see at any time before he accepted the Brothers' offer and upon which he therefore cannot have relied when he accepted it and which was not in fact the basis for calculation of the price actually offered, in order to define the scope of an offer which makes no reference to it.[24]

[127] It may be the case, for all I know, that Sheikh Abdullah has some stand alone claim arising out of the failure of the offer letter to match the proposal which the Court of Appeal made in February 2008, but, if so, the suggestion was not put to either Saudi law expert and Sheikh Abdullah must be left to pursue it in the Saudi Courts.

[128] These considerations, however, are peripheral to the exercise which the Court is required to carry out in the present case. I have to decide what is the proper construction of the offer letter in light of the evidence of Saudi law which I have received. In the light of that evidence I have reached the conclusion, for the reasons which I have attempted to set out above, that were this claim to have been adjudicated upon in the Courts of KSA and under Saudi law, it would have failed. Accordingly, I hold that it fails here. In my judgment, therefore, the 12 April 2008 letter did not offer the Brothers' interests in Chemtrade for sale or purchase, nor did beneficial ownership of those shares pass to Sheikh Abdullah, as claimed, when he

[23] SR150 million per male share fell short of the adjusted DTBA valuation by more than the difference between the DTBA valuation of the companies without Chemtrade and its valuation of the companies including Chemtrade, as was pointed out by Dr Al-Ghazzawi at paragraph 6.4 of his Report

[24] the offer letter refers merely to 'a valuation'

deposited the purchase price on 5 August 2008. Had Sheikh Abdullah opted to sell instead of to buy, he could not have been compelled to transfer his one eighth interest in Chemtrade.

The unfair prejudice case

Background

[129] Chemtrade has 50% of the shares in FOMEL. The other shares belong to Fuchs. FOMEL's Memorandum of Association provides for the issue of two classes of shares. Chemtrade holds all of the issued A shares and Fuchs holds all of the issued B shares. Each class of shareholder has the right to appoint two directors to the board. Chemtrade has two directors on the FOMEL board – Sheikh Mohamed and Sheikh Siraj. At the material time Fuchs had two directors on the FOMEL board – Mr Fuchs and Mr Untersteller.[25] FOMEL's Articles of Association provide that the board is not quorate unless at least one director of each class (or his alternate) is present. In the case of an equality of votes, the chairman has a casting vote. The chairman is and has at all material times been Sheikh Mohamed. It was common ground that to date the casting vote has never been used and I was told and accept that there had been an understanding between the parties that all matters would be dealt with by mutual agreement.

[130] What has given rise to these proceedings is that sometime in late 2009 or early 2010 Sheikh Abdullah made it clear to Mr Fuchs and Mr Untersteller that if they were to attend board meetings with Sheikh Mohamed and Sheikh Siraj, he would suspend supplies from AFPSA to FOMEL. The refusal of Fuchs to attend a FOMEL board meeting called by the Class A directors for mid December 2009 shows that the threat must have been made by then. Sheikh Abdullah also made clear that he was unimpressed with the arrangements under which AFPSA had for many years supplied FOMEL and indicated that they might at some time in the future be varied in favour of AFPSA. Had Sheikh Abdullah ceased supplying FOMEL, its business, so far as it then depended upon such supplies, would have dried up, once it had exhausted its current inventory, until a new supplier could have been found.

[131] So far as the evidence goes, Mr Fuchs and Mr Untersteller appear to have simply caved in to these threats. No attempt appears to have been made to join with Sheikh Mohamed and Sheikh Siraj to call Sheikh Abdullah's bluff or to enter into negotiations about varying the supply arrangements or to comb through the trade mark agreements under which AFPSA operated in search for infringements which they could use to persuade Sheikh Abdullah to change his stance. Instead, they appear to have colluded with him in the production of at least one and perhaps two letters, sent by Sheikh Abdullah's London Solicitors, Forsters, to Fuchs, setting out these threats and then relied upon them to justify their non attendance at board meetings between the beginning of 2010 and to date. The result is that FOMEL has

[25] Mr Untersteller was replaced in November 2011 by Dr Lingg

been without a functioning board for almost three years. Mr Joffe QC, who has appeared, together with Mr Lynton Tucker, for Chemtrade, says that this conduct is unfairly prejudicial to Chemtrade as co-owner of FOMEL.

[132] At some stage Sheikh Abdullah added to his threats a promise to Mr Fuchs and Mr Untersteller that if he managed to establish his claim to the Chemtrade shares, he would cause Chemtrade to transfer a one per cent interest to Fuchs, giving it control of FOMEL.

[133] During this period Fuchs has also acquiesced in the fact that FOMEL's receivables have for the most part been under the control of Sheikh Abdullah within AFPSA bank accounts. There is some evidence that some of this money may have been used by him for purposes unconnected with FOMEL's business, although there is no allegation that FOMEL has suffered any loss as a result.

[134] More seriously, perhaps, Fuchs has acquiesced in the fact that during 2010 Sheikh Abdullah helped himself to US$18.5 million of FOMEL cash, claiming that he was entitled to it by way of dividend. This despite the fact that, as Fuchs was well aware, there could be no dividend in FOMEL in 2010 (or at any subsequent time) because it had no functioning board to declare one. Although these payments were completely unauthorized, Fuchs never discussed with Sheikh Mohamed or Sheikh Siraj what remedy FOMEL might have with regard to them or whether steps should be taken to exercise it. It is true, however, that Fuchs did pass on to Sheikh Mohamed and Sheikh Siraj monthly financial statements from which the withdrawals, characterized initially merely as receivables and subsequently as payments against dividends, could be discerned.

[135] Perhaps even more seriously, and while it had previously declined to share in the FOMEL 'dividends' of 2010, in late 2011 Fuchs arranged with Sheikh Abdullah to withdraw from FOMEL a similar amount of US$18.5 million for itself. Fuchs claims that it did this to keep the money out of the clutches of Sheikh Abdullah and thus acted entirely for the benefit of FOMEL. The money remains in Fuchs hands and, I am told, it does not appear in its financial statements as an asset, but rather as a liability, so that the cash held is balanced by the liability. It is subject to an undertaking to the Court not to deal with the money pending judgment in these proceedings. Fuchs did not tell Sheikh Mohamed or Sheikh Siraj that it had done this.

