Application to dissolve a limited partnership pursuant to section 29 of the Limited Partnerships (Guernsey) Law, 1995, as amended. The application also sought the rescission of the limited partnership agreement.

[2021]GRC089

IN THE ROYAL COURT OF GUERNSEY

(ORDINARY DIVISION)

Between

FONDS RUSNANO CAPITAL SA — **Plaintiff**

-and-

CRGF GP LIMITED — **Defendant**

Hearing dates: 10 to 14 and 17 to 19 June 2019

Judgment handed down: 27 April 2021

Before: Richard James McMahon, Esq., Bailiff
Jurats: D P Hodgetts LVO, D J Mortimer and J M Wyatt

Counsel for the Plaintiff: **Advocate S L Brehaut**
Counsel for the Defendant: **Advocate A C Williams**

Cases, Texts & Legislation referred to:

The Limited Partnerships (Guernsey) Law, 1995
Filatona Trading Limited v Navigator Equities Limited [2019] EWHC 173 (Comm)
The Ocean Frost [1985] 1 Lloyd's Reports 1
Bingham, *The Business of Judging*
Gestmin v Credit Suisse [2013] EWHC 3560 (Comm)
Kairos Shipping v Enka, The Atlantik Confidence [2016] 2 Lloyd's Reports 525
The Royal Court (Reform) (Guernsey) Law, 2008
The Evidence in Civil Proceedings (Guernsey and Alderney) Rules, 2011
The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009
Republic of Djibouti v Boreh [2016] EWHC 405 (Comm)
Wisniewski v Central Manchester Health Authority [1998] Lloyds LR (Medical) 223
R v Inland Revenue Commissioners, ex parte TC Coombs & Co [1991] 2 AC 283
Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. 18 March 1970
Arrow Nominees Inc v Blackledge [2000] 2 BCLC 167
Alhamrani v Alhamrani 2009 JLR 301
The Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950
The Russian Labour Code
M. v MBUDO, 2 August 2017 (Supreme Court of Republic of Sakha)
Ch.D. Elster Metronica, 28 March 2011 (Moscow City Court)

Kornaukhov v "Centerenergogaz" JSC, 13 November 2013 (Krasnoyarskiy District Court of Astrakhan Region)
BBR Bank JSC v Gordienko, 13 June 2018 (St Petersburg City Court)
S v "Lindner" LLC, 27 July 2017 (St Petersburg City Court)
M. v "South Boulevard Ring" LLC, 29 July 2017 (Chelyabinsk Region Court)
J.S.A. v SAO "VSK", 10 May 2016 (Chelyabinsk Region Court)
Litke v JSC "I.D.E.A. Bank", 24 April 2017 (Supreme Court of the Russian Federation)
Svetashov v Kireyev, 27 February 2017 (Supreme Court of the Russian Federation)
G v FGBI VPO "Russian State University of Physical Education, Sports, Youth and Tourism", 2 December 2015 (Moscow City Court)
V. v Insurance company "Consent" LLC, 20 November 2015 (Moscow City Court)
M. v State Budget Educational Institute "Vorobyovy gory", 8 December 2015 (Moscow City Court)
Federal Republic of Brazil v Durant International Corporation 2012 JLR 356
El-Ajou v Dollar Land Holdings plc [1994] 2 All ER 685
Property Alliance Group Limited v Royal Bank of Scotland plc [2018] EWCA Civ 355
Marme Inversiones 2007 SL v NatWest Markets plc [2019] EWHC 366 (Comm)
Chitty on Contracts (33rd ed., 2018)
Car and Universal Finance Co Ltd v Caldwell [1965] 1 QB 525
Clough v London and North Western Railway Co (1871) LR 7 Ex 26
The Partnership (Guernsey) Law, 1995
National Crime Agency v Robb [2015] Ch 520
Shalson v Russo [2005] Ch 281
Lindley & Banks on Partnership (20th ed., 2017)
Harrison v Tennant (1856) 4 Beav 482
PWA Corp v Gemini Group Automated Distribution Systems Inc (1993) 103 DLR (4th) 609

Introduction

1. This action concerns a dispute between the partners of a Guernsey limited partnership known as CRGF LP. However, as will become apparent, it is as much about a dispute between a Russian group of companies and one of its former employees, Pavel Erochkine. The Plaintiff, Fonds Rusnano Capital SA, is the sole limited partner of CRGF LP. It is incorporated in Luxembourg. It forms part of a group of companies ultimately owned by OJSC RUSNANO (which will generally be referred to as "JSC Rusnano"), a Russian state-owned joint stock company. The Defendant is the sole general partner of the limited partnership. It is incorporated in the British Virgin Islands. It has always been ultimately owned by Mr Erochkine.

2. The limited partnership was established by a written agreement dated 1 October 2015, but that agreement was superseded by another agreement dated 3 December 2015, at which time the Plaintiff replaced the original limited partner. This is the Amended and Restated Limited Partnership Agreement (to which we will refer as "the LPA"). These proceedings began by an application dated 3 April 2018 brought by the Plaintiff seeking to dissolve the limited partnership pursuant to section 29 of the Limited Partnerships (Guernsey) Law, 1995, as amended. That application also sought the rescission of the limited partnership agreement. It was apparent that that was the primary relief being sought because that was intended to undo the limited partnership arrangements involving the Plaintiff completely rather than leaving them in place but bringing them to an end. As a result, the Court directed that the matter should be re-cast by way of an action to which the Defendant could properly plead in response. The Cause was subsequently tabled on 31 August 2018. The Defendant's Defences followed on 27 September 2018 and the Plaintiff's Réplique is dated 25 October 2018. Both parties raised *exceptions de forme* which were answered by the Plaintiff on 25 October 2018 and by the Defendant on 7 December 2018. The Plaintiff amended its Cause on 3 May 2019 and it is that Amended Cause on which the action has proceeded, although further minor amendments were made during the course of the trial.

3. The trial of this action took place in June 2019, following which judgment was reserved. The Jurats reached their conclusions on the facts comparatively quickly but, as will become clearer, the issue of how to resolve the differences between the opinions given by the two experts on Russian employment law, which fell to be determined by the presiding judge, has taken far longer to consider than the Court would have wished and for which it apologises to the parties and their Counsel. Some of the delay can be attributed to the pressures of other matters at the end of 2019 and the year from March 2020 has been a most unusual, unprecedented twelve months during which managing the consequences of the Covid pandemic coupled with the presiding judge switching between judicial offices and all that entailed meant there was too little time available to concentrate on the reserved judgment. Further, the proceedings broadly involving the same personnel concerning the RN Pharma Trust, in respect of which a considerable amount of evidence was adduced in this action (and about which a little more will be said in due course), also went on appeal during this period and the outcome of that appeal was awaited just in case it impacted on the decision in this case. When those proceedings were remitted to the Royal Court at the end of 2019, it took the parties until May 2020 for directions to be sought, although the parties eventually resolved matters between themselves by that summer. Whilst these events do not excuse the delay in delivering this judgment, they provide some explanation for it. One advantage enjoyed by the Court, though, arises from the decision to have the proceedings transcribed on a daily basis, meaning there has been ready access to all the evidence and oral submissions and the impressions the Jurats formed of the witnesses heard at the trial crystallised shortly after the trial took place.

4. Before turning to the trial process and the issues that have been raised for determination, it is also helpful to refer to the way in which Advocate Williams, who appears on behalf of the Defendant, drew attention to the guidance offered by Teare J in *Filatona Trading Limited v Navigator Equities Limited* [2019] EWHC 173 (Comm) relating to the assessment of evidence particularly in cases involving foreign personnel and the presiding judge, when giving directions, commended what was summarised in that judgment to the Jurats. Paragraph 10 sets out the approach taken by Robert Goff LJ in *The Ocean Frost* [1985] 1 Lloyd's Reports 1 (at page 57):

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

Reference was also made in para. 11 to the following passage from a book written by Tom Bingham, *The Business of Judging* (at page 14):

> "*An English judge may have, or thinks that he has, a shrewd idea of how a Lloyd's broker, or a Bristol wholesaler, or a Norfolk farmer, might react in some situation which is canvassed in the course of a case but he may, and I think should, feel very much more uncertain about the reactions of a Nigerian merchant, or even an Indian ship's engineer, or a Jugoslav banker. Or even, to take a more homely example, a Sikh shopkeeper trading in Bradford. No judge worth his salt could possibly assume that men of different nationalities, educations, trades, experience, creeds and temperaments would act as he might think he would have done or even – which might be quite different – in accordance with his concept of what a reasonable man would have done.*"

In para. 13, a passage from para. 22 of the judgment of Leggatt J in *Gestmin v Credit Suisse* [2013] EWHC 3560 (Comm) is quoted, which follows from his comments about the unreliability of human memory:

> "*In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.*"

Finally, in para. 14, dealing with evidence given by witnesses not speaking their first language and sometimes through an interpreter, His Lordship quoted what he had said in para. 11 of *Kairos Shipping v Enka, The Atlantik Confidence* [2016] 2 Lloyd's Reports 525:

> "*First, a fact-finding judge can gain little from the demeanour of a witness when the witness is foreign, comes from a different culture and does not give evidence in his first language or does so through an interpreter; see The Business of Judging by Tom Bingham at p.11. In The Ikarian Reefer at p.484 lhc para. (4) Stuart-Smith LJ said that "most experienced judges recognise that it is not easy to tell whether a witness is telling the truth, particularly if the evidence is given through an interpreter." Second, in all cases, but especially in those cases where scuttling is alleged, the assessment of the reliability of a witness depends, not only upon a consideration of the extent to which his evidence is consistent with what is not in dispute, is internally consistent and is consistent with what the witness has said on other occasions but also upon a consideration of the extent to which his evidence is consistent with the probabilities. That involves placing the evidence in the context of the case as a whole. As was said in The Ikarian Reefer at p.484 lhc para. (4) the evidence of those impugned "has to be tested in the light of the probabilities and the evidence as a whole".*"

5. This judgment has been prepared in accordance with the provisions of section 16(5) of the Royal Court (Reform) (Guernsey) Law, 2008:

> *"(5) A reasoned judgment in civil proceedings in which the Jurats (and not the Bailiff alone) are sitting shall contain –*
>
> *(a) the Jurats' findings and decisions,*
> *(b) any dissenting findings or decisions made by different Jurats,*
> *(c) the identity of the Jurats making dissenting findings or decisions,*
> *(d) the Bailiff's findings, decisions and directions of law and procedure, and*
> *(e) the application of his findings, decisions and directions of law and procedure to the facts.*
>
> *(6) In this section "the Bailiff" means the person presiding over the proceedings."*

The presiding judge did not sum up to the Jurats in open Court but instead indicated that the Court would reserve its judgment and retired with the Jurats, as he is permitted to do under section 14(2) of the 2008 Law. The findings of the Jurats were generally unanimous but, in

some instances, Jurat Mortimer differed from Jurats Hodgetts and Wyatt, and this judgment sets out, as required, where those dissenting findings were made.

6. After reminding the Jurats of their respective roles, namely that the presiding judge remains the sole judge of questions of law and procedure and the Jurats are the sole judges of questions of fact, the Jurats were directed that they must accept the presiding judge's directions on the law and follow them. The Jurats were directed that the general burden of proof rests on the Plaintiff to establish the case it was advancing, where the standard of proof is the civil standard of the balance of probabilities. This was explained as being that to establish something on the balance of probabilities means to prove that something is more likely so than not so.

7. In addition to highlighting the principles taken from the ***Filatona Trading*** case just mentioned, the presiding judge further directed the Jurats to have regard to the whole of the evidence presented to the Court, and to form their own judgments about the witnesses, and which evidence they treated as reliable, and which they considered was not. They were reminded that the facts of the case were their responsibility. They could choose to take account of the arguments in the speeches they heard, but were not bound to accept them and, if the presiding judge appeared at any time to express any views concerning the facts, or emphasise a particular aspect of the evidence, the Jurats were not to adopt those views unless they agreed with them. The Jurats were further directed that it is possible to disbelieve certain aspects of the evidence given by a witness but to find other aspects believable. In other words, just because one or more elements of the evidence given by a witness is not credible, that does not automatically mean that the whole of that witness's evidence has to be disregarded. As was commonplace in trials, the evidence-in-chief of each witness from whom oral evidence was heard was found in their Affidavits, which meant considering whether there were any inconsistencies in that material and, if so, how that was addressed in the oral evidence. Further, this meant that the Jurats could concentrate on the cross-examination of each witness and consider how far, if at all, a witness for one party agreed with the case of another party and, if there was no such agreement, to consider how well or badly the witness has been able to respond to those questions put designed to undermine the other party's case.

The witnesses

8. The Court heard oral evidence from three witnesses of fact and the parties' respective experts on Russian law. In addition, the Plaintiff had served two hearsay notices dated 17 May 2019 in relation to an Affidavit of Linda Zheng, sworn on 2 July 2018, and an Affidavit of Valeria Lukyanova, sworn on 3 August 2019. On behalf of the Defendant, Advocate Williams submitted that both of these Affidavits should be disregarded. Indeed, he suggested that Ms Zheng's Affidavit was inadmissible because it had not formally been served on the Defendant and he referred to Ms Lukyanova's Affidavit being unsworn, which aspect of confusion may have arisen because the English translation of it has not included the attestation aspect of what appears on the original Russian version. The Court is satisfied that both Affidavits have been sworn.

9. The manner in which these hearsay notices were served purported to comply with the rules found in Part I of the Evidence in Civil Proceedings (Guernsey and Alderney) Rules, 2011. In each case, they were served just before the 21-day period prior to the trial and gave the reason for not calling each witness to give oral evidence as being that the witness was resident outside the jurisdiction and the cost of calling the witness to confirm her statement would be disproportionate. However, this overlooks the order made by the Court for witness statements of both parties to be served and filed by 8 February 2019. This non-compliance with the rules of court does not in itself affect the admissibility of this evidence, but may be taken into account when considering the weight to be attached to it and, for example, in relation to costs (section 2(5) of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009).

Accordingly, the presiding judge rejected the submissions of Advocate Williams inviting him to withdraw this evidence from consideration by the Jurats and instead directed the Jurats as to the matters to be taken into account by them in considering what weight, if any, to give to these aspects of the Plaintiff's case.

10. Those matters are set out in section 4 of the 2009 Law. The Jurats were directed that they could consider what inferences to draw about the reliability of the evidence contained in those two Affidavits and, in particular, could have regard to the way in which reliance was being placed on this evidence late in the day, when the scope for the Defendant to exercise any of the options found in Part I of the 2011 Rules was less readily available to it, as well as the factors listed in section 4(2):

> "*(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness,*
> *(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated,*
> *(c) whether the evidence involves multiple hearsay,*
> *(d) whether any person involved had any motive to conceal or misrepresent matters,*
> *(e) whether the original statement was an edited account, or was made in collaboration with another for a particular purpose,*
> *(f) whether the circumstances in which the evidence is adduced as hearsay suggest an attempt to prevent proper evaluation of its weight, and*
> *(g) any other circumstances which the court may, in the interests of justice, consider relevant.*"

11. Having regard to all matters that were relevant, the Jurats took the view that the Plaintiff could have made arrangements for Ms Lukyanova to have attended at the trial to give evidence in person. As her Affidavit explains, she is an employee of Rusnano Management Company LLC (which is the style by which we refer to this company, although at times the order of the words changes to Management Company Rusnano LLC), which is affiliated with the Plaintiff. She worked with Mr Erochkine for just over three years and she describes him as her superior within the employment structure. On the basis that this was an action being brought by the Plaintiff to achieve the relief being sought by it (and, in particular, the rescission of the LPA), the Jurats felt strongly that the Plaintiff has made a tactical decision not to call her to give oral evidence so as to enable a proper evaluation of what evidence she gave to be undertaken. In those circumstances, the Jurats were minded to afford very little weight to the evidence set out in her Affidavit. However, because it had been sworn and was admissible, this was not an instance where no weight could be given to this evidence. Although she set out a little bit about the limited partnership, which was largely drawn from other written material before the Court in any event, she appears to have been more involved in another project involving the RN Pharma Trust, which has not been of direct relevance to the issues this Court has to resolve. In the broadest sense, her evidence suggests that Mr Erochkine was secretive, but there has been other evidence, including some of the documents to which we will refer, that shows this anyway.

12. The position in respect of Ms Zheng is slightly different, because she is not someone over whom the Rusnano Group could exercise control. As the general manager of Conduit Ventures Limited ("Conduit"), which was engaged to provide services to the Plaintiff in relation to the creation of a fund and advising on potential investments into it, she could not as readily be compelled to assist the Plaintiff. However, she swore her Affidavit in London and so the suggestion that it would not be cost-effective to secure her attendance to give oral evidence appears to the Jurats to be a very weak argument. The relevance of what she explains in her Affidavit is principally to state that prior to May 2018 she and her colleague at Conduit, John Butt, were unaware that Mr Erochkine had a personal interest in the Defendant,

and so in the general partner of the limited partnership that had been established. Aside from that, she offers some confirmation of the steps that were taken in relation to acquiring what are known as "the Didi shares" (formally being a shareholding in Xiaoju Kuaizhi Inc.), but that is not really contentious between the parties. Although some of what she states relays what Mr Butt had told her, there appears to be no motivation to misrepresent what has been included in her Affidavit and there has been no evidence, when there could have been from the Defendant's witness, to contradict the fact that it was news to those who worked for Conduit that Mr Erochkine has a personal interest in the Defendant when he told them of it in May 2018, some time after he left his employment with the Rusnano company. Further, the Jurats noted that Mr Erochkine dealt with Ms Zheng's Affidavit in his Second and Fourth Affidavits in these proceedings. To that extent, this is evidence that the Jurats are prepared to take into account, although not to the same extent as if the Plaintiff had called Ms Zheng and her evidence had been capable of being tested.

13. On behalf of the Defendant, Advocate Williams further relied upon the critical comments made by Flaux J (as he then was) in *Republic of Djibouti v Boreh* [2016] EWHC 405 (Comm) about a claimant's decision in respect of the evidence to be called in support of a claim. This was a case relating to the development of new port facilities in Djibouti, the driving force behind which was the first defendant, utilising a public/private collaboration. The President of the Republic had taken a particular interest in the construction of a new oil terminal at Doraleh. Much of the construction work was undertaken by Mr Boreh's company, known for these purposes as Sporim. The trial judge had indicated at the pre-trial review that it was considered essential that the President, from whom two witness statements had been served, attend court in person to give evidence, rather than using a video link. He had noted (in para. 51 of the judgment), after citing the passage from *The Ocean Frost* (*supra*):

> "*That approach to the evidence is one which I have adopted as my overall approach, given that many of the most significant events in the case took place more than ten years ago. However, there are two caveats in relation to that approach. The first is that, in some respects, the contemporaneous documentation is thin, particularly in relation to the negotiations with ENOC of the Horizon agreements, so that there is not always contemporaneous documentation against which to test the recollection of witnesses. The second is that, in a very real sense, this case is a "swearing match" between two protagonists, the President and Mr Boreh, with Mr Boreh maintaining that the President was well aware of Mr Boreh's personal interest in the various ventures of which complaint is now made, specifically his shareholding in Horizon, all such matters having been discussed orally between them and agreed by the President. The President on the other hand denied all such knowledge*."

Advocate Williams suggests there are parallels with the position in the present case.

14. In the *Boreh* case, despite the judge's indication, the President chose not to attend to give evidence and wrote a letter to the court explaining his reasons just before the trial began. Flaux J described the explanation as "*both inadequate and misconceived*" because the Republic had chosen to commence proceedings and had the burden of proving them "*on a balance of probabilities, but to the heightened standard applicable in cases of fraud*" (para. 54). He then cited what Brooke LJ had pointed on in *Wisniewski v Central Manchester Health Authority* [1998] Lloyds LR (Medical) 223, 227: "*in certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.*" There is an exception to that principle, albeit it was inapplicable in that case given the findings relating to the explanation offered, as set out in *R v Inland Revenue Commissioners, ex parte TC Coombs & Co* [1991] 2 AC 283, 300: "*if the silent party's failure to give evidence (or to give the necessary evidence) can be credibly explained, even if not entirely justified, the effect of his silence in favour of the other party may be either reduced or nullified.*" This Court accepts

that the approach to the non-attendance of witnesses and the possible weight being given to anything contained in a hearsay statement can be considered in a similar way in Guernsey.

15. Advocate Williams has, therefore, invited the Court to draw adverse inferences against the Plaintiff relating to the absence from the trial of persons who appeared to have some knowledge of what was being done at the relevant times. The Jurats were directed that it was open to them to draw such adverse inferences if they were satisfied that the way the Plaintiff had chosen to seek to prove its case had left them, as the arbiters of fact, without the opportunity to hear relevant evidence being given and tested. However, they were further directed that the principles could be regarded by them as inapplicable if they were satisfied that the case being advanced on behalf of the Defendant was that Irina Rapoport was the employee associated with the Plaintiff to whom disclosures of Mr Erochkine's personal interest in the Defendant were made. Ms Rapoport gave evidence and was cross-examined quite extensively by Advocate Williams. Further, in relation to Olga Bochkova, there had been an opportunity to cross-examine her on the substantive issues requiring resolution, but Advocate Williams had chosen not to do so. Consideration would need to be given to whether that decision was one that could be justified in circumstances where the Plaintiff had tendered Ms Bochkova more as a witness in relation to the challenges being made to the adequacy of the Plaintiff's compliance with the disclosure requirements and no witness statement relating to the substantive issues had been served, but it remained the case that there had been the opportunity to ask any questions on behalf of the Defendant that it wished to put to Ms Bochkova. Finally, in relation to any other witness from whom no witness statement had even been forthcoming, eg, Oleg Kiselev, to whom Ms Rapoport reported, the Jurats might wish to bear in mind that direct evidence had been taken from Ms Rapoport, who had been regarded by the Defendant as central, where Mr Kiselev's evidence may have added little. Further, it had been open to the Defendant, had it wished to have the benefit of Mr Kiselev's evidence, or that of anyone else from across the Rusnano Group, to have applied to take evidence from him or her in some appropriate manner.

16. In general terms, the Jurats considered that there was sufficient factual evidence given by Ms Rapoport and Mr Erochkine to decide which version of events to prefer where what they had to say differed. The hearsay evidence of Ms Lukyanova did not add anything and has been disregarded by them to the extent already described. No further adverse inferences against the Plaintiff were merited. The evidence of Ms Zheng adds an external perspective to what took place and so has, as appropriate, been considered, but the Jurats have not attached any significant weight to her evidence because it was not properly capable of being tested. However, because it largely draws on the contemporaneous documents, what those documents explain is what really matters. As regards the decision of the Plaintiff not to broaden the number of witnesses from whom evidence would be given, the Jurats are not minded to draw any specific adverse inferences against the Plaintiff arising from the absence of such witnesses. In their view, none would have been likely to explain events any differently from how Ms Rapoport did, so balancing her and Mr Erochkine's evidence is also what matters. Adopting the language of the ***Boreh*** case, it was the two of them who were involved in the "swearing match". The Jurats also considered that the explanation offered by Advocate Williams as to why he did not cross-examine Ms Bochkova about the events that were in issue was insufficient and that this amounted to a decision on behalf of the Defendant to forego the opportunity to question her outside the context of her role in the disclosure exercise and that the Defendant must have had its reasons for not wishing to afford the Plaintiff the opportunity to bolster its case by asking her questions about such matters in re-examination. The Jurats also took into account that the Defendant had chosen to confine itself to the evidence of Mr Erochkine. Given that personnel at Saffery Champness (Suisse) SA ("Saffery Champness") had acted as director of the Defendant at the material times and had been engaging quite significantly with Rusnano personnel on its behalf, the decision of the Defendant not to call any of them as witnesses of those events, possibly for similar reasons to those advanced by Advocate Williams when making this submission about the potential for something adverse to the Defendant's case being stated, was a comparable

decision to that of the Plaintiff not to expand the witnesses it chose to call. In all those circumstances, the parties' choices in relation to the witnesses they called and tendered balanced each other out.

17. Turning next to those witnesses from whom the Court heard, the first was Ms Rapoport. Her examination-in-chief largely consisted in her confirming the truth of the four Affidavits she had signed in relation to these proceedings on 14 March, 2 April, 29 June and 26 August 2018 and adopting their content as her evidence. It has been an unusual feature of this case that so much of the evidence had been set out in detail in affidavit form, with voluminous exhibits. In addition to these four Affidavits in these proceedings, Advocate Brehaut also took Ms Rapoport to an Affidavit she had signed on 14 March 2018 in different proceedings before this Court (relating to the RN Pharma Trust) and to an Affidavit signed on the same date in proceedings before the High Court of Justice in the British Virgin Islands. On behalf of the Defendant, Advocate Williams objected to these Affidavits being relied upon where there had been no prior indication that they would stand as part of Ms Rapoport's evidence at the trial. Advocate Brehaut countered that they were included in the bundle and so it was preferable for the witness to confirm their truth under oath. The BVI proceedings , which will be dealt with in more detail in due course, sought injunctive relief against the Defendant (being the same entity as in these proceedings) in relation to the Didi shares and indicated that substantive relief would be sought in Guernsey as well. Those proceedings also sought disclosure from the entity hosting the Defendant's registered office. The proceedings relating to the RN Pharma Trust were referred to from time to time during the course of the trial and it has been suggested on behalf of the Plaintiff that it demonstrates a pattern of dealings by Mr Erochkine. The presiding judge directed the Jurats that these two Affidavits were not strictly speaking evidence on behalf of the Plaintiff in these proceedings because they had not been exhibited to the Affidavits of Ms Rapoport (or any other witness) as being evidence on which the Plaintiff would rely. The content of them was, in any event, generally covered by Ms Rapoport in the evidence she gave at trial. As such, they should not treat these Affidavits in the same manner as the four Affidavits directly related to these proceedings, which constituted her sworn evidence, but, in the same manner as other documents before the Court, they could afford to these documents such weight as they considered appropriate when reviewing all the circumstances of the action with which they were concerned.

18. The Jurats were reminded that Ms Rapoport had given her evidence by way of a videolink from Florence. This was less satisfactory than if she had appeared before the Court but she had been seriously unwell and so was unable to travel to Guernsey. The Court had been prepared to travel to Italy for the purpose of taking her evidence there under the terms of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, with the Plaintiff making the necessary arrangements to do so at the Florence International Mediation Chamber. Unfortunately, following a request under the terms of the Convention, no response had been received in time to make that plan feasible and so using the videolink was the next best option. The Jurats were reminded that they should take into account that Ms Rapoport's evidence was given through this medium as the only feasible option available and that they could properly make allowances for this. Ms Rapoport chose to give her evidence in English, even though this is not her first language.

19. The impression the Jurats formed of Ms Rapoport's evidence was not a particularly favourable one. They factored in that she had comparatively recently undergone major surgery and took into account the physical and psychological trauma that entailed. They noted that at times during her cross-examination by Advocate Williams she became distressed and that she also complained of being tired, which was partly understandable but at times appeared to verge on being tactical arising from the line of questioning being pursued. They further acknowledged that she chose to give her evidence without the assistance of an interpreter. However, the most damaging aspect of the way she gave her evidence was her contact with Mr Kiselev.

20. When the Court adjourned part-heard at the end of the first day of the trial, whilst Ms Rapoport was being cross-examined, she was given the usual warning not to talk about the case or anything relating to it overnight with anyone. Earlier that day she had been asked whether she had discussed her evidence with Mr Kiselev and she confirmed she had because of their working relationship. She had been asked whether she had seen Mr Kiselev the preceding weekend. After wishing to check her diary, she stated that she had, but she denied discussing the evidence she would be giving because the reason for seeing Mr Kiselev had been because it was his birthday. When the Court re-convened for the second day of the trial, she had, as requested, produced a copy of the diary she had consulted, which did not contain any entry relating to Mr Kiselev or his birthday. Her explanation was that seeing the dates had reminded her about it being his birthday and enabled her to recall that she had seen him. The Jurats consider that her request to consult her diary was simply a means of gaining some time before having to answer the question. However, it also transpired that the evening before she had met with Mr Kiselev in Florence and they had dined together. This was demonstrated by reference to social media posts by Mr Kiselev himself, which clearly show that he had taken photographs of landmark buildings in Florence that evening. Ms Rapoport explained that this had occurred because Mr Kiselev is her friend and he had been in Florence to support her physical circumstances where she could not carry anything particularly heavy. Again, she denied that they had spoken about the case. The Jurats do not believe her explanations. They do not find that Mr Kiselev had been seen by Ms Rapoport in the run-up to the trial and especially overnight when she was in the middle of being cross-examined without her having discussed the case and the evidence she was giving with him. As a result, the Jurats have asked themselves whether the responses she was giving to the questions posed could have been affected by her turning to someone else involved with the Rusnano Group and discussing what had happened and how to make the best of the situation. Although not generally concerned about the way in which the Plaintiff has chosen to seek to prove its case, if Mr Kiselev was someone who had a role to play in assisting the Court understand what happened at the time of the events in dispute, it would have been preferable had he been called to give evidence on behalf of the Plaintiff as well, rather than him being involved behind the scenes. In short, the Jurats entertain serious doubt that Ms Rapoport was attempting to recall what happened from her own memory and may well have been tailoring her evidence in such a way as to support the Plaintiff's case. What was involved was sufficiently important for both Ms Rapoport and Mr Kiselev for them to have met on these occasions and the suggestion that they did not discuss the case is a fanciful one, especially given Ms Rapoport's role as being the principal witness on behalf of the Plaintiff. As a result, the Jurats have decided that they do not accept all of Ms Rapoport's evidence, finding her not entirely credible in everything she said.

21. In relation to Ms Bochkova, she similarly confirmed, having affirmed, the truth of the content of her two Affidavits, which she had signed on 19 February and 2 April 2019. The Jurats recognise that she was not called by the Plaintiff to support its primary case seeking the rescission of the limited partnership agreement or the dissolution of the limited partnership and that Advocate Williams chose not to question her about such matters on behalf of the Defendant, but they consider that her role within the Rusnano Group meant that she was well aware of what was going on. An interpreter relayed the questions posed to her in Russian, but she largely answered in English. In relation to the way she described not having more by way of notes and other documents that would have supported the positions either side were taking, the Jurats find it incredible that such documentation does not exist. As a lawyer, purporting to rely on having a great memory does not ring true because everyone knows the vagaries of life are such that access to that memory can so suddenly be lost if the person concerned were no longer able to recall matters or, worse still, had died. Realistically, therefore, this was regarded by the Jurats as a poor explanation for the apparent paucity of documentation. Accordingly, insofar as it relates to the issue of the disclosure requirements on the part of the Plaintiff, the Jurats formed the impression that Ms Bochkova's evidence could not completely be relied upon. Against that conclusion, they were aware that Mr Erochkine, on behalf of the Defendant, did not allege that his former colleague, Ms Bochkova, would have lied to the

Court. However, because she did not give evidence in relation to the factual issues for the Jurats' determination, her evidence was of little direct assistance one way or the other to them on the issues that fell to them to resolve.

22. The Defendant called only Mr Erochkine. He also confirmed the truth of the four Affidavits he had sworn on 14 June and 11 July 2018 and on 8 February and 3 April 2019, adopting them as his evidence-in-chief. (There is also a brief Fifth Affidavit sworn on 10 June 2019 dealing with some further disclosure on behalf of the Defendant.) The Jurats found him to be a more convincing witness. He was generally calm when cross-examined. He appeared to find it surprising that anyone could question whether it was known that he was the beneficial owner of the Defendant, although the documents did not support his contention. One of the occasions when the Jurats found him to be less comfortable was in relation to the line of questioning about why he had not required his former employer to produce his HR file. His explanation that he chose not to pursue that aspect of the case because it was a complicated legal situation was not convincing. Instead, it looked like a deliberate decision because he was aware that there would be nothing recorded in that file that would assist the Defendant's case, which is what then happened when the file was directed by the Court to be produced. Similarly, his evidence that he had uploaded certain documents to a dataroom that had been created, including evidence relating to his beneficial ownership of the Defendant, did not ring true. It appeared to be an attempt to distract from the fact that the key document relating to beneficial ownership, being the nominee form, was not provided to the Plaintiff (or to others who might have wished to know by seeing such a document) and there were other attempts made by him to prevent others from being informed about his personal involvement in the Defendant (all of which will be explained in more detail in due course). Again, this means that the Jurats do not find that everything the Court was told by Mr Erochkine is believable, but the overall impression they formed of Mr Erochkine was more favourable than the view they have taken of Ms Rapoport.

23. These impressions relating to the three witnesses reinforce the Jurats' views that the guidance offered by reference to the ***Filatona Trading*** case are particularly relevant to their findings in this case. Each of the witnesses from whom the Court heard has not been completely satisfactory. There are clearly deep-seated feelings on the two sides whereas previously they were colleagues and even friends. In fact, the Jurats took the view that Ms Rapoport's comments about feeling betrayed both professionally and personally by Mr Erochkine after he left his employment accurately demonstrated the depth of her feelings about the situation. It seems that the desire to win this particular dispute has resulted in all of them losing their sense of objectivity to a degree, with the consequence that their overall ability to assist the Court has been somewhat undermined. The importance of having regard to the documents available becomes more focused.

The basis of the Plaintiff's claim

24. The Plaintiff's claim to be entitled to rescind the limited partnership agreement it entered is founded upon misrepresentation. It alleges that the misrepresentation was made fraudulently, recklessly or negligently. But for the representations made to it, the Plaintiff would not have entered into the LPA, in particular in relation to the unreasonable and uncommercial fees the Rusnano Group would be paying to a third party, and the Plaintiff would not have made the contributions it made under the terms of the LPA. Upon rescission, it is entitled to the return of those contributions from the Defendant or what those contributions now represent. The presiding judge highlighted to the Jurats the importance of returning time and again to the way the case was being put by the Plaintiff in relation to the misrepresentations pleaded, because a lot of what had been heard in evidence and in the written materials before the Court related to other matters and, however, interesting they might be as background, what matters is what the Plaintiff claims amounted to the misrepresentations made to it, as set out in the Amended Cause.

25. The representations on which the Plaintiff relies are set out in para. 25 of the Amended Cause, namely that the Defendant, through Mr Erochkine and/or Saffery Champness, expressly or impliedly represented that the Defendant, as general partner, "*was under the ultimate ownership and control of one or more of the companies within the Rusnano Group and, in turn, the Rusnano Group*" and that Mr Erochkine had no direct or indirect interest in the Defendant. The facts on which the Plaintiff relies to support that contention are set out in para. 26:

> "*(a) Both Mr Erochkine and representatives of Saffery Champness group repeatedly stated orally and in writing to representatives of the Plaintiff and the wider Rusnano Group that the Limited Partnership and the General Partner (both expressly and by implication) were under the ultimate ownership and control of one or more companies within the Rusnano Group and, in turn, the Rusnano Group. Simply by way of illustration, in an email sent at 20:25 on 11 July 2016, Mr Ross Belhomme of the Saffery Champness group stated, on behalf of the General Partner, that "CRGF is controlled by Saffery Champness as the professionals appointed to manage the fund for Rusnano. Rusnano ultimately own 100% and can remove us at any point and therefore have effective 100% control over this fund and investment". This email was initially addressed to Hong Kong lawyers assisting with the Limited Partnership's acquisition of shares in Xiaoju Kuaizhi Inc, but later on 11 July 2016 was copied to Mr Erochkine and Ms Olga Bochkova (Head of Legal for another entity within the Rusnano Group who also acted on behalf of the Plaintiff). Mr Erochkine replied stating "I think this is ok".*
>
> *(b) Further, as set out above, pursuant to the Employments Agreements Mr Erochkine was prohibited from holding a direct or indirect interest in any investment vehicle in which JSC Rusnano, Rusnano Management Company LLC or Rusnano Capital LLC was also participating (whether directly or indirectly) without the permission of the Commission on Corporate Ethics.*
>
> *(c) Accordingly, if Mr Erochkine had an interest in the General Partner (whether directly or indirectly) he was obliged to file an application / notification with the Commission on Corporate Ethics to seek its permission to holding such an interest.*
>
> *(d) Mr Erochkine at no stage, however, filed an application / notification with the Commission on Corporate Ethics, still less obtained its permission to holding any interest in the General Partner.*
>
> *(e) Further, Mr Erochkine did not inform the Rusnano Group at any time prior to July 2017 that he had any interest in the General Partner.*
>
> *(f) Further, as set out above, Mr Erochkine was otherwise:*
>
> *(i) obliged to act in the best interests of JSC Rusnano, Rusnano Management Company LLC and Rusnano Capital LLC;*
>
> *(ii) obliged to take efforts to prevent any potential conflicts between himself and the businesses of JSC Rusnano, Rusnano Management Company LLC and/or Rusnano Capital LLC; and*
>
> *(iii) not to act or omit to act in such a way that may cause financial, property, reputational or other damages to the interests of Rusnano Capital LLC, Rusnano Management Company LLC and/or JSC*

Rusnano, or to their subsidiaries, associates or 'portfolio companies'.

(g) Further, as Mr Erochkine well knew, JSC Rusnano was only permitted to provide financing to projects that would be under the direct management or co-management of the Rusnano Group pursuant to article 6.1 of the Statute on Terms and Conditions of Financing of Investments Projects (subject to exemptions set out in article 6.8 which did not apply).

(h) Further, Mr Erochkine well knew that the Plaintiff (and, in particular, Ms Rapoport and Ms Bochkova on behalf of the Plaintiff) mistakenly believed, and acted under the belief, that the General Partner was under the ultimate ownership and control of one or more companies within the Rusnano Group and, in turn, the Rusnano Group, yet (as set out in more detail below) took no step at any time prior to late July 2017 to correct such mistaken belief."

The basis on which the Plaintiff claims that the representations on which it relies were made fall into two distinct types. One category relates to the silence of Mr Erochkine despite the obligations it is claimed he was under pursuant to his employment contracts and extends to his knowledge that what was set up contravened the terms of what was permitted within the Rusnano Group. The other category relates to communications actually made by him or by Saffery Champness on behalf of the Defendant to representatives of the Plaintiff and particularly Ms Rapoport.

