



Claim Form

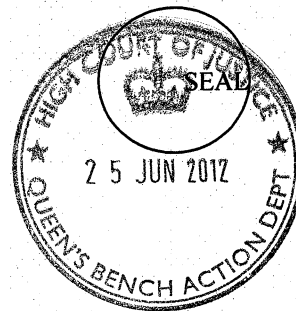
In The	HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION
	For court use only
Claim No.	4Q11X02340
Issue Date	

CLAIMANTS COPY

Claimant(s)

AMENDED BY ORDER OF MR JUSTICE EDWARDS-STUART DATED 15 JUNE 2012

MONDE PETROLEUM SA
90 Main Street,
Road Town,
Tortola,
British Virgin Islands



Defendant(s)

(1) LEELANES LLP
6th Floor 28-30 Cornhill,
London EC3V 3NF

(2) LEELANES SOLICITORS LLP
6th Floor 28-30 Cornhill,
London EC3V 3NF

(3) MIKHAIL MAVROPOULOS STOLIARENKO
LeeLanes Solicitors LLP
6th Floor 28-30 Cornhill,
London EC3V 3NF

(4) STEPHEN MARTIN ALEXANDER
Catalyst House 720 Centennial Court
Elstree
Hertfordshire
WD6 3SY

(5) BAFEL AHMED TALABANI
Farleigh House,
61 Woodland Way,
Kingswood,
Surrey KT20 6NN

Brief details of claim

See attached

Defendant's name and address

ACC.

£

Amount Claimed	
Court Fee	
Solicitor's Costs	
Total Amount	

Claim No.	
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Does, or will, your claim include any issues under the Human Rights Act 1998?

Yes

No

Particulars of Claim (attached)(~~to follow~~)

Brief Details of Claim

The Claimant's claim (as particularised more fully in the attached Amended Particulars of Claim) against the First Defendant is for breach of contract relating to a written agreement dated 8 November 2006 and to an oral agreement entered into on or about 14 December 2010 and for breach of duty and conspiracy. is for:

The Claimant also claims against the Second to Fifth Defendant in conspiracy, and against the Third to Fifth Defendants for inducing breach of contract.

- (1) US\$3 million;
- (2) Alternatively, US\$2 million;
- (3) ~~Alternatively, d~~ Damages
- (4) Further or other relief
- (5) Interest
- (6) Costs.

Statement of Truth

~~I believe~~ (The claimant believes) that the facts stated in these particulars of claim are true.

* I am duly authorised by the claimant to sign this statement.

Full Name Stuart Nash

Name of claimant's solicitor's firm Candey LLP

Signed [Signature]

position or office held _____

(if signing on behalf of a company)

~~(Claimant)~~ ~~(Litigation friend)~~ (Claimant's solicitor)

*delete as appropriate

Claimant's or claimant's solicitor's address to which documents should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.

AMENDED BY ORDER OF MR JUSTICE EDWARDS-STUART DATED 15 JUNE 2012

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Claim No: **HQ11X02340**

BETWEEN:-

MONDE PETROLEUM SA

Claimant

-and-

(1) LEELANES LLP
(2) LEELANES SOLICITORS LLP
(3) MIKHAIL MAVROPOULOS STOLIARENKO
(4) STEPHEN MARTIN ALEXANDER
(5) BAFEL AHMED TALABANI

Defendants

AMENDED PARTICULARS OF CLAIM

Background and summary The parties and *dramatis personae*

1. The Claimant (*Monde*) is a company registered under the laws of the British Virgin Islands with its registered office at 90 Main Street, Road Town, Tortola, British Virgin Islands. ~~The Claimant~~ *Monde* is in the business of carrying out consulting and advisory work in the Middle East, including in the Republic of Iraq. The sole shareholder of Monde is and was at all material times Mr Yassir Al-Fekaiki (*Mr Al-Fekaiki*), a businessman of Iraqi origin.
2. The First Defendant (*LeeLanes*) is a limited liability partnership with its registered office at 6th Floor 28-30 Cornhill, London EC3V 3NF. LeeLanes describes itself as a firm of English and foreign lawyers and as the "international arm" of LeeLanes Solicitors LLP the Second Defendant (*LeeLanes Solicitors*), a firm of English solicitors operating as a limited liability partnership from the same registered address.

2A. At all material times the third Defendant (*Mr Stoliarenko*) was and is a solicitor of the Senior Courts of England and Wales and a member of both LeeLanes and LeeLanes Solicitors.

2B. The Fourth Defendant (*Mr Alexander*) is a solicitor of the Senior Courts of England and Wales and provided legal services through and in the name of LeeLanes and/or LeeLanes Solicitors. At all material times Monde understood that Mr Alexander was a partner of Mr Stoliarenko in relation to both LeeLanes and LeeLanes Solicitors.

2C. Mr Alexander and Mr Stoliarenko were also the only members of two other Limited Liability Partnerships registered in England and Wales, namely:

(a) Panagaea Solicitors LLP (*Panagaea Solicitors*), which was incorporated on 5 October 2006 and was registered at the same address (at that time) as LeeLanes Solicitors LLP. Panagaea Solicitors was dissolved on 29 September 2009.