[136] Chemtrade further relies in its pleaded case upon an alleged fall off in FOMEL's financial performance, particularly in its 2010 financial year, said to evidence the harmful effects of there having been no functioning board in place.

[137] This is the broad structure of the complaint. Although days of evidence were devoted to exploring these matters in remorseless detail, there is really very little dispute between the parties about the facts. The issue is all about motive and unfairness. Fuchs says that it did what it did in the best interests of FOMEL. Chemtrade says that Fuchs unfairly sided with

Sheikh Abdullah and has prevented it from taking part in the board level management of FOMEL while acquiescing in Sheikh Abdullah's depredations and then helping itself to similar sums.

[138] There can be no doubt that Fuchs' refusal to attend board meetings has paralysed the board and frozen Chemtrade out of management at that level. It has not, however, frozen management at what is properly to be considered managerial level during the period in question. FOMEL has a general manager based in the former Alhamrani group premises in Jeddah and he has staff through whom he keeps the company running. Mr Untersteller, in particular, played an active and energetic role in the strategic oversight of FOMEL until he resigned in November 2011. Chemtrade asserts, however, that the fact that the company has no board has meant that there has been no properly authorized body available to step in and protect FOMEL's assets or to take strategic decisions about the direction of its business. I now turn to the specific complaints made by Chemtrade about the effects of the absence in FOMEL of a board level decision making body.

Transfer of FOMEL funds to AFPSA

[139] Between 26 October 2009 and 10 December 2009 over US$13 million was transferred from a FOMEL account at Calyon bank to AFPSA. Mr Untersteller was aware of these transfers, probably because he had been told about them by Mr Talpur, the President and CEO of AFPSA. From January 2010 onwards large sums belonging to FOMEL were held in AFPSA accounts and thus under the control of Sheikh Abdullah and his staff. The evidence made clear that Sheikh Abdullah, following his take over of AFPSA, was determined to allow Mr Untersteller access only to information which Sheikh Abdullah was content that he should have and a resolution was passed at a board meeting of AFPSA held on 2 November 2009 to that effect. A request for information from Mr Untersteller to Mr Talpur in early January 2010 was turned down as a result. DTBA, presumably on the instructions of Sheikh Abdullah, refused to give information to Fuchs on the fatuous ground that it was the auditor, not of FOMEL, but of a non existent entity called FOMEL Branch – SAIF zone. Fuchs did, however, have remote electronic access to AFPSA's management accounting records. It was less clear whether the link would enable Fuchs to identify transfers into and out of AFPSA's bank accounts, which were the accounts where the bulk of FOMEL's money, until it was accounted for by AFPSA to FOMEL, was held. Whether Mr Untersteller could have known as a result that loans to other Alhamrani Group entities were being made from the retained cash is therefore unclear. The answer appears to be that he had the means to know through the electronic link but in practice did not use it, that task being carried out by other staff at Fuchs. Finally, I should mention that Mr Untersteller was provided with monthly financial statements for FOMEL and these, as I have said, were passed on as received to Sheikh Mohamed and Sheikh Siraj.

[140] The general effect of the evidence which I received on this point was that Fuchs itself was entirely in the hands of Sheikh Abdullah as to what was happening to FOMEL's money. That was made evident by Sheikh Abdullah's ability to pay himself unauthorized 'dividends' from FOMEL cash held by AFPSA. Where I think that Chemtrade's case on this particular issue is less than strong (in relation to the absence of a functioning board) is that it is very difficult to see what the passing of FOMEL board resolutions would have done to take the cash out of the control of Sheikh Abdullah. I am quite satisfied on the evidence that he would have ignored any such resolutions and instructed FOMEL's Jeddah staff to ignore them, too. Chemtrade says that board resolutions could have been passed directing FOMEL's banks not to part with the money. The trouble with that is that the money was, to a great extent, in AFPSA's bank accounts, not FOMEL's. It is true, of course, that FOMEL could have sued AFPSA for an account of all sums due to it from FOMEL. It seems to me that at the very lowest Chemtrade has a right to complain that it was deprived of the opportunity even to discuss possible courses of action at board level.

[141] The FOMEL accounts at Calyon Bank were frozen in early 2010 as a result of intervention directly by Sheikh Mohamed and its SIB account operated by making automatic transfers of all amounts over AED 100,000 into the now frozen Calyon account, where the balance remained at around US$9 million, plus whatever came in from those of FOMEL's customers who paid directly into that account.

FOMEL 'Dividends'

[142] The US$12.5 million taken by Sheikh Abdullah as a supposed dividend in March 2010 showed up on the March monthly financial statement as a receivable. It was later described as 'payment against dividends.' Sheikh Abdullah claimed that payment of a US$24 million dividend had been agreed at the board meeting of AFPSA held on 2 November 2009. There was a dispute about that and different versions of minutes of those meetings later surfaced. Mr Untersteller said that there was no agreement for distribution of a dividend in FOMEL at the 2 November meeting, although he said that the possibility might have been discussed. I accept that evidence, although even if such an agreement had been reached between Fuchs and Sheikh Abdullah it would have been of no effect.

[144] Sheikh Abdullah wrote to Fuchs on 8 March 2010 announcing a 'dividend' to each of them in the amount of US$12.5 million. Mr Untersteller and Mr Fuchs called Sheikh Abdullah on the same or the following day and argued against payment of a dividend and Fuchs wrote to Sheikh Abdullah on 12 March 2010 refusing to support the distribution. On the other hand, no steps were taken by Fuchs to put obstacles in the way of Sheikh Abdullah and the Class A directors were not informed about the proposal. They found out only from the monthly accounts much later.

[145] Although Mr Untersteller became aware of this withdrawal when he saw the March monthly accounts on 5 April 2010, he did not mention the fact when on 20 May 2010 he replied to various concerns which had been raised in correspondence by Sheikh Mohamed. In answer to Sheikh Mohamed's inquiries Mr Untersteller said that treasury functions were dealt with by the Jeddah team and that Fuchs had never had reason to question what they were doing. He also said that he was not involved in the day to day management of FOMEL and that he had a level of information very similar to that of Sheikh Mohamed. I am afraid that this was not a completely frank description of the position. Mr Untersteller may not have been involved in day to day management, but he was heavily involved, despite Sheikh Abdullah's attempts to keep him in the dark, in the oversight of FOMEL and was in possession of a much greater level of information and had superior means of knowledge than those enjoyed by Sheikh Mohamed or Sheikh Siraj.