26. The reliance placed on conversations between Mr Erochkine and Ms Rapoport is demonstrated by para. 15(b) of the Amended Cause:

"*During conversations with Ms Irina Rapoport (the Deputy Head of Investment Division K), and Mr Erochkine's immediate manager), Mr Erochkine informed Ms Rapoport that:*

(i) The Limited Partnership was a suitable structure through which the Plaintiff and the wider Rusnano Group could invest in China in an effective, cost-efficient and tax-efficient way.

(ii) The Limited Partnership was an "off the shelf" structure created by the Saffery Champness group.

(iii) Although the Limited Partnership was initially controlled by the Saffery Champness group, if the Plaintiff became the limited partner in place of Rysaffe Actionnaires Sarl ("actionnaires" being French for "shareholders"), the Rusnano Group, through the Plaintiff, would ultimately own and control the Limited Partnership.

(iv) Although entities within the Saffery Champness group would continue to have nominal and administrative roles in relation to the Limited Partnership structure, including Rysaffe Administrateurs Sarl acting as director of the General Partner, Rysaffe Administrateurs Sarl and/or other entities affiliated with Saffery Champness would act in accordance with the instructions of the Plaintiff in relation to the Limited Partnership (such that the Limited Partnership in general, and the General Partner in particular, would be under the ultimate control of the Rusnano Group)."

The Defendant's *Exception de forme* sought clarification as to the dates of these conversations, who participated and what was said. The Plaintiff's response referred to many conversations between Mr Erochkine and Ms Rapoport from the second half of 2014 until

July 2016 and makes particular mention of a meeting on or around 22 June 2016, with these discussions taking place on the telephone or in the Plaintiff's office in Moscow.

27. In Les Defenses, the Defendant denies para. 25 of the Amended Cause. In respect of para. 26, it denies all the sub-paragraphs, except for sub-para. (f), which relates to obligations arising from Mr Erochkine's contracts of employment, which is not admitted. Further, there is an express denial that Mr Erochkine entertained the belief that the arrangement by which he owned the general partner was forbidden by Russian law as set out in para. 26(g). In addition, Les Defenses suggest that the example given in para. 26(a) of the e-mail sent on 11 July 2016 proceeds from a false premise, because the response from Mr Erochkine set out at the end of it does not relate to the enquiry mentioned, but to a different query within that chain of messages. In relation to the references the Plaintiff makes to the Code of Conduct, these are recommendatory only and so do not create any binding obligation. In general and in any event, Ms Rapoport was already aware of the facts relating to the Defendant as general partner.

28. The Defendant also denies para. 15 of the Amended Cause, other than to accept that Mr Erochkine took steps to establish the limited partnership. In particular, at para. 27 of Les Defenses, the Defendant states:

> "*Before the Limited Partnership was created Mr Erochkine discussed the ownership of the general partner with Ms Rapoport. It was [Rusnano Capital LLC's] preference that the General Partner should be owned by Mr Erochkine and it was ultimately decided in discussion with the Rusnano Group that the general partner should be Mr Erochkine.*"

29. In respect of agreeing to execute the amended limited partnership agreement and thereafter making the contributions to it, at para. 27 of the Amended Cause, the Plaintiff says it relied on the truth of the representations, which are denied to have been made by the Defendant. However, in respect of the contributions, the Defendant alleges in Les Defenses that these were made because the Plaintiff was obliged under the terms to make them, which meant that ownership and control of the general partner was irrelevant to the Plaintiff's decision-making in that regard. In its Réplique, the Plaintiff denies that this was irrelevant because its belief in the truth of the representations led to it agreeing to execute the limited partnership agreement and its continued belief in the truth meant that it made the contributions it was obliged to make rather than taking steps at that point to rescind the agreement.

Non-compliance with disclosure obligations

30. Against the case advanced on behalf of the Plaintiff, one of the pervasive submissions made by Advocate Williams on behalf of the Defendant has been that the Plaintiff has failed to comply with its disclosure obligations under the Royal Court Civil Rules, 2007 to such an extent that a fair trial of the issues has become impossible. As a matter of procedure, he invites the Court to dismiss the action without the Jurats needing to consider any factual issues at all. As an alternative, if the case is left to the Jurats, they can be invited to draw adverse inferences from the absence of what should have been expected to be disclosed and, in particular, to conclude that the missing documents would support the Defendant's case that the Plaintiff knew all along that Mr Erochkine was the beneficial owner of the Defendant.

31. The legal basis supporting these submissions is found in *Arrow Nominees Inc v Blackledge* [2000] 2 BCLC 167. This case involved unfair prejudice proceedings in England and an application to strike out the petition because, during discovery, forged documents were disclosed with the result that a fair trial was no longer possible. That application was dismissed, but the judge indicated that a further application could be brought and might succeed. When the application was renewed at trial, the judge found that the person concerned had lied about the circumstances of the forgeries and that there was a serious risk

that other documents had been forged, but he nevertheless ruled that there could still be a fair trial and so again dismissed the application to strike out. The English Court of Appeal concluded that the judge should have held that a fair trial could not take place and so granted the strike out application.

32. In giving the judgment of the court, Chadwick LJ explained the position as follows (at para. 54):

> "*I adopt, as a general principle, the observations of Millett J in Logicrose Ltd v Southend United Football Club Ltd (1988) Times, 5 March, that the object of the rules as to discovery is to secure the fair trial of the action in accordance with the due process of the court; and that, accordingly, a party is not to be deprived of his right to a proper trial as a penalty for disobedience of those rules, even if such disobedience amounts to contempt for or defiance of the court, if that object is ultimately secured, by (for example) the late production of a document which has been withheld. But where a litigant's conduct puts the fairness of the trial in jeopardy, where it is such that any judgment in favour of the litigant would have to be regarded as unsafe, or where it amounts to such an abuse of the process of the court as to render further proceedings unsatisfactory and to prevent the court from doing justice, the court is entitled, indeed, I would hold bound, to refuse to allow that litigant to take further part in the proceedings and (where appropriate) to determine the proceedings against him. The reasons, as it seems to me, is that it is no part of the court's function to proceed to trial if to do so would give rise to a substantial risk of injustice. The function of the court is to do justice between the parties; not to allow its process to be used as a means of achieving injustice. A litigant who has demonstrated that he is determined to pursue proceedings with the object of preventing a fair trial has forfeited his right to take part in the trial. His object is inimical to the process which he purports to invoke.*"

In the following paragraph, His Lordship explained that a court does not do justice to other parties to proceedings if the trial concerned takes longer than it should because it is "hijacked" by needing to investigate what documents were false and what documents had been destroyed, meaning that it occupied more of the court's time than was necessary for the purpose of deciding the real points in issue. This made it unfair to the other parties to that case and also to others waiting for their matters to be heard. This is because a fair trial in this context means one conducted between the parties without undue expenditure of time and money and also having regard to the demands of other litigants on the finite resources of the court.

33. Advocate Williams draws further support for this principle by reference to what the Jersey Court of Appeal decided in *Alhamrani v Alhamrani* 2009 JLR 301, in which the discretion to decide a case against a party because of the litigant's conduct putting the fairness of the trial at unacceptable risk or drawing adverse inferences was confirmed as a matter of Jersey law. At para. 24, Beloff JA summarised the position as follows:

> "*… if a litigant's conduct puts the fairness of the trial at unacceptable risk (so that any judgment in favour of a litigant would be regarded as unsafe), a court is bound to refuse that litigant to take further part in the proceedings and (if the litigant is a claimant) to determine the claim against him.*"

No reliance is placed by the Defendant on any previous decision in Guernsey along these lines. However, the Court adopts these principles as they operate in England and Jersey as if they also represent the law of Guernsey. They are founded in common sense and this Court should, and would, respond to the type of risk of injustice mentioned in a similar fashion.

34. Advocate Williams has provided the Court with a detailed schedule of the documents the Defendant submits are missing from the Plaintiff's disclosure. He points first to the absence

of the level of notes, or minutes or other records of the meetings that are acknowledged to have taken place that would be expected. By highlighting the instances where meeting notes have been disclosed, he suggests that it must follow that other meeting notes relevant to the establishment of the limited partnership and how it was to operate must exist. The absence of more documentation reflecting what was discussed at these meetings is not credible and the inference to be drawn is that the Plaintiff has failed to comply with its duties of disclosure. Further, had those duties been performed satisfactorily, it would have shown that the basis of the Defendant's case is supported by the documentary record. This is a form of abuse of the process of the Court and so should not be countenanced.

35. The second issue raised on disclosure is a related one and concerns the absence of notes of Ms Bochkova's telephone calls and meetings. Advocate Williams suggests that, even making allowances for different cultural approaches, a Russian lawyer would, like any other lawyer, make and keep some file notes. Further, her comment that the absence of notes was understandable because she has a great memory is simply incapable of belief. It would have been more credible if the notes had been identified even if there were then a claim that they were not disclosable as being covered by legal privilege.

36. The third broad category to which the Defendant refers relates to e-mails passing between Ms Rapoport and Ms Bochkova. As part of the Plaintiff's case, both Ms Rapoport and Ms Bochkova accept that they had regular, even daily, contact by e-mail. Ms Bochkova suggests that there are no e-mails passing between them forming part of the Plaintiff's disclosure because there was no electronic correspondence relating to the limited partnership. Again, Advocate Williams suggests that that is just not credible and does not explain the failure to disclose documents that should have been disclosed.

37. The fourth category of documents the Defendant says cannot amount to full disclosure in accordance with the Plaintiff's obligations are calendars, diaries and electronic meeting invitations. Ms Bochkova has claimed to have searched the Outlook calendars of seven individuals, including Ms Rapoport, Mr Erochkine and herself, as well as four others who did not give oral evidence (Mr Lisov, Ms Lukyanova, Ms Petrochenko and Ms Davydochkina), yet all that was disclosed by the Plaintiff were a couple of weeks from Ms Rapoport's calendar in March and April 2015 and, very late in the day, her calendar for June and July 2016. The Defendant suggests that there must have been more relevant entries than these few.

38. The next category to which Advocate Williams has drawn attention is, it seems, a specific instance of these more general complaints because it relates to negotiations or discussions around the Plaintiff's execution of the LPA on 11 November 2015. In particular, he submits that this type of document would plainly be relevant to the question of whether those acting on behalf of the Plaintiff believed that the other party to the agreement was an entity controlled from within the Rusnano Group, or whether, as Mr Erochkine claims, it was always intended to be an arm's length entity. He further points out that there were three directors of the Plaintiff at the time, being Ms Rapoport and two directors from the Intertrust group (Frank Deconinck and Giuseppe Di Modica), yet there has been no e-mail traffic disclosed showing that those directors were consulted and how they responded. This should have been the case where Ms Bochkova had informed Mr Erochkine by e-mail on 30 October 2015 that the documentation would be sent by her to the directors. This is a highly relevant aspect of the Plaintiff's case because it needs to show that the directing minds of the Plaintiff were misled as alleged.

39. The sixth category to which the Defendant refers relates to Mr Kiselev's e-mails. As the person to whom Ms Rapoport reported, Advocate Williams suggests that there must have been some relevant e-mail traffic between them, which therefore should have been disclosed. Similarly, the next category relates to e-mails sent or received by Anatoly Chubais, who in turn sat immediately above Mr Kiselev in terms of reporting. In relation to him, Ms

Bochkova had not even conducted a search of his e-mails. The final category relating to searches of e-mails relates to those in Mr Erochkine's work e-mail store. The Defendant suggests that, because the investment using the limited partnership was one of the major projects on which Mr Erochkine worked, there must have been a significant number of disclosable documents of this type.

40. The ninth category of documents highlighted in Advocate Williams' schedule relates to the instructions given by Rusnano to its advisers, PricewaterhouseCoopers, arguing that it is simply not credible that this resulted from instructions given orally. The Defendant believes that the report produced, running as it does to 39 pages of detailed tax advice, can only have been prepared following written instructions, yet no written instructions have been disclosed.

41. The tenth category relates to whether or not the investment in China had a formal project ID number and so a fund passport, which would then contain key information. If this existed, then it was a potential source that needed to be searched. Advocate Williams suggests that the evidence on this issue was hopelessly confused and inconsistent, with the consequence that there could not have been any systematic search or review of documents that would have been unearthed if the project ID had been properly used for this purpose.

42. The next category to which the Defendant draws attention relates to the period when the Plaintiff says its personnel became aware, following Mr Erochkine's resignation, that there were issues with the general partner and conducted an investigation. The Defendant questions why, if a fairly fevered investigation were being undertaken, as claimed, there are not more documents disclosed from that period relating to that investigation.

43. The final set of categories are all arguably smaller issues. Advocate Williams points out that the Plaintiff has disclosed two versions of the Regulation on the Financing Procedure and Terms of Investment Projects of Rusnano OJSC numbered 2 and 6 and dating from 6 June 2014 and 26 December 2016 respectively, but has not disclosed those versions, presumably numbered 3, 4 and 5, between those dates. The Defendant also criticises the Plaintiff for failing to disclose policies or procedures from the Plaintiff or from RN Consulting SA. Further, there was no clarity as to whether Mr Erochkine had been enrolled as a participant in the Rusnano Management Company's long-term bonus scheme because the list of participants has not been disclosed. Where Ms Rapoport has referred in her evidence to placing reliance on a decision of the Supervisory Board relating to the establishment of RN Consulting SA, no document setting out such a decision has ever been disclosed. In relation to the Advisory Board of Rusnano Capital LLC, Mr Erochkine believes there would be documentation found in minutes or resolutions of this Board relating to the limited partnership, although Ms Bochkova stated that she was on this Board and knew the limited partnership was never discussed, but the Defendant suggests that this is not the same as conducting a reasonable search. Finally, the Defendant highlights that the process leading to the preparation of a draft investment advisory agreement with RN Consulting SA must have involved instructions being given by Ms Rapoport, yet no such documentation has been disclosed.

44. Although this issue is one of procedure, and so for determination by the presiding judge in accordance with section 6(2)(a) of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950, the presiding judge invited the Jurats to consider whether they felt they had been provided with all the documentation they expected would be before the Court when it came to reaching their factual findings. This was done with a view to informing better the decision of the presiding judge on the merits of Advocate Williams' submissions.

45. In general, the Jurats are surprised that an organisation such as the Rusnano Group, which they find to be a bureaucratic one, would not have more documents than those produced. Their overall impression is that the production of e-mail traffic and other forms of instant messaging, such as WhatsApp, appears to be incomplete. Accordingly, they doubt that the level of disclosure of the Plaintiff has been as full as it could, and arguably should, have been.

This has hampered their consideration of the issues they have to resolve. However, they further noted that the bulk of the documentation produced on behalf of the Defendant derives from Saffery Champness. In itself, this is unsurprising because that group's document management system would inevitably store its dealings with others relating to the limited partnership (and also the RN Pharma Trust, in which Saffery Champness personnel were also involved). This does mean that there are questions about how complete the searching undertaken by Mr Erochkine has been. Whilst he would not have had access to any documents left with the Rusnano Group, he used his private e-mail address frequently and there have been no key documents available to him through that source to support the Defendant's defence of the claims brought by the Plaintiff. In particular, the Jurats reject Mr Erochkine's claims to have uploaded documents showing his personal involvement in the Defendant to the dataroom created to assist Saffery Champness (which will be covered in more detail later). In summary, whilst there have been plenty of documents before the Court, the Jurats suspect that there could well have been even more, although whether they would have assisted the Defendant or the Plaintiff is questionable.

46. The presiding judge shares those impressions in deciding how to approach the submission that he should withdraw the case from the Jurats. In his judgment, the question about disclosure relates to the Plaintiff's claim to be entitled to rescind the LPA; it does not relate to the Plaintiff's application to dissolve the limited partnership under the provisions of the Limited Partnerships (Guernsey) Law, 1995. Had the proceedings been confined to that issue only, then the way in which the application was originally brought meant that it would have been dealt with on Affidavit evidence, also having regard to the materials exhibited. The disclosure obligations under the 2007 Rules only arose once the proceedings were converted into an action. Accordingly, he has focused on the relevance of the issue to the rescission claim.

47. Disclosure was an issue raised on behalf of the Defendant by Advocate Williams from the time of the case management conference in this action on 14 December 2018. By that time, extensive Affidavit evidence had already been filed. In those circumstances, the Court chose to dispense with standard disclosure, as is permitted by rule 65(2). It appeared contrary to the overriding objective to require both parties to undertake the searches required by rule 66 when there was already, on their respective cases, all the material before the Court that such searches would unearth. However, both parties were required to serve and file disclosure statements, but without any list of documents, in a form expected by rule 69. The Plaintiff's disclosure statement is dated 17 January 2019 and the Defendant's is dated 18 January 2019. They are signed by Ms Bochkova and Mr Erochkine respectively. The ongoing duty of disclosure under rule 70 was acknowledged by both parties.

48. The Defendant was dissatisfied with the Plaintiff's disclosure statement and also gave an indication that an application might be forthcoming relating to its disclosure. An application dated 25 January 2019 was made by which the Defendant sought a timetable for any such application and the consequential delay of the resumption of the case management conference. A revised and slightly more expanded, disclosure statement on behalf of the Plaintiff was then provided by Ms Bochkova dated 31 January 2019. There was then a hearing on 1 February 2019 at which these procedural issues were raised before the Court. In particular, Advocate Williams argued that it should have been Ms Rapoport who took responsibility for the Plaintiff's disclosure statement rather than Ms Bochkova. This suggestion was rejected by the presiding judge, but it was becoming apparent that there was a degree of personal grievance arising by Mr Erochkine, giving instructions on behalf of the Defendant to Advocate Williams, towards Ms Rapoport in relation to these matters. There was a further hearing on 26 February 2019 at which the possibility of applying for specific disclosure was ventilated. There was then the pre-trial review on 3 May 2019, which offered another occasion on which disclosure issues could be raised. Ultimately, though, despite querying over a protracted period of time the adequacy of the Plaintiff's disclosure, the Defendant never pursued any application, as it could have done, relating to disclosure.

49. In those circumstances, especially where the means of seeking appropriate relief were clearly available to the Defendant, it is an unattractive argument to advance during the trial itself a submission that the trial should be treated as an abuse of process because of the Plaintiff's conduct in respect of its ongoing disclosure obligations. Both parties have a duty to ensure that the overriding objective of the 2007 Rules are satisfied. The decision of the Defendant not to make a specific disclosure application under rule 71 necessarily has to be factored into the overall determination as to whether to proceed to determine the Plaintiff's claim does injustice to the Defendant. Further, the way in which the submission has been advanced by Advocate Williams shows clearly that there could have been an all-encompassing application for specific disclosure of the categories of documents set out in the schedule he supplied. Alternatively, the Defendant could have approached this issue in a more targeted fashion, perhaps choosing one or more of those categories with a view to ascertaining whether, if such an order had been made, it turned out that further documentation was produced, in which case it might have been more acceptable to pursue the wider application. Neither option was taken.

50. In this regard, reference can also be made to two particular issues that arose during the course of the trial. Complaint was made that Mr Erochkine had not been provided with sight of the human resources file (or files) ("the HR file") relating to him that his former employers must have created and held and also that the register of conflicts maintained had also not been disclosed. In respect of the former, it was suggested on behalf of the Defendant that Mr Erochkine had not used the means available to him under Russian law to obtain sight of his HR file because it was too expensive and complicated to do so. However, he was saying in his evidence that there should be documentation on that file that would show what he was saying about having told his employer about his interest in the Defendant was accurate. Similarly, he contended that, whilst it was common ground that there had been no formal application to the Ethics Commission (about which much more will be explained later in this judgment), he had been told that his interest in the Defendant would be noted. Despite these contentions, the Defendant had not seen fit to make any application to require disclosure from the Plaintiff of these files. As a result, of its own motion, the Court invited representations from the parties about these two documents and then ordered the Plaintiff to produce both Mr Erochkine's HR file and the register of conflicts, which were duly provided during the course of the hearing. Permission was given to Mr Erochkine to review these documents over the weekend, when he was still subject to cross-examination, so that he was allowed to give any instructions to Advocate Williams arising from his review of this additional material.

51. Although the content of Mr Erochkine's HR file came as a surprise to the Court, because it included much less than might have been expected to be on it had he been employed, for example, by a British employer, the experts on Russian law were conveniently available to the Court, who confirmed that the contents of this file were as expected. Unsurprisingly, there was nothing on the face of this file that supported Mr Erochkine's contention that it would have contained some material supportive of the Defendant's case. Similarly, the register of conflicts did not contain any entry relating to Mr Erochkine. This was a case of the Plaintiff needing to prove a negative, but it has confirmed that there was nothing in it relating to compliance with any employment-related obligations that exist.

52. The approach that the Defendant took to these two particular documents, or files, was consistent with its overall approach. The Defendant has raised concerns about not having access to material that it says would exonerate Mr Erochkine but took no active steps to ensure that they were before the Court. Instead, the Defendant has relied on the approach of not using procedural means available to it so that it can make the submission advanced by Advocate Williams that it has not had a fair trial and injustice would result if the Plaintiff's action for rescission is determined. The presiding judge is satisfied that this is a submission without merit and that it would actually do injustice to both parties if the action were dismissed without any further adjudication.

53. The position is very different from the *Arrow Nominees* case. There are no forged documents where there is a spectre that other documents before the Court are also forgeries. The issues in the present case are much more about what was provided between the parties and those acting on their behalves and, where documents do not exist, why that is the case. The suggestion that there would be a whole raft of documentation that Ms Bochkova has conveniently overlooked disclosing because those documents would be adverse to the Plaintiff's case in that they would support the contentions of Mr Erochkine that both Ms Rapoport and Ms Bochkova (and possibly others) were fully aware of his personal interest in the Defendant before the LPA was executed does not of itself mean that the Jurats would be unable to reach their conclusions as to who knew what and at what time. The justice of the case requires those findings to be made on the basis of the material before the Court rather than accepting this procedural device to avoid such a determination happening. More particularly, the way that the Plaintiff's case is put relies heavily on the obligations arising from Mr Erochkine's employment founding the representation on which it relies, with the discussions and any other documents that might exist relating more to the other basis on which the case is put, being what was said and done, or omitted to be said and done, by Mr Erochkine and/or Saffery Champness. Rather than the general complaints made on behalf of the Defendant about the overall paucity of documents disclosed by the Plaintiff, these matters appear to the presiding judge to fall squarely in the realms of an appropriate specific disclosure application being made, which the Defendant threatened, but then never pursued. As such, the Defendant has to accept its share of any blame for the absence of any such documents to support its case.

54. Although the impression formed by the Jurats of Ms Bochkova as a witness was not particularly favourable, in relation to this procedural issue the presiding judge has formed a slightly different view. Whilst agreeing that it is surprising that some of the categories of documents in the schedule provided by Advocate Williams are not found in greater numbers, eg, notes of meetings and discussions, e-mail exchanges relevant to the limited partnership project and some of the other message platforms, like WhatsApp, being used by those involved, Ms Bochkova has stated that she had carried out what she considered to be a reasonable search of the places where relevant documents would be expected to be found and she then signed the Plaintiff's disclosure statement. Whilst she accepted that she has not been involved in litigation in a British jurisdiction previously, and so has no great familiarity with what is expected of her, she also had the benefit of assistance from the Plaintiff's Advocates, who similarly confirmed they were satisfied that the disclosure statement was a proper one to put before the Court. Further, it was not suggested on behalf of the Defendant that Ms Bochkova had lied to this Court. In these circumstances, as a lawyer who is no doubt subject to some form of regulation in the Russian Federation, the presiding judge accepts the answers given by Ms Bochkova as truthful, recognising that to do otherwise would have potential ramifications for her. He further takes into account that her evidence was largely confined to the question of disclosure because of the way in which Advocate Williams chose not to explore the substantive issues with her, despite the level of her involvement clearly being quite considerable. In forming his view on how to approach all this evidence, he also took into account the way in which Mr Erochkine's Third Affidavit was directed towards the question of disclosure. In short, the Defendant had chosen to tackle the question of disclosure in what might be considered to be an unconventional manner and so, despite some misgivings about the completeness of the materials that were before the Court, he was and remains satisfied that the trial has not resulted in unfairness to the Defendant and so has decided that it would be wrong to withdraw the case from further consideration and determination, in particular by the Jurats.

55. Whilst emphasising that their approaches to these issues were very much matters for their assessment, the presiding judge did direct the Jurats that they were entitled to consider whether the absence of any document, whether specific or of one or more of the categories outlined in the schedule prepared by Advocate Williams, is such that it is appropriate to draw

any adverse inferences against the Plaintiff. Further, the issue of adverse inferences could also operate against the Defendant if they considered the Defendant had not fully complied with its disclosure obligations. They were asked to consider whether, in the light of the documents that were before the Court, it was possible that some other documents exist (or existed) that would support the contention of Mr Erochkine that Ms Rapoport, and possibly others, knew full well that Mr Erochkine was acting as agreed. In doing so, they were able to balance those occasions where the documents before the Court suggested that he had something to hide and, therefore, whether there was any substance to his suggestion that there was other material that would explain the knowledge of others. They were invited to consider what really amounted to an allegation from Mr Erochkine that there had been some underlying conspiracy between the witnesses from whom the Court had heard to depart from what was expected of them by their employers, which had resulted in the suppression of material that would now be adverse to the Plaintiff's case. If they felt that there had been that level of non-disclosure of relevant material, it was open to them to draw adverse inferences.

Facts

56. When making their factual findings on the basis of the documents and the written and oral evidence before them, the Jurats were reminded by the presiding judge that there were some key dates to bear in mind. This was because the Plaintiff's case was that, but for the misrepresentations, it would not have entered into the LPA, although it also pleads that it would not have made the contributions required under it, which were later, or allowed them to be used to purchase the Didi shares (para. 27 of the Amended Cause). Accordingly, the first relevant time for the Jurats to consider was what the position was up until the execution of the LPA. Ms Rapoport had signed this on 11 November 2015, but it was not executed on behalf of the Defendant and the other counterparty until 3 December 2015, and during that short period the Plaintiff could have avoided being party to the LPA had something happened that would cause it to do so. Because the inducement to enter the LPA on which the Plaintiff relies necessarily had to operate before 3 December 2015, the time thereafter up to the making of the first large contribution to fund the purchase of the Didi shares on 8 July 2016 relates more to the opportunity that could have arisen to seek to rescind the LPA before it really became operative. Subsequent events are still relevant to the question of who knew what and when because of the reactions to what then happened, but the primary focus needed to be on events up to 3 December 2015 to decide first whether there had been any misrepresentation and then whether it operated as an inducement. Events much later would need to be considered principally in relation to another issue raised by the Defendant relating to affirmation.

57. By way of a little background to the establishment of the limited partnership that is the subject of this action, JSC Rusnano is the parent company of a group of companies controlled by it and it supports the implementation of Russian state policy for development of the nanotechnology industry by investing directly and through nanotechnology funds in financially efficient high-tech projects, thereby facilitating the development of new industries in Russia. This entity was originally called Russian Technologies Corporation. From a minute dated 13 October 2009, permission was given to participate in the international investment fund of nanotechnologies through acquiring an interest in the capital for a foreign-registered entity (Rusnano Capital Fund) up to $1 billion, in order to raise foreign investments for joint international funds managed by foreign management companies and controlled by Rusnano Capital, where the interest of Rusnano Capital Fund in any such joint international fund was not to exceed 50% of the total interest of each separate joint international fund.

58. The structure charts produced show the Plaintiff sitting directly below JSC Rusnano and being owned as to 99.998% by that entity. The remaining 0.002% is owned by Rusnano Capital AG, incorporated in Switzerland, which itself is wholly owned by JSC Rusnano, although it is now in liquidation. In turn, Rusnano Capital AG wholly owns RN Consulting SA, which is incorporated in Luxembourg, and it also owns 99% of Rusnano Capital LLC,

incorporated in Russia, with the remaining 1% of that entity being owned by RN Consulting SA. In the board pack for a meeting of the directors of Rusnano Capital AG on 30 January 2011, the relationship is further explained as being that the purpose for which the Plaintiff was established was to reduce the tax burden on Rusnano when investing in funds, with cash being transferred from JSC Rusnano to Fonds Rusnano Capital AG through purchases of additional shares issued by the Plaintiff, those transfers being made in instalments upon receipt of capital calls from funds and with the purpose of RN Consulting SA being to give assistance in finding and implementing investment projects (under the agreement with the Management Company) and for cash flow separation (investment from management fees). In other words, the Plaintiff is the investment vehicle of the Group, utilising funds provided by JSC Rusnano by way of setting up joint investment funds in foreign jurisdictions with third party investors and Rusnano Capital LLC undertook consulting services regarding the Plaintiff's investment decisions. Mr Erochkine describes the Rusnano Capital group as a fund of funds.

59. Mr Erochkine was employed by Rusnano Capital LLC with effect from 1 April 2010 in the position of Project Director under Employment Contract No. 7. The Court will deal with the detailed terms and the agreed variations to them when it considers the expert evidence. However, the job description associated with that role, which Mr Erochkine signed on his first day of employment, sets out that he was to rely on the laws of the Russian Federation, the company's Articles of Association, orders and directives from the employees he reports to pursuant to that job description, the job description itself and the Company's internal code of conduct. Mr Erochkine was to report to the department head, Ms Rapoport. His official duties included implementing the corporate policy in investor relations and its specific stages, participating in the implementation of the information disclosure system, the transparency policy and the company's working plans in investor relations, engaging in ongoing liaison and maintaining contacts with investors, mass media representatives, informing them about official resolutions and orders of the company's management, preparing responses to official requests, overseeing timely distribution of information materials about the company's activities and ensuring compliance with the management's decisions, informing the management in a timely manner about the current progress of work. Amongst his rights were the entitlement to represent a business unit before other organizations as instructed by management, to request at the management's instruction or obtain on the company's orders and directives from other business units any information and materials required to fulfil his official duties and to provide clarifications to the company's business units how to comply with resolutions passed by the company's governing bodies.

60. An early example of a top level decision of what became JSC Rusnano is found in the Minutes of the meeting of the executive board of that entity dated 14 September 2010. It deals with a pharmaceutical fund, which had a target total value of US$900 million, where the total amount to be invested by Rusnano was not to exceed US$300 million. It re-stated the minute from 13 October 2009 as being to participate in the international investment fund of nanotechnologies by way of acquisition of the participatory interests in the capital of the legal entity registered in a foreign jurisdiction (the Rusnano Capital Fund) with the total stake of Rusnano in that share capital of up to 100% and a total contribution of not more than $1 billion, for raising foreign investments into the joint international funds managed by foreign management companies and controlled by Rusnano Capital, while the stake of Rusnano Capital Fund in joint international funds shall not exceed 50% of the total interest of each separate joint international fund. The meeting also approved the term sheet presented in respect of funding through the Plaintiff, including appointing Ms Rapoport to the office of General Director of Rusnano Capital LLC as a member of the Plaintiff's board representing Rusnano, instructing her to ensure that the resolutions adopted by Rusnano would be duly implemented. The term sheet refers to the structure of the investment including two Guernsey limited partnerships (Celtic Pharma Holdings II LLP and Celtic Pharma Holdings III LLP). It states that Rusnano would participate in the Funds by way of acquisition of shares in the Plaintiff, which would act as limited partner in the Funds and make investments in them

pursuant to its capital commitments following the receipt of the relevant capital calls from the Funds. The general partner was to be Celta Pharma Holdings General LP, which was to be controlled by Rusnano Capital AG, a subsidiary of Rusnano, by way of participation in the capital of the general partner through Rusnano Consulting SA, which in turn would hold special rights to manage the general partner, including having a veto *inter alia* relating to making investments, accepting new partners and making changes to the documents relating to the Fund that would infringe on those interests of Rusnano Consulting SA. The funding being provided to the Plaintiff by Rusnano was made subject to the strict conditions set out in Schedule 8 to the Minutes. Carey Olsen gave letters of advice in respect of each of these two limited partnerships to the director of the Plaintiff and to the director of RN Consulting SA by letters dated 16 September 2010.

61. At an extraordinary general meeting of RN Consulting SA held on 18 November 2010, Mr Erochkine and Ms Rapoport, along with Emile Wirtz, were appointed as directors of the company for a term to expire after the annual general meeting to be held in 2016. A week before, Mr Erochkine had confirmed that he would accept election as a director of this company.

62. It is common ground that the other big project on which Mr Erochkine worked during his employment within the Rusnano Group was this pharmaceutical fund. There have been other proceedings before the Court relating to that fund, finally culminating in an agreed order on 21 August 2020, by which the Respondents to that application agreed to terminate the RN Pharma Trust and distribute its assets to the Applicant, Rusnano Capital AG, and to pay a specified amount in settlement of the Applicant's costs. Although quite a lot of material has been put before the Court in these proceedings relating to the pharmaceutical fund, the Court regards that more by way of comparison to show how Mr Erochkine was expected to conduct himself in respect of the limited partnership with which these proceedings are concerned and so make little other mention of the detail of the pharmaceutical fund.

63. On 30 January 2011, Mr Erochkine, by now Deputy General Director of Rusnano Capital LLC, as well as Ms Bochkova, attended a meeting of the board of directors of Rusnano Capital AG in Zurich. The minutes record that Mr Erochkine gave a report on the progress of projects proposed for financing by Rusnano Capital AG. The meeting covered the investment in the pharmaceutical funds and one of the other matters discussed related to the functioning of the management bodies of Rusnano Capital AG and its subsidiaries, where the requirement that Rusnano Capital AG retains control functions in relation to the activities of Fonds Rusnano Capital SA without transferring powers from Rusnano to Rusnano Capital AG was minuted.

64. A consultancy Services Agreement was entered into between the Plaintiff and Rusnano Capital LLC on 30 November 2011 to be valid until 31 January 2015. It relates to the provision of services to advise and make recommendations on *inter alia* the nanotechnology and investment markets for which fees were payable. It states that Rusnano Capital LLC was to be an independent contractor, which would not have any power or authority to make or purport to make investment decisions or to enter into any transaction on behalf of or in other ways to bind the Plaintiff.

65. Mr Erochkine was again promoted to Deputy General Director for Investment and signed the job description for that role on 10 January 2012. He was required to know and rely on similar documents to his job description as Project Director, although reference was made to the internal code of conduct, job safety requirements and fire safety rules. His official duties had evolved to become managing the Investment Division, searching for funds based on criteria consistent with parameters contemplated by the company's internal regulations, engaging co-investors in the fund creation process, conducting negotiations with funds' representatives and co-investors as to preparation for, and implementation of, fund creation projects, participating in funds' investment committees and initiating and preparing materials pursuant

to the company's internal regulations as regards *inter alia* the terms of the company's participation in the creation of funds, drafting business plans for the funds' investment projects jointly with management companies and co-investors, drafting, and ensuring compliance with, schedules for conducting expert examinations and implementing investment projects, supervising activities of funds and management companies and taking measures to remedy detected breaches in the course of funds' activities and implementation of investment projects and project companies during funds' activities.

66. It was in 2012 that Mr Erochkine had contact with Conduit to discuss the possibility of a business relationship with Rusnano. He had the idea that setting up a fund to invest in assets in China, in partnership with a Chinese co-investor, would be beneficial. He had identified Conduit as being of interest because it was a player in nanotechnology related sectors and had a track record in respect of earlier funds. Ms Zheng and Mr Butt were involved and this led to several delegations visiting Moscow from China. Ms Zheng has explained that nothing in her dealings with Mr Erochkine led her to believe that he had been acting in any capacity other than as an employee of Rusnano, who reported to Ms Rapoport. Ms Zheng says that throughout the time Mr Erochkine was employed by Rusnano, they were unaware of any personal interest in the Defendant.

67. On 13 June 2013, Rusnano approved a strategy taking it through until 2020. Its vision was to become the global Russian technological investor specializing in investments (directly and through investment nanotechnology funds) in competitive Russian and foreign companies implementing promising nanotechnologies. Its aim was to become an internationally recognized leader in high-tech investments.

68. This strategy led to the Rusnano Group undergoing a restructuring in late 2013. The asset management and asset holding functions were to be separated. A document dated 2 October 2013 explains the rationale for liquidating two entities, Rusnano Capital AG and Rusnano Capital LLC to save money. In its place, LLC MC Rusnano (to which the Court will refer as "Rusnano Management Company LLC", adopting the style of the pleadings, or simply "the Management Company") would be interposed between JSC Rusnano and RN Consulting SA, with Fonds Rusnano Capital SA (the Plaintiff) being retained. There would be a concentration of employees and competencies in the Management Company.

69. As a result, Rusnano Management Company LLC was incorporated in Russia in December 2013. It is 99% owned by JSC Rusnano and Mr Chubais is identified as the principal person on the board.

70. On 11 February 2014, JSC Rusnano and the Management Company agreed that the former would transfer to the latter the authorities of Rusnano specified in its internal documents and applicable Russian laws, subject to the terms of that written agreement. When dealing with third parties, it was a requirement for the Management Company to inform those third parties that it was exercising authority as the sole executive body of Rusnano, where the Management Company would represent Rusnano reasonably and in good faith, implementing resolutions of Rusnano. Clause 4.1 provides that the Management Company administers Rusnano's property on behalf of the latter according to the purpose of such property, the objectives of Rusnano and within the powers prescribed by Russian legislative acts and other legal regulations, Rusnano's Charter and its internal documents. Any income derived from using the property was to be remitted to Rusnano. The Management Company undertook to administer Rusnano's property in strict compliance with the purpose of the respective property and for the purposes and objectives of Rusnano. These general obligations were further elaborated upon in detail in clause 5.