(b) Panagaea LLP (*Panagaea*), which was incorporated on 5 October 2006 and was registered at the same address (at that time) as LeeLanes LLP. Panagaea was also dissolved on 29 September 2009. It appears from an email sent by Mr Stoliarenko to Mr Andrew Symes of Coutts & Co (*Coutts*) on 2 July 2008 that Panagaea's legal practice was "incorporated into" Leelanes (which incorporation apparently involved funds held in Panagaea's client accounts being transferred (via the Panagaea office account) to LeeLanes' office account).

2D. Mr Alexander was also one of the members of another firm of solicitors, Class Law Solicitors LLP (*Class Law*), which was incorporated on 10 February 2004 and was (from at least 2005) registered at the same addresses (from time to time) as LeeLanes LLP. Class Law was dissolved on 29 September 2009. Further:

(1) Mr Stoliarenko appears to have been involved with Class Law, as LeeLanes Solicitors have stated in correspondence that Class Law paid Mr Stoliarenko's mobile telephone bills at that time, although the details of his precise role are unknown.

(2) Class Law was also associated with Panagaea and/or Panagaea Solicitors, as evidenced by the fact that (according to LeeLanes Solicitors) Class Law paid for the internet servers used by Panagaea.

- (3) Mr Al-Fekaiki (and entities controlled by Mr Al-Fekaiki) had been a client of Class Law (and in particular of Mr Alexander) for some time prior to 2005. In or around late 2005 Mr Alexander informed Mr Al-Fekaiki that he was joining a new firm with Mr Stoliarenko (i.e. LeeLanes/LeeLanes Solicitors), and at that point Mr Al-Fekaiki (and in due course Monde) began to receive legal services from Mr Alexander through LeeLanes/LeeLanes Solicitors rather than through Class Law.

2E. Mr Alexander was also a director of a number of other companies, including:

- (a) Brooklands Securities Limited (*Brooklands*), a company incorporated under the laws of England and Wales, which at the relevant times was registered at the same registered address (at that time) as LeeLanes Solicitors. Both Mr Alexander and Mr Stoliarenko were directors of Brooklands, having been appointed on 15 June 2007 and 19 June 2007 respectively. Brooklands is presently in liquidation.
- (b) Golden Hinde Capital Limited (*Golden Hinde*), a company incorporated under the laws of England and Wales on 4 March 2008. Mr Alexander is and has been since its incorporation a director of Golden Hinde and is recorded as the owner of the single issued share.
- (c) Transdermal Cosmetics PLC (*Transdermal*), of which Mr Alexander was a director until his resignation on 29 May 2008.
- (d) Ejder PLC (*Ejder*), a company incorporated under the laws of England and Wales on 20 November 2006 with the same registered address (at that time) as LeeLanes. Mr Alexander was both a shareholder and a director of Ejder, until he resigned his directorship on 7 August 2007.

2F. The Fifth Defendant, Mr Bafel Ahmed Talabani (*Mr Talabani*) is a Kurdish businessman and son of the Iraqi President, Mr Jalal Talabani. Mr Talabani controlled and/or had a beneficial interest in and/or operated through a company registered in Cyprus by the name of Doom Limited (*Doom*).

2G. Mr Hewa Karamani (*Mr Karamani*) is an associate of Mr Talabani who was also acting for Allenborough in connection with the Transaction.

2H. Ms Carolyn Parks (*Ms Parks*) was and is understood to be an administrative assistant at LeeLanes and/or LeeLanes Solicitors and/or Class Law Solicitors and/or Panagaea and/or Panagaea Solicitors.

Background and summary

3. In about May 2006, Monde became involved in a potential project to provide on a “turnkey” basis a 488 MW gas power plant (the *Transaction*). The proposed seller of the power plant was Allenborough Energy Corp (*Allenborough*), a company incorporated in Kansas and carrying on business in the energy sector. The proposed buyer was the Kurdistan Regional Government (*KRG*) (represented by the Ministry of Electricity), the government of an autonomous federal subdivision of the Republic of Iraq.
4. Monde’s principal claim against LeeLanes herein is for the sum of US\$3m, alternatively US\$2m, representing commission due to it in connection with the Transaction, which sum LeeLanes is obliged to pay to Monde from monies held by LeeLanes in an Escrow Account. Monde also claims damages against LeeLanes for breaches of contract and/or duty arising from its role as escrow agent under the Transaction: see below at paragraphs 20B and 30G.
- 4A. In addition, Monde claims damages for the tort of unlawful means conspiracy (against all five Defendants) and for the tort of inducing breach of contract (against Mr Alexander, Mr Stoliarenko and Mr Talabani) in connection with the misappropriation of a deposit of US\$18.75 million which LeeLanes was obliged to hold as escrow agent: see below at paragraphs 30D to 30F.

Agency Agreement

5. By an agreement made on 22 July 2006 between Allenborough and Monde (the *Agency Agreement*), Allenborough appointed Monde as its exclusive agent for the purpose of arranging the Transaction.
6. The terms of the Agency Agreement, to which Monde will refer as may be necessary, provided *inter alia*:
 - (1) By clause 2.3 that:

For the services rendered pursuant to this Agreement [Allenborough] shall pay compensation to [Monde] in accordance with clause 3 of the Agreement.

- (2) By clause 3.2, that:

[Allenborough] hereby irrevocably agrees to pay to [Monde] from the total proceeds of the Transaction regardless of the form thereof ("the Proceeds"), ... [Monde's] commission in the total amount calculated in accordance with clause (3) of the Schedule to the Agency Agreement ("the Commission"), ...