[146] It was not until August 2010 that Sheikh Siraj was able to detect and query the US$12.5 million 'payment against dividends.' Mr Untersteller told him that the item referred to a loan taken by the Alhamrani Group and that Fuchs had obtained an undertaking for its return should the ownership issue go against Sheikh Abdullah. The supposed undertaking was in fact a statement contained in an unsolicited fax sent by Sheikh Abdullah to Fuchs in March 2010, in which he said he would comply with any order of a competent Court requiring him to repay the money. Although Sheikh Mohamed and Sheikh Siraj made repeated inquiries in late August 2010 about the alleged undertaking, they were never shown a copy of it until after service of Fuchs' defence in these proceedings. The undertaking was, of course, worthless and it was clear from the evidence that, as would be expected, Fuchs was well aware that it was. Mr Untersteller described it as better than nothing and said that sending a copy to Sheikh Mohamed or Sheikh Siraj would only have caused more trouble. The Class A directors offered to attend a board meeting to discuss recovery of the money, but Fuchs did not respond.

[147] Sheikh Abdullah took another US$6 million in August 2010. Fuchs had had no advance warning of this, although it found out about it in September. Mr Fuchs said that he protested to Sheikh Abdullah about this payment, also. Mr Untersteller sent the August 2010 monthly accounts in which the payment was reflected to the Class A directors on 12 October 2010 without adverting to the entry. He did not reply to a letter from Sheikh Siraj expressing concern about the further payment.

[148] In my judgment Chemtrade is right in its contention that the failure to attend board meetings did cause prejudice by hampering what could have been an effective response on the part of FOMEL to Sheikh Abdullah's withdrawals. FOMEL could have sued Sheikh Abdullah for the return of the money and at least obtained some sort of holding or freezing order pending resolution of the ownership dispute. I quite accept that that might have prompted Sheikh Abdullah to cut off supplies of product, but the point, it seems to me, is that a decision would have been taken by both interested parties having considered the various options. Even if

the 'right' decision was to do nothing, Chemtrade was prejudiced by being unable to take part in reaching it.

Fuchs takes out US$18.5 million

[149] For some months before October 2011 Fuchs had been attempting to persuade Sheikh Abdullah to consent to a payment from FOMEL to Fuchs to match the US$18.5 million taken by Sheikh Abdullah in 2010. On 5 October 2011 Fuchs entered into two agreements with Sheikh Abdullah.

[150] One of these agreements refers to AFPSA as having operational control of FOMEL and to Fuchs' request to AFPSA for a transfer to it of US$18.5 million of FOMEL's money and goes on to provide that in consideration of Sheikh Abdullah and AFPSA agreeing to the payment being made, Fuchs would indemnify them up to the amount of the payment against any loss which either might suffer as a result of FOMEL being unable to satisfy a judgment made against FOMEL by reason of its having made the payment, but only in the event that a competent Court decided that Sheikh Abdullah was not the owner of Chemtrade.

[151] Whatever else it achieves, it is plain that nothing in this agreement provides for Fuchs to account to FOMEL (which for obvious reasons was not a party to it) in the event that it should subsequently be found that Fuchs should not have had the money. What is also revealing is the distorted presentation of AFPSA as having operational control of FOMEL and of the supposed requirement of the consent of AFPSA before FOMEL could resort to its own funds. Neither of those statements was true.

[152] Under the other agreement Sheikh Abdullah agreed to indemnify Fuchs and FOMEL against any sum which Fuchs or FOMEL might be ordered in the present proceedings to pay to Chemtrade or the Brothers, or which Fuchs might be ordered to pay by any competent Court as a result of the taking by Sheikh Abdullah of his US$18.5 million. The agreement made further elaborate provisions about cooperation with Sheikh Abdullah in Fuchs' defence of these proceedings – the impact of which is that if Fuchs does not do what Sheikh Abdullah instructs it to do in that regard, the indemnity will lapse (absent various saving provisions which I do not need to reproduce).

[153] On 18 October 2011 Fuchs received the US$18.5 million. As a result, cash previously available to FOMEL of some US$20 million was reduced to about US$2 million. A lot of time was spent in probing whether settlement of a debt by the Iraqi distributor immediately before the payment was made and which enabled it to be made had any significance for the proceedings. In my judgment, it had none.

[154] Fuchs did not discuss these arrangements with the Class A directors.

[155] Much time was taken up at trial in an elaborate discussion of the reasons for an alleged decline in FOMEL's business in 2010. Various reasons and explanations were offered and

tested. It seems to me, as Mr Joffe QC accepted at the end of the hearing, that this has nothing to do with unfair prejudice. He said that he relied upon it only to show that the board paralysis caused by Fuchs' refusal to attend meetings meant that the board as a whole was deprived of the opportunity to address these and other matters concerned with the commercial fortunes of FOMEL during this period. In fact what happened on the ground was that Mr Untersteller acted as a one man board of directors, with Mr Fuchs in the background. The Class A directors were indeed deprived of a voice, but it seems to me that I need say no more about this part of the case than that.

[156] There were commercial decisions to be made about the management of FOMEL's business, which on a day to day basis was being run from Jeddah. One example concerns dealings with the Iraqi distributor, who was setting up his own plant in Jordan. When a distributor sets up a plant, direct sales will decrease in proportion as he manufactures his own product in substitution. The MENA scheme was intended to offset this disadvantage by combining a production licensing or trade mark licensing agreement with a call option in favour of FOMEL, enabling it to buy a shareholding in the plant at an agreed valuation if the licensee should prove to be successful. In the case of the Iraqi distributor, this process was complicated by the fact that he was heavily in debt to FOMEL for product, leading to a decision to cut off his supply for a period. That obviously meant loss of sales to FOMEL and a build up in inventory. There were difficulties, too, because the absence of a FOMEL board meant that no authorization could be given for the execution of the licence or the taking of a call option, In the end the makeshift solution was that the distributor was given an informal permission by Fuchs to go into production, with 'royalties' being paid to FOMEL. Indeed, Fuchs provided draft documentation with the Iraqi distributor under which Fuchs would have granted the rights and taken the call option in its own name, with a 'right' (but no obligation) to assign to FOMEL (or any other majority owned affiliate of Fuchs) at some unspecified later stage. No call option has yet been signed with the Iraqi distributor, although Mr Untersteller told the Court that a finally agreed version was now ready to be executed.