71. On 6 June 2014, as part of its new strategy to 2020, JSC Rusnano approved a new version of the Regulation on the financing procedure and terms of its investment projects. It explains that Rusnano finances investment projects in the form of participation in investment funds

under direct management/co-management of the Management Company (its subsidiaries) and JSC Rusnano or third-party management companies, by holding equity interests in portfolio companies, by lending or in other forms of financing provided they will ensure realization of requirements as to Rusnano's participation in investment projects contemplated by that regulation as well as Rusnano's internal regulations. The basic form of financing of new projects was stated to be its participation in investment funds under management/co-management of the Management Company and its subsidiaries, with other forms of financing being permitted to be used if Rusnano implements investment projects that make a significant contribution to the development of nanotech industry in the Russian Federation and any investment projects significant for subsequent creation of investment funds of nanotechnologies with participation of JSC Rusnano. Section 5 deals with direct investment by Rusnano where the priority is the implementation of financially efficient investment projects. Section 6 deals with participation in investment nanotech funds. The ratio of Rusnano's target investments to the target investments raised from third party investors in each such fund as a rule should be 1:1, ie, Rusnano's share not exceeding 50% of the target fund, unless a different target ratio is contemplated by Rusnano's board. Investment is said to be permissible before third party investment is raised, provided there is confirmed interest from third party investors. Rusnano may finance investment projects in the form of participation in investment nanotech funds established under the management of third-party management companies only if such projects are in the existing portfolio of JSC Rusnano and subject to the task to further migrate such funds to the model of co-management with the involvement of the Management Company, its subsidiaries and Rusnano (clause 6.6). The main objectives of Rusnano's participation in such funds is to increase volumes of financing of nanotech projects in the Russian Federation by way of engaging co-investors at the level of investment funds and portfolio companies of such funds, engaging leading management companies specializing in high-technology industries and to transfer advanced technologies to the Russian Federation.

72. Mr Erochkine commenced a relationship with Saffery Champness in June 2014 when considering a structure to hold the pharmaceutical fund. This appears to be his first contact with Ross Belhomme. What was being contemplated on that occasion was a trust structure. On 2 July 2014, Mr Erochkine explained to Mr Belhomme why, as part of the big picture, Rusnano Capital AG would not be added as the sole beneficiary because of the desire to try to make a deal with it to share benefits. He wrote that he had to stay in control of the situation with Rusnano Capital AG not having any control over the proposed trust, which was very important to him, so he sought Mr Belhomme's reassurance that it should have no claims. He mentioned that if the other party to that transaction needed to know more, the principal could call Ms Rapoport. In the event, Rusnano Capital AG was named as the sole beneficiary when the RN Pharma Trust was settled, as explained by Mr Belhomme's colleague, Paul Tucknott, in an e-mail to Ms Bochkova on 15 July 2014, who subsequently arranged for the documentation to be executed. As a consequence, the proceedings concerning the RN Pharma Trust resulted in the outcome already mentioned.

73. On 8 July 2014, the executive board of Rusnano Management Company LLC took notice of Ms Rapoport informing it that the Plaintiff would participate in Conduit Ventures RN Growth Fund on terms of co-management within the parameters that its interest would be up to 50% of the total commitments of the fund's investors up to a limit of US$50 million, being monies that had previously been allocated to Celtic Pharma Holdings II LLP, where those financing commitments had been terminated. This investment was to ensure the creation of production in the Russian Federation of the creation of a research centre there, or the transfer of foreign technology to the country. It was expected that the fund itself would include Rusnano in its name. Ms Rapoport was authorised to progress matters with a deadline of 8 October 2014.

74. Mr Erochkine attended the meeting of the board of directors of Rusnano Capital AG held in Moscow on 17 July 2014. Ms Rapoport was present as one of the directors and Ms Bochkova also attended. Both Mr Erochkine and Ms Bochkova spoke on the topic of the current status

of projects. No express mention of the pharmaceutical fund or the project involving Conduit was minuted.

75. Mr Erochkine and Ms Rapoport undertook a visit to China and Hong Kong in September 2014, having meetings with various parties in connection with the investment project. This included a meeting in Tianjin at which agreement was reached about the way forward.

76. At a meeting of the board of Rusnano Capital AG on 22 September 2014, participation in Conduit Ventures RN Growth Fund was approved. The key parameters specified were a target portfolio return of no less than 30% per annum, with a minimum return of 6%, with target capital of US$300 million, with the first closing of US$100 million, of which Rusnano Capital's share would be no more than US$50 million, to be no later than 31 December 2014. The management fee for the general partner was put at 2.5% with a success fee of 25%, where Rusnano Capital would receive 100% of the management fee on the capital it invested and a share in the success fee pro rata the amount of Rusnano Capital's invested capital.

77. On 25 September 2014, Ms Zheng of Conduit sent the English version of the draft LPA, prepared by Macfarlanes LLP, to Mr Erochkine. She also explained that the Chinese partnership agreement was being drafted by a Chinese lawyer based on its content. The draft LPA referred to two Scottish limited partnership entities of Conduit being the general and limited partners, with a view to establishing a limited partnership registered in England to be called Conduit Ventures Rusnano Growth Fund LP.

78. The same day, Mr Erochkine urgently requested a note from Ms Lukyanova about what was being done in China, explaining the trips made and that MOUs were signed that could be passed to Mr Chubais. He later added that the document should explain that all investors for the first closing had been found. The letter was eventually sent by Ms Rapoport to Mr Chubais explaining about the trips made by her and Mr Erochkine in August and September 2014 leading to documents being signed with regards to establishing the fund Conduit Ventures Rusnano Growth Fund, which had been approved on 7 July 2014, referring to MOU signed with Tianjin Bohai Haiseng Equity Investment Fund Management Co. Ltd and Pingan Bright Fortune Investment Management Limited Company as co-investors in the fund. Her letter also indicated that this would facilitate the first closing of the fund before the end of the year in the amount of US$100 million and that final steps were being taken towards signing legally binding agreements. She provided a list of other entities with which negotiations were being held in respect of the second closing in the amount of US$200 million.

79. On 16 October 2014, Mr Butt of Conduit proposed to Mr Erochkine that the feeder structure being proposed would be the optimal win-win for all because it enabled Conduit to take care of most of the matters which may arise onshore and enable any future changes in tax legislation to be addressed. After referring to the perceived tax advantages, he noted that being part of the general partner would require resubmission of the applications, which could take a long time. Mr Erochkine forwarded this to Ms Bochkova and Marina Petrochenko some hours later and this was fed into the work being undertaken by PricewaterhouseCoopers Russia BV ("PwC"), which then prepared a discussion document analysing the tax implications arising from the creation of an investment fund in China. It noted the plan that RN Consulting SA would provide advisory services to the fund's management company in China, which would act as the general partner, and RN Consulting SA would participate in sharing profits of the fund in the carried interest but, at the same time, would not be entitled to participate in the management of the fund and/or in profits from investments. The Plaintiff would act as the limited partner. Part of that analysis refers to the way in which the Chinese management company would receive a fee for the management services delivered to the fund and then pay for the advisory services rendered by its consultant, RN Consulting SA. The document further describes an alternative structure, as proposed by the partner, seemingly Conduit. The outcome is probably financially beneficial. The document then briefly

considers the position if the feeder fund and second management company were registered in Guernsey or Jersey.

80. It is at around this time that Mr Erochkine says he first discussed with Ms Rapoport the idea that the structure might involve a general partner owned by him. He says she was attracted to the idea.

81. On 4 December 2014, Ms Lukyanova asked Mr Erochkine by e-mail how it was intended to plan the carry in the new funds so as to be consistent with the long-term planning and investment strategy. It referred to 50% but the division's strategy envisaged receiving 100% for its money. Mr Erochkine responded that it depended on the fund and what the management board approved but in Conduit it would be 100%.

82. The exchanges with PwC continued in November and December 2014. The focus became a Guernsey feeder fund with the general partner registered in the British Virgin Islands, apparently to minimise cost and avoid regulation in Guernsey. In response to a request from Ms Petrochenko, on 17 December 2014, PwC set out the tax implications on the following description of the structure:

> "*Fund 2 is a partnership incorporated in Guernsey*
> *Fund 2 will be managed by the general partner (MC 2) incorporated in BVI.*
> *Fonds Rusnano Capital S.A. will be a limited partner in Fund 2.*
> *RN Consulting S.A. will be a shareholder in MC 2*
> *Fund 2 will be a limited partner in Fund 1 (Fund 1 will be incorporated in China)*
> *Fund 1 will be managed by the General Partner (MC 1) also incorporated in BVI.*"

Mr Erochkine replied that "*In other words we will proceed as follows*", adding that he understood it was not possible to reduce the tax burden any further. Mr Erochkine accepted in his evidence that his reference to "*we*" here was to him and Saffery Champness.

83. On 18 December 2014, the Defendant was incorporated with a single share issued to Rysaffe Actionnaires Sarl. This was done on Mr Erochkine's instructions. He says he was encouraged to do this by Ms Rapoport and that this was an alternative plan in case the intended partnership with Conduit fell through. Although it is undated, Mr Erochkine had signed a Saffery Champness Fiduciary Services Agreement, stating that he was an employee of Rusnano, and by which he sought to have a company formed and administered, referring also to a limited partnership structure. The agreement refers to CRGF GP Ltd in the BVI and CRGF LP in Guernsey, the purpose for which was stated to be "*to facilitate an investment into China by Russian investment entity Rusnano*". The acronym chosen was consistent with the style previously being discussed to stand for "Conduit Rusnano Growth Fund". On the same day, Rysaffe Actionnaires Sarl executed a nominee declaration, governed by Guernsey law, in respect of that one share in the Defendant, by which it stated that it held that share for Mr Erochkine absolutely.

84. On 22 December 2014, by e-mail Mr Erochkine sought assistance from Ms Bochkova to provide Mr Tucknott with documents relating to the Plaintiff, as the limited partner in the fund, and relating to RN Consulting SA, "*which will receive a portion of the management fees and carry from the GP*", all in the context of "*incorporation of the GP/Fund*". The same day, Mr Belhomme confirmed that the general partner had been formed in the BVI. Before Mr Belhomme confirmed that the general partner had been incorporated, Mr Erochkine had informed Mr Belhomme that he could communicate directly with Ms Bochkova "*but keep in mind that they are our client and potential LP in the fund so we should only disclose info relevant to them*". He added "*We should get the GP to sign something with them to make sure they are responsible for costs as this structure is for them and their tax purposes*". This led to Mr Belhomme sending a letter by e-mail to Ms Bochkova addressed to RN Consulting SA on CRGF Partner Limited (sic) paper dated 21 January 2015 relating to the creation of the

partnership. The costs to do so were estimated to be £25,000 and it was requested that confirmation be given that all fees and costs would be covered by the Plaintiff "*for whose requirements the feeder fund vehicle is created*".

85. On 22 January 2015, Mr Chubais briefed the President of the Russian Federation on the results of Rusnano's activities for 2014, during which mention was made of other Chinese projects.

86. On 2 March 2015, Mr Erochkine became a part-time employee of Rusnano Management Company LLC, as Managing Director for Investment, Investment Division K. This contract, No. 332, was for four hours each week. Once again, the details relating to this employment will be dealt with when considering the expert evidence. There has been no job description, signed or otherwise, provided to the Court relating to this part-time post.

87. Also on 2 March 2015, the Defendant invoiced the Plaintiff for £114,680 in respect of initial take on, and other work, but the bulk of the invoice related to pre-agreed fixed fees for liaison with the Chinese regulatory and government bodies, validation of the foreign limited partnership status and advisory work on structuring. That invoice was settled by a payment instruction to Bank Julius Baer ("BJB") dated 11 March 2015.

88. On 15 May 2015, Ms Rapoport signed a bonus recommendation in respect of the work of Mr Erochkine during 2014. It refers to him being actively involved in and contributing to the development, discussion and agreement with the management of Rusnano of the RNC Group Strategy for 2014-2020, during which he made proposals on how to restructure the group and optimize its operations. He had engaged with potential partners. He was actively involved in the working group of Rusnano Management Company in charge of developing investor relations strategy, resulting in finding potential partners for co-investing in funds, referring to Celtic Pharma Holdings III and Conduit Ventures RN Growth Fund.

89. On 9 June 2015, RN Consulting SA and Mr Erochkine concluded an agreement, which has been termed "the Luxembourg Agreement", relating to the work that Mr Erochkine had been doing on the pharmaceutical fund. It appointed him as an independent advisor to RN Consulting SA, an entity by which he was not employed, in return for which he would be paid a Fee.

90. On 20 August 2015, the director of public relations enquired of Ms Rapoport and Ms Bochkova whether there had been any progress on the Conduit fund, because he was preparing material for Mr Chubais to deliver at a Forum. In particular, he wished to know whether it was possible to name the investors, the volume and the mandate of the fund. Ms Bochkova replied that there had been progress but information could only be disclosed after first closing because of the terms of the confidentiality agreement signed with Rusnano's partners. When asked to say when first closing would take place, Ms Bochkova replied that it was difficult to predict because of the need for state approvals in China, but that they hoped that by the end of the year the fund would be ready.

91. On 20 September 2015, Imogen Wilson of Saffery Champness e-mailed Mr Erochkine about the setting up of the limited partnership and the invoice of £25,000 presented. She explained that £5,000 related to Mr Erochkine's time and that sum would be held on account for him against future service provision by Saffery Champness, as Mr Erochkine had requested in his e-mail to Mr Belhomme on 10 December 2014, with the balance being to cover legal fees and the time spent by Saffery Champness personnel, which included setting up the BVI company as the general partner, reviewing the documentation for the Chinese LP and re-writing it to align to Guernsey law and liaising with their Guernsey office and Carey Olsen. The intention was to register the limited partnership using a standard limited partnership agreement. She hoped it might all be completed the following week. Mr Erochkine replied that Rusnano would not sign the limited partnership agreement at this stage and so wondered if it could be

set up with some involvement from the general partner. Ms Wilson replied the following day that Rysaffe Actionnaires Sarl could act as the initial limited partner to contribute a nominal amount, enabling the partnership to be registered, but that the Chinese partnership agreement would have to wait until Rusnano became the limited partner. Mr Erochkine asked her to send the revised draft document to him to work on with Rusnano and that the fund would charge a management fee of 2.5%, but they were still discussing how it would be split.

92. On 23 September 2015, Mr Erochkine asked Ms Bochkova to forward a raft of certified company documentation to Ms Wilson. Instead, Ms Bochkova suggested creating a remote dataroom into which all the documents would be uploaded to be viewed by the Saffery Champness people because it would be easier than sending tons of documents to them. This task was performed and the access codes forwarded by Ms Bochkova to Mr Erochkine who relayed them to Saffery Champness on 28 September 2015. Ms Rapoport was informed by Ms Bochkova that all the documents for KYC for general partner and feeder were in the dataroom. Mr Erochkine says he put materials showing his beneficial ownership into this dataroom, although the Plaintiff has carried out an analysis of what went in there and says nothing of the sort was ever there.

93. On 1 October 2015 the original limited partnership agreement for CRGF LP was executed between the Defendant and Rysaffe Actionnaires Sarl with an initial capital contribution of £100.

94. Previously, on 16 September 2015, Mr Belhomme had asked Edward Capel Cure at BJB if that institution would be happy to open a new account for a Guernsey fund being created for Rusnano, using funds held already in an account with it, which Mr Capel Cure indicated should not be a problem. On 9 October 2015, Ms Wilson sent Mr Capel Cure a structure chart, which included a box showing Mr Erochkine as the 100% owner of the Defendant as general partner. This led to an e-mail from Mr Erochkine to Mr Belhomme on 12 October 2015 asking whether it was possible to remove his name from the structure chart of CRGF being sent around, mentioning BJB, adding "*I think less is more and we can always disclose if people ask*". As a result, on 15 October 2015, Ms Wilson sent Mr Capel Cure an amended structure chart on which there is no indication of the ultimate beneficial owner of the Defendant.

95. During October 2015, Mr Erochkine and Ms Bochkova continued to exchange e-mails with Kevin Wang of Tianjin Bohai Haiseng Equity Investment Fund Management Co Ltd, about such matters as the name to be used for the fund to be established in China, where Ms Bochkova's contribution was that any name needed to include a reference to Rusnano, eg, "Tianjin Bohai RUSNANO Private Equity Investment Fund (Limited Partnership)", although she had no objection to Conduit also being used in the name. (For ease of reference, the onshore element of the fund will generally be referred to as "the Tianjin Bohai Fund" hereafter.) Questions were also raised about the structure chart and whether any positions to which they would recruit needed work permits.

96. Ms Rapoport asked Mr Erochkine on 12 October 2015 whether the Conduit fund will be financed that year because they needed to do the fund's passport for the stress test. Mr Erochkine confidently stated it would be funded for sure and the passport would be done the following day.

97. On 13 October 2015, a regulation on representatives of JSC Rusnano and Rusnano Management Company LLC in governing and supervisory bodies of portfolio companies and investment funds was approved.

98. On 30 October 2015, Mr Erochkine sent to Ms Bochkova by e-mail the final version of the revised limited partnership agreement and a draft subscription document. Ms Bochkova replied that she still needed documents about the general partner and asked Mr Erochkine to

call her. She would send the draft documents to the directors for review. Mr Erochkine's response was that he had sent it, referring to having sent her the certificate of incorporation, the memorandum and articles of association, the register of directors and the register of members. The latter two documents showed Rysaffe Administrateurs Sarl as the director and Rysaffe Actionnaires Sarl as the sole member, both with effect from 18 December 2014. Mr Erochkine accepted in cross-examination that these documents did not show his beneficial ownership of the Defendant.

99. On 11 November 2015, Ms Rapoport signed the subscription agreement, thereby committing the Plaintiff to contribute to the limited partnership, if accepted by the general partner, an initial contribution of RMB300 million, with a total commitment of RMB900 million.

100. On 12 November 2015, Mr Erochkine introduced Ms Wilson to Mr Wang, who described himself to her as the coordinator for the fund, explaining that he was waiting for all the documents required to start registration. They then proceeded to discuss through e-mail exchange what documents were needed and how they would be certified. On 17 November 2015, Mr Wang enquired about the relationship between the limited partnership and the BVI general partner, asking which one would be the limited partner in the Sino-Russian fund and further questioning the role Rysaffe Administrateurs Sarl would play. She responded that the limited partnership is managed and controlled by the general partner, which in turn was controlled by its director, Rysaffe Administrateurs Sarl, which was controlled by its own board of directors, including Mr Belhomme and Mr Tucknott. Mr Wang asked if there was a structure chart that could be provided and Ms Wilson asked Mr Erochkine if she could forward the chart that had been prepared, to which Mr Erochkine replied "*Yes but could you please remove my name. As 100% LP is Fonds Rusnano, I think we can avoid giving more info on the GP than necessary*."

101. On 24 November 2015, the minutes of the weekly meeting of Rusnano Capital LLC record in respect of the Conduit Ventures RN Growth Fund that the first tranche is being prepared for transfer to CRGF LP to meet the terms of clauses 2.3 and 2.4 of the LPA between the Tianjin Bohai Fund, with three projects having been received from the Chinese side. A first meeting of the investment committee was planned for early the following month.

102. The Amended and Restated Limited Partnership Agreement dated 3 December 2015 (ie, "the LPA") was executed between the Defendant, Rysaffe Actionnaires Sarl and the Plaintiff. Rysaffe, as Initial Limited Partner, wished to transfer its interest the Defendant. Ms Rapoport had signed on behalf of the Plaintiff on 11 November 2015 at the same time that the subscription agreement was signed.

103. The LPA states that the limited partnership does not have separate legal personality. At clause 2.4, the purpose is set out, albeit in poor English:

> "*The purpose of the Partnership shall be to is to generate long-term capital appreciation through investments in technology-related (including nanotechnology) vehicles, primarily in the growth stage but, in some cases, in the expansion and early stages, primarily across Asia and Russia with strong intellectual property positions that seek to grow rapidly and expand their international market access (the "**Portfolio Companies**". The Partnership and Portfolio Companies will invest in high-technology companies related primarily to Nanotechnology, Robotics/Automation, Advanced Materials and ICT. The Partnership shall engage in such other activities as the General Partner deems necessary, advisable, convenient or incidental to the foregoing for which limited partnerships may be formed under the Law. The General Partner may, on behalf of the Partnership, execute, deliver and perform all contracts and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable in order to carry out the foregoing purposes and objectives.*"

There are standard terms conferring on the general partner full, exclusive and complete discretion to manage and conduct the affairs of the limited partnership, including maintaining a cash reserve of €2.5 million, with any limited partner taking no part in the management or conduct of the partnership's business or affairs. The term of the partnership was seven years from 1 October 2015. The total commitment of the Plaintiff as limited partner was stated to be the Euro equivalent of RMB900 million, split into a first tranche of RMB300 million and a second tranche of RMB600 million. For the management services being provided by the general partner, a management fee of 2.5% of the total commitments was payable per annum quarterly in advance. In addition, initial set up fees and placement fees were payable. The first financial year would end on 31 December 2016. Notices to the general partner were to be delivered to Saffery Champness in Geneva.

104. On 9 December 2015, Mr Capel Cure informed Mr Erochkine by e-mail that he had been contacting Mr Belhomme for further information because BJB had hit a compliance gridlock. Mr Erochkine offered to help. Mr Capel Cure replied that he was working on a solution so nothing further was needed. Then on 15 December 2015, he requested that the Plaintiff provide a copy of the board resolution confirming the transfer of US$7.5 million. He added "*This is something that Compliance here want to have evidence of to confirm that the full structure is aware of the funds flow*." The following day, Mr Erochkine forwarded this chain of messages to Ms Bochkova, but the sentence just quoted had been omitted. He asked that the board resolution being requested be provided quickly and preferably that week. Ms Bochkova forwarded the request to a colleague, Mikhail Lisov to be dealt with that day.

105. On 16 December 2015, Mr Erochkine provided to Ms Bochkova a draft letter to be sent by the Defendant as general partner to the Plaintiff, and signed by Mr Belhomme, confirming that, prior to making payments from the assets of the partnership in excess of €100,000, prior written consent from the Plaintiff would be obtained, but that this did not relate to transfers to the Defendant for management fees, or expenses incurred in relation to the ongoing activities of the partnership or to meet binding commitments, including capital contributions to underlying investments of the partnership. The following day, Ms Bochkova replied with some suggested changes, including the final element about when prior approval was not needed and lowering the level before prior approval needed to be obtained to €50,000.

106. On 17 December 2015, the directors of the Plaintiff resolved to make a first tranche transfer to the fund of €7.5 million. A copy of the written resolution was forwarded by Mr Erochkine to Mr Capel Cure.

107. On 21 January 2015, Mr Erochkine asked Mr Belhomme for an update in relation to the feeder fund for Rusnano, referring to the general partner. Mr Belhomme replied:

> "*The General Partner has been created and is a BVI company. At the moment this is owned by out nominee company and we will still need to finalise how this should be owned. I have some ideas which we can discuss next week.*
> *The next step is to create the Partnership.*
> *The Partnership will only have a single investor and so therefore will not have the characteristics of a "collective investment scheme" and will therefore not be subject to regulation by the Guernsey Financial Services Commission.*
> *Once fees are agreed I will arrange for partnership agreement to be drafted.*"

108. In an e-mail exchange between Ms Bochkova and Mr Erochkine on 5 February 2016 relating to a draft Powerpoint presentation being circulated, Ms Bochkova enquired about how the decision-making at the level of the Plaintiff should be recorded, also demonstrating why it is not only a limited partner in the fund but also a co-general partner. Mr Erochkine's response was that he felt the "*issue is that they do not fully understand the co-GP model*", so he proposed to write a letter to explain that this was the only model which had been accepted and

approved by everyone. He suggested that reference could be made to the wording of the supervisory board stating that the Plaintiff had been specifically created to incorporate and co-manage the funds.

109. On behalf of Rusnano Management Company LLC, its legal director wrote to Mr Belhomme on 9 February 2016 explaining that the establishment of the CRGF LP fund had been approved by the board on 8 July 2014 with the Plaintiff's commitment being US$50 million, adding that "*all investment funds are subject to approval of the Board of Directors of Rusnano in the event such investment funds are financed out of the funds of Rusnano. Since CRGF fund is financed out of the funds of Fonds Rusnano Capital S.A., no corporate approvals are required at the level of RUSNANO. The management of international investment funds is exercised by the companies of Rusnano Capital Group*", adding that any queries in respect of the fund could be addressed to Ms Rapoport.

110. On 29 February 2016, Ms Wilson told Mr Erochkine that Banque Havilland, which was to be used to hold the limited partnership's funds, required forms to be signed by the Plaintiff. She asked to whom they should be sent. On 9 March 2016, Mr Erochkine informed Ms Bochkova about this, asking her to arrange for the forms to be signed. He added that, when the cash flows will start to move, he hoped they would open accounts somewhere else. The completed form in respect of CRGF LP says that the beneficial owner is the Plaintiff, declaring that it is a politically exposed person in Russia as it is ultimately owned by a state-controlled technology company. As shown by an e-mail from one of the private bankers at Banque Havilland on 8 April 2016, the proof of residence of Mr Erochkine had been provided to it by Saffery Champness, although a more recent one was requested. The list of signatories on the account though was confirmed by Ms Wilson to be the standard list from Saffery Champness, who also confirmed that Ms Rapoport had signed on behalf of the limited partner but would not have any authority over the account.

111. On 10 March 2016, Mr Erochkine informed Mr Butt and Ms Zheng at Conduit that CRGF LP is managed by Ms Wilson.

112. In the Spring of 2016, there was a presentation to Division K about an Uber-like taxi application run by the entity referred to as Didi. The presentation refers to the investment being made through Fund ID_2462. It is accepted that this is a means by which to identify the Tianjin Bohai Fund. The proposal was that CRGF would invest US$20 million on behalf of Rusnano, where the investment by Rusnano's co-investor, China Merchants Bank ("CMB"), would be US$100 million. The investment on behalf of Rusnano would amount to 0.07% in the company's total shareholding, where investment into Russia was estimated to exceed the investment on behalf of Rusnano, because the company would bring its existing technology solutions to Russia and adapt its services to Russian realities, using Russian technologies. It was envisaged that all of Rusnano's investment would go to the company's "nano" solutions. The company was a multi-billion dollar venture, although smaller than its competitors. The potential participation of the Tianjin Bohai Fund in this round of financing of Didi-Kuaidi, put forward by Ms Rapoport, was to be noted. An equity joint venture contract dated 1 April 2016 was executed between RN Consulting SA and Tianjin Bohai State-owned Assets Administration Co., Ltd. and on the same day a second equity joint venture contract was executed by RN Consulting SA with Tianjin Xin Hai Seng Venture Capital Management Co., Ltd.

113. The raft of documentation following those two agreements was sent for review to Rusnano's Chinese lawyers at Allen & Overy. It was explained *inter alia* to Ms Bochkova on 19 April 2016 that there was a commitment of subscription to the general partner, reflecting the same overall amount as under the CRGF limited partnership of RMB900 million. Ms Bochkova's response the following day was that the subscription of capital to the fund should be signed by the limited partner of the fund, which was not RN Consulting SA "*which is LP only of GP*

and Fund Manager", where the limited partner of the fund "*will be CRGF LP (our BVI company)*".

114. In the meantime, on 15 April 2016, Mr Capel Cure of BJB sent a letter to Ms Rapoport headed "*Important: REMEDIAL ACTION REQUIRED*". This related to CRGF LP and the Plaintiff and the bank's update of client files for client due diligence, for which they needed to understand in detail the ownership structure of their clients and the route of funds to and from their accounts. BJB sought documents and/or information by no later than 15 July 2016, explaining:

> "*As part of our review we have noted that Rusnano employee Pavel Erochkine is apparently the sole beneficial owner of CRGF General Partner Ltd, ('The General Partner') a company incorporated in the BVI with no apparent ownership or management links to Rusnano.*
>
> *Additionally we have noted that:-*
>
> *a) On 11/03/15 we were instructed to make a payment of £114,680 to CRGF GP from your Fonds Rusnano Capital SA account held by us, and*
> *b) We have seen the Limited Partnership Agreement dated 3 December 2015 between CRGF GP Ltd, Rysaffe Actionnaires Sarl and Fonds Rusnano Capital SA ('the agreement') under which further payments will be made to CRGF GP*
>
> *Accordingly, we seek confirmation that the board of Management Company RUSNANO OJSC are aware of, agree and approve the arrangements above and in particular the agreement includes clauses containing the following:*
>
> - *2.5.1: "… The General Partner shall have full, exclusive and complete discretion to manage and conduct the business affairs of the partnership …"*
> - *2.5.4: "… The General Partner shall have power and authority to enter into, perform and carry out contracts and agreements of every kind necessary or incidental to the offer and sale of limited partner interests …"*
> - *6.7: "… In consideration of the management services provided by the General Partner, the partnership shall pay to the General Partner a fee (the "Management Fee") in the sum of 2.5% of total commitments per annum … until completion of the winding-up of the partnership"*
> - *6.8: "… In addition to the Management Fee, an initial set-up fee of 1% and a placement fee of 2% of the total commitment, per admitted limited partner … shall be payable to the General Partner".*
>
> *We note that the potential commissions payable to CRGF GP Ltd are potentially substantial and could amount to several millions over time.*
>
> *We therefore seek clarification from Management Company RUSNANO LLC, acting on behalf of OJSC RUSNANO, that these arrangements are fully acceptable and agreed. We would accept the written confirmation of a member of RUSNANO LLC's Executive Committee as their acceptance of the above arrangement, conditional on the additional signature of the Legal Director of RUSNANO LLC confirming that these arrangements meet regulatory and legal requirements.*"

If the information requested could not be provided BJB would have no alternative but to review the relationship.

115. The draft prepared by Mr Erochkine for Mr Kiselev to send was provided to Ms Bochkova in an e-mail on 26 April 2016. It read:

"*I am glad that the account opening process for the CRGF LP (the "Fund") is almost complete. Further to your request, I would like to address your concerns, which you have raised with Irina Rapoport, CEO of Rusnano Capital.*

The importance of this project for Rusnano Capital needs to be emphasized. It will be its first Asian fund with strong Chinese partners and co-investors. We are planning to launch other funds and projects in China and South East Asia in the near future and this is a serious step in that direction, which has been thoroughly analyzed and due diligenced. The project was originated by Pavel Erochkine in 2012 and it has taken Rusnano Capital a lot of hard work and effort to get to the current stage when the legal structure is set up, all partners have committed to the project and the Fund is ready to start making investments.

It has already been confirmed to you by Rusnano Capital's team/board and by Mr. Mizgirev, Legal Director of Management Company Rusnano LLC., that CRGF is full approved in line with all the procedures of Rusnano and Rusnano Capital (09 February 2016). The transaction was approved on 08 July 2014 and the key terms were: commitment by Fonds Rusnano Capital SA of RMB equivalent of $50m for first closing (and potentially additional $100m for second closing, subject to approval), management fee of 2.5%, involvement of key Rusnano Capital team members into the GP (Pavel Erochkine), veto right on investments and control over investment flows (Irina Rapoport and Mr. Frank Deconinck). The chosen structure gives Rusnano Capital both sufficient control and flexibility for our first transaction with Chinese partners and investors.

It took over a year to agree all the legal documents between all parties involved. On 1 October 2015 the main legal entities were registered (CRGF LP and CRGF GP) and the initial Limited Partnership Agreement was signed. After all of Rusnano Capital's review procedures were completed, on 11 November 2015 Fonds Rusnano Capital SA signed legally binding documents, including the LPA and the subscription agreement. On 17 December 2015 at the request of Julius Baer the Board of Rusnano Capital AG reviewed the LPA and reapproved the commitment to CRGF LP as well as approved the initial payment to a Julius Baer account.

The Fund has been involved in the account opening with Julius Baer process since October 2015. It has been five months since all the legally binding documents had been signed. The first investment may take place within a month. Any further delays at this stage create a real risk of Fonds Rusnano Capital SA not being able to meet its legal obligations to the Fund, which may make it necessary for Rusnano Capital and the Fund to reconsider their banking arrangements.

The account opening delays have already created issues as the Fund's Chinese partners are interpreting delays as Rusnano Capital's unwillingness to start investing and as some of the Fund's targets have already closed financing rounds. We can no longer risk expose this project to such risks and need to start investment activity.

I hope that the account can be unblocked and made operational within days. Please contact Irina Rapoport, CEO of Rusnano Capital, for any further questions relating to Fonds Rusnano Capital and Pavel Erochkine for any questions relating to the GP and planned investment activity of the Fund."

116. Ms Bochkova replied the same day, making some changes and sent to Mr Erochkine both a redline version and a clean copy on headed paper. In doing so, some of her changes were technical references to people and corporations and other similar minor corrections, but she inserted as a second paragraph:

> "*Rusnano Capital is one of the most important investment vehicles of RUSNANO mandated to be an anchor investor in investment funds in foreign jurisdictions with main goals to attract foreign investments to finance the most promising innovative nano-tech projects in Russia and transfer nanotechnologies to Russia for the purposes of realization of the policy of the Russian Federation in the nanotechnology sphere.*"

At the beginning of the new third paragraph, she changed the wording to "*Within the framework of its mandate, Rusnano Capital has realized one of the most important projects in Asian region – joint investment fund with institutional partners from China*", repeating shortly thereafter that the establishment of the Fund "*is fully in line with Rusnano Capital's mandate and goals*". With some further very minor stylistic changes, this version of the letter was signed by Mr Kiselev and sent dated 27 April 2016.

117. Rusnano Management Company LLC had established a Procedure for Workflow and Paperwork Management on 11 April 2014. Unsurprisingly, there is a requirement to register incoming documents, unless they are greetings, invitations, other than invitations to speak on a particular topic, advertisements, periodicals, anonymous letters or letters of individuals with no return address or statistical data. In two documents dated 22 May 2018, the managing director for human resources and administrative activities at the Management Company confirmed that in 2016 no correspondence was received by Rusnano from BJB and no correspondence was sent to BJB. Ms Rapoport states that she has no recollection of seeing the letter from BJB. However, Mr Erochkine recalls that the letter was in a sealed envelope which he passed to Ms Rapoport and which he did not read himself. He then says that he and Ms Bochkova set about drafting a response to BJB, with Ms Rapoport dictating to them but without him seeing a copy of the letter. He first saw it at a meeting Ms Rapoport had with BJB in June or July of that year. This is one of the more significant factual disputes and so will be considered further later in this judgment.

118. Mr Erochkine refers to a trip he made to China between 18 and 22 April 2016 and a trip he made to Italy between 1 and 4 May 2016, when Mr Kiselev, Ms Rapoport and Ms Bochkova were all present. He says they discussed the CRGF limited partnership a lot during that trip.

119. On 30 April 2016, Mr Erochkine again asked Ms Bochkova whether the draft letter from the Defendant to the Plaintiff about when prior approval was required needed to be signed or amended. She suggested some revised wording on 6 July 2016. It eventually evolved into a letter dated 7 July 2016. However, Ms Bochkova then told Mr Erochkine on 27 July 2016 that Ms Rapoport wanted to approve all payments other than mandatory ones and requested the agreement with Rysaffe. She attached a draft letter for Mr Belhomme to send, which he did dated 28 July 2016. It was this letter that was counter-signed by Ms Rapoport. It also contained some exemptions from the requirement to obtain prior written approval for payments. These related to fees under the LPA, expenses of the general partner incurred as registrar charges, audit fees, administration fees and charges payable to Rysaffe Administrateurs Sarl up to £50,000 per annum and transaction fees up to £10,000 per new investment, insurance premiums, costs and liquidation charges in connection with the termination of the partnership and any other mandatory expenses. It also exempted capital contributions pursuant to notices issued by Tianjin Bohai Rusnano Private Equity Partnership Enterprise.

120. On 10 May 2016, Ms Wilson sent to Mr Capel Cure a draft of a share purchase agreement between Mr Erochkine and the Plaintiff relating to the sale of the single share in the Defendant held legally by Rysaffe Actionnaires Sarl as nominee for Mr Erochkine for US$1. This was followed by a letter dated 12 May 2016 signed by Mr Belhomme on behalf of Rysaffe Administrateurs Sarl to Mr Capel Cure confirming the request to close the accounts

held in the name of CRGF LP. The letter also stated that the Defendant had not made any payments to Mr Erochkine.

121. During the following months, there were a number of enquiries internally within the Rusnano Group about what could be said publicly about the new fund with the Chinese, but each time the response was given that the terms of the confidentiality agreements meant that nothing could be said until the first closing.

122. On 27 June 2016, at a meeting of the internal investment committee of Division K of Rusnano Management Company LLC, Mr Erochkine gave a report about the participation of the Tianjin Bohai Fund (identified by reference to ID_2462) in the round of financing of Didi-Kuaidi, which would entail co-investing with CMB in the ratio 1 to 5 with Rusnano contributing US$20 million. This was approved.

123. A regulation on management of subsidiaries and affiliates of Rusnano JSC and Rusnano Management Company LLC was approved on 30 June 2016. As well as setting out how entities lower down the Group would be operated, there is a section about information exchange, by which it was required that subsidiaries would channel information upwards through the hierarchy. Three of the subsidiaries listed in Group I (being those acting as management companies, including management/co-management of investment funds, raising investments, search of new projects and representation functions) are Rusnano Capital AG, Rusnano Capital LLC and RN Consulting SA.

124. In response to an enquiry on 4 July 2016 from BJB about the nature of two transfers of US$7.5 million and US$17.55 million made in the last week of June to Banque Internationale Luxembourg, wishing to know the ultimate purpose, Ms Rapoport asked Ms Bochkova and Mr Erochkine what the response should be, adding that she would like to send a robust response, to which Ms Bochkova agreed, but advised not to do so at that time, whilst also questioning why the bank would make the transfer and then ask the reason why. However, Mr Erochkine suggests that the routing of the funds through another institution at which Rusnano had funds to avoid directing a payment that BJB would query demonstrates how Ms Rapoport was closely involved in the details of the transactions and the manner in which she identified solutions to overcome what might otherwise be difficulties.