- (3) By clause (3) of the Schedule to the Agency Agreement, that:

[Monde's] Commission shall be equal to:

- (a) *An amount of 3 (three) million US dollars payable regardless of the amount of the Proceeds, plus;*
- (b) *100% of the excess of the Proceeds over the amount of 120 (one hundred and twenty) million US dollars;*

Total Commission shall not exceed 30% (thirty percent) of the Proceeds.

Sale of Assets Agreement

7. Between July and November 2006, Monde provided services to Allenborough pursuant to the Agency Agreement, in particular by:

- (1) negotiating the terms of a sale of assets agreement pursuant to which Allenborough would sell to KRG the equipment which formed part of the Transaction;
- (2) arranging, through Mr Stoliarenko and/or Mr Alexander acting through LeeLanes LLP and/or LeeLanes Solicitors LLP, legal services in terms of the drafting of key documents including the Sale of Assets Agreement;
- (3) arranging local support in Kurdistan for the benefit of Allenborough, including (but not limited to) in terms of logistics and security for trips by Allenborough personnel to Kurdistan;
- (4) liaising between Allenborough and the KRG, including the Minister of Electricity and other officials at the Ministry of Electricity including Mr Diyar Baban (the General Manager at the Ministry of Electricity), the Minister of Finance, the Vice-President of the KRG, the Deputy Prime Minister of the KRG and the Prime Minister of the KRG.

8. On 4 August 2006, by a letter sent by e-mail from Mr Mikhail Stoliarenko (a member of LeeLanes), LeeLanes authorised Mr Yassir Hani Al-Fekaiki (~~the representative of Monde~~) to execute the contemplated sale of assets agreement on behalf of LeeLanes.
9. On or about 28 November 2006 in Iraq, a Sale of Assets Agreement (the *Sale of Assets Agreement*) was entered into by KRG, Allenborough and LeeLanes. The Sale of Assets Agreement was executed on behalf of LeeLanes by Mr Al-Fekaiki pursuant to the authority granted to him by the letter referred to above at paragraph 8. The Sale of Assets Agreement was executed on behalf of the KRG by the Minister of Electricity and by the Deputy Prime Minister on behalf of the Council of Ministers and the Minister of Finance (who was not in Kurdistan at the time). Upon his return, the Minister of Finance subsequently applied the Ministry of Finance seal to the agreement to confirm his consent.
10. The third recital of the Sale of Assets Agreement recorded that the parties intended to enter into a turnkey contract (the *Turnkey Contract*) for the delivery, erection, starting up, testing and training in respect of the plant and equipment for US\$187.5 million (the *Proceeds*).
11. The terms of the Sale of Assets Agreement, to which Monde will refer as may be necessary, provided *inter alia* as follows:

- (1) By section 1, that:

[Allenborough] agrees to sell to [KRG] and [KRG] agrees to purchase from [Allenborough], on the terms and conditions set forth in this Agreement, the Assets. The parties agree that the closing of the sale of the Assets pursuant to this Agreement ("Closing") shall take place upon execution of the Turnkey Contract by the parties hereto and the date when the Turnkey Contract is so executed shall be the "Closing Date".

- (2) Section 4.3 provided *inter alia* that KRG agreed:

within 21 (twenty one) days following the Signing Date ... [to] transfer the amount equal to ... 10% of the Proceeds ("Deposit") to the account of [LeeLanes] specified in subsection 4.6 below ("Escrow Account") ...

- (3) By section 4.4:

[LeeLanes] shall, subject to the fulfilment by the Purchaser of its obligations under subsection 4.3 above in full:

4.4.1. upon the earlier of (a) ... or (b) the expiration of 21 ... days following the receipt of the Deposit in the Escrow Account, arrange a bank transfer to [Allenborough] of an amount equal to ... 100% of the Deposit less any portion thereof due from [Allenborough] to third parties, subject to the provisions of subsection 4.5 below”

(4) By section 4.5:

The parties agree as follows in respect of the Deposit:

4.5.1 ...

~~4.5.2~~ If the Turnkey Contract is not executed within the period prescribed by subsection 16.14 below as a consequence of any default or breach hereof by [KRG], an amount equal to ... 50% of the Deposit shall be immediately repaid in full by [Allenborough] to [LeeLanes].

(5) By section 4.6:

The parties agree that the following shall be the Escrow Account:

Name: LeeLanes LLP Client Account
Bank: Coutts & Co
Branch: 440 The Strand, London
Number: 03663205
Sort Code: 18 00 02

11A. Further or alternatively, it was an implied term of the Sale of Assets Agreement (implied in order to give the same business efficacy) that LeeLanes would not pay away the Deposit (or any other sums deposited with it as Escrow Agent) otherwise than in accordance with its obligations under the Sale of Assets Agreement (including in particular section 4.4 thereof).