[157] There is no doubt that Mr Untersteller played a leading part in these matters. Whether FOMEL has suffered any loss as a result of the absence of a functioning board, rather than as a result of the difficulties facing the distributor and his anxiety to obtain the best possible deal for himself, it is impossible to say. It must, however, be true to say, and I accept, that problems of this sort were not merely operational. They clearly raised strategic questions which required board consideration. Chemtrade was prevented from participating in any of that. In fact, neither Sheikh Mohamed nor Sheikh Siraj was even kept informed about these tricky matters.

[158] A production licensing agreement and call option agreement had been entered into with an Egyptian entrepreneur in 2005. Investment into Egypt could not be effected otherwise than through a local manufacturer. Serious consideration was being given by Mr Untersteller in September 2010 to entering into a joint venture with the Egyptian producer, but no progress

could be made because FOMEL did not have a functioning board. By contrast, a Fuchs associate company has invested in the company which is attempting to build the plant. That investment is subject to FOMEL's call option, but the absence of a functioning FOMEL board has meant that the possibility of equity investment in Egypt has simply never been considered by an organ of FOMEL with the authority to make it. It is, again, impossible to say whether that has caused a loss to FOMEL, although it has certainly caused a loss of opportunity.

[159] I should mention one other specific complaint, which is that Fuchs is supposed to have diverted from FOMEL an opportunity which it had acquired to obtain a food grade lubricants business from Shell ('Cassida'). There is nothing in this allegation. FOMEL had no entitlement of any sort in relation to this acquisition, nor did Fuchs have any sort of obligation to confer upon it any benefit, general or specific, as a result of its acquisition. There had originally been a plan for the goodwill in the Cassida business to be purchased rateably by Fuchs subsidiaries worldwide – including FOMEL. That could not be achieved in the case of FOMEL because there was no board to authorize the acquisition, but it was later discovered that there was to be no charge for Cassida goodwill and the product is simply purchased by subsidiaries (and FOMEL) from Fuchs as and when required and on sold in the ordinary way. The Cassida matter is, however, an illustration of the fact that the absence of a functioning board may have a seriously inhibiting effect on the business of a company when decisions need to be taken at higher than operational level.

[160] Finally, I should mention two further complaints. The first is an escalation latterly in trade receivables. There can be no suggestion that Fuchs has connived at this unfairly to the prejudice of Chemtrade. The second is the sudden appearance of inventory on FOMEL's balance sheet where previously it had carried none. Again, this cannot amount to unfairly prejudicial conduct on the part of Fuchs. The best that can be said, and I accept, is that these matters were fit subjects for board discussion and, possibly, board action.

Unfair prejudice

[161] Those, in short, are the principal allegations made by the Brothers against Fuchs

[162] I have to decide whether what Fuchs has done, or failed to do, amounts to unfairly prejudicial conduct of FOMEL's affairs. Fuchs' case is simplicity itself. It says that in the face of Sheikh Abdullah's threats to cease supplying FOMEL it took the view that FOMEL's interests were best served by complying with his demands and acquiescing in his dealings with FOMEL's funds. It says that in the face of Sheikh Abdullah's tendency to help himself to FOMEL money during 2010, it was acting in the best interests of FOMEL when it appropriated US$18.5 million of FOMEL's money to itself in October 2011.

[163] One must not lose sight of the fact that on any reasonable view of the matter Fuchs was in a difficult position. It had been assured by Sheikh Siraj in May 2009 that the Brothers were out

of Chemtrade. In November 2009 Fuchs was told the opposite. Until the dispute was judicially determined, Fuchs could not know which side was right. Fuchs appears to have taken the view at a fairly early stage that Sheikh Abdullah had the better of the argument, a view which it appears Fuchs later modified – but not until after it had aligned itself with him.

[164] On 18 November 2009 Sheikh Mohamed called a board meeting of FOMEL in London for 9 December 2009. The Class B directors refused to attend, pleading other commitments, but indicated that in view of the overall uncertainties involved in the situation they were taking legal advice. Fuchs says that the Brothers' correspondence at this time was overly legalistic, something which they say put them on their guard. On 10 December 2009 the Brothers wrote to Fuchs asking for a board meeting by mid-January and seeking certain information. Fuchs agreed to a meeting at Heathrow Airport on 14 January 2010. Sheikh Mohamed and Sheikh Siraj went to London for the meeting but on 13 January they received an email from Mr Fuchs who, forgetting the golden rule never to employ two excuses when one will suffice, said that the Class B directors would not attend (a) because they were too ill to travel and (b) because they had received a threatening letter from lawyers acting for Sheikh Abdullah. Forsters' letter was dated 13 January 2010 and was sent by fax and email. The letter maintained that Sheikhs Mohamed and Siraj were dishonestly interfering in the affairs of FOMEL because they had sold Chemtrade to Sheikh Abdullah and that if the Class B directors attended board meetings with them they would incur accessory liability. Fuchs itself, as well as the Class B directors, would be held responsible for any damage caused by their attendance. It also maintained that Sheikhs Mohamed and Siraj were not even *de jure* directors of FOMEL, having long since retired by rotation (or resigned by the 10 May 2009 letter) and threatened that if (a) FOMEL was in the control of Sheikh Mohamed and his brothers or (b) Sheikh Abdullah did not succeed in establishing his claim to Chemtrade in his then Saudi proceedings to that end, the arrangements whereby AFPSA supplied product to FOMEL at cost plus freight and infrastructure services at no cost would cease. The letter does not make it clear whether AFPSA would instead charge market rates for product and charge for services, or whether it would cease to supply product and services at all, but Mr Fuchs told me that they had previously been told that supplies would be cut.

[165] It is clear from notes made by Mr Fuchs of a meeting which he had with Sheikh Abdullah in Paris in late February of 2010 that at any rate the terms of this letter had been agreed with Fuchs before it had been sent.