125. On the same day, Mr Erochkine sent a memorandum to Mr Kiselev about the financing of the Didi project, referring to the decision of the investment committee on 27 June 2016, asking for approval of the payment of US$25 million out of funds allocated to the Tianjin Bohai Find, of which $20 million was for the purchase of shares in Didi-Kuaidi. Mr Kiselev signified his approval in manuscript.

126. On 5 July 2016, Mr Butt wrote to Saffery Champness, being for the attention of the board of directors of CRGF LP, that the investment of US$20 million with investment from CMB as co-investor was recommended, although the investment had not yet been approved by Tianjin Bohai.

127. On 6 July 2016, Mr Erochkine requested Ms Wilson to send a capital call for US$20 million for the Didi deal plus US$5,000 for the transfer costs and expenses. He further apologised for all the changes explaining that "*Rusnano is a difficult counterparty with a lot of bureaucracy, internal processes and left arm not knowing what right arm is doing*". Ms Wilson replied that there was pressure to arrange settlement of the fees outstanding and the need to keep a balance in the account held with Banque Havilland, so she suggested a call of US$22.5 million. Mr Erochkine responded that the proposal would not work, which is why he asked his proposal to be followed. He added that the "*Didi deal has to be done. Otherwise the whole project falls apart*" and that if there were delays in settling the outstanding fees of Saffery Champness through the second capital call he "*will pay your outstanding fees from my own funds. I hope you have enough trust so that you can rely on this.*" Finally, he wrote:

"*We are so close that it would be very unfortunate to create any delays at this stage. We need Didi to launch this project and they are closing the round early next week and will not wait for a small investor like us.*" The drawdown request was duly made to the Plaintiff that same day referring to the investment of US$20 million in the shares of Xiaoju Kuaizhi with the deadline being 19 July 2015 (sic).

128. On 7 July 2016, Ms Petrochenko suggested that the transaction should await signature of the share purchase agreement by a new Hong Kong based special purpose vehicle to show that the shares belong to the fund. Mr Erochkine then explains that the general partner administers the account on behalf of the partnership and the deal documents had been prepared. Further, Didi would not wait. Ms Rapoport subsequently confirmed that the monies should be paid that day. She accepted that this amounted to her overruling Ms Petrochenko.

129. Mr Butt gave a presentation to Investment Committee A of the limited partnership on the morning of 8 July 2016. The first step was to take part in the round of financing of Didi, with the second step being to move the investment into the Tianjin Bohai Fund at cost and then expand collaboration with CMB.

130. The Plaintiff transferred US$20,005,000, as requested, to the limited partnership on 8 July 2016.

131. There is an extensive e-mail chain commencing on 26 May 2016 when Mr Erochkine asked Kevin Chen at Didi about commencing due diligence, which also involved contributions from Paul Jing of Allen & Overy, Ms Zheng from Conduit and Angela Zhao, a lawyer from Fangda Partners, and which included on 27 June 2016 Mr Erochkine explaining that the investment committee had approved the US$20 million investment that day, so the transaction could proceed, although consideration needed to be given to the requirement of investing in nanotechnology projects, which he suggested be incorporated into a side letter, which was agreed, provided it was non-binding. On 4 July 2016, Mr Erochkine hoped that the deal would be signed that week, but sought time to make the transfers, but was told that funding had to be in place by July 2016 at the latest. On 7 July 2016, Mr Erochkine indicated they were ready to sign. On 9 July 2016, Mr Jing informed Ms Zhao that CRGF LP will sign the transaction documents and own the shares. When clarification was sought, Mr Jing added the following day that "*Rusnano is planning to transfer the shares to a 100% owned subsidiary of CRGF LP post closing*". On 11 July 2016, Ms Zhao asked Mr Jing to provide them with "*written proof of the affiliation relationship between CRGF LP and Rusnano*", which may be needed before execution. Mr Jing sent the register of partners, showing Rusnano as the limited partner. Ms Zhao asked to know the shareholding structure of the general partner. Mr Jing referred this enquiry to Mr Belhomme, who in turn referred it to Mr Erochkine, pointing out that Saffery Champness still had CRGF GP owned by Mr Erochkine and wondering if those enquiring were expecting to hear it is owned by a Rusnano entity. Mr Erochkine's response was to suggest replying "*by saying it is owned by rysaffe or whoever the legal owner is and stop there? We do not have to provide further details*". Mr Belhomme agreed to do that and wait to see what was then said. Accordingly, Mr Jing provided the register of members of the Defendant. Ms Zhao replied that it was still not clear to them and asked for "*written evidence showing that CRGF LP is controlled by Rusnano and the percentage of economic interests held by Rusnano in CRGF LP*". Mr Jing referred this to Mr Belhomme, who responded that "*I think it is important to explain that Rusnano is purely a fund of funds investor and does not make direct investments. All of its investments are via third party funds hence why a fund is used here. Rusnano is the sole LP in CRGF and there is no intention that any other LP's will be added.*" Mr Belhomme attached a structure chart and added: "*CRGF is controlled by Saffery Champness as the professional appointed to manage the fund for Rusnano. Rusnano ultimately owns 100% and can remove us at any point and therefore have effective 100% control over this fund and investment.*" Ms Zhao indicated that there had been some problems with investor identity before, but Mr Chen was now OK with them

proceeding. Mr Jing asked Mr Erochkine and Ms Bochkova whether holding the signature pages, as proposed by Ms Zhao, to await Didi completing their versions the following day, with closing then taking place, was what they would like. Mr Erochkine replied "*I think this is ok*", pointing out further that Mr Belhomme had mentioned a cut off time for same day payment, so hoping it would not go beyond 9 am Geneva time. Mr Erochkine confirmed that 523,189 Series A-18 Preferred Shares were being purchased for US$19,999,998. Mr Belhomme confirmed on 12 July 2016 that payment instructions had been given. Ms Bochkova reminded Mr Belhomme that payment could not be made until confirmation from Mr Jing that he had received fully executed versions. When this was confirmed, the payment was made, as confirmed on behalf of the Plaintiff by Banque Havilland.

132. The Didi share certificate from Xiaoju Kuaishi Inc. dated 13 July 2016 records CRGF LP as the shareholder. No one seems to have spotted that the limited partnership does not have legal personality.

133. On 13 July 2016, the Defendant made a further drawdown request for US$5 million, before the deadline of 26 July 2015 (sic), for the purposes of ensuring that sufficient funds would be held for an anticipated investment in the Tianjin Bohai Fund and to enable an appropriate reserve of €2.5 million as defined in clause 2.5.5 of the LPA to be retained. The Plaintiff transferred US$5 million, as requested, on 15 July 2016.

134. From 18 July 2016 some questions arose about the structure of the Tianjin Bohai Fund, to which Mr Erochkine responded to explain that there would be Rusnano involvement at the management company level and where 50% of Tianjin Bohai Rusnano Private Equity Investment Fund Management Co., Ltd would be owned by the Plaintiff.

135. On 25 July 2016, the Defendant sent a letter to the Plaintiff asking it to confirm its agreement to the 2% fee based on the capital commitment of US$20 million being split between Conduit, CMB and other parties involved in the transaction and that a 20% success fee relating to any profit made would be paid in due course. Ms Rapoport signed to confirm this.

136. The minutes of the weekly meeting of Rusnano Capital LLC on 22 August 2016 record that the investment in Didi through "RNC – CRGF LP" had completed and that a meeting with Mr Chubais would take place in Hong Kong on 27 September.

137. On 2 September 2016, Ms Petrochenko sent an e-mail to Mr Erochkine asking how the management fee from the Defendant for the money paid would be received, pointing out that the money was needed for RN Consulting SA.

138. On 13 December 2016, Tatyana Pashkevich asked Ms Bochkova about the structure of participation in what she termed "*the Tianjin Fund through the Guernsey fund CRGF*". Ms Bochkova explained in reply that this was a variant on PwC's proposal to use a Scottish structure. This led Ms Pashkevich to ask about the way "*Fonds*" exercised control over the fund, enquiring about whether there were other agreements additional to the LPA. She was also enquiring about receiving fees into RN Consulting SA. Ms Bochkova forwarded the exchange to Mr Erochkine who explained on 20 December 2016 that receipt of fees was in the budget from 1 July 2017 and "*Before that date we are planning to complete all of the procedures and start receiving the management fees as planned*".

139. At the end of 2016, Mr Erochkine had an e-mail exchange with Ms Lukyanova about the details of how the right of the co-investor in the Tianjin Bohai Fund worked. Mr Erochkine explained that CRGF contributes Didi to the fund, with partners contributing US$20 million in cash, thereby creating an equal investment in the fund, meaning that the exposure to Didi is US$10 million. If that did not happen there would be the right to sell the shareholding, with it being offered over the counter in Hong Kong by Conduit.

140. After what was really a quiet year for the limited partnership following the purchase of the Didi shares, there was a flurry of activity from July 2017, starting on 14 July 2017, when Ms Bochkova sent a draft investment advisory agreement between the Defendant, acting as general partner of CRGF LP, and RN Consulting SA to Mr Erochkine by e-mail. The basis of the draft agreement was that RN Consulting SA would provide advice to the partnership and be paid advisory fees.

141. Further, on the same day, Ms Bochkova and Mr Erochkine exchanged text messages about another potential investor into the fund, but referring to the problems with the Tianjin Bohai Fund, so it would be based through the offshore one, being CRGF. Ms Bochkova apologised for putting pressure on Mr Erochkine, with Mr Erochkine noting that what everyone needed was a plan, one possibility being to sell the Didi shares and close the topic.

142. Also on 14 July 2017, Andrew Everton of Saffery Champness e-mailed Ms Bochkova following a conversation she had had with a colleague of his. This led to Ms Bochkova asking on 17 July 2017 for the account statement of CRGF Fund as of that date. Mr Everton replied that he understood that the latest statements would have been received from Mr Erochkine. Mr Everton made the arrangements to introduce Ms Rapoport to Banque Havilland the following day, as requested and provided Ms Rapoport with the statements requested.

143. On 17 July 2017, Mr Erochkine sent an e-mail to Mr Kiselev, copied to Ms Rapoport, about his letter of resignation. He reported that he had learnt the diagnosis and the situation was worse than expected so his top priority for the following six months was to get out of the bad situation with his health. As a result, he had to resign and was doing so with immediate effect because he could not perform his functions responsibilities and so did not consider he should be paid his salary any more. Ms Rapoport immediately forwarded the message to Ms Bochkova. It is common ground that Mr Erochkine's employment terminated at the end of the month on 31 July 2017 as recorded in a document dated 25 July 2017 formally recording the termination of the employment agreement at the initiative of the employee.

144. In her evidence, Ms Rapoport accepted that Mr Erochkine's resignation came as a surprise to her. When it was suggested to her that this meant the agreed process by which he would earn his money for the project from the management fee payable to the general partner would now be realised, she denied any analogy with long-term bonuses capable of being earned by him. She was aware that the consultancy agreement with RN Consulting SA had not yet been finalised. She denied that she had agreed with Mr Erochkine that he should own the Defendant as the general partner within this fund.

145. On 17 July 2017, Mr Erochkine asked his contacts at Didi, Mr Chen and others for a response to queries he had raised earlier about consolidated financials for 2016 and a general business update, which led to a response being provided to him from investor relations because his former contacts had moved on. Mr Erochkine replied on 19 July 2017, asking them to use "CRGF LP and Rusnano" on the documents as that is the legal entity used for ownership of the shares, because such documents may be seen by auditors, which is why he was asking for the documents to be re-issued in that style.

146. Following submission of his resignation letter, Mr Erochkine had discussions with Ms Rapoport on the telephone. He indicated he wished to sell the shares in Didi promptly, explaining that he had a personal economic interest in the project meaning the shares must be sold. He intimated that he would liquidate the limited partnership if the shares were not sold. On 27 July 2017, Ms Rapoport met with Mr Erochkine in London, hoping to resolve matters. During that meeting, Mr Erochkine repeated that he had a personal economic interest in the limited partnership and wanted the Didi shares to be sold.

147. On 9 August 2017, Ms Rapoport followed up a conversation she had had with Robert Steele at Saffery Champness with an e-mail to him. (By this time, Mr Belhomme had left Saffery Champness.) She sought his confirmation that because Rusnano had commenced an internal investigation that Saffery Champness would take no action in respect of the assets of CRGF (as well as in relation to the RN Pharma Trust) without prior written consent of a director of the Plaintiff. In his reply the following day, Mr Steele asked her to inform Mr Erochkine about this requirement so there would be no confusion on his part. Ms Rapoport had stated that all the assets of CRGF (and the Trust) were assets of Rusnano, to which Mr Steele responded that the beneficial ownership of the assets of CRGF LP, being the shares in Didi, was with Rusnano entities, as the limited partner, but that what needed to be clarified was the ownership of the general partner, which might be something to discuss with Mr Erochkine.

148. In a WhatsApp message on 10 August 2017, Ms Rapoport asked Mr Erochkine who owns the Defendant. When it was suggested to her that this indicated she knew he owned it and was asking if he still did, Ms Rapoport denied this, explaining that she was asking him who owned the general partner in the limited partnership because at that time she did not know.

149. On 14 August 2017, Ms Bochkova made enquiries of Mr Steele about certain payments shown on the statements, which he answered. She also asked for copies of the agreements signed between Rysaffe Administrateurs Sarl, Saffery Champness and CRGF GP for directorship, registered office and corporate services. Mr Steele replied that they needed to discuss this with Mr Erochkine first. Ms Bochkova replied that she did not understand what kind of secret provisions it might contain and that, as the sole investor in the fund, they expected such a type of services agreement to be fully transparent.

150. On 16 August 2017, Mr Erochkine informed Mr Steele by e-mail that he had been having almost daily discussions by telephone with Ms Rapoport and Ms Bochkova and the issue of the ownership of the Defendant had not been raised at any time. Mr Erochkine also forwarded Ms Bochkova's message from 14 July 2017 to Mr Steele, commenting that "*they wanted to enter into a fee sharing agreement, which we were discussing. This clearly implies that there was no question about GP ownership. They were interested in negotiating a fee sharing agreement with me.*"

151. On 17 August 2017, Mr Erochkine sent an e-mail to Mr Steele setting out what he regarded as the best course of action. In relation to the CRGF limited partnership, he wanted Rysaffe to represent his interest, explaining that there were negotiations with the limited partner over three scenarios, which were first continuing the position, secondly replacing the limited partner or thirdly selling the general partner to Rusnano. His position needed to be protected in those negotiations. This was why the discussions should be between him and Rusnano and not with Saffery Champness and, if they were contacted, anyone from Rusnano should be told to speak directly to him. He drew attention to provisions in the LPA about limited partners not being involved in management and felt Rusnano were trying to establish a precedent so as to strengthen their negotiating position. Further, he advised against providing the Plaintiff as limited partner with information at this stage because of the limitations placed under the terms of the LPA in doing so. He indicated he would be speaking with Mr Kiselev.

152. Ms Rapoport says she sat in on the telephone call between Mr Erochkine and Mr Kiselev. The latter invited Mr Erochkine to transfer control over the Defendant to the Rusnano Group (and to act similarly in relation to the RN Pharma Trust), in return for which Mr Kiselev would, at the appropriate time following the shares in Didi being sold, seek to obtain approval for a bonus to be paid to Mr Erochkine even though he was no longer employed within the Group. Mr Erochkine did not agree to do this, but Ms Rapoport thought that it was something to which they could work. The Luxembourg Agreement was not mentioned. Mr Kiselev offered some advice as an older man to Mr Erochkine about his actions.

153. After that call, Mr Erochkine asked Mr Steele to let him know what documentation had already been provided about the general partner. Mr Steele told him, adding that they had not sent any of the ownership documentation / management and administration agreements for the general partner, saying they had explained they needed to speak with Mr Erochkine. Shortly thereafter, Mr Erochkine updated Mr Steele, starting by asking him to keep contact with Rusnano to the absolute minimum while they were reaching agreement. He also set out that it had been a long call with Mr Kiselev, with Ms Bochkova joining for most of the call. Mr Erochkine had confirmed that the structures (including the RN Pharma Trust) had not changed since their set up and Rusnano's position had not been affected. Mr Erochkine was not interested in partial solutions, such as giving Rusnano more rights, and would not act against his interests under the current documents. Mr Kiselev had made it clear that it was not politically acceptable for Rusnano funds or assets to be managed by a person with no ties to Rusnano, so Mr Erochkine could re-join if he wished. Mr Erochkine did not want to do so and sought a compromise making all sides happy as a long-term solution. In respect of the Defendant, Mr Kiselev had offered the solution of moving it to a Rusnano entity in return for a direct contract with Rusnano, but Mr Erochkine had rejected that because he had "*invested a lot of time and effort to get where CRGF is now*". Mr Erochkine wanted to develop the project either with Rusnano as the limited partner or with another partner. Mr Erochkine had asked if he could sell the limited partner's interest, but Mr Kiselev had rejected that because he wanted to be in control of the general partner first. Accordingly, there had been no agreement.

154. On 17 August 2017, Mr Erochkine exchanged apparently friendly text messages with Ms Rapoport about the call with Mr Kiselev. Mr Erochkine indicated Mr Kiselev had not been ready to talk about selling the Didi shares and that he needed a couple of days to think about concrete steps.

155. On 21 August 2017, Ms Rapoport wrote to Xiaoju Kuaizhi Inc. informing it that Mr Erochkine had left Rusnano and was no longer authorized to act on behalf of Rusnano or the Fund and that his potential inappropriate behaviour was under investigation. This led Ms Zhao to send an e-mail to Mr Erochkine on 22 August 2017 asking him to confirm that he was no longer employed by Rusnano Capital and thus no longer authorized to act on its behalf and that the confidential information he had received would be kept confidential. On 25 August 2017, Mr Jing asked Ms Bochkova about what Mr Erochkine had said in reply, namely that he still represents the Defendant as general partner and so is authorised to represent the limited partnership. Mr Erochkine had requested that Didi should not contact Rusnano or share information with it.

156. On 30 August 2017, Mr Erochkine set out his consideration of what should be done with the CRGF limited partnership. He felt the structure had been created to assist Rusnano and would not be attractive to new limited partners to invest in China, so there were no real grounds for Rusnano to grab hold of the entire structure, especially where it already had a high level of control. The Didi shares could be sold at a profit. Ideally Rusnano would sell its units in the fund, or the fund could sell the shares, or there be conflict between the partners and liquidation of the fund, so the Didi shares would be sold by the liquidator, or the fund could continue waiting for the floatation of Didi and there be a co-management agreement or the fund could be frozen for the time being, awaiting the IPO, and liquidated afterwards.

157. On 31 August and 1 September 2017, Mr Erochkine and Ms Bochkova exchanged text messages about how to resolve matters. Mr Erochkine was concerned that Rusnano joining the general partner would make the structure unsellable. He had in mind a side letter giving an element of control. Ms Bochkova commented that it was important not to forget "*that the main uncomfortable point is that the Fund is managed by, let us say, somebody odd, and at any moment this somebody may transact the assets. We need to remove this risk and then to propose options for structuring the transaction, which can be plenty.*" In the course of further exchanges on 13 September 2017, Mr Erochkine raised the possibility of a liquidator being

appointed and the fund assets being sold by the liquidator. Ms Bochkova also indicated that Mr Kiselev would not consider the exit from the project until he has control over the asset of the fund through the general partner. There is also a WhatsApp message that day from Ms Bochkova to Mr Erochkine in which she states about securing control over the general partner: "*I don't give a damn about the GP itself, but whilst the assets are held by the fund and the Rusnano money is in the accounts, it is necessary for Rusnano to control the GP.*" She needed them to find a solution to present to Mr Kiselev relating to that issue.

158. On 2 October 2017, Mr Erochkine informed Mr Steele that he was due to speak with Rusnano again that week as they had prepared some documents regarding the sale process. On 4 October 2017, Mr Bochkova sent a draft side letter to Mr Erochkine for the Defendant to send to the Plaintiff. There were to be additions of clauses 2.6.3, 2.6.4 and 11.5, all with a view to ensuring that no transaction could be effected without prior written approval on a unanimous vote of the limited partners. On 30 October 2017, on behalf of the Defendant, Mr Everton and Mr Steele wrote to the Plaintiff agreeing that, whilst the draft side letter was being considered, the general partner would not undertake any new transactions without the Plaintiff's prior approval. A revised draft, with amendments proposed by Mr Erochkine, was returned to Ms Bochkova and Ms Rapoport on 1 November 2017.

159. On 5 November 2017, Mr Erochkine sent an e-mail to Mr Steele asking if he had had a response from Ms Bochkova. He felt that they had had enough time to act and find a mutually convenient solution, but they were playing games or stuck in a bureaucratic stalemate. He further wrote: "*I have been planning to have a successful, known and active high tech fund with their help as LP. But all the activity is effectively blocked and my plan is under a lot of threat now.*" He wanted the general partner to send a strongly worded letter on the Friday and if the revised side letter were not signed, there would be serious thought given to a capital call, which might trigger the dissolution option. This was because he was "*not prepared to take a passive friendly stance anymore. The way they have behaved is unacceptable and I cannot tolerate it anymore. If we need to take to a court then we should do this. I have put a lot of work, effort and reputation into this project and I feel it is now on the verge of being ruined.*"

160. On 9 November 2017, Ms Bochkova replied to Mr Steele that the revised draft side letter was not acceptable because Mr Erochkine's comments strengthen the position of the general partner and did not give any comfort to Rusnano. She reminded him that the purpose of the side letter was to establish joint control over the fund's activities after which they could start reviewing the opportunities for selling the fund's assets. She asked for a quick response. Mr Steele forwarded the message to Mr Erochkine. When Ms Bochkova asked about progress on 13 November 2017, Mr Steele replied that the problem with the wording of the draft side letter was that it tied the general partner's hands if it could not get approval from Rusnano even for third party debts it was obliged to settle and there was potential liability for losses of missed opportunities. Ms Bochkova invited him to propose some alternative wording. Mr Steele forwarded this message to Mr Erochkine, who replied on 23 November 2017, following a meeting with Mr Steele, with a suggested response. However, Mr Steele suggested the following day to Ms Bochkova that the best solution would be to discuss matters with Mr Erochkine directly.

161. On 24 November 2017, Mr Erochkine wrote a letter to Ms Bochkova about the outstanding issues following the ending of his employment in July. In respect of the limited partnership, he complained that the fund was effectively blocked due to continued misunderstandings between the general partner "*which is fully owned by me*" and the limited partner. He had understood that it had been agreed to sell the Plaintiff's interests to another investor or other investors and that a side letter would give sufficient comfort in the meantime. However, he had learnt that contact had been made with the directors of the Defendant during which other intentions were raised and that serious allegations had been made about him and his ownership of the general partner to third parties, including Xiaoju Kuaizhi Inc., in respect of

which he might need to take legal action, but he hoped that would be unnecessary. He sought confirmation that the intention to replace the Plaintiff as sole limited partner was still the plan. He pointed out that if the deadlock were not broken, the Plaintiff had committed US$150 million to a 7-year fund with a 2.5% annual management fee, so there were significant financial risks.

162. Ms Rapoport indicated that the receipt of this letter was the first occasion on which Mr Erochkine expressly confirmed his beneficial ownership of the Defendant. Previously, the references had been more oblique, referring to having a personal economic interest. When asked about how she felt when she found out, she described herself as "*outraged*" and that on both a personal and business level she felt betrayed. She referred to seven and a half years of friendship, with Mr Erochkine and his family coming to her house, when all along he had been lying, which is why she felt betrayed and could not have imagined being put in this position.

163. The Plaintiff's Annual Accounts for the financial year ending 31 December 2016, dated 29 November 2017, record that "*On July 8, 2016 and July 15, 2016, the Company acquired the participation in CRGF GP L.P. for a total amount of USD 25,005,000.00. The Board believes that despite the loss of CRGF for the financial year 2016, there is no impairment required since CRGF is in start-up period and the investment was acquired only in July 2016.*"

164. On 4 December 2017, Mr Erochkine and Ms Bochkova met in Paris. They discussed the signing of a side letter, which was a pre-condition to any sale of the Didi shares.

165. On 11 December 2017, Mr Erochkine sent an e-mail to Mr Steele explaining that he was making a final push to agree the side letter with Ms Bochkova, pointing out that he had asked a direct question about his ownership of the general partner twice in a very direct way and each time the response had been that Rusnano was not challenging his ownership in any way and it was not an issue. Mr Erochkine wanted some resolution, otherwise he was ready to move forward and ask for the management fees to be paid to the general partner. Mr Steele replied that it might be necessary to consider triggering the arbitration clause in the LPA. On 8 January 2018, Mr Erochkine sought to recover the fees due to the Defendant by wishing to instruct Saffery Champness to transfer the monies held on behalf of the limited partnership to the Defendant and to make a further capital call for the remaining fees.

166. On 15 January 2018, Ms Bochkova responded on behalf of RN Consulting SA to Mr Erochkine's letter of 24 November 2017. Her understanding of the underlying facts differed from his. In respect of the Defendant, she referred to it being "*allegedly fully owned by you*". She further wrote:

> "*As you know, being a state-owned group of companies, in order to ensure preservation of public funds, JSC RUSNANO implemented highly strict policies on participation in investment funds and on conflict of interests to be adhered with by its employees. All your activities as a manager of RUSNANO Management Company LLC ("**Rusnano**") and Rusnano Capital LLC were subject to these policies.*"

She referred him to article 4.1 of the employment agreement dated 1 November 2016 and then to the Code of Corporate Ethics and the definition of "Conflicts of Interest" found in it, before adding:

> "*Having participation in a company that manages Rusnano's assets or having other personal economic interest in Rusnano Group projects would be a clear evidence of the existence of the conflict of interests. In such case according to Chapter 10 of the Code of Corporate Ethics you should have applied to Commission on Corporate Ethics within 14 days from acknowledgement of information evidencing conflict of*

interests, which would determine whether you may have participated in the conflicted project or not."

She did not believe Mr Erochkine had made any such application to the Commission. She next referred to the Statute on Terms and Conditions of Financing of Investment Projects, article 6.1 of which provided that JSC RUSNANO would only finance projects under direct management or co-management of Rusnano. She considered that what Mr Erochkine had done by "*structuring investment vehicles which are not even under joint control of either Rusnano or JSC RUSNANO but are rather controlled by a private person having its economic interest in the projects would be a clear violation of highly strict investment-control policy implemented to protect public funds.*"

167. This was the earliest articulation of the basis of the case now made by the Plaintiff. It resulted in Mr Erochkine instructing his Advocates here in Guernsey in respect of his interest in the Defendant, as shown by a letter to Ms Bochkova dated 26 January 2018.

168. Mr Erochkine met with Ms Rapoport in London on 26 January 2018. Ms Rapoport wanted Mr Erochkine to sign the side letter to rectify his breach of duties. Mr Erochkine adds that he recalls Ms Rapoport mentioning his ownership of the Defendant during this meeting without alleging that she had been misled about it.

169. The other matters to which the correspondence between Mr Erochkine and Ms Bochkova also relates are Mr Erochkine's Luxembourg Agreement, which has been the subject of proceedings in Luxembourg commenced on 9 March 2018 and touches upon arrangements involving Celtic Pharma Holdings II LP, as well as the RN Pharma Trust, which was subsequently dealt with in the other proceedings before this Court. The proceedings in Luxembourg claim in excess of US$6 million. Ms Rapoport explained that she had a similar agreement herself, but had not received any monies under it. The proceedings in relation to the RN Pharma Trust were commenced with an Affidavit in support from Ms Rapoport dated 18 March 2018. As previously noted, those proceedings went to the Court of Appeal later in 2019, were remitted to this Court thereafter, but resolved between the parties by the summer of 2020. Both matters have been considered by way of background by this Court to add colour to the subject-matter of the present dispute, but no formal findings are required in respect of them.

170. There were also proceedings commenced in the British Virgin Islands by the Plaintiff against the Defendant and Arias, Fabrega & Fabrega Trust Co. (BVI) Limited, which also provided the Defendant's registered office. (The other entity was a party principally in respect of the disclosure aspects of the application.) Ms Rapoport's Affidavit in support is dated 14 March 2018, being the same date as her first Affidavit in these proceedings and to which reference was made therein. The relief being sought was an ex parte interim injunction to restrain the Defendant from issuing any further drawdown request in the terms of the LPA or in any way disposing of, dealing with or diminishing the value of the assets in the limited partnership pending the determination of the proceedings it intended to commence before this Court, which was indicated would be for the dissolution of the partnership and the return of the assets to the investor. It sets out the same allegation as made now that, while an employee of the Rusnano Group, Mr Erochkine "*improperly acquired to himself an economic interest in the General Partner that ought properly to belong solely to Rusnano*". In relation to the fear of dissipation of the assets of the limited partnership, this Affidavit refers to the negotiations that had been taking place and which were likely to come to an end once the application in the proceedings here were to be served. This application was lodged on the afternoon of 15 March 2018 and the relief sought was granted on 24 March 2018 by Justice Adderley, whose order required an additional undertaking to be given that the Plaintiff would issue its application in Guernsey within five working days. These proceedings were commenced by the Application dated 3 April 2018.

171. Those injunction proceedings in the BVI were returnable on 18 April 2018, when the freezing order was continued, but adjourned to enable expert evidence on Guernsey law to be provided, which then led to a further hearing before Justice Wallbank on 26 April 2018 in respect of which the transcript has been referred to. Although counsel for the Defendant clarified that she took her instructions from the general partner and not from Mr Erochkine, there was Affidavit evidence before that court from Mr Erochkine, lodged on the afternoon of 25 April 2018, supportive of the Defendant's application to vary the freezing injunction to permit certain expenses to be paid out of partnership assets, in which he stated that he was the ultimate beneficial owner of the Defendant and alleged that the Plaintiff had failed to make full and frank disclosure. In doing so, he exhibited *inter alia* the letter from BJB to Ms Rapoport dated 15 April 2016 and the response from Mr Kiselev dated 27 April 2016, to both of which reference has previously been made. The hearing focused on the questions arising as to the Guernsey law of partnership and did not involve any detailed consideration of Mr Erochkine's allegation about non-disclosure.

172. The freezing injunction, duly varied to enable the Defendant to carry on its ordinary business, was continued by an order dated 5 June 2018, entered on 14 June 2018. Justice Wallbank's judgment refers to the original ex parte order having prejudged these proceedings, ignored the partnership agreements and other material background information, which the Plaintiff had failed to disclose. The way the letter of 15 April 2016 from BJB was dealt with is found first in para. 19 of that judgment:

> "*The correspondence shows that before the partnership began investing, the Rosnano group's bank, Julius Bär, made a probing due diligence request querying information they held showing Mr. Erochkine as the sole beneficial owner of the general partner. Julius Bär pointed out in a letter dated 15th April 2016, addressed to Ms. Irina Rapaport as the Chief Executive Officer of RUSNANO Capital LLC and Managing Director of RUSNANO OJSC, that 'Rusnano employee Mr. Erochkine is apparently the sole beneficial owner' of the general partner. It also expressly referred to the broad discretion of the general partner conferred by the LPA and pointed out that its terms entitle the general partner to earn potentially substantial fees and commissions. Julius Bär sought express confirmation that the management company, RUSNANO LLC, fully accepted and agreed these arrangements. The bank placed these issues squarely before the Rusnano group.*"

The judgment then deals with the reply of 27 April 2016, in which the judge noted that the fund, which he took to mean the partnership, had been fully approved and that the chosen structure gives Rusnano Capital sufficient control and flexibility for the first transaction with Chinese partners and investors and any further queries could be addressed to Mr Rapoport in respect of the limited partner and Mr Erochkine in respect of the general partner. In para. 23, the judge notes "*the Rusnano group's response to the bank affirmed the arrangements outlined by the bank, as approved*", although in the following paragraph the judgment states:

> "*We are not told what, if anything, then passed internally between the Rusnano group and Mr. Erochkine to address the alleged irregularity, and, if nothing did, why not. It is plain however that the bank placed the issue squarely before the Rusnano group's senior management. There is thus at least prima facie evidence that Mr. Erochkine was to be treated as the sole beneficial owner of the general partner, that the Rusnano group knew this, and were content to invest in the PRC through the partnership on that basis.*"

173. Justice Wallbank also regarded the brief mention Ms Rapoport had made to the side letter dated 28 July 2016 in her evidence as not amounting to full and frank disclosure, because it amended the LPA in a number of ways and needed to be read with the LPA to understand the contractual scheme then in place between the parties. There had been no evidence before that

court to explain who had proposed what and which party might have taken the lead in drafting it. The judgment records (at para. 42):

> "*Ms. Rapoport does not tell us what prompted the parties to enter into this side letter. It was entered into some three months after the bank had raised the sole beneficial ownership issue, about two to three weeks after Fonds Rusnano had made its first contribution in July 2016, and about a year before Mr. Erochkine's employment came to an end. Clearly, though, Fonds Rusnano wanted more control than the LPA gave them.*"

He was also critical that the way in which the general partner gave information-only access to its bank account on 18 July 2017 had not been referred to more explicitly on behalf of the Plaintiff.

174. Paragraph 87 of the judgment deals with these issues:

> "*In the present case Fonds Rusnano appears to have failed to give full and frank disclosure in a number of very material facts. These include the 28th July 2016 Side Letter and the fact that Mr. Erochkine's apparent sole beneficial ownership had been squarely put to the Rusnano group before it contributed capital to the partnership. This was crucial information which changes the whole complexion of the matter. But the general partner did not strongly oppose the application to continue the injunction on this ground. Nor was there detailed argument over Fonds Rusnano's degree of culpability or any mitigating circumstances. It would not be procedurally fair for this Court of its own motion to impose the penalty of refusal to make a fresh order. I will therefore disregard the failure to give full and frank disclosure for the purposes of the question whether a fresh injunction should be made.*"

175. Before leaving that judgment, reference can briefly be made to the approach taken to the continuance of the injunction by reference to the tests of there needing to be arguable case and dissipation, because they amount to findings on the material before the BVI court. Paragraph 63 of the judgment sets out that:

> "*The crux of Fonds Rusnano's claim is that Mr. Erochkine and/or the professional corporate services provider induced Fonds Rusnano to enter into the partnership by way of a misrepresentation that Fonds Rusnano and in turn the Rusnano group ultimately controlled the general partner and that Mr. Erochkine had no direct or indirect interest in the general partner. On the evidence before this Court it seems likely that during his employment Mr. Erochkine gave the impression, consistent with the terms of his employment, that any relationship of control over the general partner came to him purely as a Rusnano employee and was to be exercised always and only for, ultimately, the Rusnano group's benefit. It is unlikely, in my view of the evidence currently before the Court, that the Rusnano group did intend Mr Erochkine to assume a personal interest in the venture. I have seen no documentary evidence that Mr. Erochkine was intended by the Rusnano group to have any personal or private investment consultancy role in relation to the project, or some other pecuniary incentive. Correspondence which Mr Erochkine points to as indicating this falls short of demonstrating this. It can be construed as simply recording that Mr. Erochkine was the senior employee entrusted with particular duties to develop the investment parts of the project for the Rusnano group. Whether such an impression, or perhaps acknowledgement, amounted to a representation that induced Fonds Rusnano to enter into the LPA is another matter, but it is more than barely capable of being seriously argued.*"

Then para. 71 of the judgment records:

> "*… what is alleged by Fonds Rusnano is that Mr. Erochkine has, by a dishonest sleight of hand, attributed to himself the full ownership interest in the general partner in circumstances where the Rusnano group had not intended this, had not agreed to it, and, they say, they had not known about this until Mr. Erochkine resigned. On the evidence, the Rusnano group did know before they contributed capital that Mr Erochkine could claim sole beneficial ownership rights and they took that risk. But there is a danger that precisely the same sort of sleight of hand might be applied to the proceeds of sale of the partnership assets or the limited partner's interest in the partnership, and it is such dissipation which this Court considers it should be astute to prevent.*"

176. Immediately following the hearing in the BVI, steps were taken to change the formal control of the Defendant. On 27 April 2018, Rysaffe Administrateurs Sarl resigned as director of the Defendant at a meeting of the director attended by Mr Everton and Mr Tucknott. They noted the effect of the applicable legislation that, in the absence of a business company having a director, any person who manages, or who directs or supervises the management of the business and affairs of the company is deemed to be a director, which covered Mr Erochkine as the sole beneficial owner. On 8 May 2018, at the request of Mr Erochkine, the nominee arrangement in respect of the sole share in the Defendant was revoked and that share was transferred into Mr Erochkine's name. Further, on 10 May 2018, by a written resolution of the new sole shareholder of the Defendant, Mr Erochkine formally became the Defendant's sole director.

177. On 11 June 2018, Mr Erochkine sent to his Advocate, a summary of a discussion he was having with Ms Zheng, who he asked to confirm its accuracy. The summary referred to a visit that a high level Chinese delegation had made to Moscow, at Ms Rapoport's request, on 3 to 6 June 2018, with a view to raising new money for CRGF LP, during which Ms Rapoport had told Ms Zheng, in the presence of Ms Bochkova, that Rusnano were not seeking to dissolve CRGF LP and that the freezing injunction was in order to stop Mr Erochkine benefiting because he had left Rusnano Capital. They did not want to sell the Didi shares and were planning to wait to exit via the IPO. Ms Zheng quickly replied that that is what had been discussed in Moscow, although they had not mentioned CRGF in particular; it was more about the general situation. Shortly thereafter, Ms Zheng clarified that when she had asked about dissolving CRGF, Ms Rapoport had told her that did not intend to dissolve any overseas assets. Ms Zheng has also stated that it was during the month or so before this that Mr Butt first discovered from Mr Erochkine that he was the director and shareholder of the Defendant.

178. On 18 June 2018, Ms Rapoport wrote to BJB asking for copies of the letters dated 15 and 27 April 2016 and enquired how they had been sent. On 25 June 2018, Mr Capel Cure replied, explaining that the letter dated 15 April addressed to Ms Rapoport had been given to Mr Erochkine at a meeting that day for onward delivery to her, but their records did not show the means by which the letter from Mr Kiselev had been received.