Addendum to the Agency Agreement

12. In parallel to the negotiation of the Sale of Assets Agreement, from about August 2006 Allenborough and Monde entered into negotiations to amend the Agency Agreement, with a view *inter alia* to:

- (1) setting out in numerical terms (as opposed to as percentages) the payments to be made to Allenborough upon each payment into the escrow account by KRG;
- (2) amending the timetable for payment of Monde's commission under the Agency Agreement; and

- (3) ensuring that payments from KRG into the escrow account to be operated by LeeLanes would be held on terms providing for the payment of commission to Monde from that escrow account.
13. As such, in late August/early September 2006, Monde instructed Mr Stoliarenko, acting on behalf of LeeLanes and/or LeeLanes Solicitors to draft a "sidecar agreement" to amend the Agency Agreement as set out above.
14. A first draft of an "addendum" to the Agency Agreement, which provided for a bipartite contract between Allenborough and Monde, was prepared by Mr Stoliarenko on behalf of LeeLanes and/or LeeLanes Solicitors for Monde, and was sent by Mr Al-Fekaiki to Allenborough for comment on 8 September 2006.
15. On 22 September 2006, Mr Len Stafford of Allenborough e-mailed Mr Al-Fekaiki and informed him that it was "*imperative that LeeLanes (as escrow agent) signs the sidecar agreement as well so there is no question about flow of funds*", which e-mail Mr Al-Fekaiki forwarded to Mr Stoliarenko the same day.
16. Mr Stoliarenko then prepared and sent to Mr Al-Fekaiki on 26 September 2006 a revised draft addendum. In the revised draft addendum, LeeLanes had been added as an additional party, making the draft addendum into a tripartite agreement. Clause 1.3 of the revised draft addendum would have amended clause 3.3 of the Agency Agreement (which provided for the payment of Commission to Monde) so that it would have read:
- [Monde's commission] shall be paid to [Monde] upon its written instructions to [LeeLanes] from each instalment of the Total Price received by [LeeLanes] from KRG, subject to the overriding obligation of [LeeLanes] to arrange the following payments from each respective instalment of the Total Price received from KRG:*
- (a) *The amount of \$ 18,750,000 ..., the next working day following the Receipt Date of the Deposit in the Escrow Account; ...*
17. The effect of such clause would (if agreed) have been that once the deposit of US\$18.75 million had been paid by KRG to LeeLanes, the full sum would be paid over by LeeLanes to Allenborough, and none of the deposit would be paid to Monde as commission.
18. In early November 2006 Mr Al-Fekaiki was in Iraq (and specifically in Erbil) with Mr Lee Derr and Mr Len Stafford (representatives of Allenborough) (but no representatives of LeeLanes) in order to negotiate terms of the Sale of Assets Agreement with the

KRG, and the Ministry of Electricity in particular. And During this visit, Allenborough and Monde wished to execute the addendum during that visit. On 7th November 2006 Mr Al-Fekaiki telephoned Mr Stephen Alexander of LeeLanes from the Khanzad Hotel in Erbil and:

- (1) informed him that Monde was not content with the revised draft addendum (because Monde would receive no payment of any commission from the deposit paid pursuant to the anticipated Sale of Assets Agreement);
- (2) informed him that he (Mr. Al-Fekaiki) proposed to amend the payments to be made to Allenborough in the revised draft addendum in order to provide for payment of part of Monde's commission from the escrow account upon receipt of the deposit; and
- (3) asked him whether such a change would be acceptable to LeeLanes, and (if so) whether Mr. Al-Fekaiki would be authorised to execute the redrafted addendum on behalf of LeeLanes.

Mr Alexander confirmed (in that telephone conversation) that such a change would be acceptable to LeeLanes and that Mr Al-Fekaiki was authorised to execute the redrafted addendum in Iraq on behalf of LeeLanes.

19. On 8 November 2006, Allenborough, Monde and LeeLanes entered into an agreement in Iraq (the *Addendum Agreement*), which amended the Agency Agreement. The Addendum Agreement was executed by Mr Al-Fekaiki on behalf of LeeLanes pursuant to the authority referred to above at paragraph 18 above.
20. Pursuant to clause 1.3 of the Addendum Agreement, clause 3.3 of the Agency Agreement was amended to read as follows:

[Monde's commission] shall be paid to [Monde] upon its written instructions to [LeeLanes] from each instalment of the Total Price received by [LeeLanes] from KRG, subject to the overriding obligation of [LeeLanes] to arrange the following payments from each respective instalment of the Total Price received from KRG:

- (a) *The amount of \$ 16,750,000 ..., the next working day following the Receipt Date of the Deposit in the Escrow Account; ...*

20A. The effect of the amendment was that, following receipt of any instalment of the Total Price (including the Deposit), LeeLanes was obliged to pay Monde commission due to

it, subject only to the overriding obligation to pay to Allenborough certain fixed payments from each instalment. In the case of the Deposit, the fixed payment due to Allenborough was US\$16.75 million, such that the remaining US\$2 million from the Deposit was due to be paid by LeeLanes to Monde.

20B. By reason of the facts and matters set out above:

- (1) It was an implied term of the Addendum Agreement that LeeLanes would fulfil its obligations as Escrow Agent under the Sale of Assets Agreement; and/or
 - (2) LeeLanes owed a duty at common law to Monde, Allenborough and KRG to perform its duties as Escrow Agent with reasonable care and skill, and not deliberately to breach those obligations.
21. On or about 25 November 2006, Mr Al-Fekaiki had a telephone conversation with Mr Mikhail Stoliarenko (a member of LeeLanes) concerning the Sale of Assets Agreement, in the drafting of which Mr Stoliarenko had been acting and/or advising on behalf of Monde. During this conversation Mr Al-Fekaiki informed Mr Stoliarenko of the conversation he had had with Mr Alexander referred to above at paragraph 18, and in particular to the changes to the timing of the commission payments to Monde under the Addendum Agreement. He also informed Mr Stoliarenko that the Addendum Agreement had been signed by him on LeeLanes' behalf. In response, Mr Stoliarenko confirmed "that is fine" or words to such effect.