[166] Of course, the mere attendance by the Class B directors at a meeting of FOMEL's board would give the Brothers control of FOMEL.So that Fuchs was faced with a dilemma. It is equally clear from the events which I have summarized above that it must have resolved that dilemma by at the latest 14 January 2010 and made a decision to comply with Sheikh Abdullah's demands.

[167] Despite Mr Untersteller's initial doubts about the strength of his case, Fuchs says it came to the conclusion that, as against the Brothers, Sheikh Abdullah had the better of the argument, although there is documentary evidence that the strength of that belief, if ever held with any conviction, waned with the passage of time. I do not think that that was the reason why Fuchs adopted the position that it did. In my judgment, the truth is that Fuchs did not so much 'throw in its lot' with Sheikh Abdullah, who in his evidence revealed a less than enraptured attitude to its current management. I think a better description of Fuchs' stance is that it decided to do as little as possible to upset him. That decision had nothing to do with its appreciation of the strength of his legal case and everything to do with his commercial leverage. As each of Mr Untersteller and Mr Fuchs accepted, they were concerned about his threat to stop supplying at cost plus freight, something which effectively provided FOMEL with working capital and which contributed significantly to its profits, and even more concerned about his threat to cease supplying at all. Fuchs' difficulty was caused by FOMEL's bizarre business model, which breaks a generally accepted rule that a retailing business (which is how Mr Untersteller described FOMEL's distributor business) should never be dependent upon a single supplier (or a single customer, for that matter).

[168] If Sheikh Abdullah were to stop supplying product at cost and to begin charging for the hidden services (such as quality control, finance costs of purchasing raw material, raw material storage and shipping), which he said were being provided free of charge, then according to Sheikh Abdullah FOMEL would have been unable to continue in business. In fact, cessation of supply from AFPSA would have had less impact upon FOMEL in 2010 than it would have had in 2008 or 2009. In those two years the proportion of direct sales by FOMEL, as against royalties received by FOMEL from licensees, was roughly 80% to 20%. In 2010 the corresponding proportions were 67% to 33% and in 2011 the ratio had dropped to 25/75.

[169] In my judgment, it was because of Sheikh Abdullah's commercial threats that Mr Fuchs and Mr Untersteller did not attend board meetings of FOMEL or provide the Class A directors with more than minimal information about the financial state of the company and no information at all (apart from what could be gleaned from the monthly accounts) about Sheikh Abdullah's 'payments against dividends' or its own removal of US$18.5 million from FOMEL's cash balances. They colluded (quite unnecessarily, in my judgment) in the production of Forsters' letter of 13 January 2010 (and a later one of April 2010 threatening to suspend supplies altogether) in order to provide a fig leaf of respectability for the stance which they had decided to adopt.

[170] A mass of evidence was led and a large amount of cross examination was carried out in an attempt to prove that Fuchs need not have yielded to Sheikh Abdullah's demands. It should, it was said, have delinked the two companies by unwinding the operational merger and going elsewhere for supplies of base oil, additives and grease and should have used toll blenders (third parties offering a blending service on an ad hoc basis), or the various

licensees whose plants were in production, to manufacture lubricants for FOMEL. That evidence, in my judgment, is largely beside the point. Obviously FOMEL, had the Brothers been consulted and concurred, *could* have unwound the operational merger and *could* have gone elsewhere for product, although how easy it would have been for FOMEL to have done that is quite another matter. What FOMEL could not do was find another source of supply at the prices which, since acquiring the majority stake in AFPSA, Sheikh Abdullah had permitted to continue to prevail between the two companies or to obtain for nothing the hidden financial benefits which Sheikh Abdullah referred to in his evidence. I do not suggest that what, in my judgment, would have been the significant and damaging upheavals and uncertainties involved in unraveling the arrangement may not have been an additional reason why Fuchs decided to appease Sheikh Abdullah, although there is little, if any, trace of such concerns in the contemporaneous documents. But even if Fuchs could have separated the businesses with comparative ease, it could never have replaced the advantageous terms of trade offered by AFPSA. As Mr Fuchs put it, FOMEL 'depended' upon AFPSA. Sheikh Siraj's description was of AFPSA 'supporting' FOMEL financially, technically, and with product.

[171] Nevertheless, since such an amount of time and costs was spent on the inquiry and in case this matter goes further, I should set out my findings of fact upon these matters. Before doing so, I should stress that the question whether FOMEL was part of AFPSA, such that any sale of AFPSA must necessarily involve a sale of FOMEL (dealt with at paragraphs [91] to [97] above) is a completely different question from the question whether FOMEL could survive, or could only survive with difficulty, or could not survive as well, if it severed its connections with AFPSA. In what follows I am dealing with the latter question.

[172] I take first the possibility or practicability of FOMEL's finding alternative blenders and grease suppliers. Mr Ahsan Rashid, AFPSA's first President/CEO between 1997 and 2006, had as part of his duties a supervisory role in relation to FOMEL. During the same period his younger brother, Mr Asif Rashid, was general manager of FOMEL at its Sharjah headquarters. Mr Asif Rashid declined to move to Jeddah as part of the operational merger in 2006 and left the Group. His motives are irrelevant. Mr Ahsan Rashid's evidence was that there had been an attempt in 2003 to find an alternative blender for FOMEL, which had been unsuccessful. In 2004 there had been a proposal for the construction of a blending plant in the UAE in conjunction with Emirates National Oil Company, but the attempt got nowhere in the face of opposition from Sheikh Mohamed. Sheikh Siraj ascribed the decision not to go ahead to lack of funds. In 2008, when Sheikh Abdullah took over AFPSA, it would have been necessary to seek alternative sources of supply in the UAE, where new plants were being constructed, offering blending facilities at cheaper rates than AFPSA because the base oil used was charged out at lower rates. It would not at that date have been possible to employ licensees as blenders because, with the possible exception of Sudan, the plants were either not constructed or were not yet operational.

[173] Once the licensees' plants had become operational, however, it was the view of Mr Ahsan Rashid that it would be possible to switch over to the six producing licensees overnight. The licencees would be known to FOMEL's general manager, who would be able to make the necessary arrangements. The licensees produce to Fuchs trade mark standards and employ their own in house chemists and engineers. Supplies of grease could (now) be obtained from the licensees operating out of Tanzania, Sudan and Egypt.