179. There was an ex parte application for a prohibitory injunction before this Court that was heard on 6 July 2018, which also involved detailed consideration of the decision of Justice Wallbank. This arose because of the parties' inability to agree what was meant by some of the language in the LPA, and it was considered preferable to invite this Court to rule on the meaning rather than returning to the BVI court. The order was granted as a means of supplementing what was already operating from the BVI court, with a return date one week later, at which time an order was made on terms that would apply until further order, broadly preserving the position of the parties in the meantime.

180. It appears that the Tianjin Bohai Fund as planned never became effective.

Misrepresentation arising from employment obligations

181. The first basis on which the Plaintiff alleges a representation was made to it arises from the employment position of Mr Erochkine. It is common ground that Mr Erochkine did not make any formal notification to any of his employers that he was the beneficial owner of the Defendant when the limited partnership was being established. The question, therefore, is whether he was under any duty as a result of his employment contracts to make such a disclosure. By para. 13 of the Amended Cause, the Plaintiff pleads that Mr Erochkine was prohibited from holding a direct or indirect interest in any investment vehicle in which Rusnano Management Company LLC, Rusnano Capital LLC or JSC Rusnano was also participating (whether directly or indirectly) without the permission of the Commission on Corporate Ethics.

182. The most relevant timeframe for considering this issue relates to when the Defendant was incorporated in December 2014 and through to when the original limited partnership was first established on 1 October 2015, running through to when the LPA was executed on 3 December 2015, when the Plaintiff replaced Rysaffe Actionnaires Sarl as the limited partner. Further, as set out in paragraphs 16 and 22 of the Amended Cause, some consideration can also be given to the position up to July 2016 when the Plaintiff make the contributions to the partnership as required under the terms of the LPA, on the basis that it would have offered the opportunity to the Plaintiff to seek to avoid the consequences of an otherwise binding LPA before it was too late.

183. By way of a brief reminder of the facts set out above, Mr Erochkine's employment position can be summarised as follows. He was employed by Rusnano Capital LLC from 1 April 2010, initially as Project Director, but thereafter eventually as Managing Director. He was employed by Rusnano Management Company LLC part-time under an employment contract dated 2 March 2015 as Managing Director for Investment, Investment Division K. From 1 November 2016, which is after the material times, Mr Erochkine worked solely for this company under a contract dated that day in the same position as Managing Director for Investment, Investment Division K.

184. Paragraph 11 of the Amended Cause refers to clause 3.2.14 and clause 11.2, as well as clause 4.1, referring to Article 22 of the Russian Labour Code. Paragraph 12 refers to the Codes of Corporate Ethics, para. 3.1 (and the definition of "Conflict of Interest"), para. 9.1.1 and para. 9.1.5. It is accepted by Mr Erochkine on behalf of the Defendant that he was familiarised with the Rusnano Capital LLC Code of Corporate Ethics, but questions what the effect of that is, given what that company did and the recommendatory nature of some of the provisions. However, he denies having been familiarised with the Rusnano Management Company LLC Code of Corporate Ethics.

185. Each of Mr Erochkine's contracts of employment is governed by Russian law. As a result, the expert evidence dealt with the question of whether the obligations that the Plaintiff relies upon existed and operated to require him to disclose his interest. In accordance with section 20(2) of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009, disputed questions of foreign law are for the presiding judge to determine, so the following decisions have not involved the Jurats.

186. The expert called on behalf of the Plaintiff is Alexander Karpukhin, a partner at Five Stones Consulting in Moscow. Mr Karpukhin's initial report is dated 15 February 2019. The expert called on behalf of the Defendant is Dr Viktor Gerbutov, a partner at Noerr, also in Moscow. His report is dated 14 February 2019. The Defendant took advantage of the right in rule 12(1)(a) of the Evidence in Civil Proceedings (Guernsey and Alderney) Rules, 2011 to put questions to Mr Karpukhin for clarification on the content of his report. The responses were given in a document dated 5 April 2019. In respect of the eighth question asked on behalf of the Defendant, Mr Karpukhin had sought to discover what was actually being asked by letter dated 28 March 2019, and that answer was provided by Advocate Williams by letter dated 5

April 2019, which resulted in Mr Karpukhin's response being set out in a further document dated 12 April 2019.

187. The experts also produced a helpful Joint Memorandum dated 18 June 2019, during the course of the trial and just before they gave their evidence, indicating the areas on which they agreed. The first aspect relates to the hierarchical sources of Russian law as they operate in respect of labour law. The main source of law in that continental system of law is statute. There is a strict division between different branches of law, for example, civil law and labour law. Court judgments are not formally regarded as a source of Russian law, but it is acknowledged that they provide important guidance on the correct interpretation of law and other legal acts, and the courts prefer to comply with the resolutions on particular cases issued by higher-level courts. Indeed, the judgments of the highest courts (the Constitutional Court, the Supreme Court and, until is abolition in 2014, the Supreme Arbitrazh Court) are in certain cases mandatory for lower courts. In particular, the experts agreed (in para. 5 of their Note) that the sources of Russian labour law listed in Articles 5 and 10 of the Labour Code generally have the following hierarchy:

> "*(1) Russian Constitution;*
> *(2) Generally recognised principles of international law and international treaties of the Russian Federation;*
> *(3) Federal constitutional laws;*
> *(4) Labour Code;*
> *(5) Other federal laws and laws of subjects of the Russian Federation;*
> *(6) Decrees of the President of the Russian Federation;*
> *(7) Resolutions of the Government of the Russian Federation and normative legal acts of federal executive authorities;*
> *(8) Normative legal acts of executive authorities of subjects of the Russian Federation;*
> *(9) Normative legal acts of municipal authorities;*
> *(10) Collective agreements, accords;*
> *(11) Local normative acts.*"

Simply through listing this hierarchy, it is readily apparent that the system of Russian labour law has a number of real differences with how matters are resolved according to Guernsey law. This is an aspect that the Court has striven to remember throughout.

188. Further, in accordance with Article 5 of the Labour Code, (and which the presiding judge notes is the highest level applicable from that hierarchy of sources), in any case of contradiction between the Labour Code and other legislation (or other sources of labour law) regarding the regulation of labour relationships, the Labour Code prevails. By virtue of Article 8 of the Labour Code, local normative acts cannot worsen the position of employees in comparison with the position established by the other sources of Russian labour law. According to Article 9 of the Labour Code, labour contracts may not contain terms that limit the rights of, or reduce the level of guarantees for, employees in comparison with those established by the labour legislation and other normative legal acts and, if such terms were to be included in a labour contract, they would not apply.

189. According to Article 22 of the Labour Code, the employer must familiarize employees with the adopted local normative acts directly related to their working activities against their signature. According to Article 312.1 of the Labour Code, remote employees may be familiarized by the employer with local normative acts by e-mail exchange using improved electronic signature. The experts agree that an employee cannot be required to comply with a local normative act with which he is not familiar, but where an employee signs during the familiarization process it confirms that he has been familiarized with the local normative act and agrees to comply with it.

190. According to Article 21 of the Labour Code, the duties of employees include, in particular, a duty to treat the property of the employer (including the property of third persons held by the employer if the employer is responsible for the safety of this property) and of other employees with due care. However, the experts agreed that the notion of property under this Article does not extend to proprietary and non-proprietary rights and business opportunities.

191. When Mr Erochkine was initially employed by Rusnano Capital LLC as Project Director, with effect from 1 April 2010, his contract of employment (No. 7) contained the following provisions, as referred to in the Amended Cause:

> "*3.2 The Employee shall: …*
>
> *3.2.14 handle the Employer's property with due care. In case of a damage to or loss of property provided by the Employer, immediately notify the Employer. …*
>
> *4.1 Upon the hiring (and before the execution of this Contract), the Employer shall make available to the Employee to familiarize himself, against his signature, with the Employer's staff handbook, policies and procedures and any other internal regulations which govern the Employee's employment and may cover such aspects as business ethics, job safety, discrimination and labor productivity management. Such internal documents of the Employer shall be from time to time brought into compliance with existing Russian laws and the Employer's current needs. The Employee shall receive detailed explanations as to the Employer's internal documents as part of the Employer's information program and as and when the Employer's internal documents are amended. The Employee shall comply with the Employer's internal documents.*
>
> *11.2 The rights of all the deliverables developed by the Employee during and in connection with performance of his job duties and/or during the working day shall be held solely by the Employer.*"

192. When Mr Erochkine was promoted to Deputy Director General with effect from 17 December 2010, as recorded in Addendum No. 1, and also when his job became Deputy Director General for Investment with effect from 5 December 2011, as recorded in Addendum No. 3, these terms remained unchanged. Addendum No. 4 increased base pay with effect from 10 January 2012. Addendum No. 6 made Mr Erochkine a remote employee with effect from 1 November 2013. The entirety of clause 3.2 was substituted and so read *inter alia*:

> "*3.2 The Employee shall: …*
>
> *3.2.2 perform his job duties in good faith according to high quality standards, corporate ethics and confidentiality requirements, promptly, in a highly qualified and efficient manner, and to handle the Employer's and other employees' property with due care; …*
>
> *3.2.10 handle the Employer's property with due care. In case of a damage to or loss of property provided by the Employer, immediately notify the Employer*".

Clause 16.6 ("*If the Employee may or is required to apply to the Employer, provide clarifications or any other information to the Employer, he may do so in the form of an electronic document.*") was also inserted.

193. With effect from 1 January 2015, Mr Erochkine was again promoted to Managing Director, with an increase in base pay, as recorded in Addendum No. 7. Supplementary Agreement No.

8 enabled Mr Erochkine to have work of an itinerant nature, with effect from 12 January 2015. With effect from 2 March 2015, Mr Erochkine was provided with a company vehicle, as recorded in Addendum No. 9.

194. Employment Contract No. 332 is dated 2 March 2015 and deals with Mr Erochkine's part-time employment with Rusnano Management Company LLC as Managing Director for Investment, Investment Division K. Clauses 3, 4.1 and 11.2 are all in the similar form, so far as is material, as in Employment Contract No. 7 governing his other (and principal) employment. For example, the terms of clause 3.2.2 as substituted by Addendum No. 6 in Employment Contract No. 7 are found in clause 3.2.3 of Employment Contract No. 332 and clause 3.2.14 in Employment Contract No. 332 is in the same terms as clause 3.2.14 in Employment Contract No. 7 rather than as it became re-numbered in Employment Contract No. 7 following Addendum No. 6. The working week is stated as 4 hours (clause 7.1) and the workplace is the Moscow office of the Employer (clause 8.1).

195. Rusnano Capital LLC gave effect to that company's Code of Conduct with effect from 2 April 2015 by way of Order No. 14. Mr Erochkine accepts that he signed on 31 March 2015 to confirm that he had read *inter alia* the Code of Conduct. The particular provisions to which the Plaintiff refers in the Amended Cause are:

> "*3.1 All of the employees regardless of the level of the position they hold are advised to follow the following standards of corporate conduct:*
>
> - *To comply with the Company's internal regulations as in effect;*
> - *To follow the generally accepted norms of ethics and rules of conduct;*
> - *To act in the best interests of the Company;*
> - *To be responsible for your own actions, not shift the responsibility on the circumstances and/or other employees;*
> - *To take efforts to prevent any potential conflicts between business units and individual employees;*
> - *Not to act or omit to act in such a way that may cause financial, property, reputational or other damages to the interest of the Company as a whole or to its business units and individual employees, as well as subsidiaries and associates. …*
>
> ***9. Company's approach to dealing with conflicts of interest***
> *This Section contains model situations giving rise to potential conflicts of interest between an employee and/or his/her family members and the Company.*
>
> *The list of such situations of conflict of interest is not exhaustive. It means that the Company's employee knew or should have known in advance about the facts which give rise to a conflict of interest and require notice to be given to the Commission.*
>
> *For the avoidance of taking actions in a situation where there is a conflict of interests between an employee, his/her affiliates and the Company, the employees shall undertake to rely on the following principles in the situations listed below:*
>
> *9.1 Involvement of an employee and/or his/her family members in operations of the Company's portfolio companies:*

9.1.1 For the purposes of this Code, involvement of an employee and/or his/her family members in operations of the Company's portfolio companies means:

- *an employee and/or his/her family members have signed or intend to sign an employment contract or civil-law contract with a portfolio company;*
- *an employee and/or his/her family members are members of the governing or controlling bodies of a Company's portfolio company;*
- *an employee and/or his/her family members hold or intend to acquire shares, interests or units in the Company's portfolio companies or funds created with the involvement of the Company. …*

9.1.5 In each case referred to in paras 9.1.1-9.1.4. it is recommended:

a) for the employee: within 14 (fourteen) calendar days from the date when it became known to him/her that the Company is a member of the given organization, such period shall be exclusive of the time when the employee was absent for a valid reason (sick leave, business trip, etc.);

b) for the employee's family members: within 14 (fourteen) calendar days from the date when it became known to the employee that the Company is or considers becoming a member of the given organization, such period shall be exclusive of the time when the employee was absent for a valid reason (sick leave, business trip, etc.),

to take the following steps:

- *notify the manager of the relevant project of the occurrence / existence of such situation and give notice to the Commission in the form attached as Exhibit 1 to this Code;*
- *notify the governing body of the Company's portfolio company of the occurrence or existence of such situation (as the employee may think appropriate);*
- *vote in the governing or controlling bodies of the Company's portfolio companies or other organizations as instructed by the Company (according to the Company's internal regulations governing the activities of Company's representatives), having in mind that before the instruction was prepared the employee had communicated the circumstances referred to in paras 9.1.1-9.1.4. to the Company's manager of the relevant project;*
- *in the event that a conflict of interest occurs, not make any decisions inside the Company on the project which is being implemented by the Company's portfolio companies and other organizations jointly with the Company.*"

In Section 2 of the Code, the term "*Conflict of Interest*" is defined as "*Intersection/collision of personal interest of an employee or his family members with the interests of the Company; personal interest of employees that may cause them to act against the interests of the Company and deteriorate its performance*". Although not expressly referred to in the Amended Cause, the definition of "*Commission*" means the "*Company's Corporate Ethics Committee*".

196. A Code of Conduct of Rusnano OJSC and Rusnano Management Company LLC appears to have first been promulgated dated 5 May 2014 (with reference made to Order No. 54/89), although it was subsequently amended by Order No. 7/16 in February 2015 and Order No. 38/86 in April 2016 (and it is this amended document to which the Court has been referred). There is no document containing Mr Erochkine's signature showing that he similarly confirms that he read this document in any version.

197. The wording in the Code of Conduct of Rusnano OJSC and Rusnano Management Company LLC is in substance the same as in the Code of Conduct of Rusnano Capital LLC save that it has been modified so as to refer to the two companies rather than just one. In particular, subject to that modification, the wording of para. 3.1 is the same, as is the definition of "*Conflict of Interest*". The wording of Section 9 is broadly the same but, in para. 9.1.1 there is also reference after the words "*portfolio companies*" to "*and other organizations in which either Company is or considers to become a member*".

198. During the course of being cross-examined, both experts broadly maintained the position that they had taken in their reports. However, Dr Gerbutov, in response to questions put to him by way of analogy with the situation within a law firm where an employee is tasked with working on a matter but has a personal interest in the other side's business, acknowledged that this would amount to a conflict of interest that should be disclosed, thereby enabling it to be managed or the employee taken off that piece of work.

199. Mr Karpukhin commented on the issue of whether Article 21, which is reflected in the terms of Mr Erochkine's employment contracts, was engaged relating to him being obliged to take due care of the employer's and other employee's property. In his view it did and this was one of the main duties Mr Erochkine had as an employee. He expanded that further by reference to para. 8.2 of the Codes of Conduct, relating to employees handling the property of affiliates of the employer with due care and to ensure its efficient use for work-related purposes. The problem for the Plaintiff is that this was not one of the obligations on which it has relied for the purpose of establishing the misrepresentation.

200. As regards familiarization of a Code of Conduct against signature, Mr Karpukhin referred to Mr Erochkine's status as a remote worker, by which it was permissible to comply with this requirement via the internet, local network disk or intranet. Again, the difficulty for the Plaintiff is that Mr Erochkine accepts he was familiarized against his signature in respect of the Rusnano Capital LLC Code of Conduct on 31 March 2015, and it was in relation to that employment that he was a remote worker, whereas the dispute lies in respect of familiarization to the Management Company Code of Conduct, where he did not have remote worker status.

201. On the question of whether the provisions of the Code of Conduct were mandatory obligations of Mr Erochkine, Mr Karpukhin noted that the language in places was advisory in nature, eg, paragraphs 3 and 9.1.5. In this regard, he drew attention to Article 21 of the Labour Code relating to what an employee is obliged to do in relation to his employer's property, as well as the provision of Mr Erochkine's employment contract (eg, clauses 3.2.3 and 3.2.14) as meaning that these overrode anything that might suggest that this was not an obligation and only recommendatory in nature. By reference also to Article 56 of the Labour Code, providing that an employee is bound by the duty to act on the employer's interest and under its control, he suggested that:

> "*As it is necessary for the employee to comply with his obligation to prevent any damage to the employer, it is impossible for him not to follow the provisions of Clauses 9.1.5 of both the RCL Code and the Rusnano Code and not to notify the project manager and the Commission on Corporate Ethics of a "conflict of interests".*"

202. Mr Karpukhin also gave his analysis of the terms of the Statute (or Regulation) on Terms and Conditions of Financing of Investment Projects. Whilst this was strictly beyond the terms on which permission had been given for expert evidence on issues of Russian Employment law, although arguably an extension of Mr Karpukhin's opinion on the way in which property of an affiliate fell to be regarded, this section is of less direct relevance to the question of whether the terms under which Mr Erochkine was employed operated from time to time to oblige him to disclose his beneficial ownership of the Defendant.

203. On behalf of the Defendant, Dr Gerbutov summarised his opinion as being that:

> "*To be binding for employees, codes of corporate ethics and similar codes must be worded as binding documents and comply with all the requirements established by the Labour Code for local normative acts. The employees must be familiarized with them against signature. The codes of corporate ethics cannot worsen the position of employees in contrast to the one established by the labour legislation.*"

On the assumption that Mr Erochkine had not been familiarized against his signature with the Code of Conduct of Rusnano Management Company LLC and JSC Rusnano, it followed that he was not bound by its terms. In any event, the content of the Codes did not constitute binding obligations on employees.

204. Dr Gerbutov referred to Article 9 of the Labour Code, under which labour contracts may not contain terms that limit the rights of, or reduce the level of guarantees for, employees in comparison with those established by the labour legislation and other normative legal acts. Further, the scheme of the hierarchy of sources aims at protecting employees as the economically weak party in labour relationships. He cited a number of commentaries that support that proposition, but it is uncontentious anyway as reflecting the approach in other jurisdictions, including here in Guernsey. He noted that, in accordance with Article 5 of the Labour Code, local normative acts have the lowest position. So internal labour regulations, job descriptions, regulations on bonuses and safety regulations are examples of this type of act and where they rank in the hierarchy.

205. On the question of familiarization against signature, Dr Gerbutov broadly takes a strict line that the absence of a signature meant that there had not been the familiarization required by Articles 22 and 68 of the Labour Code. He referred to the article by article commentary on the Labour Code and a passage contributed by Professor Khohlov of the importance of this step:

> "*The legal effect of familiarizing the employee with the system of local normative acts existing in the company of the employer is that the employee agrees to work under the conditions established by these acts. Otherwise the parties establish by their agreement a different rule which would constitute a term of the labour contract. For instance, by the fact of familiarization against signature with the rules of the internal labour regulations the employee express his consent to work in accordance with the work and relaxation regime, determined by the employer in these rules; …*"

Consequently, in the absence of familiarization, there were plenty of examples of Russian courts ruling the normative acts inadmissible. Whilst trying to determine which of those cases might be the most likely to be regarded as authoritative, reference is made to one ruling from the Supreme Court of Republic of Sakha (*M. v MBUDO*, 2 August 2017), although without any passage being quoted, and reference is also made to an appeal ruling from the Moscow City Court (*Ch.D. Elster Metronica*, 28 March 2011), where the passage quoted clearly shows the court ruling the normative act as inadmissible. If inadmissible, it follows that its provisions cannot be relied upon to enforce any alleged obligation arising.

206. He does, though, acknowledge that there have been instances when Russian courts have accepted familiarization of employees by means other than signature as being sufficient, although he highlights that such decisions have, in his view correctly, been criticized by Russian scholars.

207. On the question of the binding or otherwise nature of codes of corporate ethics, Dr Gerbutov states that until recently they had been regarded as non-binding. He refers to articles written describing these as containing "*a code of ethical norms and rules of behaviour which are recommended for compliance by the employees during performance of their labour duties.*" Further, "*corporate norms should not be mixed with local ones, as they are not legal in their nature*". This means that such recommendations to follow what is recommended "*cannot create any negative consequences for an employee in case of their breach*". However, more recently, the prevailing opinion in the Russian courts, and amongst scholars and state authorities, is that this type of code "*may be binding for employees provided that they are adopted by employers as local normative acts*". They need to be worded as binding documents. As set out in expert advice published by the Ministry of Labour, codes of corporate ethics must comply with *inter alia* the condition that "*the rules of behaviour of employees must be formulated as concrete as possible, to avoid their arbitrary interpretation when making the employee disciplinary liable.*" The manner of construing any ambiguities against enforceability on the part of an employer is consistent with the re-balancing of the inequalities of bargaining power between the employee and employer.

208. In relation to the duties of an employee under Russian law, Dr Gerbutov refers to the main ones listed in Article 21 of the Labour Code, which include:

(i) to perform the labour duties, provided for by the employment contract, in good faith;
(ii) to comply with internal labour rules;
(iii) to comply with labour discipline;
(iv) to fulfil specified labour quotas;
(v) to comply with labour safety requirements;
(vi) to treat carefully the property of the employer (including the property of third persons held by the employer if the employer is responsible for the safety of this property) and of other employees; and
(vii) to immediately inform the employer or direct superior of the emergence of a situation presenting a threat to the life and health of people, safety of property (including property of third persons held by the employer if the employer is responsible for the safety of this property).

He points out that there is no obligation under the Labour Code to notify an employer about potential conflicts of interest. He further states that there it is a controversial issue under Russian law as to what additional duties operate, including negative duties amounting to prohibitions, that are not included in the Labour Code but arise under normative acts, because of the requirement that the normative act may not worsen the position of an employee.

209. Because it has been acknowledged that Mr Erochkine was familiarized with the Code of Rusnano Capital LLC against his signature, Dr Gerbutov agrees that this Code in principle could contain labour duties and be binding on Mr Erochkine. However, he suggests that the language demonstrates that the Code was not creating labour duties and so is not binding.

210. In Mr Karpukhin's responses to the clarification sought on his original report, he began by expanding upon his references to the obligations to look after an employer's property as set out in Article 21 of the Labour Code. By reference to a case from the Krasnoyarskiy District Court of Astrakhan Region (*Kornaukhov v "Centerenergogaz" JSC*, 13 November 2013) "*Due care of property means not only its safety (preventing from actions that could damage*

or destroy property), but also to abstain from actions that may withdraw the property from operation, make it impossibility to use the property for the intended purpose". Further, Mr Karpukhin refers to a diagram assisting in understanding the hierarchy of sources to which reference has previously been made, to show that Article 21 flows downwards into the internal documents level and the employment contract level. In his opinion, his references to paragraph 8 of the Codes can be construed as encompassing property of a company's affiliates because paragraph 3 prohibits acts and omissions of all employees aimed at causing damage to the company and third parties, such as subsidiaries, depending companies and portfolio companies. He also clarified that he was not suggesting that the creation of the limited partnership itself causes damage to company property, but that taking steps to gain control over a large sum of corporate funds where there was no element of control for any Rusnano entity meant that he considered that the arrangements were such that there had been a breach of Mr Erochkine's obligations under his contract of employment and under the Codes. To support this view, he drew attention to an additional case from the Court of the St Petersburg City Court (*BBR Bank JSC v Gordienko*, 13 June 2018) in which it was said that "*intentional use of the powers by the G.D. expressed in making business decisions using confidential information, making conversion operations contrary to Bank interests in order to get personal benefits and advantages for himself … resulted in significant harm to the employer's rights and legitimate interests.*" In respect of the potential liability of Mr Erochkine in respect of the property used in the limited partnership, Mr Karpukhin stated that such liability would arise from his employment with Rusnano Management Company LLC, because it was the managing company of Rusnano JSC.

211. On the issue of familiarization against signature, Mr Karpukhin explained that recent case law is increasingly moving away from the formalistic approach where lack of the employee's signature on the document definitely means he/she is not familiarized with the document at all. He considered that what a court would seek to ascertain is whether the employee is aware of the applicable duties. He quoted first from a decision of the St Petersburg City Court (*S v "Lindner" LLC*, 27 July 2017):

> "*The judicial board rejects the claimant's arguments that she was not familiarized with the job description since when the applicant was hired, she was interviewed, familiarized with the requirements for the candidate for the position, was handed a copy of the employment contract, with an appendix with her rights and obligations, she was familiarized with the rules of internal labour regulations and other local acts of the defendant, governing the legal relations of the parties to the employment contract. There are no evidence submitted to the courts of first and appeal instances by the claimant proving that the claimant asked the defendant on the ambiguity of her job duties due to her failure to familiarize herself with the content of the annexes to the employment contract or with the job description.*"

He added a reference to a decision of the Chelyabinsk Region Court (*M. v "South Boulevard Ring" LLC*, 29 July 2017):

> "*The arguments of claimant that due to the absence of the job description of the claimant it is impossible to conclude what are her job duties and what particular job duties she did not perform or did not perform properly, cannot lead to the annulment of the court decision. Indeed, the employment contract as of … does not specify particular duties of M. However, during the consideration of the case by the court of the first and appeal instances, the claimant confirmed that when hiring she was informed of her job duties, during the probation period she was entrusted of certain work in accordance with her job duties. Also, the claimant confirmed that since … she undergo training and internship in another division of the company, where she was familiarized and studied the rules, methods, ways of performing the labor function in accordance with the standards of the company; after that she held examination on business and professional qualities.*"

212. In response to the clarification sought on whether an employee working remotely can use electronic means to agree to local normative acts of another employer within the corporate group where there is no direct relationship, Mr Karpukhin replied that "*As the law does not provide for any regulation related to the procedure of familiarizing of the employees of one company with local normative acts of another company, in my view, general rules of familiarization shall be applied. Accordingly, a person may familiarize himself/herself with such act by any available means*".

213. Due to the senior position held by Mr Erochkine, Mr Karpukhin considered it unlikely that he would be unaware of some of the key documents setting out how things were to be undertaken in relation to his work duties. He cited a decision of the Chelyabinsk Region Court to support that proposition (*J.S.A. v SAO "VSK"*, 10 May 2016):

> "*The court board believes that X, considering the claimant's profession and the position occupied, he shall be aware about the obligation to comply with the labor law requirements in regard to his duties and the necessity to know which duties are imposed on him, their terms and consequences on non-performance of the duties.*"

In his opinion, this would extend to compliance with the Statute or Regulation on Terms and Conditions of Financing of Investment Projects promulgated by Rusnano JSC because it defines the objectives, forms and terms of financing of the very investment projects and participation using Rusnano funds on which Mr Erochkine was working.

214. Mr Karpukhin also prepared a brief collection of other cases relating to the familiarization of employees as part of his evidence on which Dr Gerbutov then comments. He referred first to two decisions of the Supreme Court of the Russian Federation, the first of which is *Litke v JSC "I.D.E.A. Bank"* (24 April 2017) and a short passage, which states:

> "*This local normative act of the Bank establishes a mechanism for indexing wages of Bank employees, including determining its frequency (on an annual basis), the basis for indexation (issuance of the relevant order on the main activity), the size of the indexation (determined by the Bank's President), the method of familiarizing all employees of the Bank with the order for the indexation (by sending via intrabank e-mail).*"

It was the final comment that he highlighted as showing support for the fact that this was a departure from the requirement to familiarize against signature. However, Dr Gerbutov suggested that this was a misinterpretation of the decision. He supplied a translation of a broader extract from the judgment from which it became apparent that the Supreme Court had distinguished between the various documents, meaning that there had been no conclusion that local normative acts could be validly provided to employees by other means than against signature.

215. The second case to which Mr Karpukhin referred is *Svetashov v Kireyev* (27 February 2017) and another short passage:

> "*Since the establishment of the Company, it has developed a common practice (business practice) of issuing orders for awarding both the CEO and other employees of the Company without familiarization under the signature, this practice (business practice) was not disputed by the plaintiff before a corporate conflict occurred.*"

Dr Gerbutov pointed out that this was not a ruling on a substantive issue, but involved a situation where a judge refused to accept the case for consideration, where the judgments tend to repeat come of the arguments set out in the courts below. In addition, the subject-matter of the case was about bonuses, which are not relevant to local normative acts, and where the

payments themselves were not in dispute. In other words, nothing was being determined about the appropriateness of any familiarization method.

216. Mr Karpukhin's note had also referenced several decisions of the Moscow City Court, on the basis that it is a prominent and large appellate court in Russia and many of the employment decisions are taken by it. The first was a passage from *G v FGBI VPO "Russian State University of Physical Education, Sports, Youth and Tourism"* (2 December 2015, which Dr Gerbutov agreed supported the proposition being advanced by Mr Karpukhin:

> "*The court reasonably did not take into account the arguments of G. that the execution of the Instruction on clerical work is not part of her official duties and she was not acquainted with the specific Instruction, since the official duties of the plaintiff include the duty to be guided by the local normative acts of the employer, the Instruction is publicly available on the University website, the department representative was familiarized with the information letter about the introduction of the instruction, and the claimant also had a real opportunity to get acquainted with the Instruction.*"

However, in respect of the other two cases, Dr Gerbutov took the view that they did not lend support to the proposition because it was quite usual practice for an employment contract to list local normative acts where an employee has already been familiarized with them before signing the contract and so the contract serves as a form of receipt acknowledging that familiarization. So the first case (*V. v Insurance company "Consent" LLC*, 20 November 2015) did not prove that general acknowledgement in the employment contract was sufficient, where Mr Karpukhin had extracted the following passage:

> "*V. was familiarized with local normative acts of the employer before signing the employment agreement, as evidenced by his signature on the last page of the employment agreement.*"

In the second case (*M. v State Budget Educational Institute "Vorobyovy gory"*, 8 December 2015) the passage states:

> "*The claimant was familiarized with the local normative acts of the employer when signing the employment agreement, additional agreements as evidenced by the employee's signature in the employment agreement, the job description, additional agreements.*"

Again, Dr Gerbutov points out that there was an employee signature on the agreements through which familiarization with the local normative acts took place. Accordingly, both of these cases do not demonstrate that there is familiarization without any signature. As such, Dr Gerbutov maintained his stance that a signature was what was needed to establish familiarization. He indicated that there were very few cases on familiarization without there being a signature.

217. When Mr Karpukhin was being questioned by Advocate Williams, he agreed that mere awareness of a local normative act would not constitute familiarization with it. His view is that there has to be familiarization, but that this does not always have to be against a signature. He also confirmed that there would be no carry forward from one familiarization process to a separate, albeit related, employer. In other words, the mere fact that Mr Erochkine had signed that he was familiarized with the Code of Rusnano Capital LLC did not mean that Rusnano Management Company LLC could dispense with any familiarization of Mr Erochkine when he became employed by that entity. Russian courts would not read across from what had happened with one entity to another one. Dr Gerbutov agreed with that assessment that each contractual relationship would be viewed separately by a Russian court.

218. Mr Karpukhin spent some time considering clause 16.2 of the contract with Rusnano Management LLC. The translated document reads:

> "*The Employee acknowledges that he has read and understood and agrees to comply with all provisions contained in the job description and all of the internal policies and procedures. All Schedules to this Agreement shall make its integral part. The Employee also agrees to regularly read and strictly comply with the provisions of all other internal policies, procedures, regulations and other documents of the Employer*."

Because Mr Erochkine had signed this contract dated 2 March 2015, Mr Karpukhin gave the opinion that this level of agreement was sufficient to bind Mr Erochkine, in the sense that his new employer, Rusnano Management Company LLC, could assert that he had been familiarized. It was then suggested to him that this translation was not entirely accurate. By looking at the Russian version, he accepted that clause 16.2 says that Mr Erochkine shall acknowledge himself and follow the rules, rather than that he had read and understood them. As a result, he expressed the opinion that clause 16.2 imposes an active obligation on employees to act proactively and to get the documents mentioned and familiarize themselves with them.

219. In relation to Article 21 of the Labour Code, Mr Karpukhin accepted that references to those duties do not expressly include good faith, but rather an obligation on an employee conscientiously to fulfil his labour duties according to the labour contract. Quite surprisingly, he also said that there was no learning from the Russian courts, nor any definition in the Labour Code, as to what was covered by good faith. Dr Gerbutov agreed that the concept has not really been elaborated upon, adding that he was unsure whether the notification of a conflict of interests even amounted to an ethical issue. Mr Karpukhin gave his view that someone acts in good faith by trying to follow the rules, and this extends to rules found in a code. He thought it related to acting in the company's interests, so concealing from the company an interest contrary to the company's interests would not be acting in good faith as required under Mr Erochkine's contract of employment as found in clause 3.2.3.

220. In respect of references to property, Mr Karpukhin stated that he took the view that a Russian court would find money to be covered by this. Dr Gerbutov was not asked whether he agreed, but the absence of any contrary evidence means that Mr Karpukhin's opinion on this issue is accepted.

221. As a general comment on the evidence of the two experts, the presiding judge found Mr Karpukhin more convincing than Dr Gerbutov in relation to the areas on which they disagreed. He noted that Dr Gerbutov took more of an academic approach to the issues than the practical approach of Mr Karpukhin. This may well have been a consequence of the different levels of involvement in Russian law employment-related practice. Mr Karpukhin explained that he spent about 80% of his professional practice dealing with employment cases. He was regularly in court. Dr Gerbutov mentioned first that about 50% of his practice over the previous two years was employment-related work, but then modified that downwards to around 30%. Moreover, he explained that he only had one active employment case at that time, and that was also being handled by a junior lawyer. That said, Dr Gerbutov was able to give his evidence clearly because of his better command of the English language. The presiding judge formed the impression that Dr Gerbutov had approached the issues on which he was required to opine more from a textbook, citing numerous papers and cases that were supportive of his opinion, but had less of a grasp of how a Russian court dealing with a case like this would reach its conclusions. By comparison, Mr Karpukhin also supported his propositions by reference to decided cases, but also offered his view as to how practice was evolving, possibly quite quickly, to such an extent that there were increasing departures from the historical, more formalistic approach to these issues. This gave the presiding judge some confidence that any Russian court having to resolve the types of question before this Court

would be prepared to look purposively at the situation and find a solution that met the justice of the situation with which it was faced.

222. The Plaintiff's case is that Mr Erochkine had an obligation to apply to the Commission on Corporate Ethics and, more broadly, his employment contracts contained provisions requiring him to act in the best interest of his employer. The former depends on a finding that the notification requirement, found in the Codes, applied and was binding. Accordingly, starting with the question of familiarization with the Codes of Conduct, the first issue to resolve relates to whether the absence of Mr Erochkine's signature relating to the Rusnano Management Company LLC Code means that that Code should be found to be inadmissible against him.

223. The Court is satisfied that Russian law now recognises that there are situations in which familiarization will be found even though the employer has not signed. In that regard, although Dr Gerbutov has been critical of the cases in which that has been found, certainly from an academic perspective, because of the terms of Article 22 of the Labour Code, he still had to concede that there are decisions of Russian courts, including those to which regard may well be had when determining such an issue, where familiarization occurs in the absence of a signature relating to the corresponding normative act. Accordingly, there is no absolute barrier to such a finding being made.

224. The Court is further satisfied, on the basis of the employment relationship that Mr Erochkine had with Rusnano Management Company LLC, that a Russian court would find that he had been familiarized with that entity's Code of Conduct. Although both experts were in agreement that there would be no direct read across between the acknowledged familiarization process through which Mr Erochkine went in respect of the Code of Rusnano Capital LLC, it is an inescapable fact that this occurred shortly after he had signed his part-time contract with Rusnano Management Company LLC. Although Mr Erochkine was at pains in his evidence to draw a distinction between the functions he was expected to perform under each of these contracts, it rather begs the question of the purpose of him formally becoming a part-time employee of Rusnano Management Company LLC. What he actually did for his employers does not appear to have changed significantly. Indeed, Mr Erochkine even described his employment change when he became fully employed by Rusnano Management Company LLC as an "*internal transfer*". The Court is, therefore, satisfied that, despite his protestations that he had discrete functions for each employer, a Russian court would conclude that Mr Erochkine could be regarded as having been familiarized with the Code of Conduct of JSC Rusnano and Rusnano Management Company Limited, which was in such similar terms and had been promulgated earlier than the Rusnano Capital LLC Code. The Court accepts the evidence of Mr Karpukhin that clause 16.2 of that new contract conferred on Mr Erochkine an active duty to find and familiarize himself with matters relating to his employment. The final sentence reads: "*The Employee also agrees to regularly read and strictly comply with the provisions of all other internal policies, procedures, regulations and other documents of the Employer.*" Given the close proximity in time when he was formally familiarized with the Rusnano Capital LLC Code, this Court considers it is more likely than not that a Russian court faced with these facts would reject Mr Erochkine's claim that there had been no familiarization with the Code of his new employer. Further, Mr Karpukhin's passing reference to how working for a State-owned entity would result in employment-related matters being construed strictly also resonates, which is why the balance tips in favour of the conclusion that there would be a finding of familiarization, even in the absence of a signature relating to the Code itself. There has been a signature on the contract and the overall circumstances are such that this Court finds that the Code should not of itself be ruled to be inadmissible as against Mr Erochkine.

225. Having reached that first conclusion, the next issue is whether, having been familiarized, the Codes create binding obligations, or whether their terms are recommendatory only.