~~Failure of the Transaction to close Payment of the Deposit~~

21A. By a letter dated 5 January 2007 to KRG, LeeLanes Solicitors acknowledged safe receipt of a signed copy of the Sale of Assets Agreement, which had been endorsed in various ways by different representatives of the KRG. The letter also:

- (1) Noted that it had been mutually agreed between the parties that the signing date of the contract would be treated as 12 December 2006;
- (2) Explained that LeeLanes Solicitors wrote to KRG in "[its] capacity as Escrow Agents under the contract" (although in fact LeeLanes not LeeLanes Solicitors was the Escrow Agent) and referred to clause 4.3 of the Sale of Assets

Agreement which stated that within 21 days of signing KRG was obliged to transfer to the escrow agent the sum of 10% of the contract price;

(3) Requested KRG to make the relevant payment of 10% of the contract price.

21B. Shortly before the Deposit was eventually paid nearly 5 months later (as set out below at paragraph 22), a letter dated 31 May 2007 was sent by email from Mr Adam Cooper (of Simmons & Simmons) on behalf of Mr Talabani to Mr Alexander on behalf of LeeLanes Solicitors. In that letter, Mr. Talabani:

(1) claimed to have been authorised by the KRG to “ensure that the transfer of funds to, and the payment of amounts by, the Escrow Agent (as defined in and contemplated by the [Sale of Assets Agreement] is managed in accordance with the best interests of the Kurdistan Regional Government”;

(2) stated that as a condition of the transfer of any amounts to LeeLanes Solicitors as Escrow Agents:

(a) an Escrow Account was to be established as a joint account in the name of LeeLanes Solicitors and Mr Talabani;

(b) the Escrow Account would not be used for any purpose other than in connection with the Sales of Assets Agreement;

(c) amounts standing to the credit of the Escrow Account would be able to be withdrawn at Mr Talabani’s direction at any time and applied for the purpose of making “Authorised Investments” (which were defined as including, for instance, US government debt, A+ rated debt, time deposits, money market funds, etc.).

(4) asked LeeLanes Solicitors to sign and return a copy of the letter to enable the KRG to transfer the funds.

That proposed arrangement would have been inconsistent with the obligations undertaken by LeeLanes (as opposed to LeeLanes Solicitors) pursuant to the Sale of Assets Agreement, as pleaded at sub-paragraph 11(3) above.

21C. On 31 May 2007 Mr Al-Fekaiki, who had been sent a copy of the agreement in draft, emailed Mr Alexander and Mr Stoliarenko and stated the proposal should only be

followed on strict conditions. Specifically, he suggested that the request to change the escrow arrangements should be followed only if Mr Talabani produced "some proof from the Ministry of Electricity and the Ministry of Finance that he is representing the KRG regarding the payment of any funds with the Escrow to Allenborough" and that all payments should be "always in line with the existing contract" unless all parties (i.e. to the Sale of Assets Agreement and/or the Addendum) specifically agreed. In the event, no agreement to make payments other than those set out in the Sale of Assets and/or Addendum Agreement was reached by all the parties. As a result, the provisions of the Sale of Assets Agreement and/or the Addendum Agreement as regards the payment of the Deposit remained in full force and effect.

21D. However, on 2 May 2012 Leelanes disclosed for the first time a signed copy of the letter, which had been signed by Mr Alexander (on behalf of LeeLanes Solicitors) as well as by Mr Talabani (purportedly on behalf of KRG). This purported agreement is hereinafter referred to as the *Talabani "Agreement"*, without prejudice to Monde's denials

- (1) that Mr. Talabani was in fact authorised by KRG so to act at that time; and
- (2) that the Talabani "Agreement" (which was not – in contrast to the Sale of Assets Agreement – signed or executed on behalf of the Ministry of Electricity, the Council of Ministers and the Ministry of Finance) was authorised, valid or binding.

21E. It is to be inferred that Mr. Alexander, together with LeeLanes Solicitors and/or Mr. Stoliarenko and/or LeeLanes, signed the Talabani "Agreement" in order to enable the Deposit to be paid. In this respect, Monde will refer to the email sent by Mr Talabani to Mr Alexander on 1 June 2007 in which he said "Please sign today the letter from simmons and simmons as the funds are ready to be transferred final!!!! The secon [sic] you sign call me and I will send it. obviously out of earshot of the simmons rep!"

22. In the event, on 65 June 2007 KRG paid the sum of US\$18.75 million, being 10% of the Proceeds, (the *Deposit*) to LeeLanes, albeit not into the Escrow Account specified in the Sale of Assets Agreement (pleaded at paragraph 11(5) above) but instead into ~~(so far as Monde is aware) the Escrow Account~~ a USD account at Coutts in the name of "LeeLanes LLP Client Account" with account number 108949401 (the *LeeLanes USD*

Client Account), at Coutts & Co. Thereafter LeeLanes was under a duty not to make payments from the Escrow Deposit held in the LeeLanes USD Account otherwise than in accordance with their obligations under the Addendum Agreement and/or the Sale of Assets Agreement. In particular, pursuant to clause 4.4.1 of the Sale of Assets Agreement (pleaded at paragraph 11(3) above) LeeLanes was obliged after 21 days to pay 100% of the Deposit to Allenborough, less any portion thereof due from Allenborough to third parties (which, for the avoidance of doubt, included the obligation under the Addendum Agreement to pay US\$2 million to Monde).