[174] Mr Mezahem Basrawi took over from Mr Ahsan Rashid as Chief Operating Officer (as he described it) of AFPSA and of FOMEL. He occupied those positions until his retirement in November 2009. He said that in 2004 UAE blenders had a bad reputation for quality and that that remains the case today, with the exception of industry majors such as Shell and Mobil. He also mentioned that there had been a proposal in 2008 that AFPSA should charge a margin of 2%-3% to FOMEL, but that was never put into effect.

[175] Mr Untersteller's evidence was the most comprehensive of the witnesses on the subject of possible alternative supplies. He accepted that the UAE is now home to top quality multinationals offering blending facilities, but his difficulty was that Fuchs as a matter of policy would not outsource blending. He gave several reasons for this. First, it would mean opening Fuchs' books and formulae to market competitors. Secondly, the product made at AFPSA's Yanbu plant for FOMEL was audited to internationally accepted standards. Mr Untersteller was not sure whether it would be possible to audit toll blenders' plants so as to obtain the same certifications for product produced by them for FOMEL. Thirdly, Fuchs was able to impose a single universal quality control procedure over the production at AFPSA's Yanbu plant, something which it could not do if it was purchasing from a variety of toll blenders and in any case it takes weeks if not months for Fuchs to be able to approve the product of any individual plant. Yanbu had the advantage that it took base oil by pipeline from the refinery, which means that it is not necessary to truck from refinery to plant, an advantage which he did not believe was possessed by any other blender.

[176] Mr Untersteller went on to explain that AFPSA's packaging plant was a mere 200 yards from the blending facility at Yanbu. The bulk of FOMEL's sales was exported direct from KSA. Making alternative arrangements for packaging would mean either building a dedicated plant – something that would take about two years to become operational and which would have involved investment in new machinery and moulds – or arranging to purchase packaging from a manufacturer, probably in UAE. The latter course could only be contemplated after a thorough quality audit of the product to be purchased had been carried out and would have involved a logistical nightmare, with empty containers having to be trucked between the new packaging supplier and the plant(s) of the new blender(s).

[177] The evidence on price was not particularly clear. All were agreed that the price at which AFPSA was compelled to purchase base oil (because of the effective monopoly of Lubref, its KSA base oil supplier) was higher than the price at which supplies of base oil could be

obtained in UAE, although Mr Untersteller said that after FOMEL had taken advantage of the export rebate allowed by the Saudi authorities, the difference was only US$10 per metric tonne (or US$153,000 at 2011 levels of trade).

[178] Mr Untersteller stressed that Fuchs' marketing strategy was to offer a superior product at a high price and that the reputation of product made from Saudi refined material was second to none, and which could not be replicated by producing elsewhere. There was little evidence as to how Fuchs sources production in its other territories, but one supposes that it uses base oil from other sources than Saudi Arabia in at least some of them, so that dependence upon product originating from Saudi Arabia cannot be a universal Fuchs policy. I do, however, accept Mr Untersteller's evidence upon the reputational perception in the market of product with a start to finish Saudi pedigree. Precisely what price differential flows from that was not dealt with in the evidence.

[179] Mr Fuchs said that FOMEL could not rely upon toll blenders. They act for competitors and themselves compete in the market. He conceded, however, that he was not heavily involved in the operational structure of the business, which was handled by Mr Untersteller.

[180] Sheikh Siraj's view was that Sheikh Abdullah would have to give reasonable notice of any change in the terms of supply or, presumably, of any termination of supplies. He said that that would have to be of sufficient length to enable FOMEL to find alternative sources of supply.

[181] So far as the difficulty, or otherwise, of undoing the operational merger that had taken place in 2006 was concerned, there was scant evidence. It was the view of Sheikh Siraj that unravelling the operational merger would take less than the six months which it had taken to put it in place. As he put it, you can always hire people.

[182] Mr Ahsan Rashid said that operational separation could have been achieved quickly. All that was needed was a new technical manager. The employees dealing with FOMEL's affairs in Jeddah were dedicated to FOMEL's business. FOMEL's books were separate from those of AFPSA. The staff would have had to be re-employed, but Mr Rashid saw no difficulty in that.

[183] In my judgment this evidence shows that ending FOMEL's dependence upon AFPSA would have been possible. It would, however, be a lengthy and costly process and would have caused a significant interruption to FOMEL's shrinking distributorship business. Not only that, it would have caused the loss of the preferential trading terms which Sheikh Abdullah has, at least to date, been prepared to offer FOMEL, although again the effect of that would have been felt largely in the distributor sales. In my judgment, therefore, Fuchs had good reasons for wishing to avoid a rupture with Sheikh Abdullah. Not only that, there is no evidence that the Brothers themselves would have approved of taking steps which would have provoked Sheikh Abdullah into terminating supplies had the suggestion been put to

them at the time. Without their agreement and support at board level, changes to suppliers and the making of other arrangements could not have been put in place. That, of course, was what made Sheikh Abdullah's threats difficult to counter.

[184] I do not consider that Fuchs' concerns about what might happen to FOMEL were they to antagonize Sheikh Abdullah were bogus or contrived. In my judgment, however, they should have dealt with the Class A directors at board level. The supposed irregularities in their appointments were common to both parties and readily capable of being remedied. The assurances which they had been given that it was only a matter of time before transfers of the Brothers' Chemtrade shares were registered in favour of Sheikh Abdullah were never made good and it became clear when the ownership proceedings were commenced that he had yet to establish his title to the shares. In my judgment, even without the benefit of hindsight, Fuchs made the wrong call. It could not have been criticized for attending board meetings with Chemtrade's lawfully appointed directors and should have done so. Both parties should have joined to do what they could to protect FOMEL's interests against Sheikh Abdullah's threats. Fuchs could not know where the beneficial ownership of the Chemtrade shares lay. It did, however, know that the shares had not been transferred to Sheikh Abdullah and it did know that until they were transferred the board consisted, or was intended to consist, of Sheikh Mohamed and Sheikh Siraj. For all Fuchs knew, the shares might never be transferred to Sheikh Abdullah. Yet it acted as if they had been.