226. Having regard to the terms of section 9 (set out above), the first thing to note is that the situations in which potential conflicts of interest can arise are not meant to be exhaustive because they are "*model situations*". Accordingly, of more relevance is the second sentence in the second paragraph of the section: "*It means that the Company's employee knew or should have known in advance about the facts which give rise to a conflict of interest and require notice to the given to the Commission.*" In the situations described, so also in other situations where the facts give rise to a conflict of interest as defined within Section 2, being what might be described as an overlap between personal interest of the employee and those of the employer, "*employees shall undertake to rely on the following principles*". Thus far, these provisions appear to impose obligations. However, in para. 9.1.5 reference is made to "*it is recommended*" to take the steps described relating to notifying the persons listed and "*in the event that a conflict of interest occurs, not to make any decisions inside the Company on the project which is being implemented by the Company's portfolio companies and other organizations jointly with the Company*". Further, Section 10, dealing with disclosure of conflict of interest, provides:

> "*10.1 If an employee has a conflict of interest (including potential), it is recommended for the employee to immediately, but in any case within 14 (fourteen) calendar days from the date when it becomes known to him/her that there are potential grounds giving rise to a conflict of interest, give relevant notice/submit application to the Commission (Exhibit 1 or 2 to the Code).*
> *10.2 If it becomes known to an employee that any damage was caused to the Company, that the standards of corporate conduct were violated and in other cases provided by this Code, such employee may submit application to the Commission describing all available information (Exhibit 2 to the Code).*
> *10.3 If the employee fails to inform the Commission in due course, the Commission may take measure under Section 11 of this Code.*"

The measures mentioned in Section 11 are:

> "*11.1 Giving an explanatory talk.*
> *11.2 Submitting the matter for consideration of the Company's General Director;*
> *11.3 Restricting the employee's authority to represent the Company:*
>
> - *in the governing and controlling bodies of portfolio companies and other organizations in which the Company is or considers becoming a member;*
> - *before mass media companies;*
> - *in official, business and public events.*
>
> *11.4 Decreasing an employee's personal efficiency indicator as part of the KPI system*".

227. In the context of Mr Erochkine's employment, the Court is satisfied that a Russian court would conclude that the obligations imposed to disclose conflicts of interest are binding and not merely recommendatory only. It is necessary first to put this employment into its proper context and not just to look at the language used in isolation. The investment functions to which Mr Erochkine's employment related involved placing monies belonging to the Russian Federation in the types of funds being developed under the terms of the rules under which the Rusnano Group were operating. He was a senior employee tasked with identifying and working up projects for this type of investment. He was given a high degree of latitude in the way he worked. Against that background, he was made subject to these Codes and so must be taken to have understood that he could not act contrary to the best interests of his employers (although that is a discrete issue to which reference will be made shortly).

228. The scheme of the Codes is, in this Court's view, an important one. Each Code should be construed as a whole. Two of the objectives of the Codes as found in para. 1.4 are "*to define the rules of conduct for all employees, regardless of the level of position they hold, in situations not regulated by the effective laws of the Russian Federation*" and "*to be used as an instrument to prevent any conflict of interest, inappropriate corporate conduct and resulting conflicts both inside and outside the Company/ies*". These objectives expand upon para. 1.2, which states that "*The Company's Code of Conduct constitutes a body of ethical standards and rules of corporate conducted accepted in the Company.*" Avoiding, or as necessary managing, conflicts of interest was clearly one of the central features of the Codes.

229. Although it is not relied upon directly by the Plaintiff, Mr Karpukhin highlighted how Section 8 deals with each Company's approach to dealing with property:

> "*8.1 All of the employees shall assume obligations to respect the interests of the Companies and must not use the Companies' opportunities (in particular, the property, proprietary and non-proprietary rights, business opportunities etc.) for other purposes than those provided by the Company's internal regulations.*
> *8.2 All of the employees shall assume obligations to handle the Companies' property with due care and ensure its efficient use for work-related purposes.*
> *8.3 The employee's responsibility for safety of the Companies' property shall be regulated by the employment contract with such employee, the Staff Handbook and other internal regulations of the Company.*"

This language is clearly mandatory and so binding. These obligations are also found in sources of obligations higher up the hierarchy. In relation to the Code of Rusnano Management Company LLC, there is property of JSC Rusnano for which that related company has become responsible and that must be taken into account in deciding how to approach these obligations. The Court accepts Mr Karpukhin's characterisation of the flow of monies contributed to the limited partnership as being monies from JSC Rusnano to Rusnano Management Company LLC for which that company then took responsibility for its proper use. Further, this issue also engages the terms on which financing was to be provided for investment projects, which the Court is satisfied Mr Erochkine fully understood. When viewed in the light of the definition of "*Portfolio Company*" in Section 2 of the Rusnano Management Company LLC Code as a "*Legal entity implementing an investment project in which RUSNANO OJSC or RUSNANO MC LLC is a member or shareholder and/or over which the Companies can exercise control for the purpose to realise such investment project*", there is a link between the responsibilities of Mr Erochkine as an employee and the use of this property.

230. As a result, the Court is satisfied that the combination in Section 9 of requiring notice to be given to the Commission once an employee knows about facts giving rise to a conflict of interest would be more likely to prevail over the subsequent use of language indicating that this is no more than recommendatory. It is unhelpful that the words used in Section 10 refer to it being recommended to give the notification but that Section and para. 9.1.5 can be regarded as being indicative of the timescales within which the requirement to notify must be performed. In that regard, this Court considers it significant that one of the measures mentioned in Section 10 if there is a breach of the provisions of the Code, which again implies that they have to be followed, is to restrict the authority of the employee to act on behalf of his employer in respect of organizations in which the employer is considering becoming a member. In the context of this action, that must be taken to extend to the limited partnership. In other words, had Mr Erochkine's employers been notified, as required, of his beneficial ownership of the Defendant before the Plaintiff committed itself to becoming the replacement limited partner, it would have been able to decide whether that was an appropriate step for it to take and could have decided how best to deal with Mr Erochkine's ongoing involvement in that project as one of their employees.

231. The combination of these obligations found in the Rusnano Management Company LLC's Code means that the Court find that Mr Erochkine was subject to a binding requirement to make a notification of the conflict of interest arising from the manner in which he had caused the Defendant to be incorporated by Saffery Champness with him as the beneficial owner by virtue of the nominee arrangement that was put in place on his instructions. It is common ground that he did not notify the Corporate Ethics Committee, as required.

232. If that construction of the Code of Rusnano Management Company LLC should not be reached because a Russian court would find that Mr Erochkine had not been familiarized with that Code and was only familiarized with the Code of Rusnano Capital LLC, about which there is no dispute, then this Court would need instead to consider whether what had been found to be binding obligations on the face of the Code operated to create a notifiable conflict of interest. This issue effectively turns on the argument advanced on behalf of the Defendant that the terms of Mr Erochkine's employment with that entity did not give rise to any conflict of interest because that employer was a provider of consultancy services and the monies that were to be contributed to the limited partnership did not come from that entity, but rather reached the Plaintiff through a different route. Accordingly, it is not the flow of funds that can create any conflict of interest, unlike under the terms of the Code of Rusnano Management Company LLC.

233. Whilst recognising that the easier hook on which to base a conflict of interest is absent, this Court returns to the way in which Dr Gerbutov accepted that the strict arrangements within a law firm would give rise to a conflict of interest if one of its lawyers had a personal interest for the other side in a matter on which that lawyer was working for the firm. Such a lawyer would be providing professional advice to the firm's client, but also be interested in the outcome become of the personal interest in what Dr Gerbutov called "the counterparty". The position in which Mr Erochkine was once he had arranged the incorporation of the Defendant as his personal entity, using Saffery Champness to give this a veneer of independence, is really no different. As an employee of Rusnano Capital LLC, Mr Erochkine was within a group of employees providing the consultancy services for which his employer had contracted. In this regard, it is important to remember that this was not an entity providing services to anyone who chose to contract with it, but rather an entity performing a function within a group structure for the benefit of that structure. Its clients were not even at arm's length. Therefore, whilst respecting the evidence of the experts that a Russian court would look at each employment relationship discretely, when considering if Mr Erochkine had any conflict of interest with Rusnano Capital LLC, it is necessary to re-visit the definition of a conflict of interest.

234. The definition involves considering what the employee's personal interest is, which here is the beneficial ownership of the Defendant and so prospective general partner of the limited partnership, and then consider whether that "*may cause them to act against the interests of the Company and deteriorate its performance*". The interests of Rusnano Capital LLC include the manner in which its employees provide the consultancy services that it had contracted to provide. If there is a suggestion that what is being advised as an acceptable course of action for the entity to which those consultancy services are being provided is somehow designed to produce a personal benefit for one of the employees providing that advice, that appears to this Court to be a conclusion that a Russian court could properly reach on those facts. Mr Erochkine's evidence that he did not understand at the time that his ownership would formally amount to a conflict would not assist him when it comes to deciding whether a conflict existed objectively. This may be relevant to the nature of any misrepresentation through non-compliance with an obligation, but it does not affect the existence of the obligation itself. Accordingly, even in the absence of any capital commitment by Mr Erochkine's employer, his failure to disclose to Rusnano Capital LLC under the terms of its Code of Conduct, with which he had clearly been familiarized, breached his obligations under that Code as well.

235. It would, therefore, only be necessary to consider any other obligations to which Mr Erochkine was subject if the findings made thus far are all wrong. In other words, contrary to what the Court has decided, if Mr Erochkine was only familiarized with the Code of Conduct of Rusnano Capital LLC and that Code either did not impose any obligation to notify the conflict of interest under Sections 9 and 10 (and the conclusion should have been reached in respect of the Code of Rusnano Management Company LLC) or his position did not amount to a conflict of interest, then consideration needs to be given to the further obligations on which the Plaintiff relies in para. 26(f) of the Amended Cause. This sub-paragraph has not been admitted, rather than denied, meaning that the Plaintiff is required to prove that these obligations exist. This is where the issue of good faith is engaged.

236. There has been a risk in relation to the concept of good faith that approaching it on conventional lines of the implied term of mutual trust and confidence produces a complete answer. If Russian law were not engaged, it would be simple to find that Mr Erochkine had breached such an implied term. His claims to have undertaken a lot of work at his own expense (as stated in para. 87.4 of his Fourth Affidavit) would inevitably lead to the conclusion that he was improperly engaging in playing on both sides of a negotiation rather than having the best interests of his employer at the forefront of his consideration. However, having regard to how this obligation would arise and be dealt with by a Russian court is what matters.

237. In that regard, what is set out in the Labour Code is the highest authority. Article 21 refers to an employee being obliged conscientiously to fulfil his labour duties under the labour contract. Clause 3.2.3 of Mr Erochkine's employment contract with Rusnano Management Company LLC provided that he shall:

> "*perform his job duties in good faith according to high quality standards, corporate ethics and confidentiality requirements, promptly, in a highly qualified and efficient manner, and to handle the Employer's and other employees' property with due care*".

By Addendum No. 6 to his employment contract with Rusnano Capital LLC, clause 3.2.2 made exactly the same provision with effect from 1 November 2013. It is, therefore, quite clear that the obligation of good faith was imposed on Mr Erochkine prior to him causing the Defendant to be incorporated and it was imposed in respect of his part-time employment once the Defendant existed but before it contracted with the Plaintiff when executing the LPA.

238. In absence of any guidance from decided Russian cases explaining any limitations on what amounts to good faith, this Court is satisfied that it is appropriate to follow the approach suggested by Mr Karpukhin. Giving this concept its ordinary meaning, and in the context of employment in a State-owned group, the Court finds that an employee such as Mr Erochkine would not be acting in good faith if the employee established a corporate entity with a view to keeping for that entity all, or even some, of the monies that his employer would provide to that entity without first informing someone that this could potentially be the outcome. In the terms of Article 21, it would be contrary to the employee's duty to act conscientiously without alerting his employer (or, if more than one, his employers) to that fact. Put another way, keeping silent would be a breach of this important employment obligation because it would mean that any employer would be unable to approach its part in any transaction (which really means here the Plaintiff being obliged to use the monies provided to it from the Group under the terms of the binding LPA without knowing the consequences of the agreement it was entering and thereafter bound by) is a type of employment contract breach that can give rise to a representation being found. Whilst this would not of itself require the type of notification that has been found to operate under the terms of the Codes of Conduct, it still created an obligation on Mr Erochkine under each of his contracts of employment to say something.

239. The outcome of this lengthy consideration of the expert evidence and whether Mr Erochkine had any employment obligations to disclose his beneficial ownership of the Defendant is that, on any of these bases, such an obligation existed as a matter of Russian law. Each of the findings sought by the Plaintiff has been made. The obligation to notify arose under both Codes of Conduct because there was a conflict of interest that was required to be disclosed and the evidence shows that it was not formally notified. However, if the conclusions relating to the obligations under both Codes were to be wrong, there remains the obligation arising under the clauses of Mr Erochkine's contracts to acts in good faith, reflecting the requirements found in the Labour Code, and keeping silent, if that factual finding were to be made, would be a breach of such an obligation.

Attribution of Mr Erochkine's obligations to the Defendant

240. There is a distinction, though, between what Mr Erochkine was obliged to do under his contracts of employment and how that affects the position of the Defendant. At the material times, the director of the Defendant was Rysaffe Administrateurs Sarl. The humans directing that corporate director were personnel at Saffery Champness, including Mr Belhomme, Mr Tucknott and Mr Everton. Whether that also extended to Ms Wilson, or whether she should properly be treated as someone acting under the direction of others and so by extension as an agent of those performing the functions of being the Defendant's directing minds, was an issue for the Jurats to consider.

241. Those with responsibility for the Plaintiff probably regarded the issue of whether the silence of Mr Erochkine, if that is what it was, meant that the Defendant as general partner was necessarily complicit in his actions. Whereas any actual form of representation emanating from Saffery Champness personnel in their capacity of acting on behalf of the Defendant can clearly be associated with the Defendant, anything relating to Mr Erochkine personally, both in terms of any non-compliance with his employment obligations or any other form of representation has to be shown by the Plaintiff as being an act on behalf of the Defendant. This is because Mr Erochkine and the Defendant are two separate persons.

242. Advocate Brehaut sought to establish that Mr Erochkine could, despite having no formal role, be treated as one of those directing the operations of the Defendant by reference to the way such issues had been dealt with in Jersey in *Federal Republic of Brazil v Durant International Corporation* 2012 JLR 356 and, in particular, the following long passage:

> "*46. Attribution of knowledge in the case of corporate bodies can be a difficult subject, as the judgments of the Court of Appeal in England in El Ajou v. Dollar Land Holdings Plc [1994] 1 BCLC 464 and the Privy Council in Meridian Global Funds Management Asia Ltd. V Securities Commission [1995] 2 A.C. 500 demonstrate. But the difficulties only tend to arise where the relevant act (which may include the acquisition of knowledge) or omission potentially giving rise to liability has been committed by an officer or employee without the knowledge or involvement of the board of directors or other high-level governing body: by, for example, the chief investment officer and senior portfolio manager in Meridian, the shop manager in Tesco Supermarkets Ltd v. Nattrass [1995] 1 A.C. 153, the ship's master in The Lady Gwendolen [1965] P. 294 (the latter two being among the cases discussed by Lord Hoffmann giving the judgment of their Lordships in Meridian). But where the relevant act, in this case the receipt of funds with knowledge of their source (assuming that to be the case), is the act of persons as intimately associated with the ultimate ownership and control of the company as Paulo Maluf and Flavio Maluf common sense suggests that there is no room for debate: as Mr. Baker put, "Who else's knowledge could possibly count?", a question to which no answer was ever suggested by the Defendants.*

47. *The answer, it might be said, is that the companies' boards of directors at the material time included Hani Kalouti (members of the family other than Flavio having been removed in March 1997), and that there is no evidence of him having any relevant knowledge (which for present purposes we shall assume to be true). But it is clear, from both El Ajou and Meridian, that this would by no means necessarily be an and of the matter. The classic test of attribution of actions or knowledge in relation to companies has long been to ask who is the "directing mind and will" of the company, a phrase that comes from the speech of Lord Haldane L.C. in Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. [1915] A.C. 705, it being recognised that "different persons may for different purposes satisfy the requirements of being the company's mind and will" (Hoffmann L.J., as he then was, at 474). But in Meridian, having noted that in the ordinary way the primary rules of attribution in the case of a company are to be found in its articles of association and in rules of company law and that, together with general principles of agency and vicarious liability, they will usually be sufficient to allow one to determine its rights and obligations, Lord Hoffmann, giving the judgment of the Board, continued:-*

> *"In exceptional cases, however, they will not provide an answer. This will be the case when a rule of law, either expressly or by implication, excludes attribution on the basis of the general principles of agency or vicarious liability. For example, a rule may be stated in language primarily applicable to a natural person and require some act or state of mind on the part of that person "himself", as opposed to his servants or agents. This is generally true of rules of the criminal law, which ordinarily impose liability only for the actus reus and mens rea of the defendant himself. How is such a rule to be applied to a company?*

One possibility is that the court may come to the conclusion that the rule was not intended to apply to companies at all; for example, a law which created an offence for which the only penalty was community service. Another possibility is that the court might interpret the law as meaning that it could apply to a company only on the basis of its primary rules of attribution, i.e. if the act giving rise to liability was specifically authorised by a resolution of the board or a unanimous agreement of the shareholders. But there will be many cases in which neither of these solutions is satisfactory; in which the court considers that the law was intended to apply to companies and that, although it excludes ordinary vicarious liability, insistence on the primary rules of attribution would in practice defeat that intention. In such a case, the court must fashion a special rule of attribution for the particular substantive rule. This is always a matter of interpretation: given that it was intended to apply to a company, how was it intended to apply? Whose act (or knowledge, or state of mind) was for this purpose intended to count as the act etc. of the company? One finds the answer to this question by applying the usual canons of interpretation, taking into account the language of the rule (if it is a statute) and its content and policy."

48. *Having examined other cases in the light of this statement of principle, Lord Hoffmann went on (at the pp. 509 and 511) to explain that, on a proper analysis, the purpose for which Lord Haldane had been using the notion of directing mind and will in Lennard's Carrying was "to apply the attribution rule derived from section 502" of the Merchant Shipping Act 1894 to the particular defendant in that case; that that phrase was one that did not*

always fit the facts; and that their Lordships thought that, while it would often be the most appropriate description of the person designated by the relevant attribution rule, "it might be better to acknowledge that not every such rule has to be forced into the same formula".

49. The long passage from the Meridian judgment set out above does not of course sit easily with the circumstances of the present case because the Privy Council was primarily concerned there with situations in which statutory provisions imposing liability of one kind or another are expressed in terms more readily applicable to natural persons than to corporate bodies: hence the repeated references to "interpretation" of the relevant rule. But the passage is of relevance to the present case in two respects. First, because of the reference in the second sentence to a unanimous agreement of the shareholders, which usefully points up the principle, recognised in Multinational Gas and Petrochemical Co. v. Multinational Gas and Petrochemical Services Ltd [1983] Ch. 258, that the unanimous decision of all the shareholders of a solvent company is regarded in law as the decision of the company. Secondly, because of the importance, when interpreting the relevant rule of liability, of having regard to underlying policy considerations, as noted in the final sentence of the extract quoted above and in Lord Hoffmann's references (at 508-C), to "the policy of consumer proteciton2 in the Tesco Supermarkets case and the policy of immediate disclosure of certain matters in fast-moving financial markets in Meridian itself.

50. Whichever approach is adopted, the result in the present case appears to us to be the same. On the basis of Multinational Gas, or analogous principle, the knowledge of Paulo Maluf as, in all probability, the one and only shareholder of the ultimate holding company at the material time must be taken as those of Durant and Kildare. Alternatively, if the test is taken as that of the controlling mind and will, it is plain from the evidence that that concept could not be personified more strikingly than it was by Paulo Maluf and Flavio Maluf, the former as regards strategic matters (as witness the way in which Schellenberg Wittmer turned to him, as the patriarchal figure, for instructions in Monte Carlo at a time when the whole trust structure was threatened by the unwelcome probing of Deutsche Bank), and the latter as, in effect, managing director. And if the critical factor is regarded as the policy considerations underlying the judge-made rules of constructive trusteeship and unjust enrichment (relied on by the plaintiffs here) – namely to permit, wherever this can fairly be done, those who have been deprived of property by fraud or breach of trust to recover it from those into whose possession it has come and who have no entitlement to it – it would seem incontestable, on the facts revealed above, that any knowledge that Paulo Maluf and Flavio Maluf may have had of the tainted nature of funds flowing into Durant and Kildare should be attributed to those companies: any other conclusion would be an affront to justice, all the more so given the scant regard for the niceties of corporate governance that appears to have attended these companies' affairs."

243. Because this was raised in Advocate Brehaut's closing submissions, meaning that Advocate Williams had not had the opportunity to deal with this issue during the course of his submissions to the Court, the presiding judge permitted him to provide any written submissions he wished in writing in the immediate aftermath of the hearing. In respect of this case, he sought to distinguish it on its facts and suggested that it was a novel approach not based on any previous authority. Further, it would undermine the usual approach to separate corporate personality to extend attribution to someone who had not formal role in the

company. If this principle were correct, then looking through the company to see the position of the shareholder, or all the shareholders, would be contrary to policy.

244. Advocate Brehaut was also permitted to comment on anything Advocate Williams submitted in writing for the same reason that she would have been able to do so if this had featured in the parties' oral submissions, having the last word. In particular, she drew attention to what the Court of Appeal in England had stated in *El-Ajou v Dollar Land Holdings plc* [1994] 2 All ER 685, in which Hoffmann LJ had noted that "*different persons may for different purposes satisfy the requirements of being the company's directing mind and will*". Further, Rose LJ had added that, whilst the formal directors of a company would normally be regarded as its directing mind, "*particular circumstances may confer that status on non-directors*".

245. The presiding judge directed the Jurats that it was open to them to find that Mr Erochkine's actions, or omissions, could be attributed to the Defendant. In doing so, he was satisfied that the approach taken in Jersey could be adopted as applicable in Guernsey. Before the Jurats could make the finding that what Mr Erochkine did or did not do in relation to the part he played in the Defendant, they needed to consider all the instances where those persons at Saffery Champness acting on behalf of the Defendant had turned to Mr Erochkine for instructions. If the corporate director was the only directing mind and will, which effectively means those humans acting for the corporate director, the Jurats might wonder why it was that they did not just get on with matters without reference to Mr Erochkine. Accordingly, balancing those occasions on which the personnel at Saffery Champness acted independently against those where they turned to Mr Erochkine to be told how to deal with what was happening might assist them in deciding the extent to which Mr Erochkine and the Defendant were one and the same. They could also take into account what happened when Rysaffe Administrateurs Sarl resigned as director in 2018 and consider whether that supported a conclusion that, from its incorporation, Mr Erochkine had been the real alter ego behind the Defendant. If they found that Mr Erochkine had played such a role throughout the relevant time, they could then reach the conclusion that any non-compliance by him with his employment obligations extended to being a representation through silence on behalf of the Defendant.

Non-compliance with obligation involves implied misrepresentation

246. Having reached these conclusions on the obligations of Mr Erochkine, and placed them into the context of how they relate to the Defendant, the next issue to consider is whether any such non-compliance can amount to a misrepresentation. Advocate Brehaut relies on the guidance given by the Court of Appeal in England and Wales in *Property Alliance Group Limited v Royal Bank of Scotland plc* [2018] EWCA Civ 355. This case involved interest rate swaps, but it is the summary of the principles beginning at para. 126 to which the Court has been referred:

> "*126. All this does not mean that the Court should be too ready to find an implied representation. An implication can arise from words or conduct. In DPP v Ray [1974] AC 370 the House of Lords held that the offence of obtaining by deception had been committed when a customer entered a restaurant, sat down, ordered a meal and then decided later not to pay. That was because the customer impliedly represented that he could pay before he left and that representation should subsequently have been corrected. Lord Reid dissented in the result but in agreement with the majority stated that the initial conduct of the customer in sitting down and ordering a meal was a representation that he was able and willing to pay for his meal: see page 379D. To our mind this is effectively representation by conduct rather than representation by words. To like effect are In re Shackleton (1875) LR 10 Ch App 446 and In re Eastgate [1905] 1 KB 465, to which Newey LJ referred counsel in the course of the hearing. In these cases it was held that a buyer,*

who took delivery of goods from a seller, represented that he was able and willing to pay for them. On any view it is by no means impossible that a representation can, in theory, be made by conduct alone.

127. The facts of those cases are, of course, a long way from a typical swaps case. Although the general principle they illustrate applies to commercial disputes there is not a great deal of authority on the material required for the making of an implied representation in the context of a banking transaction.

128. In Geest plc v Fyffes plc [1999] 1 All ER (Comm) 672 the defendant had promised to use reasonable endeavours to obtain a bank's agreement to substitute itself for the claimant as guarantor of its subsidiary's obligations under charterparties and in any event to indemnify the claimant in respect of its liability under the guarantees it had given. When the claimant sued for breach of these obligations, the defendant alleged that the claimant had failed to disclose that the claimant had confirmed to the shipowners that the subsidiary would remain its subsidiary for the duration of the charters. In fact the subsidiary had been disposed of and was no longer the subsidiary of the claimant. Colman J held that there was no general duty of disclosure before entering into a contract of guarantee or indemnity but only a duty not to make express or implied misrepresentations. The judge said that English law had settled on four propositions, the third of which he formulated as follows (page 683b):

> *"Where there is no express misrepresentation, the first question to ask is whether there has been any implied misrepresentation at all and, as with any other type of contract, the essential issue is whether in all the circumstances relating to the entering into of the contract of guarantee or indemnity, including in particular (a) the nature of the contract between the beneficiary and the principal debtor, (b) the conduct of the beneficiary and (c) express representations made by him to the surety, it has impliedly represented to the surety that there exists some state of facts different from the truth. In evaluating the effect of the beneficiary's conduct a helpful test is whether, having regard to the beneficiary's conduct in such circumstances, a reasonable potential surety would naturally assume that the true state of facts did not exist and that, had it existed, he would in all the circumstances necessarily have been informed of it."*

129. In IFE Fund S.A. v Goldman Sachs International [2007] 1 Lloyd's Rep 264 Toulson J said (paragraph 50):

> *"In determining whether there has been an express representation and to what effect, the court has to consider what a reasonable person would have understood from the words used in the context in which they were used. In determining what, if any, implied representation has been made, the court has to perform a similar task, except that it has to consider what a reasonable person would have inferred was being implicitly represented by the representor's words and conduct in their context."*

The Court of Appeal upheld the judge's decision that no express or implied representation had been made on the facts, see [2007] 2 Lloyd's Rep 449.

130. *Christopher Clarke J cited the dicta of both Toulson J and Colman J in Raiffeisen Zentralbank Osterreich AG v Royal Bank of Scotland plc [2011] 1 Lloyd's Rep 123 at paragraphs 82-85 echoing Colman J's helpful test:*

> *"whether a reasonable representee would naturally assume that the true state of facts did not exist and that, had it existed, he would in all the circumstances necessarily have been informed about it."*

He held that on the facts, no implied representation had been made. In Casa di Risparmio della Repubblica di San Marino SpA v Barclays Bank Ltd Hamblen J also adopted the remarks of Toulson J in considering whether implied representations had been made (he held that they had not).

131. *In UBS AG v Kommunale Wasserwerke Leipzig GmbH and Depfa Bank plc [2014] EWHC 3615 (Comm) Males J accepted Depfa's submission that it was implicit, in what it had been told by UBS about a particular need for Depfa to become an intermediary in a transaction with KWL, in the fact that UBS had told Depfa that it had done due diligence on KWL and in the fact that the transaction was presented to Depfa at all, that UBS believed the other party to the transaction to be honest and did not have any significant doubts about its honesty. In doing so, he followed Christopher Clarke J's endorsement of Colman J's helpful test.*

132. *The present case appears to be the first in which Colman J's test has been considered by the Court of Appeal. We do think it is a helpful test, in relation to the existence of an implied representation, to consider whether a reasonable representee would naturally assume that the true state of facts did not exist and that, if it did, he would necessarily have been informed of it. To that extent we would approve the dicta of Colman J in Geest plc v Fyffes plc but that is not to water down the requirement that there must be clear words or clear conduct of the representor from which the relevant representation can be implied.*"

247. In the absence of any domestic authority, the presiding judge adopts and adapts to the instant case the test set out in English law on implied representations for the purposes of directing the Jurats how to approach this issue. First, they needed to understand that it is harder to imply a misrepresentation than it is if something is expressed and so they should exercise a degree of caution before making such a finding. They needed to bear in mind that they were asking themselves what a reasonable person would have understood the situation to be where there is no disclosure of Mr Erochkine's beneficial ownership of the Defendant. That reasonable person has to be someone who acts on behalf of the Plaintiff and the case being advanced is that Ms Rapoport was the person to whom this should have become known. There might be a subtle distinction in relation to non-disclosure through a notification to the Commission on Corporate Ethics, which would then have been able to decide how the matter fell to be viewed. Further, the Jurats needed to consider what the true state of affairs was, being Mr Erochkine's ownership of the Defendant, and whether it was reasonable, in the absence of such disclosure, for the Plaintiff, through Ms Rapoport, to assume that there was nothing preventing the Plaintiff from executing the LPA and thereafter abiding by its terms. Further, was the ownership of Mr Erochkine something that the Plaintiff would have been expected to have been told about, whether under the terms of the Codes or generally? In considering these questions, the Jurats were reminded that the findings made by the presiding judge from the expert evidence was that there were obligations under both Codes and the clauses in the employment contracts relating to good faith which they had to accept and from which they could not depart.

Misrepresentation

248. Having concentrated up to this point on whether or not any misrepresentation as alleged by the Plaintiff has been made that the Defendant was under the ultimate ownership and control of one or more companies within the Rusnano Group and the Mr Erochkine had no direct or indirect interest in the Defendant as general partner arising from his employment law obligations, when considering what is pleaded at para. 26(a) of the Amended Cause, the Jurats were directed that they had to consider the documents and the evidence they had heard to decide whether there were the repeated statements being made. Although one example was expressly stated, being Mr Erochkine's response in a chain of e-mails, they needed to look more widely at the whole context of what had been happening before the Defendant was incorporated, through to after its incorporation up to the time of execution of the LPA. Outside of the employment law obligations, such decisions were squarely within their remit to decide on the facts.

249. They were looking for some statement of fact made by Saffery Champness and/or Mr Erochkine on which the Plaintiff had been intended and entitled to rely as a positive assertion that the fact was true. Alternatively, if it was more about the absence of something being explained that should have been explained in the light of enquiries being made, they would consider the directions given about implying such a representation, although to do this in circumstances where there was no underpinning obligation to say something would most likely make that difficult to find. Further, in order to determine whether any, and if so what, representation was made by a statement, the Jurats would need to construe that statement in the context in which it was made, applying an objective interpretation to the statement according to the impact that it would have an a reasonable person to whom such a representation were made, albeit such a person would have the known characteristics of the Plaintiff and those acting on its behalf, which largely meant Ms Rapoport in this context.

250. The Jurats were further directed that they were free to make their own findings in respect of whether there had been any misrepresentation as claimed by the Plaintiff and were not obliged to follow what had been set out in the judgment of Justice Wallbank in the BVI court. In particular, this Court had had the benefit of a much more detailed explanation of the circumstances under which the letter of 16 April 2016 from BJB had been received and dealt with that the references to the material that had been before the BVI court. Whilst findings made by courts in other jurisdictions can be informative and, in some cases, prevent another court from reaching a different conclusion, this was not one of those cases.

251. Once the Jurats decided whether there had been any misrepresentation on the part of the Defendant, including the narrower issue for them of non-compliance with Mr Erochkine's employment law obligations leading to an implied representation, they next needed to consider whether the Plaintiff had relied on the misrepresentation, which was applicable both to express misrepresentations and any that were implied. The Plaintiff had pleaded that the representations made had induced it to enter the LPA and thereafter comply with its obligations under it. This is the required causal link.

252. On the question of reliance, Advocate Williams referred to a lengthy passage in the judgment of Picken J in *Marme Inversiones 2007 SL v NatWest Markets plc* [2019] EWHC 366 (Comm), another high value case involving swaps. These paragraphs deal with awareness:

> "*281. That there is the awareness requirement is made clear in a number of authorities and textbooks. As to the latter, Mr Howe QC cited a number of examples, starting with J Cartwright, Misrepresentation and Non-Disclosure (4th Ed., 2017) where this is stated at [3-50] ("The requirement of a causal link between statement and loss"):*

"Whichever remedy is sought for misrepresentation, it will be necessary to establish an adequate link between the statement and the consequence from which the representee claims to be relieved. If the claim is for damages, the question is whether the statement caused the loss. If the claim is for rescission of a contract, the inquiry is as to the causal link between the statement and the claimant's entry into the contract. The language used in the different remedies, and the legal tests employed for them, will vary, but generally the issue is similar: it is an issue of the claimant's reliance on the statement, and whether the statement caused the harm in issue. A false statement, even one made fraudulently, will not be actionable as a misrepresentation by the person to whom it was addressed if it had no impact on his actions, nor otherwise caused him loss. This means that the statement must have been present to the claimant's mind at the time when he took the action on which he bases his claim, but the claimant need not prove that he believed that the statement was true: it is sufficient that, as a matter of fact, he was influenced by the misrepresentation. … ."

Mr Howe QC relied also on what is stated in Chitty on Contracts (32nd Ed., 2015) at [7-035], as follows:

"It is essential if the misrepresentation is to have legal effect that it should have operated on the mind of the representee. It follows that if the misrepresentation did not affect the representee's mind, because he was unaware that it had been made, or because he was not influenced by it, or because he knew it was false, he has no remedy."

Similarly Spencer Bower & Handley: Actionable Misrepresentation (5th Ed, 2014), another textbook cited by Mr Howe QC, has this to say at [6-01]:

"The representee's state of mind (inducement) when changing his position after receiving the representation is relevant in all cases of misrepresentation … He must establish that the misrepresentation operated on his mind and caused him, or helped to cause him, to act as he did."

So, too O'Sullivan, Zakrzewski & Elliott, The Law of Rescission (2nd Ed., 2014) contains the following passage at [4.101]:

"Where implied representations are pleaded, the claimant must prove that he understood that the representations alleged were in fact made; otherwise there can be no reliance".

282. As Mr Howe QC went on to point out, unsurprisingly perhaps given that the textbooks, of course, reflect the decided cases, in Raiffeisen Christopher Clarke J at [87] stated as follows:

"… the claimant must show that he in fact understood the statement in the sense (so far as material) which the court ascribes to it: Arkwright v Newbold (1881) 17 Ch D 301[13]; Smith v Chadwick (1884) 9 App.Cas 187; and that, having that understanding, he relied on it. This may be of particular significance in the case of implied statements."

He went on at [187] to say this:

> *"It is not, therefore, necessary for the representee to establish that he would have acted differently if he had known the truth. And it may not be sufficient either. If it were, a claimant who gave no thought to any representation, or did not understand it to have been made, might be entitled to recover."*

283. *Raiffeisen was cited by Hamblen J in Cassa di Risparmio at [224]:*

> *"As further observed in Raiffeisen, at [87], the claimant must show that he in fact understood the statement in the sense (so far as material) which the Court ascribes to it; and that having that understanding, he relied on it. Analytically, this is probably not a separate requirement of a misrepresentation but rather is part of what the claimant needs to show in order to prove inducement".*

Subsequently, in Foster Hamblen J cited this passage at [100]-[101]:

> *"... the lack of evidence from Mr Foster that he understood the representations to the effect alleged were being made is highly relevant to the issue of inducement – see the CRSM case at [224]. Unless one understands the representation is being made, it is difficult to see how it can be said to have been relied upon. Mr Foster's evidence was that had he known at the time that the factory had financial issues he would not have signed the contract. However, the case is one of positive representation, not non-disclosure. He gives no evidence that he understood that the Defendants were representing to him or telling him that the factory had no financial issues, still less that they were making the more specific representations set out in the pleading. I am accordingly not satisfied that inducement has been sufficiently proved."*

So, too, in an earlier implied representation case, Brown v Innovatorone, Hamblen J stated this at [906]:

> *"In so far as the Claimants were alleging implied representations it was incumbent on them to prove that such representations were understood to have been made since otherwise there could be no reliance. In relation to most of the alleged implied representations there was no such evidence, or no sufficient evidence, of any such understanding from Lead Claimants or IFAs. Equally, in so far as deceit was being alleged, it was incumbent on the Claimants to prove that the alleged representor understood a representation to the alleged effect to have been made. In relation to most of the alleged implied representations there was no such evidence, or no sufficient evidence, of any such understanding."*

284. *Another, somewhat earlier, authority also dealing with implied representations is IFE Fund in which Toulson J stated as follows at [78]:*

> *"...it is essential for a misrepresentation to have legal effect that it should have operated on the mind of the representee. It follows that if a representation did not affect the representee's mind, because he was unaware that it had been made, or because he was not*

influenced by it, or because he knew that it was false, the representee has no remedy."