22A. When KRG paid the Deposit to LeeLanes, it did not intend LeeLanes to have free disposal of the Deposit but instead intended that the Deposit be held it on trust such that it could only be applied for the purpose stipulated in the Sale of Assets Agreement. In the premises, LeeLanes held the Deposit (or monies representing the same) on trust and was subject to the duties of trustees in relation thereto.

22B. In the event, in breach of LeeLanes' contractual duty under the Sale of Assets Agreement and/or LeeLanes' duties as a trustee, as pleaded in detail at paragraphs 22E-22O below, LeeLanes failed to pay the Deposit to Allenborough within 21 days (i.e. by 26 June 2007) or at all (at least directly¹). Instead, the Deposit was misappropriated and/or paid away to parties not entitled to it, as pleaded at paragraphs 22E-22O below.

Bank accounts and authorised signatories

22C. In the section entitled "Misappropriation of the Deposit" below, reference is made to a number of bank accounts, details of which are set out and defined below for convenience:

- (1) The LeeLanes USD Client Account (as to which see above paragraph 22);
- (2) A sterling account at Coutts in the name of "LeeLanes LLP Client Account" with account number 03663205 (the *LeeLanes Sterling Client Account*);
- (3) A sterling account at Coutts in the name of "LeeLanes LLP Office Account" with account number 03663191 (the *LeeLanes Office Account*);

¹ On 29 August 2007 a payment of £23,086.57 was made to Allenborough from the office account of Panagaea, which as set out in Schedule 1, received substantial sums from the Deposit. This payment appears to have been related to the inspection of the power plant equipment undertaken on behalf of KRG on 30 and 31 August 2007.

22D. According to the mandates disclosed by LeeLanes:

- (1) In respect of each of the LeeLanes accounts at Coutts, the only authorised signatories were Mr Stoliarenko and Ms Parks.
- (2) In respect of any accounts of LeeLanes Solicitors at Coutts, the only authorised signatories were Mr Stoliarenko and Mr Jonathan Jacob (another member of LeeLanes Solicitors).

Misappropriation of the Deposit

22E. In breach of its obligations (including its contractual obligations under the Sale of Assets Agreement and its obligations to Monde under the Addendum Agreement), the Deposit was misappropriated by LeeLanes and/or paid away to recipients who were not entitled to receive those monies. Further details of the misappropriation of the Deposit are set out below.

22F. No transfers were made to Allenborough during the 21-day period following the receipt by LeeLanes of the Deposit (by the end of which period on 26th June 2007 the Deposit should have been paid to Allenborough, less any sums due to third parties). Instead, the following transfers were made during that period (none of which were related to the Transaction):

- (1) On 7 June 2007 (i.e. two days after the payment of the Deposit) payment of US\$49,800 (which converted into £25,000) was made from the LeeLanes USD Client Account to the LeeLanes Sterling Client Account, then on to the LeeLanes Office Account, and then on to an account at National Westminster Bank in the name of "Mr A S Bawany T/A Ana Holdings". Monde is not aware of any relationship between Mr Bawany or "Ana Holdings" and the Transaction. The instruction to Coutts was made by Ms Parks, who apparently gave the instruction to Coutts on the basis of an "Authority for Transfer" signed by Mr Alexander.
- (2) On 11 June 2007, a payment of US\$19,820 (which converted into £10,000) was made from the LeeLanes USD Client Account to the LeeLanes Sterling Client Account and then on to the LeeLanes Office Account. This instruction was given to Coutts by Ms Parks, apparently on the basis of an "Authority for

Transfer” signed by Mr Alexander which requested the transfer and then requested “onwards [payment] pending my further instructions”.

- (3) On 15 June 2007, a payment of US\$154,947 (which converted into £78,000) was made from the LeeLanes USD Client Account to the LeeLanes Sterling Client Account, then on to the LeeLanes Office Account and then on to a Panagaea Solicitors’ account at the National Westminster Bank. This instruction was given by Ms Parks to Coutts, apparently on the basis of an “Authority for Transfer” signed by Mr Alexander which requested the transfer.

Further:

- (a) At the time of the credit of the £78,000 to the account of Panagaea Solicitors, that account held £120.91. Within a week of the credit, a number of cheques were written (nos. 16, 20, 21, 22, 23 and 28) for a total of £66,223.38.
- (b) The annotation on the account statement disclosed by LeeLanes on 28 May 2012 reads “Payments on behalf of Ejder Plc” for the first five cheques noted above, whilst the annotation for the sixth reads “Loan to Class Law Sols”. As set out above at paragraph 2E(d), Mr Alexander was at that time a director of Ejder and a member of Class Law Solicitors.