Have the Brothers been oppressed, unfairly discriminated against or unfairly prejudiced?

[185] It is not suggested that the Brothers have been oppressed, in the sense of having been victimized or picked upon, or that they have been unfairly discriminated against. The only question is whether they have been unfairly prejudiced.

[186] In my judgment, they have. What Fuchs did was to substitute its own opinion of what was in the best interests of FOMEL for that of its board. The Brothers had a right to expect that Fuchs would not do that. I am sure that Fuchs did not act as it did out of spite or out of a wish to promote its own interests at the expense of those of the Brothers (although it certainly wished to protect its own interests while disregarding those of the Brothers), but unfairness does not require proof of malice or of attempts to achieve unwarranted advantage. It is, in my view, unfair to prevent a shareholder with the right to do so from participating, through its appointees, in the board level management of a company, however pure one's motives. That must be the case whether or not the beneficial ownership of the company's shares is in dispute.

[187] So far as concerns the withdrawal, in October 2011, of the US$18.5 million, it seems to me that that was motivated as much as anything by self interest, but I do not regard it as having prejudiced the Brothers. The money, together with any interest accrued in the interim, must

now go back into FOMEL's hopefully unfrozen bank accounts, or into some newly opened bank account. Chemtrade will have suffered no detriment of any sort.

[188] On the other hand, I do not consider that the appropriate remedy in this case is to compel Fuchs to buy the Brothers out. The unfair prejudice of which the Brothers complain is of having been frozen out of management at board level. They do not complain that the affairs of FOMEL are going to be taken in directions unacceptable to them as shareholders, or that their investment has been or is going to be jeopardized as a result of actions taken by their fellow shareholder or that if they are compelled to remain as shareholders they will be financially disadvantaged by arrangements designed to benefit Fuchs to the prejudice of the Brothers. The unfairness of which they complain will disappear if I order that FOMEL's Articles of Association be amended to provide that the quorum for meetings of its board shall be any two directors. I will further direct that the amended Articles of Association provide that unless short notice is accepted, board meetings must be convened on not less than 14 calendar days notice and may be held only on days which are business days in each of the Kingdom of Saudi Arabia and the Federal Republic of Germany. The casting vote will remain with the chairman for the time being. In my judgment, the facts call for no more radical remedy than this. The parties must agree the form of the necessary amendments to give effect to my order.

Appointing liquidators to FOMEL

[189] It will be obvious from what I have said that I do not intend to appoint liquidators to FOMEL. In its counterclaim to the Brothers' unfair prejudice claim Fuchs sets up what it calls a 'Larger Enterprise Understanding.' This seeks to give the appearance of substance to a submission that there was a general joint venture between Fuchs and the Alhamranis (referred to in this context as 'the Alhamrani Group') the continued existence of which depended upon some unspoken but fundamental understanding that all companies on the Alhamrani side should remain in the same beneficial ownership.

[190] There is no evidence for any such general joint venture. Fuchs had been a joint venturer with the Alhamranis in the original grease plant and from 1995 it was joint venturer with the Alhamranis (and, indirectly, with the Al Suleymans) in the various manifestations of what eventually became AFPSA. Fuchs was joint venturer with the Alhamranis in FOMEL. But that was a different joint venture from the joint venture that was AFPSA.

[191] Fuchs' relationship with the Alhamranis in FOMEL was governed by the so-called First Regional Shareholders Agreement. 'Regional' in that agreement referred to the territories set out in Annex 1. By clause 13.03 Fuchs Switzerland (the original contracting party) represented and warranted that it was and would continue to be a subsidiary of Fuchs. By clause 13.04 Chemtrade represented and warranted that it was and would continue to be 100% directly and beneficially and ultimately owned by members of the Alhamrani family -

which is the current position. Those being the express terms upon which the parties came together as co-venturers in the business of FOMEL, it seems to me impossible to imply into that agreement an additional term, to the effect that if the Alhamranis disposed of any other company in the Sons' Account, then the joint venture in FOMEL would be at an end, justifying Fuchs in seeking an order to wind up.

[192] Quite apart from the commercial improbability underlying the so-called Larger Enterprise Understanding, the First Regional Shareholders Agreement was expressed, by clause 21.03, to supersede all prior or contemporaneous agreements and understandings and stated that there were no other agreements between the parties in connection with its subject matter.

[193] Although not pleaded as part of its counterclaim, Fuchs relies in its written closing submissions on an alleged breakdown in trust and confidence between the parties.

[194] I am certainly not going to wind up FOMEL on any such ground. I see no reason to kill off[26] a company which has been successful in the past and is perfectly capable of being successful in the future, simply because a publicly listed multinational company advances the improbable claim that trust and confidence has broken down between itself and its joint venture partner. I have seen nothing which suggests to me that Fuchs does not trust, or, for that matter, has any reason not to trust the principal movers behind Chemtrade – Sheikh Mohamed and Sheikh Siraj - or that it has no confidence in their being able to deal properly and effectively in the business of FOMEL. I have had the fullest opportunity to observe the principal actors in this dispute. Mr Fuchs and Mr Untersteller are exceptionally gifted businessmen with very level heads indeed. I have no reason to think that Dr Lingg, who has replaced Mr Untersteller on the FOMEL board, is out of any different mould or that he will have any greater difficulty than will Mr Fuchs in putting these proceedings behind Fuchs and in dealing coolly and rationally with Sheikh Mohamed and Sheikh Siraj in the best interests of FOMEL and, ultimately from their perspective, of Fuchs.

Commercial Court Judge
21 December 2012

[26] literally – the appointment of liquidators to FOMEL would automatically terminate its intellectual property licence from Fuchs and render the business valueless overnight

APPENDIX

Date: 6.4.1429 A.H.

corresponding to: 12.4.2008 A.D.

From: The children of Ali Mohammed Alhamrani

To: His Excellency Father Sheikh Mohammed Alamin Ashanqiti, the Chairman of the Board for the Settlement of Complaints, may Allah preserve him,

Your Excellency,

May peace and the mercy and blessings of Allah be upon you.