Similarly, more recently, in another implied representation case, Leni Gas & Oil v Malta Oil [2014] EWHC 893 (Comm), Males J explained at [15] that:

> *"...a claimant must show that it understood that the representation alleged was being made to it. Without such an understanding, there can be no question of any reliance on the representation."*

285. Although Mr Saini QC did not take issue with any of these textbooks or authorities, he nonetheless submitted that, when implied representations are being considered, there are special considerations which mean that the representations should be regarded as having been present in the representee's mind even if the representee did not give the representation any conscious thought and that that is all the more likely to be appropriate if it is a case where the 'helpful test' in Geest is made out. The difficulty with this submission, however, is that it is not supported by authority – indeed, Mr Saini QC did not himself identify any authority which supported his submission. On the contrary, such authority as there is points in the opposite direction. Thus, and whilst nonetheless acknowledging that the case was not directly on point since it was concerned with an express misrepresentation claim, Mr Howe QC was able to point to one of the authorities to which Christopher Clarke J referred in Raiffeisen at [87], namely Arkwright v Newbold (1881) 17 Ch 301 and this statement on the part of Cotton LJ at p. 324:

> *"In my opinion it would not be right in an action of deceit to give a plaintiff relief on the ground that a particular statement, according to the construction put on it by the Court, is false, when the plaintiff does not venture to swear that he understood the statement in the sense which the Court puts on it."*

As Mr Howe QC observed, this passage was cited with approval by Asplin J in another express representation case, Bonham-Carter v SITU [2012] EWHC 3589 (Ch), at [131], as supporting the proposition that "the representee must establish that he subjectively interpreted the representation in the sense in which the court has found it to be false". It was also, previously, cited by Rix LJ in The Kriti Palm [2017] 2 CLC 223 at [253] and, again, at [278] when dealing with the absence of evidence from a Mr Whitaker as to what his understanding was in relation to a particular conversation where the representation was said to have been made (see [274]). It was, indeed, the absence of similar evidence in a claim for misrepresentation where the critical words in a company prospectus ("the present value of the turnover or output of the entire works") were ambiguous which led the House of Lords in Smith v Chadwick (1884) 9 App Cas 187 (Lord Bramwell dissenting on this point on the facts) to decide that the claim could not succeed. In that case, the claimant gave evidence merely that he understood the words to mean "that which the words obviously conveyed" without explaining the meaning he understood them to convey.

286. In the circumstances, I agree with Mr Howe QC when he submitted that these authorities support the proposition that a claimant in the position of Marme in the present case should have given some contemporaneous conscious thought to the fact that some representations were being impliedly made,

even if the precise formulation of those representations may not correspond with what the Court subsequently decides that those representations comprised. If the position were otherwise, then, I agree with Mr Howe QC that the consequence would be that there would be a substantial watering down of the reliance requirement. Acceptance of Mr Saini QC's argument would also entail an impermissible application of the Geest ("entitled to assume") test in a context in which it was never intended (even by Colman J) that that test should operate and in circumstances where the Court of Appeal in PAG has made it clear that the test is merely 'helpful' and is not determinative. As Mr Howe QC submitted, if Mr Saini QC were right, then, the reliance requirement would largely no longer apply in the case of implied representations, and that simply cannot be right. Furthermore, I agree with Mr Howe QC when he submitted that Mr Saini QC's submissions, in effect, remove the distinction between actionable non-disclosure (where there is no requirement to show that the claimant understood or was aware of any representation at the time, only that the defendant failed to correct a mistaken assumption) and misrepresentation (where there is such a requirement). That distinction, which is long-established and clear, is described by Cartwright at [16-03], as follows:

> *"A claimant who seeks to avoid a contract on the ground of either non-disclosure or misrepresentation will typically be claiming that he made a mistake, or entered into the contract on the basis of assumptions as to the relevant surrounding circumstances which he now knows were inaccurate; and now that he knows the truth, he says that he would not have entered the contract had he not made the mistake or made those assumptions. In the case of misrepresentation, he alleges that it was the defendant's misrepresentation that caused him to make the mistake: the defendant's words or conduct communicated information on which the claimant relied in deciding to enter into the contract. But in the case of non-disclosure the defendant has done nothing to cause the mistake or to give rise to the assumptions as to the circumstances surrounding the contract; he failed to give the claimant relevant information which would have corrected the mistake or false assumption."*

If Mr Saini QC were right in what he submitted, there is a real danger not only that the distinction between non-disclosure and misrepresentation is impermissibly blurred but also that implied misrepresentation claims would be allowed to succeed in situations where there is not even any 'duty to speak'."

253. The presiding judge adopted these principles when directing the Jurats in relation to considering the impact, if any, that those misrepresentations found to be made on behalf of the Defendant operated on the minds of those controlling the Plaintiff. It was open to the Jurats to consider whether the Plaintiff had proved to the requisite level that it addressed its mind to these matters. By way of example, if the Plaintiff would still have entered into the LPA even had it been aware of the true facts, then any misrepresentation of a type pleaded by the Plaintiff would not have been relied upon and it would not have induced the Plaintiff to execute the LPA and thereafter abide by its terms. As set out in the passage quoted from *Marme*, this is of particular importance where the misrepresentation is founded on non-disclosure. In summary, drawing on what is set out in para. 7-112 of *Chitty on Contracts* (33rd ed., 2018):

"*… where a person was induced to enter into a contract as a result of a misrepresentation by the other party to the contract, and the misrepresentation never became incorporated as a contractual term, the representee was entitled to rescind the contract, whether the representations was fraudulent, negligent or wholly innocent. At common law, the right to rescind was confined to cases in which the representation was fraudulent or in which there had been a total failure of consideration, but in equity there was a right to rescind even for innocent misrepresentation.*"

Findings of the Jurats

254. By way of some introductory background, the Jurats believe that the material before this Court relating to the RN Pharma Trust structure on which Mr Erochkine also worked during his employment with Rusnano Capital LLC and Rusnano Management Company LLC is relevant to how it should approach their findings relating to the limited partnership. Without setting out all the details, they are satisfied that it became apparent during the course of the evidence that Mr Erochkine had an expectation that he would be handsomely rewarded for applying the skills he felt he was bringing to the Rusnano Group. Much was made during the trial of the perception he had that he deserved to receive large bonuses consistent with his own ambitions. It was difficult to piece together exactly what it is that he felt he should be paid on top of his basic salary, but the Jurats formed the impression that he had gone to work for the Group with a view to establishing himself as a prominent player in the funds marketplace. Further, he was prepared to accept what he regarded as a significant drop in his basic pay from what he might otherwise have enjoyed in order to reap the benefits from his work in other ways. The Luxembourg Agreement is one example and the establishment of the RN Pharma Trust as a means by which he would exercise control over his own destiny in obtaining financial benefit, albeit that eventually did not come to fruition, is a further example to set against his approach to his work on the limited partnership associated with the Chinese fund. In short, the RN Pharma Trust offers some extra colour to the decisions needed in respect of the core facts relating to this action.

255. The Jurats are conscious that the task of the Plaintiff is principally to prove a negative. In the absence of any document demonstrating what the personnel of the Plaintiff, or the wider Rusnano Group knew at the relevant times, they have had to consider what had happened during the time preceding the incorporation of the Defendant as well as who has been shown to know what during that period and later. Because of the time prior to the execution of the LPA almost a year later, they have also considered carefully the evidence related to that time. They recognise that this case is more about the absence of knowledge during that period, as also demonstrated by what happened subsequently, and whether that absence of knowledge led to actions being taken that would not otherwise have been taken in the way they were. As a result, they have had to consider what inferences they can properly draw from the documents, recognising that the essence of case turns on which witnesses to believe as to whether Mr Erochkine told anyone about his ownership of the Defendant when Ms Rapoport, on behalf of the Plaintiff, claims he did not.

256. In doing so, they have weighed up the evidence given by Ms Rapoport that Mr Erochkine had presented the limited partnership structure presented to her as being an off-the-shelf product that could be used and adapted for the purposes of establishing the offshore element of the Tianjin Bohai Fund project. She believed that the ownership of the Defendant rested with an entity of Saffery Champness. She understood that Saffery Champness, through whichever of the Rysaffe entities needed to act, would take instructions from Rusnano personnel. She stated clearly that she would not have signed the LPA on behalf of the Plaintiff if she had been aware that the ultimate beneficial ownership of the Defendant, or at the least ultimate control over it, was outside the entities that make up the Rusnano Group. That is why no reference was made to the management fee payable under the LPA in the side letter executed because she always believed that any fee payable would be returned through an agreement

with RN Consulting SA, although she was aware that no such agreement came to be finalised. Although her suspicions were raised about Mr Erochkine when he referred in August 2017 to having a personal economic interest in the Defendant, she did not have those suspicions confirmed until his letter dated 24 November 2017.

257. Mr Erochkine sought to explain his reluctance to disclose to others openly his ownership of the Defendant because of his concerns that it would lead to regulatory issues being raised. He considered that these proceedings were no more than responsive to the proceedings he commenced in Luxembourg to enforce the terms of his Luxembourg Agreement because they had followed within days. In general, he had found the Rusnano Group unnecessarily bureaucratic and looked for flexibility and creativity in how he approached his job. By the time of his resignation, he was frustrated with Rusnano. Following the meeting held on 22 September 2014, the other partners considering investing did not want to work with Conduit, so he developed the idea that he could own the general partner for the offshore element of the Fund and he floated that idea with Ms Rapoport in or around October or November 2014. He was already aware of the use to which side letters were put as a means of obtaining the appropriate degree of control that the Rusnano Group needed, and that is why various discussions about side letters subsequently took place. This shows that the template to which the Rusnano Group worked was largely being followed. However, in his mind there was no imperative to conclude any side letter with RN Consulting SA until such time as the onshore element of the Tianjin Bohai Fund was established. The structure that was used was one that he created and he saw it as a stepping stone towards his ambition to own his own fund management business. The extent of that personal commitment to fulfil his ambition is shown by the offer he made on 6 July 2016, at a time when the purchase of the Didi shares was becoming critical, to settle any outstanding fees of Saffery Champness personally.

258. Because para. 26(a) of the Amended Cause pleads as an example of the statements made by Mr Erochkine and representatives of Saffery Champness the e-mail on 11 July 2016, the Jurats make the following findings in relation to that exchange. When Mr Erochkine wrote "*I think this is ok*", the question posed by Mr Jing related to whether Rusnano wished to hold off releasing the signature pages, as proposed by Fangda, to the following day. This question was put to both Mr Erochkine and to Ms Bochkova. The Jurats consider that the only sensible way to construe Mr Erochkine's short response is to take it as a direct answer to that question rather than being more broadly confirmation that everything set out below that last question is agreed. The context of the words on which the Plaintiff relies also implies that Mr Erochkine had in mind the timing issues for the closing due to take place next day, as shown by his reference to Mr Belhomme needing to know it was proceeding by a given time to ensure same day payment. Attempting to link this response to what had been written by Mr Belhomme a little earlier that day ("*CRGF is controlled by Saffery Champness as the professionals appointed to manage the fund for Rusnano. Rusnano ultimately own 100% and can remove us at any point and therefore have effective 100% control over this fund and investment.*") is trying to implicate Mr Erochkine in something for which Mr Belhomme, as a director of the corporate director of the Defendant, has to take responsibility. Accordingly, the Jurats do not find that this is an example of Mr Erochkine himself misleading anyone.

259. What Mr Belhomme wrote to Mr Jing, however, is misleading. It was written on behalf of the Defendant and, albeit sent to lawyers in China, Mr Jing then relayed it to Ms Bochkova and Mr Erochkine, who for these purposes are viewed as persons within the Rusnano Group, meaning that the misrepresentation of the actual position, which was that the Plaintiff and all other entities in the Rusnano Group did not then have the ability to give instructions to all elements of the limited partnership and so did not exercise full control over Saffery Champness, was relayed to Rusnano personnel. It offered an opportunity for Mr Erochkine to correct what had been set out, which he did not take. It is consistent as well with the pattern of how Mr Erochkine had instructed the people working at Saffery Champness to say as little as possible that would expose to external scrutiny his beneficial ownership of the Defendant. As a result, when Mr Belhomme wrote his e-mail, he was doing so with actual authority on

behalf of the Defendant and Mr Erochkine, also acting with that entity's implicit authority, decided not to correct what had been relayed to Ms Bochkova. It is the combination of what Mr Belhomme wrote and what Mr Erochkine failed to correct that amounts to the making of this misrepresentation to those at Rusnano.

260. The problem, however, with this particular example is that it comes rather too late in the day to be capable of operating as an inducement to the Plaintiff to enter into the LPA. It even comes after the first tranche of monies were paid under the terms required to make contributions to the limited partnership, although it did occur just before the second capital call. As such, whilst it is an example of something being stated that was not true, and can be used to show that Saffery Champness, as director, were not portraying an accurate picture at this time, which in turn can support a finding that it had not done so before, it is not of direct relevance to the Plaintiff's case because it cannot have induced the execution by Ms Rapoport of the LPA. It has been treated, therefore, as an example of an ongoing position from which extrapolation becomes possible.

261. Whilst dealing with this lengthy e-mail chain, the Jurats further note that, when Ms Zhao asked Mr Jing to explain the shareholding of the Defendant, Mr Jing sought input from Mr Belhomme who, in turn, referred the query to Mr Erochkine. This exchange was not relayed to Ms Bochkova, but kept separately. Mr Erochkine responded that all that should be explained is the formal legal ownership of the Defendant, which is what was then relayed to Mr Jing. This is one of the bases on which the Jurats find that Mr Erochkine was still taking steps to conceal his beneficial ownership of the Defendant.

262. Of more direct relevance to the question of the extent to which that concealment was happening is the question of whether the nominee arrangement by which the Defendant's sole shareholder confirmed Mr Erochkine's beneficial interest was ever disclosed to anyone at the Plaintiff and, in particular, to Ms Rapoport. The Jurats find that it was not. Indeed, they find that steps were taken by Mr Erochkine to ensure that as few people as possible became aware of his personal 100% ownership of the Defendant. This is apparent from the occasions on which Mr Erochkine explained that the structure chart being circulated should not show him as the owner of the Defendant. His approach throughout in his dealings with Saffery Champness was that less knowledge about this put him in a better position.

263. In particular, the Jurats reject his suggestion that this document was uploaded into the dataroom. The Defendant, acting through Mr Erochkine by this time as he had become the formal shareholder and sole director, had had the opportunity to have the dataroom interrogated but, on advice, had apparently chosen not to do so. The Jurats do not accept that there was anything complicated, as Mr Erochkine explained, about taking that step and that the Defendant would inevitably have done this if it would demonstrate the truth of Mr Erochkine's contentions. Instead, they consider that this decision reflects the fact that to have done so would have confirmed that his suggestion of other documentation mysteriously disappearing was a myth. Further, the utility bill request to which he also referred in relation to the dataroom post-dates the time at which the uploading of documents relating to the Defendant into the dataroom took place. The Jurats are satisfied that it was the formal constitutional documents relating to the Defendant that were uploaded. Whilst those documents offered an accurate picture of what anyone searching, eg, in the BVI, could ascertain about the Defendant, this did not give to those at Rusnano working on the limited partnership any indication that the beneficial ownership might differ from the legal ownership. It certainly was not as complete a picture as if the nominee arrangement had been disclosed. It fostered the impression that Saffery Champness would take instruction from the Rusnano side in relation to the Defendant, whereas the true position was that those instructions could only come from Mr Erochkine, when he would be acting not as an employee of a Rusnano entity, but rather in his personal capacity. This arises because the Jurats are satisfied that Mr Erochkine had incorporated the Defendant to be his personal vehicle as a general partner with a view to it flourishing even after anything involving the

Rusnano Group came to an end. That is why he says he invested so much time and energy into the project. However, the costs incurred in incorporating the general partner and the rest of the limited partnership structure were funded by Rusnano. Having paid those monies, it was reasonable for the Plaintiff and others working at Rusnano to believe that the Defendant was owned or at least controlled by an entity within the Rusnano Group.

264. The disclosure to BJB of the two versions of the structure chart, initially showing Mr Erochkine's 100% ownership, presented problems for him subsequently, most clearly shown in relation to the letter from Mr Capel Cure dated 15 April 2016 and the way that preparing the response was handled. The Jurats do not accept Mr Erochkine's assertion that he handed the envelope containing this letter to Ms Rapoport and that, when it came to preparing the response, Ms Rapoport dictated what was to be sent by way of reply with Mr Erochkine and Ms Bochkova present. This version is quite simply unbelievable for a number of reasons. If Ms Bochkova had been present and Ms Rapoport was dictating the response, there would have been no reason for Ms Bochkova to take the draft sent to her by Mr Erochkine to tidy it up. Any contribution she wished to make to the drafting could have been done whilst the dictation process was being done. There would also have been no need for her to put the text on to headed paper because that could, and so would, have been done at the time of drafting. Instead, the sequence of events is consistent with Ms Rapoport's evidence that she did not at the time see this letter. Were she being untruthful about this, subsequently requesting information from BJB about how the letter had been sent would have been a masterly subterfuge if she already knew full well that Mr Erochkine had handed it to her. Further, the absence in the Rusnano document receipt logs of any record of the letter arriving would amount to deliberate suppression of it, whereas it is much more likely that Mr Erochkine opened the letter addressed to her and then chose to suppress it from the official system because, as he feared would be the case because of the discussions he was having with BJB, its content was damaging to him. Even without the finding that it must have been Mr Erochkine who read the letter and prepared the response, which he then forwarded to Ms Bochkova without her, Ms Rapoport or Mr Kiselev knowing the reason for it, just reading content of the response that was sent demonstrates, as the Jurats find, that it is not a direct response to the questions posed by Mr Capel Cure. The style of the draft Mr Erochkine prepared is different from the way in which other letters are written on behalf of Rusnano personnel. Mr Erochkine obviously could not refer to the letter to which it was intended to be a response because that would inevitably have elicited a request to see the letter to which it was replying. Accordingly, rather than write directly in response to the letter, it had to be couched in opaque language, attempting to cover the substance of the request but without doing so explicitly. The Jurats are satisfied that, had Ms Rapoport seen the letter, any response prepared at her bidding would have referred to the letter and answered the questions posed more directly than the text prepared by Mr Erochkine. The consequence is that the Jurats find that the letter dated 15 April 2016 was not passed on to Ms Rapoport, that Mr Erochkine prepared the response to it alone, although his draft was then polished by Ms Bochkova and engrossed ready for Mr Kiselev to sign, and that when Mr Erochkine prepared the draft it was deliberately vague in its terms and did not address the questions posed because only Mr Erochkine amongst the Rusnano personnel knew what those questions were.

265. Contrary to these particular instances, and recognising also that the non-disclosure of the BJB letter occurred after the LPA had been executed, the Jurats have also tried to ascertain what the relationship was between the key players before the end of 2015 and whether Mr Erochkine's evidence that he had set up the prospective general partner in a manner that was understood and so known to, in particular Ms Rapoport. They find that Mr Erochkine was a trusted colleague. He worked in a small team and was permitted to exercise a high degree of individual responsibility. The Rusnano Group operated, as perhaps might be expected given the control of the State, in a bureaucratic fashion. This may not have been the way in which those involved wished to operate in the funds world. Accordingly, whilst endeavouring to comply with all the requirements placed upon them, they also strove to ensure that investment projects could be sourced and developed as practically as possible. It is the closeness of the

working relationship Ms Rapoport had with Mr Erochkine, as also evidenced by the bitterness she felt when Mr Erochkine resigned, which provides the foundation on which to consider how much she actually knew even though it is not documented.

266. The Jurats take as their starting point that Mr Erochkine was sufficiently aware of the various orders made within the Rusnano Group about how to make investments of monies channelled through the Plaintiff, even though he was keen to explain that his principal employment, which was his only employment at the time the Defendant was incorporated, with was Rusnano Capital LLC, which was not directly involved in the investment decisions. His function was, therefore, a consultancy or advisory one. When he chose the name for the Defendant, he chose to use an acronym that reflected what had been discussed internally, thereby giving weight to the impression that this was the vehicle to offer the offshore element to the onshore Tianjin Bohai Fund and not his personal venture. He had played his role in the restructuring within the Group, as shown by the recommendation for his bonus, and so the Jurats find that he was familiar with how arrangements within the Group were developing. His part-time employment with Rusnano Management Company LLC began after the Defendant had been incorporated but before the LPA and the subscription agreement had been finalised and were then to be executed. By this time, he had some responsibility for investment decisions using Rusnano monies.

267. A further factor when considering the closeness of the working relationship is that Ms Rapoport is an experienced businesswoman and it is for that reason, coupled with the general background, that Jurats Hodgetts and Wyatt reach the conclusion that she would not have been prepared to sign the LPA and the subscription agreement on 11 November 2015 if she did not know how the counterparty to the LPA, the Defendant, had been established by Mr Erochkine. They found Mr Erochkine's general demeanour when he gave his evidence as slight bemusement that there was all this fuss when his colleagues had known all along that he had been setting up the general partner for the envisaged limited partnership with him being the owner of it. His relationship as an employee was capable of offering the level of control needed anyway and there was always scope to execute some other arrangement that would see a portion of the management fees payable returned to the Rusnano Group. The fact that this was not completed before Mr Erochkine had to resign for health reasons was not attributable to him.

268. Another element that supports this conclusion is that too little distinction has been drawn between the Tianjin Bohai Fund and what has been termed the feeder fund, involving the CRGF limited partnership. It was the onshore fund in China where there would be additional potential investors, but the offshore part of this structure was only for the benefit of the Rusnano Group. This was a consequence deriving from the taxation advice obtained from PwC. Different models had been under consideration to minimise the taxation consequences when the onshore fund, which was the most important part of what was being established, would become operative. The Guernsey limited partnership, referred to by Ms Rapoport as a technical structure and not a fund, had that appearance. It was intended as the means through which Rusnano's monies could pass to be invested in the Chinese fund. Apart from complying with the overarching rules where there would be satisfactory control, the core of the co-management principles lay in the Chinese fund structure rather than the Guernsey limited partnership. That is why Mr Erochkine made his proposal for how the general partner in it would be set up, satisfying his ambition to have a ready-made fund vehicle for what he intended to do later in his life. Put simply, as an experienced businesswoman, the LPA would not have been executed if Ms Rapoport had not understood the structure to which she was committing the Plaintiff. Accordingly, the Plaintiff has not discharged the burden on it in respect of the express or implied misrepresentations in para. 26(a) of the Amended Cause.

269. Jurat Mortimer dissents from that finding. Instead, he considers that the examples of where Mr Erochkine has taken steps to conceal his beneficial ownership of the Defendant, some of which have just been highlighted but which pervade all of the facts as set out above until after

he resigned his employment, show clearly that he was acting in this manner precisely because he had not told his colleagues. The way in which he dealt with Saffery Champness shows very clearly that he was acting alone and not performing his employment duties. The explanations he gave as to how much time and energy he had invested in this personal project support only one conclusion, namely that he had stepped outside of doing his job, he knew that he should not have acted this way whilst remaining employed, he caused Saffery Champness to bolster this deception because otherwise he would be found out and, when it was becoming harder and harder to maintain these two courses, he resigned his employment to ensure that he retained the Defendant as the means to derive his personal profit for his endeavours. As soon as one steps back from the different accounts and looks at the documents on which the case has been tried, they make a lot more sense based on a conclusion that there had been no discussions with Ms Rapoport and that Mr Erochkine was off on what might be termed a frolic of his own. Accordingly, he would find that para. 26(a) of the Amended Cause has been proved by the Plaintiff to the required standard.

270. In this regard, Jurat Mortimer notes that Mr Erochkine's evidence of when he floated the idea of establishing the Defendant comes only in October or November 2014. It was a departure from the structure that had been considered before then. It was not documented, as would have been expected of such a bureaucratic organisation. If it was something about which Ms Rapoport, and others, were comfortable, there would have been no need when Mr Belhomme wrote on 21 January 2015 to stress that this feeder fund vehicle had been set up for the requirements of the Plaintiff, because that was stating the obvious. Instead, he would find that this was a further example of Mr Erochkine setting out to paint a misleading picture. The fees payable for setting up the Defendant would not have been paid by the Plaintiff if it knew that this element of the structure was outside its control, which is what ownership by Mr Erochkine then and moving forward would mean. That would be generosity beyond what was permitted for the use of State-owned monies. The circulation of the structure chart showing Mr Erochkine's personal ownership of the Defendant and its rapid suppression on his instructions at a time when the limited partnership had been established but just before the LPA was executed can only be regarded as a step designed to avoid information that was not known to Ms Rapoport and so others as well coming to light when Mr Erochkine was on the verge of obtaining the significant management and fees over which he would be able to exercise control. This also relates to when the structure chart was sent to Mr Wang in November 2015, which was just after the LPA and subscription agreement had been signed, but before the LPA had been completed. This was a critical point and unwarranted scrutiny of the ownership of the Defendant is the only sensible conclusion for why Mr Erochkine gave the instruction he did.

271. Despite the difference of conclusions between the Jurats on para. 26(a) of the Amended Cause, in the light of the presiding judge's directions on the consequences of non-disclosure as required under the terms of Mr Erochkine's employment contracts, all the Jurats accept the concession made by Mr Erochkine that he did not provide the notification required to the Commission. As such, the implied misrepresentation to which that relates is found. However, the Jurats do not consider that this omission arose dishonestly because they are satisfied that the complexities of these provisions are such that it cannot have been entirely clear that such a disclosure was needed. Further, on the basis of the findings made by Jurats Hodgetts and Wyatt, there had been notification to Mr Erochkine's immediate superior, Ms Rapoport, so the technical breach of the requirement to disclose to the Commission is one that is most probably an innocent misrepresentation or, at worse, reckless, but not fraudulent.

272. In the light of the presiding judge's directions on reliance, that finding of Jurats Hodgetts and Wyatt is sufficient to explain that there cannot have been any reliance because Ms Rapoport was aware of Mr Erochkine's beneficial ownership of the Defendant, although Jurat Mortimer would find that such reliance has been established. There is, though, a further aspect of how reliance has been approached on behalf of the Plaintiff, which relates to the absence of any evidence as to what the other directors of the Plaintiff knew or did not know. Suggesting that

Ms Rapoport is the only person involved has been dealt with on the basis that what she knew would also be known by the other directors. Accordingly, because her evidence was that she was unaware of the ownership of Mr Erochkine of the Defendant it followed that this was not information that she could have shared with her fellow directors. In relation to the issue of reliance on the absence of information, though, in order to establish that the majority of the directing minds of the Plaintiff shared the position of Ms Rapoport, some further evidence would have been helpful. In the absence of any further evidence, the Jurats are left with no direct evidence of whether the majority of the board of directors, and so the Plaintiff as a whole, knew or did not know the position. In those circumstances, Jurats Hodgetts and Wyatt infer that what they find Ms Rapoport knew must also be the knowledge of the majority, or even all, of the directors of the Plaintiff or, if they are wrong to draw that inference, the absence of any evidence relating to the other directors means that the Plaintiff has failed to prove the reliance element of its case to the requisite standard.

273. For these reasons, the Plaintiff's claim to be entitled to rescind the LPA fails. However, although the Court is not required to deal with the next issue relating to rescission, which is affirmation, it will briefly state the Jurats' conclusions in case they become relevant.

Affirmation

274. The principle of affirmation is a simple one. The party to an agreement who has grounds on which to rescind it, principally on the basis on which the Plaintiff had put its case as based on fraud, has a choice once the relevant information giving rise to that entitlement is known. In the context of this case, the presiding judge explained to the Jurats that they needed to decide when it was that those who acted on behalf of the Plaintiff learnt the truth about the state of affairs relating to the Defendant, thereafter enabling an informed choice to be made as to whether to exercise that entitlement to rescind or instead to affirm the contract through words or actions. Advocate Williams drew attention to the principles found in *Car and Universal Finance Co Ltd v Caldwell* [1965] 1 QB 525 and the older decision in *Clough v London and North Western Railway Co* (1871) LR 7 Ex 26, in which (at page 35) it was suggested that the question is "*has the person on whom the fraud was practised, having notice of the fraud, elected not to avoid the contract? or has he elected to avoid it? or has he made no election?*". In the more recent of those cases, the principle was explained in the following manner:

> "*An affirmation of a voidable contract may be established by any conduct which unequivocally manifests an intention to affirm it by the party who has the right to affirm or disaffirm. Communication of an acceptance of a contract after knowledge of a fundamental breach of it by the other party or of the fraud affecting it is, of course, evidence establishing affirmation but it is not essential evidence. A party cannot reject goods sold and delivered if he uses them after knowledge of a right to reject, and the judgment cites a case where an instruction to a broker to re-sell was sufficient affirmation of the contract in question even though that conduct was not communicated. It may be said that a contract may be more readily approved and accepted than it can be terminated where a unilateral right to affirm or disaffirm arises. The disaffirmation or election to avoid a contract changes the relationship between the parties and brings their obligations to an end, whereas an affirmation leaves the contract effective though subject to a claim for damages for its breach. Where a contracting party could be communicated with, and modern facilities make communication practically world-wide and almost immediate, it would be unlikely that a party could be held to have disaffirmed a contract unless he went so far as to communicate his decision so to do. It would be what the other contracting party would normally require and unless communication were made the party's intention to rescind would not have been unequivocally or clearly demonstrated or made manifest.*"

As Advocate Williams further suggests, the approach is to ascertain objectively whether there has been affirmation, taking into account all of the circumstances. Accordingly, the Jurats were directed to consider what happened after Mr Erochkine had resigned, approaching this issue as if they had agreed with the Plaintiff that it was only after that time they the knowledge of the true state of affairs arose and what, if anything, happened thereafter.

275. The earliest time post-resignation at which those acting on behalf of the Plaintiff, being principally Ms Rapoport, could be said to be aware of any entitlement to rescind the LPA arose when Mr Erochkine referred to having a personal economic interest in the Defendant. Coupling that with him referring to wanting to have the shares in Didi sold, it should have raised alarm bells. The Jurats have noted that Mr Erochkine and Ms Rapoport met in London on 27 July 2017, after which time the steps being taken on behalf of the Plaintiff do not appear to the Jurats to be those of a party seeking to avoid the consequences of having entered into an agreement, but rather to manage the situation differently. Whilst they appreciate that there is a difference between suspicion and absolute knowledge, what happens during this period of time is inevitably going to be viewed with a degree of the benefit of hindsight. The absence of anything being stated explicitly does not necessarily equate to an absence of sufficient knowledge to take different steps.

276. The enquiries that were undertaken before the telephone call Mr Erochkine had with Mr Kiselev on 17 August 2017 also should, in the Jurats' views, have led Ms Rapoport and anyone else involved to have a clear impression that something had not gone to plan. By way of further example of the evidence that Ms Rapoport gave and upon which the Plaintiff has relied, para. 30 of her First Affidavit explains:

> "*In August 2017, Rusnano reached the conclusion that Mr Erochkine had put in place an investment vehicle, to achieve its investment strategy of investing in the Chinese technology market, which was not under the control of Rusnano as they had believed, but under Mr Erochkine's control*."

Whilst the evidence that followed at that time refers to steps being taken to ascertain what the precise position was, the Jurats consider that there is a concession here that the Plaintiff already knew sufficient to know that they needed to act. What happened thereafter is what matters.

277. Although what was actually discussed during the telephone call between Mr Kiselev and Mr Erochkine is not entirely clear, and Mr Erochkine's own description of what was discussed in his message to Mr Steele of Saffery Champness is not as explicit as it could have been as a contemporaneous note, the Jurats have formed the view that Mr Kiselev would not have engaged in this discussion with Mr Erochkine in the manner he clearly did without having been fully briefed by Ms Rapoport and Ms Bochkova as to what they believed and what they had been able to discover by dealing directly with Saffery Champness. They were discussing matters that related to future arrangements with the structure remaining in place rather than terminating the partnership. The Jurats are satisfied Mr Kiselev's decision to be conciliatory towards Mr Erochkine implies that he was not thinking at that time about undoing the arrangements that were in place but rather modifying them to avoid the politically unacceptable position in which they found themselves.

278. The negotiations that ran though until November 2017 also demonstrate the stance being taken on behalf of the Plaintiff. The usual manner of doing business by way of a side letter was proposed. The aim was for some entity within the Rusnano group to gain control of the Defendant and so have control of the investment, which has always been limited to the Didi shares. Even if there was no knowledge of who beneficially owned the Defendant, Ms Bochkova's reference to its being managed by "*somebody odd*" really confirms that what may have been suspicions had become more concrete by then. Confirmation of the position came

in the letter sent by Mr Erochkine on 24 November 2017, in which he referred to him fully owning the Defendant.

279. The Jurats have, therefore, started from the premise that this is the latest time at which those acting on behalf of the Plaintiff had the knowledge enabling them to decide whether to accept this fundamental breach and bring the contractual arrangements to an end or whether to affirm the contract. Accordingly, they have considered what happened after that time to see when it was that the possibility of rescinding the LPA first arose. The response to this letter came from Ms Bochkova on 15 January 2018 in which she drew attention to the provisions of Mr Erochkine's employment relationship which meant he had acted in breach of those obligations. Whilst the Jurats appreciate that this letter also relates to the RN Pharma Trust, they note the continued reference to Mr Erochkine having a "*personal economic interest*" in a number of projects of Rusnano, but more importantly that there is once again reference to there being a signed side letter provided by no later than 20 January 2018. When that deadline was missed, even at the meeting Mr Erochkine had with Ms Rapoport in London on 26 January 2018, the intention to deal with this by way of a side letter was raised. This was entirely consistent with the approach being taken when Ms Bochkova met with Mr Erochkine in Paris on 4 December 2017. As a result, the Jurats are satisfied that, having full knowledge of the ownership of the Defendant from 24 November 2017, the parties who were involved continued to discuss alternative ways of dealing with the situation by way of a side letter for around two months.

280. Although the Jurats have noted the way in which this has been put on behalf of the Plaintiff as taking a short time to ascertain whether a satisfactory solution could be negotiated before turning instead to the formal legal position, they are not persuaded that what the Plaintiff's personnel was doing during at this time, especially when considered alongside the preceding months following Mr Erochkine's resignation, can properly be regarded as being anything other than an unequivocal manifestation of an election to affirm the LPA. What is significant in this regard is the amount of time that passed before steps were taken to switch away from negotiations to litigating. Even if one allows a period of time to take advice and give instructions, this does not appear to the Court to have occurred until after Ms Rapoport's final attempt to negotiate the proposed side letter, which itself comes after several other attempts to achieve that outcome. Whilst the Jurats recognise that there were no explicit words used confirming that the LPA would continue and the Plaintiff has suggested that its attempts to find an alternative solution were all founded on upon it being conditional that there would be agreement, the Jurats remain unsatisfied by the amount of time that was permitted to elapse between knowing sufficient to avoid the LPA and finally commencing proceedings to that end. Over that period of time, the Defendant was entitled to regard the steps being taken on behalf of the Plaintiff as affirmation of the LPA.

281. That conclusion applies even from the latest date of knowledge, being Mr Erochkine's letter dated 24 November 2017. However, the Jurats would have found that sufficient knowledge existed prior to that letter confirming the position to be capable of being properly taken into account when considering whether there has been affirmation. In their view, this happened no later than the draft side letter being sent on 4 October 2017 and, in all likelihood really dates back until mid-August 2017 when Mr Kiselev and Mr Erochkine spoke because the sending of the draft side letter by Ms Bochkova was a response to the various discussions that had taken place by that time. Accordingly, those acting on behalf of the Plaintiff spent a period of almost six month seeking to resolve matters to their satisfaction before turning to the possibility of rescinding the LPA.

282. For these reasons, the Jurats would, had it been necessary to do so, have found that the Plaintiff had affirmed the LPA in the full knowledge of the misrepresentations on which it has relied through its conduct once it became aware of its entitlement to avoid the consequences of the LPA to which it was a party. Accordingly, even if the Court had found that the misrepresentations had been relied upon, giving rise to a prima facie case upon which

rescission could be pursued, it would have dismissed the rescission and ancillary relief being sought for this reason.

283. As a result of that conclusion, the Court does not need to consider what would potentially have been quite complex submissions made relating to the prayer in the Amended Cause in relation to rescission and relief following a favourable decision on rescission. In these circumstances, the Court will leave open whether rescission was even available where the LPA in respect of which rescission was sought was an amendment to an earlier LPA that was established before the Plaintiff replaced Rysaffe Actionnaires Sarl as the limited partner. If the effect of rescission was that the original limited partnership agreement would revive, before reaching such a conclusion there may well have been a need to hear from the Initial Limited Partner. Similarly, any relief directed at the Didi shares themselves would have needed to address the consequences of section 39 of the Partnership (Guernsey) Law, 1995, which has effect by virtue of section 33 of the Limited Partnerships (Guernsey) Law, 1995 (to which the Court will subsequently refer as "the LP Law"). The terms of section 39 refer to:

> "*Where a partnership agreement is rescinded on the ground of the fraud or misrepresentation of any party thereto, the party entitled to rescind is, without prejudice to any other right, entitled–*
>
> *(a) to a lien on the surplus partnership assets, after satisfying the partnership debts–*
>
> *(i) for any sum of money paid by him for the purchase of a share in the partnership; and*
>
> *(ii) for any capital contributed by him;*
>
> *(b) to stand in the place of the firm's creditors for any payments made by him in respect of the partnership debts; and*
>
> *(c) to be indemnified by the person guilty of the fraud or misrepresentations against all debts of the firm.*"

284. On behalf of the Defendant, Advocate Williams sought to draw a distinction between a lien over the assets of the firm, as provided for in section 39(a), being principally the Didi shares, and the transfer of that shareholding to the Plaintiff, which is the relief being sought in the event that rescission had been granted, although that appears to be an alternative to the manner in which the proposed joint liquidators on dissolution were to be directed to proceed (para. (12) of the prayer). Had the issue arisen for determination, following a finding that the LPA was to be rescinded, the Court would have considered further what effect was produced by the rescission. It would have mean that whatever had been paid by way of capital contribution fell to be returned by the Defendant to the Plaintiff. If the Defendant was not in a position to return the amount paid of just over US$25 million, one possible solution would have been to see what arrangements might be needed to realise the assets that the Defendant holds. The fact that the Didi share certificate refers to a person that has no legal identity might have become an issue, but there may have been a pragmatic solution to give effect to the terms of the lien by providing an opportunity to the Defendant to resolve matters by offering to transfer the shareholding into, for example, the name of the Plaintiff. This would produce the same outcome as if the plaintiff, rather than investing into the rescinded limited partnership, had invested directly and appears to the Court to be the preferred outcome on behalf of the Plaintiff. If this could have been achieved without any barrier being erected in its way, then it may have been the simplest solution at that time and could have found favour. To the extent that this represents a development of the principle of a rescission trust, to which Advocate Brehaut referred by reference to *National Crime Agency v Robb* [2015] Ch 520, which Advocate Williams suggests also relates to what was set out in *Shalson v Russo* [2005]

Ch 281, this may have been an appropriate development to consider making. Further consideration would have been required as to whether monies expended by the Plaintiff associated with the rescinded LPA were also to form part of the judgment (eg, para. (9) of the prayer in the Amended Cause). This would have been part and parcel of the necessary inquiry into how to unwind the parties' position to reflect that the LPA had been rescinded. However, given the conclusions of the Jurats on the facts, all these matters can be left open and the Court will turn instead to the alternative basis of the Plaintiff's case, which seeks the dissolution of the limited partnership.