We would like to start by expressing our great attitude and abundant thanks for the amicable attention which His Royal Highness Crown Prince Sultan Abdulaziz, may Allah preserve him, granted to us in making a blessed effort to mend the rift which posed a threat to a giant national economic organization, namely the Alhamrani Group of Companies, because His Royal Highness, may Allah guard him, believed that it was necessary to protect and maintain the great national economic entities and to provide every assistance and support in order to ensure that they prosper and continue. We point this out in order to show that we highly appreciate and esteem the positions adopted by His Royal Highness.

We would also like to submit, to Your Excellency personally, our sincerest tokens of gratitude and appreciation for the candid effort which Your Excellency has undertaken in the interests of achieving rightness and establishing justice, and for Your Excellency's endeavours to achieve reconciliation, reunification and the avoidance of estrangement. All we can do is ask Allah, the All-Powerful, the Sublime, to confer upon Your Excellency the best reward on behalf of all of us.

Last but not least, we would like to extend – to Their Excellencies the members of the Auditing Department of the Board of Grievances, who are in charge of the undertaking to effect reconciliation between the children of Ali Mohammed Alhamrani, may Allah have mercy on his soul – abundant thanks and great gratitude for their rapid efforts aimed at achieving the lofty objectives which were entrusted to them in the form of apposite and rational instructions issued by the Crown Prince, may Allah preserve him.

We would like to refer to the conclusions which the members of the Seventh Auditing Department, acting in their capacity as the reconciliation committee, arrived at on the fifth day of the month of Safar 1429 A. H., to entrust mohammed Ali Alhamrani – in his capacity as the Chairman of the

Alhamrani Companies, in charge of managing them, and who knew more about the affairs of the companies than anyone else – with the task of valuing the companies and funds which are jointly owned by the parties in the dispute, so that he might submit, within sixty days of the date mentioned, the value corresponding to a single share, with the result that Abdullah Ali Alhamrani, and two sisters Noura and Adawiah Ali Alhamrani, would have the option of either selling their shares to Mohammed Ali Alhamrani and his brothers Siraj, Khalid, Abdulaziz, Ahmed and Fahd Ali Alhamrani, or of purchasing for them.

It was on that basis that all of us, headed by our brother Mohammed Ali Alhamrani, took part in the work of compilation and valuation. From the data arrived at in our accurate analysis of the results of the valuation, we agreed, with complete conviction, that the price corresponding to all the shares of the partners is 1.2 billion Saudi Riyals (one billion two hundred million Saudi Riyals). Therefore, the price corresponding to the share of a female, that is to say the share of each sister, is seventy-five million Riyals, and the price corresponding to the share of a male is the share of two females, is the share of each brother, and I one hundred and fifty million Riyals. Thus, the brother Abdullah Alhamrani, and the two sisters Noura and Adawiah, have the option of either selling to us, or purchasing from us, at that price. We for our part are very ready to accept either of the two options and to put it into effect to the letter.

Because we are doing this, we are guided by what was said by Allah the most High, namely "Don't belittle the things of others" and by the saying of our Prophet "No harm no prejudice". Because we are offering this price as an unambiguous and final offer, let us adhere to it irrespective of whether we are sellers or purchasers. We are thus acting in accordance with the proverb "Anyone who makes you equal to himself is not treating you unjustly," and are at the same time confirming that we arrived at this price solely on the basis of the data obtained from a fair valuation of the share, including not only the rights linked to this share, but also the obligations and guarantees attached to this share for the benefit of third parties.

It goes without saying that the valuation was restricted to all the funds, properties and partnerships contained in shares in the companies, real estates, and movable property, located inside the Kingdom of Saudi Arabia in accordance with what is stated in the enclosed appendix No. 1. As reghards the foreign investments, it was difficult, or rather it was impossible, for us to carry out a valuation which was fair and satisfactory for all the partners in those investments, because the amount which will be included in the joint ownership, and the amount which each partner will receive of that ownership, is still the subject of a legal dispute being examined by the competent foreign Courts. The determination of that ownership will remain pending until the final judgment is passed regarding it. This is in accordance with the enclosed appendix No. 2, drawn up by the Court which is competent to examine the dispute. At the time when the final judgment is passed regarding that ownership, then, the value of the share in the foreign investments can be determined.

We shall also not omit to point out here that, in the event of sale or purchase, the purchasers or sellers, acting together, must carry out all the legal and regulatory procedures required in order to

transfer the ownership of the shares. The purchasers, whoever they may be, are obliged to submit all the guarantees to the authorities concerned and to release the sellers from any obligations. In addition, all the parties to the final contract of sale or purchase are to correct the ownership of some of the real-estate items in the required legal and regulatory manner, since some of the real-estate items are formally registered in the name of one or more partners, including the transfer of the. The ownership of the land located in the Rawda district if the city of Jeddah, with title deed No. 687/3 dated 1394 A.H., is to be transferred to Mr. Mohamed Ali Alhamrani in the event of either sale or purchase.

For the reason that we are abiding by this unambiguous and definite offer before Allah the Eternal One, the Most High, on the basis of His saying: "O you believers, fulfil your contracts," let us ask Him, the All- Powerful, the Sublime , to put in readiness for you the reasons for ending, in a just and satisfactory way, this dispute which has continued among the parties to it for more than seven years.

May Allah, the Most High, grant success to Your Excellency in achieving rightfulness, justice and good sense.

May peace and the mercy and blessings of Allah be upon Your Excellency.

[Signature]
Siraj Ali Mohammed Ahamrani
Acting on his own behalf and by the power of attorney granted to him by his brothers
Mohammed, Khalid, Abdulaziz, Ahmed and Fahd, the children of Ali Mohammed Alhamrani

Appendix N0.1

1. Alhamrani United Company "Mohammed Ali Alhamrani and Brothers", (Joint Venture Company).
2. Alhamrani Trading and Import Company, (Joint Venture Company).
3. Alhamrani International Company Limited.
4. Alhamrani Group Industrial Company Limited.
5. Alhamrani Saudi Arabian Fox Petroleum Company Limited.
6. Alhamrani Commercial Investment Company Limited.
7. Alhamrani Industrial Company Limited.
8. Alhamrani Chemicals Company Limited.
9. Alhamrani Real Estate Development Company Limited.
10. International Airport Services Company Limited.

List of lands and real estate owned by the children

(NOT REPRODUCED HERE)