Dissolution

285. The Plaintiff has advanced three alternative bases on which to seek the dissolution of the limited partnership pursuant to section 29 of the LP Law:

> "*The Royal Court may order the dissolution of a limited partnership on the application of any partner or creditor thereof or on the application of the Committee or Commission if in its opinion– …*
>
> *(e) the partnership is being conducted in a manner which is – in*
>
> *(i) oppressive to any of the limited partners or prejudicial to their interests as limited partners; or*
>
> *(ii) calculated to affect prejudicially the carrying on of the partnership business; …*
>
> *(i) persons connected with the formation or management of the partnership have, in connection therewith, been guilty of fraud, misfeasance, breach of fiduciary duty or other misconduct in relation to the partnership or any partner thereof; or*
>
> *(j) it is just and equitable to do so.*"

On behalf of the Plaintiff, Advocate Brehaut advanced the application for rescission most strongly on the third of those grounds. In doing so, she recognised that if the Court were against the Plaintiff on the question of rescission then that conclusion would have a profound impact on the ability to rely on para. (i), because of the extent of overlap.

286. In support of the "*just and equitable*" ground, Advocate Brehaut referred to a passage from *Lindley & Banks on Partnership* (20th ed., 2017) in which it is explained (at para. 24-98):

> "*This represents the final "catch all" ground on which a court may order a dissolution. It will not be construed ejusdem generis with the grounds which precede it in section 35 of the Partnership Act 1890, nor will the court tie itself down to any rigid rules governing its application. It is inevitable that, in the exercise of its discretion, the court will take into account all relevant factors, including the terms of the partnership agreement and the availability of any alternative remedy thereunder. There is, however, no scope for importing the "last straw" test recognised in the employment cases or, indeed, for deploying an argument based on affirmation, for the simple reason that the court's wide discretion obviates the need for importing any such principles. In Barber v Rasco International Ltd the partners accepted that their relationship had irretrievably broken down and that an order should be made on this ground, thus rendering it unnecessary for the court to investigate the other grounds alleged in terms of the overriding objective.*

The court could, in an appropriate case, take into account the partners' conduct before the formation of the partnership, if this has a bearing on the dissolution issue, e.g. as explaining a loss of trust and confidence, and the potential impact which making the order or, conversely, not making an order would have on the partners."

Advocate Brehaut suggests that the fact of the multiple instances of litigation involving entities within the Rusnano group and Mr Erochkine or whichever of the entities he has caused to be incorporated demonstrates without more ado that relationships have broken down to support a finding that this ground has been established by the Plaintiff. In short, the partnership cannot be allowed to continue.

287. The paragraph following in *Lindley & Banks* is also informative and so was drawn to the attention of the Jurats by the presiding judge:

"*It is apprehended that, as was the position prior to the Act, an order is likely to be made if, for whatever reason, the objects for which the partnership was formed can no longer be attained, either at all or in the manner originally contemplated by the partners, and a dissolution cannot be obtained on one of the other grounds. Wrongful exclusion of a partner will clearly justify an immediate dissolution. A complete breakdown in the relationship between the partners will, in general, justify a dissolution, as will circumstances in which the applicant partner(s) have lost trust and confidence in the other partners. Where there is a loss of trust and confidence in only some of those other partners, e.g. a managing or senior partner or the members of a management committee, the attitude of the court will be less predictable. Equally, the mental disorder of a single partner would, in all probability, suffice, in a case where the Court of Protection either cannot or declines to intervene. Despite the views expressed by the Court of Appeal in Harrison v Povey, the current editor submits that it is not necessary to establish a breach "going to the root of the agreement" before a dissolution can be ordered on this ground, but trivial breaches or incidents which would not justify a dissolution under any other ground will clearly not suffice.*

If the applicant partner(s) have an extraneous motive for seeking a dissolution, e.g. a personal benefit to be derived therefrom, this will be taken into account and may militate against an order being made."

Advocate Brehaut relied on the third sentence in this paragraph, in respect of which footnote 484 in support of this proposition reads:

"*In Rowe v Briant, unreported 15 June 1995, HH Judge Weeks QC, sitting as a judge of the Chancery Division, ordered a dissolution of a partnership of chartered accountants on the basis that there have been a "simple breakdown in personal relationships" and that matters had reached the stage where "the parties to [the] action cannot reasonably be expected to carry on business together in partnership". Thakrar v Vadera, 31 March 1999 (an unreported decision of Arden J) was, in many ways, a similar case, although one partner had served an invalid expulsion notice on the other. Equally, in Ruut v Head (1996) A.C.S.R. 160, Santow J recognised that a partnership might "limp along" for a period, notwithstanding an irretrievable breakdown in trust and confidence, unless there was a complete deadlock as between the partners; note also the obiter observation of Lord Hoffmann in O'Neil v Phillips [1999] 1 W.L.R. 1092, 1104. And see Landford Greens Ltd v 746370 Ontario Inc. (1994) 12 B.L.R. (2d) 196, where it was held that, on the facts, there was no breakdown in the partners' relationship. A loss of trust and confidence must be proved, not merely asserted: Lauffer v Barking, Havering and Redbridge University Hospitals NHS Trust [2010] Med. L.R. 68 (an employment case). Needless to say, it*

is no partner's duty to continue to place trust and confidence in his partners, irrespective of the circumstances: Johnson v Snaddon [2001] V.S.C.A. 91."

288. In response to these submissions on behalf of the Plaintiff, Advocate Williams suggests that the Court will only be considering the "*just and equitable*" ground if it has already found against the Plaintiff's fraud and oppression cases. Accordingly, he argues that the Court should be more inclined to follow the reasoning in an older case, *Harrison v Tennant* (1856) 4 Beav 482, also cited in *Lindley & Banks* in which it was stated (at page 493): "*No party is entitled to act improperly and then to say that the conduct of the partners and their feelings towards each other are such that the partnership cannot continue.*" The Defendant contends that any breakdown in the parties' relationship was caused by the allegations and hostility of those acting on behalf of the Plaintiff, which the rejection of the other grounds necessarily means were unjustified. Further, to bring about the dissolution of the partnership would be contrary to the bargain that the parties had struck.

289. Advocate Williams also refers to the decision of the Ontario Court of Appeal, *PWA Corp v Gemini Group Automated Distribution Systems Inc* (1993) 103 DLR (4th) 609, which he suggests draws a distinction between these general principles as they apply to partnerships and the position in relation to limited partnerships, because a limited partner has a reduced role and cannot participate in management. In doing so, he refers to the view of the majority that the apparent failure to agree on a restructuring plan in relation to the computer reservations system that was at the heart of the disagreements was not relevant to the terms of the partnership agreement, which contemplated that the general partner should be able to operate in the absence of consensus between the limited partners and further that the directors of the general partner could determine matters by a majority decision. Accordingly, this was not evidence of there being a deadlock.

290. That case is also useful for the manner in which there are some general comments that might assist the Jurats in how to reach their decisions and exercise their discretion on the question of dissolution. Although the presiding judge reminded them that reliance on a "*just and equitable*" ground is something with which the Court is familiar in the context of applications for the compulsory winding up of a company, In the majority judgment it was said (at page 637) that "*it is important to keep in mind that a just and equitable dissolution of a partnership is, by its nature, a remedy requiring the exercise of discretion by the trial judge. How that discretion should be exercised will obviously depend heavily upon the facts of the case as found by the trial judge.*" Further, in the dissenting judgment (at page 622), it was stated that: "*The essence of a partnership is that of mutual confidence and trust in one another, and it is of the essence of that relationship that mutual confidence be maintained. If there is a lack of confidence such that the partners cannot work together in the way originally contemplated, then the relationship should be ended.*"

291. In relation to the other grounds on which the Plaintiff relies, the presiding judge pointed out to the Jurats that the overlap in para. (i) with fraud is not complete and that it would still be open to them to find that there had, for example, been some other misconduct in relation to the partnership on which to decide that the limited partnership should now be dissolved. Similarly, although Advocate Williams had suggested that the oppression ground in para. (e) was parasitic on the fraud ground, that was not the construction of section 29(1) of the LP Law. This ground was a means by which a partner could complain that the way in which the limited partnership was being conducted by another partner was oppressive to that limited partner or prejudicial to their interests as a limited partner. This was something different to saying that fraud had arisen on the formation of the partnership or had operated afterwards in relation to the management of the partnership. However, the Jurats were further directed that they needed to be careful to have regard to the terms of the LPA so as not to find that any action that would otherwise be permitted under its provisions were treated by them as amounting to oppression. This was because one party to an agreement could properly seek to enforce the terms of its bargain with another partner to that agreement without it amounting to

oppression or prejudicial conduct. When considering each of the grounds advanced on behalf of the Plaintiff, the first consideration for the Jurats was whether the partnership should be dissolved. Thereafter, if appropriate, they would move on to consider what any dissolution ordered should entail.

292. Bearing in mind that the Plaintiff has to do no more than prove one of the grounds on which it relies under section 29(1), the Jurats are satisfied that an order that the limited partnership be dissolved should be made. The findings they made in respect of the Plaintiff's case on rescission support the majority conclusion that there was also no fraud involved for the purpose of para. (i). The inference drawn by the majority is that the Plaintiff was not misled when Ms Rapoport executed the LPA 11 November 2015 or before it became was counter-signed on behalf of the Defendant and Rysaffe Actionnaires Sarl and became effective on 3 December 2015. Accordingly, when considering the formation of the limited partnership, those connected with that step, being particularly Mr Erochkine and Rysaffe, were clearly not guilty of any fraud, etc. Indeed, as an incoming limited partner after the limited partnership had already been formed, it follows that the Plaintiff can only properly complain about the management of the partnership. In that regard, the Jurats find that the terms of the LPA were such that those acting on behalf of the Plaintiff had the ability to read the terms of what they were agreeing to and understand how the limited partnership would be managed. The management of the limited partnership has not stepped outside of the terms that the parties agreed.

293. The Plaintiff agreed to the wide powers conferred upon the Defendant, eg, by reference to clause 2.5.1 of the LPA:

> "*Subject to the terms of this Agreement, the General Partner shall have full, exclusive and complete discretion to manage and conduct the business and affairs of the Partnership, to make all decisions affecting the day-to-day business and affairs of the Partnership and to take any actions it deems necessary or appropriate to accomplish the purposes of the partnership as set forth herein, having regard to the term of the Partnership and its overall purpose as set out in Clause 2.4.*"

Further, the role of the Plaintiff as the incoming limited partner was acknowledged to be a limited one, eg, by reference to clause 2.6:

> "*2.6.1 No Limited Partner shall take part in the management or conduct of the Partnership's business or affairs, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. No Limited Partner shall have the right to vote for the election, removal or replacement of the General Partner.*
>
> *2.6.2 Subject to compliance with Clause 2.6.1, the Limited Partners shall have no personal obligation for the debts or liabilities of the Partnership; and a Limited Partner's liability is limited to payment of Contributions up to the value of its Commitment. Notwithstanding the foregoing, the Limited Partner agrees to advance additional funds to the Partnership to meet Partnership Expenses in accordance with Clause 7.3.*"

294. In terms of complying with its obligations to make Contributions pursuant to clause 3, the Plaintiff's need to make the Initial Contribution is clear and the Jurats find that it must, therefore, have been understood by Ms Rapoport and others when the LPA was executed. Whatever impression she had of the functionality of the limited partnership as the feeder vehicle, these obligations, including the likelihood of there being further Drawdown requests once the Tianjin Bohai Fund was established, all show that there was nothing contrary to the expected management of the partnership that can be said to have been brought within section 29(1)(i) of the LP Law in late 2015 or thereafter whilst Mr Erochkine remained in

employment with Rusnano Management Company LLC. To the extent that the Plaintiff argues that the threat to make a Drawdown request at a later stage constituted management misconduct, the Jurats reject that suggestion. They are not persuaded that the Plaintiff has discharged its burden in respect of that para. (i) ground.

295. Without needing to consider in detail para. (e), the Jurats are satisfied that there has been a total breakdown in the relationship between the Defendant and the Plaintiff on which to find that the Plaintiff has established that the "*just and equitable*" ground is met. They have looked in the round at what was envisaged for the creation of the Tianjin Bohai Fund and how this limited partnership fitted into the structure and they have concluded that this was, similarly to the manner in which Ms Rapoport described it, more aligned to being a vehicle for the Rusnano groups' use rather than as Mr Erochkine appeared to regard it as the start of a venture for him as an investment manager. In particular, the Jurats noted that this was effectively a two-party partnership unless and until there was agreement to admit any further limited partner. This is clear from clause 8.2.1 of the LPA:

> "*With the exception of the admission of an additional Limited Partner (as transferee) in the circumstances set out at Clauses 4.3 or 8.1, no additional Limited Partners shall be admitted to the Partnership except with the prior written consent of all Partners.*"

The Jurats find that, once Mr Erochkine resigned, thereby becoming a free agent on behalf of the Defendant, the Plaintiff would not have countenanced agreeing to any further limited partners being admitted to this limited partnership because the trust and confidence that needs to exist between the partners had been lost.

296. Although it is not a paragraph on which the Plaintiff relies, the Jurats further note that section 29(1)(a) of the LP Law provides that a limited partnership can be dissolved by order of the Court where it thinks "*it is not reasonably practicable to carry on the partnership's business in conformity with the partnership agreement*". If the Guernsey limited partnership is viewed in isolation, and confined to the terms of the LPA, including the purpose set out in clause 2.4, then it would still be possible to carry on the limited partnership's business of making and holding investments in technology-related vehicles, such as purchasing the Didi shares. However, in the opinion of the Jurats, that is to look at the overall picture too narrowly. When one steps back from this element of the overall structure, it is clear that what the Plaintiff and the rest of the Rusnano group had in mind was a Chinese fund. This Guernsey limited partnership is not the fund that they had in mind, but a component part of the overall structure. Given the involvement of Mr Erochkine in working on the proposed Tianjin Bohai Fund, which was the goal, he fully understood that what he was setting up within that overall structure was the route through which Rusnano would fund its part in the Tianjin Bohai Fund. This was being done so as to be tax-efficient, where one alternative would have been to invest directly into the Chinese onshore fund, rather than investing through the offshore feeder fund. In other words, the business of the Guernsey limited partnership was not to hold the final investments but rather to transfer them into the onshore fund with one or more Chinese partners. When the business of this partnership is viewed in this context, it shows how dependent the partners are on each other doing what had been envisaged from the outset in that broader structure. The Jurats have borne this wider purpose of the limited partnership's business in mind when deciding that the "*just and equitable*" ground has been established. For example, had the Tianjin Bohai Fund come to fruition, instead of stalling, and the Defendant had then refused to transfer the Didi shares to that Fund, even though strictly permitted to reach that decision, it would have struck at the core of the relationship between the Plaintiff and the Defendant. Although that stage was not reached, the impression formed is that Mr Erochkine, controlling the Defendant, may not have been co-operative unless at the same time he extracted for himself, rather than returning it to the Rusnano group, the fees payable under the LPA.

297. The Jurats are satisfied that the loss of trust and confidence on which the Plaintiff relies arose following Mr Erochkine's sudden resignation. For Jurats Hodgetts and Wyatt what follows necessarily has to be considered in light of their findings that those involved with the Plaintiff understood that Mr Erochkine had established the Defendant in a manner that meant he was the ultimate beneficial owner. For Jurat Mortimer, what followed when the Plaintiff discovered the truth puts Mr Erochkine's earlier actions of hiding this fact into the context of what followed. This mistrust and loss of confidence is, therefore, easier for Jurat Mortimer to find, but the majority view remains that the way in which Mr Erochkine handled his departure from his employment shows that any trust and confidence beforehand was quickly lost. They find that there had always been an expectation that there would be a side letter agreed by which the fees payable under the terms of the LPA would be remitted to an entity within the Rusnano group. The requirements of the group were that there should be an appropriate arrangement for co-management. That is why the Plaintiff, really acting through Ms Bochkova and Ms Rapoport, were so keen to conclude a suitable side letter offering to Rusnano the necessary comfort that there would be joint control over the Fund's activities (as Ms Bochkova put it in the e-mail she sent on 9 November 2017, when rejecting the changes to the text proposed by the Defendant). It was Mr Erochkine's intransigence in agreeing to an arrangement that would satisfy the Plaintiff that meant the partners fell out, (by which they mean the humans responsible of each party, adopting the same approach to attribution to which reference has previously been made), to such an extent that all mutual confidence and trust was lost. Thereafter, the partners could not work together, and could not be expected to work together as envisaged under the LPA. This is not an instance where the Plaintiff's personnel have acted improperly, as suggested by Advocate Williams, but more the case that Mr Erochkine acted differently from how Ms Rapoport and others had expected him to act.

298. For these reasons, the Court has formed the opinion that the Plaintiff, as limited partner, is entitled to an order that the limited partnership be dissolved.

Consequences of dissolution

299. The LPA itself contemplates that the limited partnership might be dissolved and wound up. Clause 11 provides:

> "*11.1 Upon the occurrence of any of the following events (an "**Event of Dissolution**"), the Partnership shall be dissolved and the General Partner shall notify the Registrar of the dissolution in accordance with the Law:*
>
> *11.1.1 the term of the Partnership expires and the General partner decides not to extend the term;*
>
> *11.1.2 the General Partner determines that the purpose of the Partnership as stipulated in this Agreement has been realised or is unable to be realised;*
>
> *11.1.3 the decision, made by the General Partner, to dissolve the Partnership for tax, legal or regulatory reasons;*
>
> *11.1.4 all the Partners decide to dissolve for any other reason;*
>
> *11.1.5 the making by the Royal Court in Guernsey of an order for dissolution of the Partnership under section 29 of the Law;*
>
> *11.1.6 subject to Clause 8.3.2, the bankruptcy or dissolution of the General Partner or the occurrence of any other event that causes the General partner to cease to be a general partner of the Partnership under the Law.*

11.2 Following the dissolution of the Partnership pursuant to Clause 11.1, no further business shall be conducted except for such actions as shall be necessary for the beneficial winding up of the affairs of the Partnership. The General Partner (or any duly elected liquidator or other duly designated representative) shall use all commercially reasonable efforts to liquidate all of the Partnership assets in an orderly manner and apply the proceeds of such liquidation as set forth in Clause 11.3.

11.3 After satisfying all current and future obligations of the Partnership to creditors in the manner described in the Law and all costs of the winding up, the remaining proceeds, if any, plus any remaining assets of the Partnership shall be distributed, firstly, for payment of outstanding fees of the General Partner and then in accordance with the provisions of Clause 10.

11.4 Upon the completion of the winding up of the Partnership, including the payment of the final distribution (if any), the General Partner (or such liquidator or other representative) shall prepare an account of the winding up in the manner described in the Law and provide a copy of the aforesaid account to the Partners and the provisions of this Agreement shall remain in full force and effect until such time."

What this means is that, in the absence of any other order following the order for dissolution, the winding up of the limited partnership would be carried out under these terms and anything on the face of the LP Law. That is what Advocate Williams suggests should happen, whereas Advocate Brehaut invites the Court to make further orders under the power available under section 29(2):

"*Upon the making of an order under subsection (1) for the dissolution of a limited partnership or at any time thereafter, the Royal Court may make such orders in relation to the dissolution as it thinks fit, including one of the appointment or one or more liquidators to wind up the partnership's affairs and distribute its assets.*"

300. In addition to clause 11 of the LPA, section 30 of the LP Law makes general provisions relating to the dissolution of a limited partnership:

"*(1) Upon the dissolution of a limited partnership its affairs shall, unless a liquidator has been appointed by the Royal Court under section 29(2) or under subsection (3), be wound up by the general partners.*

(2) Upon the dissolution of a limited partnership no limited partner may, except in accordance with the provisions of sections 21 and 32 –

(a) withdraw any part of his contributions, or

(b) otherwise claim as a creditor of the partnership.

(3) Upon the dissolution of a limited partnership or at any time thereafter, the Royal Court may, on the application of any partner or assignee thereof or any creditor, make such orders in relation to the dissolution as it thinks fit, including one for the appointment or one or more liquidators to wind up the partnership's affairs and distribute its assets.

(4) On the appointment of a liquidator (whether under this section or under section 29) all powers of the general partners cease; and a person who purports to

exercise any power of a general partner at a time when, pursuant to this subsection, those powers have ceased shall be guilty of an offence.

(5) Upon the dissolution of a limited partnership the partnership shall cease to carry on business except to the extent necessary for its beneficial winding up; and where in relation to a partnership there is a contravention of this subsection, the partnership and each general partner thereof shall be guilty of an offence.

(6) All expenses properly incurred in the dissolution of a limited partnership, including the liquidator's remuneration, are payable from the partnership's assets in priority to all other debts. ...

(10) The dissolution of a limited partnership shall be deemed to take place upon the earlier of the following –

(a) the date of the occurrence of the event upon which, under the provisions of this Law, the partnership is dissolved, or

(b) the date of the order of the Royal Court under section 29(1) for its dissolution.

(11) As soon as a limited partnership's affairs are fully wound up, the persons who conducted the winding up shall –

(a) prepare an account of the winding up, giving details of the conduct thereof and the disposal of the partnership's property, and stating whether or not any state of affairs described in section 31 has come to their attention, and

(b) provide all partners with a copy of the said account.

(12) The persons conducting the winding up of a limited partnership may seek the Court's directions as to any matter arising in relation to the winding up; and upon such an application the Court may make such order as it thinks fit."

It is readily apparent from the terms of section 30 where some of the content of clause 11 of the LPA has its origins. Of particular note is subsection (10), from which it is clear that it is not open to the Court to backdate the date of dissolution because it operates from the date of the Court's order.

301. Unsurprisingly, the Plaintiff has no wish for the Defendant, as general partner, to conduct the winding up of the limited partnership. Accordingly, it seeks the appointment of joint liquidators from KRyS Global (Guernsey) Limited to be appointed as liquidators. On the basis that the Jurats have found that the dissolution follows from the breakdown in relations between the parties as partners, the Jurats are satisfied that it is a proper exercise of their discretion to appoint one or more liquidators under section 29(2) of the LP Law to conduct this winding up exercise. Leaving that function to the Defendant, which really means to Mr Erochkine, would not be appropriate and that is why an order appointing one or more liquidators will also be made. Accordingly, para. (2) of the prayer will be granted and any liquidator will be permitted to charge on a time costs basis in accordance with para. (5).

302. Whether it is appropriate to appoint joint liquidators or whether a sole liquidator will suffice is an issue on which the Court will now invite further representations. If there were to be joint liquidators, the Court would grant power to each to act alone (ie, granting para. (3) of the prayer). That order would not be required if it were to be a sole liquidator. One of the reasons why the Court considers that a sole liquidator might be appropriate is because it

seems to them that the task of winding up the limited partnership should be moderately straightforward because the assets of the partnership comprise the Didi shares and anything left in the partnership's bank account. Ideally, upon the making of the order for dissolution, the parties might even be able to reach agreement as to what happens to the partnership's assets. Here, the Court has in mind that the principal contest has been about the Plaintiff obtaining ownership of those Didi shares, for which it considers it paid the purchase price through the agency of the limited partnership and so should now have the benefit.

303. Section 32 of the LP Law sets out the cascading effect of the distribution of the assets of the limited partnership:

> "*Upon the dissolution of a limited partnership, the assets shall be distributed in the following order –*
>
> *(a) firstly, to creditors other than partners, to the extent otherwise permitted by law, in satisfaction of partnership debts,*
>
> *(b) secondly, to limited partners who are creditors and who are not also general partners, to the extent otherwise permitted by law, in satisfaction of partnership debts other than debts described in paragraph (c),*
>
> *(c) finally, subject to the provisions of the partnership agreement, to partners as follows –*
>
> *(i) firstly, to limited partners for the return of their contributions or, where appropriate, for the release of their obligations to make contributions,*
>
> *(ii) secondly, to limited partners for their share of the profits on their contributions,*
>
> *(iii) thirdly, to general partners other than for capital and profits,*
>
> *(iv) fourthly, to general partners in respect of capital,*
>
> *(v) finally, to general partners in respect of profits.*"

Because this provision prescribes what happens to the assets of the limited partnership on dissolution, the question arises as to whether the Court is able to make any different order under the broad powers conferred upon it by section 29(2) and how, if at all, this affects the terms of clause 11.3 of the LPA. Paragraph (12) of the Plaintiff's prayer seeks an order that "*Subject to the discharge of the proper expenses of the liquidation, the Joint Liquidators shall distribute the assets of the Limited Partnership (including, in particular, its shares in Xiaoju Kuaizhi Inc.) to the Plaintiff whether pursuant to section 29(2) of the Limited Partnerships Law or otherwise as a consequence of the rescission of the LPA.*" Because the rescission claim has failed, such an order can only be granted if available pursuant to section 29(2).

304. The Court has been provided with little information about the assets of the limited partnership. The Jurats understand that the principal asset always has been and remains the shareholding in Didi, for which very nearly US$20 million was paid. The balance of the monies contributed to the limited partnership were to maintain the cash reserve provided for in clause 2.5.5 of the LPA. If the Didi shares have increased in value and there is a market to be able to realise the value of them, then that would be the primary task of any liquidator, following which the Plaintiff would normally be paid out of the proceeds in accordance with section 32, once other properly payable amounts have been settled, which would be a mixture of being a return for its contributions plus any profits. However, if the value of the Didi

shares has dropped so that selling them would leave a shortfall, the position will still follow a similar pattern, but there would seem to be a shortfall on any return of the Plaintiff's contributions. In light of the Court's decision that the limited partnership be dissolved, there is clearly scope for the parties to negotiate an outcome thereafter that is mutually acceptable, should they so wish, so what follows is indicative only unless, upon hearing further representations, some or all of the orders that would accompany an order under section 29(1) for dissolution are what the parties prefer.

305. The Court understands that the motivation for the Plaintiff pursuing its claim for rescission of the LPA was to undo its obligations to contribute to the fees otherwise payable to the general partner. Given what has happened, the Jurats have some sympathy for the Plaintiff that the Defendant would receive substantial amounts of money effectively for doing nothing other than maintain a shareholding without having to do anything else. The cost to the Defendant of remaining in good standing for this purpose in the BVI is not known, but it can be inferred that this would be significantly lower than the fees payable under the LPA. Within clause 6, there are the following provisions relating to fees:

> "*6.7 In consideration of the management services provided by the General Partner, the Partnership shall pay to the General Partner a fee (the "**Management Fee**") in the sum of 2.5% of Total Commitments per annum, payable quarterly in advance. Management Fees shall continue to accrue and be payable until the completion of the winding up of the Partnership in accordance with Clause 11.4.*
>
> *6.8 In addition to the Management Fee, an initial setup fee equal to 1% of the total Commitment of each admitted Limited Partner and a placement fee equal to 2% of the total Commitment of each admitted Limited Partner shall become due and payable by each Limited Partner upon its admission as a limited partner to the Partnership. Such initial setup and placement agent fees shall be deducted from the Limited Partner's Initial Contribution, however such amount shall not form a part of the Limited Partner's Commitment and the Limited Partner's Remaining Commitment shall not be reduced by reference to such amounts. The initial set up fee and placement agent fee are payable to the General Partner for its own benefit and which may be retained or paid to such third parties as the General Partner may determine.*"

306. Advocate Williams has highlighted clause 11.3 of the LPA as meaning that, once the assets of the limited partnership have been realised and payments made to creditors, the first call on the remaining assets will be to pay outstanding fees due to the Defendant as general partner, before any distribution is made to the Plaintiff as limited partner under clause 10 "*in proportion to their Commitments*". Because the Plaintiff is the only limited partner, it necessarily follows that when payments fall to be made to the limited partners under the terms of the LPA or the LP Law, it will only be the Plaintiff who will receive what is available. In other words, the Defendant would be entitled to receive what will by now be substantial management fees before anything is paid to the Plaintiff. It is for this reason that Advocate Brehaut contends that it is open to the Court to direct a different outcome thereby enabling the limited partnership to be dissolved in a fair and orderly manner.

307. In Advocate Brehaut's submissions she focuses on the fact that there is only one limited partner who has invested in the partnership under the terms of the LPA. Accordingly, the monies that were used to purchase the Didi shares were originally those of the Plaintiff. That is a good reason for ordering that the shares be transferred to the Plaintiff as a consequence of the dissolution of the limited partnership. In respect of the shareholding in Didi, this is a tiny fraction of the issued share capital of that company. Indeed, the holding represents approximately 0.05% of the shares. Holding those shares has not involved any meaningful

management services being provided by the Defendant as general partner. This is especially so where there has been some element of misleading of those involved with the Plaintiff who understood that there would be arrangements in place to repatriate what would otherwise be payable as those management fees into the Rusnano group. To permit the Defendant, and so Mr Erochkine, to reap the benefits of the arrangements would be manifestly inappropriate.

308. The Jurats were directed that section 29(2) does indeed afford the Court a broad discretion as to how to make orders ancillary to the primary order for the dissolution of the limited partnership. However, the exercise of this discretion must always be done judicially. This also encompasses the principle that the manner of exercising the discretion available cannot override any express provision in the LP Law, which will always govern the manner in which a winding up has to be conducted for the reason that this is what the legislature has provided. Accordingly, when considering what additional orders might be appropriate, the Court needed to adhere to the provisions of the Law and could only reach decisions that can be accommodated within the structure prescribed.

309. In relation to the LPA itself, the attention of the Jurats was drawn to clause 17.3, which provides:

> "*Every term and provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such term or provision shall be enforced to the maximum extent permitted by law and, in any event, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.*"

The Jurats were further directed that this did not give them carte blanche to ignore the provisions that formed the bargain between the parties, but they could have regard to the realities associated with what this LPA was envisaged to do as between them and, if they considered that either party had grounds to avoid the impact of any particular term, possibly because of something implicit in how they had approached entering into the LPA in the first place, such as the effect of co-management, they could consider whether there was any provision that should now be treated as if severed from the remainder of the LPA for the purposes of winding up the limited partnership.

310. The Jurats take as their starting point the fact that they have decided that the LPA should not be rescinded. As a result, it follows that the terms of the LPA will operate so far as it is appropriate for them to do so until the dissolution is completed. They are conscious that the business conducted by the partnership has been at a lower level than the parties expected. Although the Defendant was not placed in the position of having to do so, once it became apparent following Mr Erochkine's resignation that there was no scope for the business of the limited partnership to be carried on within the context of the structure in which it was established, the Defendant could have determined that the partnership, as stipulated, was unable to be realised and so an Event of Dissolution could have been identified at that time. Had the Defendant taken such a step, these proceedings for dissolution would not have been necessary. The affairs of the partnership would have been wound up and no further fees would have become payable. They have further noted that the Defendant had offered to concede the dissolution claim so that an order could have been made by consent at the outset of the hearing, but the Plaintiff wished to pursue its claim for rescission. To that extent, the Plaintiff lost the opportunity to obtain an order for dissolution on that simple basis and should suffer the consequences, unless such an outcome would be inequitable.

311. Balancing those considerations, the Jurats take the view that it would be contrary to justice if the contentions on behalf of the Defendant were allowed to prevail without any modification. The effect of clause 11.3 would be that accrued management fees, and other fees, payable to the Defendant from the partnership would have priority over any return to the Plaintiff. In the circumstances of this case, that seems to the Jurats to be unjust. Because clause 11.3 is a

departure from the provisions found in section 32 of the LP Law, pursuant to which a general partner is not a creditor under paragraphs (a) and (b) and so ranks below the return on dissolution to be provided to a limited partner, the Jurats are satisfied that clause 11.3 should be disregarded by the liquidator (or as between the parties if they proceed in that manner), so that the Defendant would only benefit from accrued and unpaid management fees in the event that there is a surplus after the Plaintiff has been paid out what it is entitled to be paid out under section 32(c)(i) and (ii).

312. An alternative approach is to treat clause 6.7, which deals with when management fees are payable, as always being subject to the Defendant, as the general partner, providing management services, following the line of argument advanced by Advocate Brehaut. Since Mr Erochkine's resignation, or at some point shortly thereafter and in any event before these proceedings were commenced in March 2018, the extent to which there have been any management services being provided to the limited partnership has dropped, and possibly even disappeared, save for the Defendant needing to remain in existence for the purpose of holding the shares and responding to these proceedings. However, the Defendant agreed not to perform any other business of the partnership pending the determination of this action, so the Jurats are satisfied that there has been nothing to which the management fees can be said to have attached since the proceedings were underway and that agreement arose. In those circumstances, the Jurats would take the view that any entitlement there has been to the payment of those management fees should be regarded as having been suspended with effect from a date to be agreed or determined upon further representations of the parties. Whether that could properly extend back to a date earlier than the commencement of these proceedings is debatable, but the Plaintiff would not be precluded from so arguing. The Court gives this indication as to how it is thinking in the hope that it will assist the parties to attempt to reach agreement as to the way in which to resolve this type of ancillary matter. Bearing in mind that the Defendant offered to agree to the dissolution of the limited partnership by no later than June 2019, that would be the latest date from which the accrual of ongoing management fees would end, but the Jurats recognise that an earlier date, but probably no later than when the proceedings began in March 2018 could be selected.

313. However broad the discretion available to the Court under section 29(2) of the LP Law, the Jurats do not think that they should properly accede to the relief sought on behalf of the Plaintiff and order that the Didi shares be transferred to it (or to another entity within the Rusnano group). This would override the provisions for the appointment of a liquidator, whose task it will be to wind up the affairs of the limited partnership. There may be legitimate partnership expenses to settle and the liquidator must have the opportunity to ascertain if there are any and realise monies to pay for those creditors. Further, having been directed by the presiding judge that the question of the incidence of costs of those proceedings is a matter of procedure for him, the Jurats cannot factor into their considerations how the liquidator will be funded other than through suing the assets of the partnership. Finally, to order the outright transfer of the shares without further ado would result in the Plaintiff getting much closer to the position that it would have been in had its primary case for rescission of the LPA been granted. The Jurats take the view that such an outcome would be inappropriate and the fact that the LPA has continued in existence with the Plaintiff under the obligations it assumed under it must be borne in mind in achieving a fair solution as between the parties on dissolution.

314. Given these uncertainties, which can only be resolved after any further submissions after which a composite set of orders would then be perfected, the best the Court can do is to give the parties the indications as to the suite of orders it could potentially make. In doing so, the parties should be aware that the Court will endeavour to put the parties into a position that fairly reflects the bargain that was reached but then the breakdown of their relationship once Mr Erochkine resigned his employment and acted differently from how the Plaintiff's personnel expected him to in those circumstances. The Court has noted that the corporate entities in which Mr Erochkine had interests which dealt with the RN Pharma Trust managed

to reach an agreed solution with Rusnano Capital AG and it sees no reason why something similar could not be achieved in respect of this matter now that the parties know that there is to be no rescission of the LPA.

Conclusions

315. For the reasons given in this judgment, the Plaintiff's claim to rescind the LPA and for relief ancillary thereto fails. The misrepresentations on which that claim was made have not been proved to the satisfaction of the majority of the Jurats and, in any event, the Plaintiff has failed to establish to the requisite standard that it relied upon them. Even if that conclusion were to be wrong, the Jurats find unanimously that the Plaintiff then affirmed the continuance of the LPA by taking a long time trying to negotiate a suitable side letter, rather than proceeding swiftly to elect to accept the fundamental breach on the part of the Defendant. This major element of this action has always been the Plaintiff's primary case seeking rescission as the means by which its entry into the LPA would be undone when the prospective dissolution application, which was how these proceedings first began, has ended up being the successful element. The Court will order that the limited partnership, CRGF LP, be dissolved pursuant to section 29(1) of the LP Law on the "*just and equitable*" ground.

316. Having granted the Plaintiff an order dissolving the limited partnership, the Court would be minded to appoint one or more liquidators. Before doing so, though, if there were to be agreement between the parties that a swift resolution of matters can be achieved without that happening, for example by the Defendant as general partner agreeing to take certain steps that would result in the assets being dealt with in a manner acceptable to the Plaintiff, then the Court would be minded to accept such a pragmatic resolution of the dispute without the parties needing to have the added expense of a liquidator being appointed. To assist the parties, and also the liquidator, if in due course appointed, subject always to the liquidator's ability to seek directions from the Court in accordance with section 30(12) of the LP Law, the Court is persuaded, subject to any further representations, that any provision under which the Defendant would be entitled to be paid accrued management fees should be severed from the LPA with effect from a suitable date, but in any event no later than June 2019. In the absence of agreement between the parties as to an appropriate way forward, whether that relates to the making of further representations now or on a future date to be fixed, then the Court will appoint one or more joint liquidators to conduct the winding up of the limited partnership.

317. The costs of these proceedings could also be the subject of an agreement between the parties or, if no such agreement can be reached, will be dealt with by the presiding judge at an appropriate time. Whilst clause 7.1.6 of the LPA refers to the costs incurred in any litigation where the Partnership is one of the parties as being a form of Partnership Expenses to be borne by the limited partnership, his provisional view is that the Defendant should not be entitled to indemnify itself out of the partnership assets in respect of the entirety of the costs associated with this action. Similarly, whilst the Plaintiff has succeeded on the dissolution claim, the action largely concentrated on the rescission claim so it is unlikely that the Plaintiff would be awarded the whole of its costs on any basis. As such, if there is to be agreement on this issue between the parties, they will potentially need to tailor the costs outcome accordingly.