22G. Based on the still incomplete information disclosed by LeeLanes (which does not account for all of the Deposit), between about June 2007 and about September 2010 the vast majority of the Deposit (and the interest which accrued on it) was paid away for purposes unconnected to the Transaction and (to the extent relevant) unconnected with and/or of no apparent benefit to KRG. As set out more fully in Schedule 1 hereto, the recipients included the following persons (with the approximate total payments received by each person in parentheses):

- (1) LeeLanes itself (£123,000 and \$165,000);
- (2) LeeLanes Solicitors (£13,000);
- (3) Panagaea (£2,11 million);
- (4) Panagaea Solicitors (£88,000);
- (5) Brooklands (£943,900 and £56,250);

- (6) Class Law Solicitors (£161,137.59);
- (7) Golden Hinde (£1.94 million and \$8,000);
- (8) Transdermal Cosmetics PLC (£600,000);
- (9) Mr Alexander personally (£168,750);
- (10) Mrs Valerie Alexander (who is understood to be Mr Alexander's wife) (£108,700);
- (11) Doom/other entities controlled by Mr Talabani (US\$5.2 million²);
- (12) Mr Stoliarenko personally (£67,000).³

22H. As pleaded at paragraphs 2-2F above:

- (1) Each of the entities at sub-paragraphs 22G(1)-(8) above are entities which either or both of Mr Stoliarenko and Mr Alexander had a financial interest in and/or was a director of and/or controlled.
- (2) The entities referred at paragraph 22G(11) are believed to be controlled by Mr Talabani.

22I. Based on the still incomplete disclosure by LeeLanes of the instructions which led to these transfers being made, the purpose for which the transfers were made (where known) is set out in the notes to Schedule 1. By way of example, such purposes included:

- (1) Payment of salaries, bills, travel and office expenses for Golden Hinde;
- (2) Payment of salaries for employees of Brooklands;
- (3) Payment of rent for Golden Hinde's offices (which was paid to Regus Management (UK) Ltd (*Regus*));
- (4) Payments to fund travel (including hotel and flight) expenses of Mr Alexander;

² In addition to the US\$1.2 million received by Doom, as noted below at paragraph 22O(2), the US\$4 million payment made on 22 May 2008 to "Financial Links" on Mr Talabani's instruction (relayed to Mr Alexander) is also believed to have been a payment for the benefit of Mr Talabani.

³ In the case of Mr Stoliarenko, no payments have been identified which were made to him *directly* from the Deposit funds. However, payments were made to him from the Panagaea office account on 30 August 2007, 26 September 2007, 19 November 2007, 23 November 2007, 3 December 2007, 23 December 2007 and 21 January 2008. The vast majority (though not all) of the sums in the Panagaea office account can be traced back to funds taken from the LeeLanes USD Account and the Deposit.

- (5) Payment of American Express card bills;
- (6) A payment to Mr Hewa Karamani to "keep him quiet";
- (7) A payment of £155,000 to a car dealer for or on behalf of Mr Talabani.

22J. LeeLanes has claimed in correspondence that payments made from the Deposit Account on the instructions of Mr Alexander were made by him as agent for, or on the instructions of, the KRG. Further, in its Further Information dated 19 April 2012 LeeLanes has claimed that all payments from the Deposit were made on the instructions of Mr Talabani. However, Monde's case is that none of the transfers listed in Schedule 1 were authorised by KRG (or by Allenborough or Monde). In support, Monde will rely on the following facts and matters:

- (1) No documents have been disclosed evidencing any authority granted by KRG to Mr Alexander to act on its behalf or to make those transfers. Further, none of the transfers purport to have been made in accordance with the terms of the Talabani "Agreement", even assuming (contrary to Monde's case) that the same was valid and effective.
- (2) In an interview given by the Minister of Electricity of the KRG on 15 September 2009, the Minister of Electricity stated that he understood that Allenborough had been paid the Deposit, but was refusing to return it, and that KRG had been attempting to recover the Deposit monies.
- (3) On 29 March 2010 Mr Talabani emailed Mr Alexander and informed him that the "govt" (i.e. KRG) were "desperate" for the money to be returned and that "some people" were considering legal action, including against LeeLanes. Mr Talabani also added that he would "not be able to make excuses for this much longer".
- (4) It is inconceivable that the KRG would have instructed Mr Alexander to disburse the funds in the escrow account to himself and his wife personally, and to business ventures controlled by himself and/or by himself and Mr Stoliarenko.

22K. Further, in respect of the payments made to LeeLanes, LeeLanes Solicitors, Panagaea, Panagaea Solicitors and Class Law Solicitors, no invoices or bills evidencing any legal

work done by those firms in relation to the Transaction or for the KRG, Allenborough or Monde corresponding to those payments have been disclosed.

22L. As set out in detail in Schedule 1, the instructions to Coutts to make the payments from the LeeLanes USD Client Account were given by either Ms Parks or Mr Stoliarenko, frequently on the basis of instructions or requests from Mr Alexander. Given that Ms Parks was an administrator and that Mr Stoliarenko was the only member of LeeLanes with authority to operate its bank accounts, it is to be inferred that each of the payments was made with Mr Stoliarenko's approval and/or knowledge. Moreover, the email correspondence between Mr Stoliarenko and Mr Alexander shows that Mr Stoliarenko was fully aware of the uses to which the Deposit was being put (full particulars of which are set out in Schedule 1 and the notes thereto). By way of example only, Monde will refer to the following documents:

- (1) An email on 30 December 2007 from Mr Stoliarenko to Ms Parks (copied to Mr Alexander), instructing Ms Parks to make a payment to Trade Bank of Iraq in the name of "Mohammed Al Sami" in the sum of US\$56,250, and to contact Mr Alexander if she had any questions.
- (2) An email on 2 September 2008 from Ms Parks to Mr Stoliarenko with the subject "FW: Doom Transfer", confirming to Mr Stoliarenko that Mr Alexander had asked Ms Parks to transfer US\$200,000 to Doom. Ms Parks told Mr Stoliarenko that she had typed the relevant letter (to Coutts) and requested Mr Stoliarenko to sign it, which Mr Stoliarenko duly did.
- (3) An email on 17 September 2008 from Mr Stoliarenko to Ms Parks (copied to Mr Alexander) requesting that payment be made for Golden Hinde's rent in the sum of £31,687, "as it has been on a previous occasion".
- (4) An email on 20 October 2008 from Mr Danielle Phillips (the Chief Operating Officer of Golden Hinde) to Mr Stoliarenko, requesting payments to Golden Hinde (in the sum of £53,311.25) for salaries, plus a further £5,375.39 for unspecified purposes, to Regus (in the sum of £26,460.64) for rent for Golden Hinde's offices and to Brooklands (in the sum of £3,709.43).
- (5) An email on 23 October 2008 from Mr Stoliarenko to Ms Parks, informing her that Mr Alexander had advised that he needed to transfer £86,000 to Golden

Hinde and £4,000 to Brookland Securities from the LeeLanes USD Client Account.

- (6) An email dated 15 December 2008 from Mr Alexander to Ms Parks (copied to Mr Stoliarenko), asking for a transfer of £65,453 to be made to pay "salaries and bills" at Golden Hinde "as per usual" and for a transfer of £7,549 to Mr Alexander to cover travel expenses.
- (7) An email on 9 January 2009 from Mr Alexander to Mr Stoliarenko and Ms Parks, in which Mr Alexander explained that "we" (i.e. Golden Hinde) were consistently behind on their rent and asked Ms Parks to send the money to Regus that day "otherwise they will close us down on Monday morning".
- (8) An email on 16 February 2009 from Mr Alexander to Ms Parks (copied to Mr Stoliarenko), requesting her to make a payment "from the fund" to Golden Hinde for December and January bills in the sum of £25,238.
- (9) An e-mail from Mr Alexander forwarded on 8 May 2009 by Ms Parks to Mr Stoliarenko, in which Mr Alexander requested a transfer of £10,000 to Golden Hinde for "travel expenses etc." Less than half an hour later, the transfer request was made to Coutts by Ms Parks.
- (10) A request by Mr Alexander, forwarded on 28 July 2009 by Ms Parks to Mr Stoliarenko, to pay US\$50,000 to the account of Mr Robert Cook (an attorney in Florida). Shortly afterwards, the transfer request was made to Coutts by Ms Parks.

22M. Further, a number of payments (totalling more than US\$5 million) were made on the instructions of Mr Talabani and/or to Doom. In particular:

- (1) On 21 November 2007 Ms Parks gave an instruction to Coutts (which was in due course carried out) to transfer US\$500,000 of the Deposit from the LeeLanes USD Client Account to Doom at an account held at the Federal Bank of Middle East in Nicosia, Cyprus. No instruction given to Ms Parks has been disclosed by LeeLanes;
- (2) On 16 May 2008 Mr Al-Fekaiki was sent an email by a Mr Ahmed Sarchil Kazzaz informing Mr Al-Fekaiki that he had been asked by "B" (i.e. Mr

Talabani) to pass on to Mr Alexander an email requesting an urgent transfer of US\$4 million to an account in the name of "Financial Links" at a bank in Dubai. Mr Al-Fekaiki did so, whilst making clear that he had no knowledge of the instruction, did not know why it had been sent via him, and that he and Monde took no responsibility for its contents. The transfer of US\$4 million was duly made on 22 May 2008. In support of the claim that this money was paid to Mr Talabani, Monde will refer to the email sent by Mr Stoliarenko to Mr Al-Fekaiki on 31 January 2011 in which Mr Stoliarenko said

I would say at this point that [Mr Talabani] is himself as dodgy as they come! The comment below comes from a guy [i.e. Mr Talabani] who instructed \$4 million to be sent early on to his personal company, if I understand it correctly, and further whose mother and father (or the party that they control) have "taken", so far as I remember you [i.e. Mr Al-Fekaiki] saying, the rest of the money that was allocated for the purchase of the power plant.

- (3) As set out above at paragraph 22L(2), on 2 September 2008 Mr Stoliarenko requested Coutts to make a transfer of US\$200,000 to Doom from the Deposit held in the LeeLanes USD Client Account. Ms Parks also emailed Mr Stoliarenko to confirm that Mr Alexander had requested this payment be made.
- (4) On 30 October 2009 Mr Talabani instructed Mr Alexander to transfer £155,000 to Houston Motor Cars Limited, a car dealer based in Guildford, Surrey. Mr Alexander forwarded this request to Ms Parks, who duly instructed Coutts to make this transfer from the Deposit held in the LeeLanes USD Client Account.
- (5) On 21 December 2009 Mr Alexander emailed Ms Parks (copying Mr Stoliarenko) and requesting her to make a payment of US\$500,000 to Doom to "reimburse Bafel as he paid Allenborough \$500,000". This payment was duly requested by Ms Parks and was made on 22 December 2009.

22N. Moreover, Mr Stoliarenko and/or Mr Alexander were aware that the payments pleaded at paragraph 22M above were not related to the Transaction. In this respect, Monde will refer *inter alia* to an email sent by Mr Stoliarenko to Mr Al-Fekaiki on 31 January 2011 in which he stated:

You were obviously aware of some of the payments that [Mr Talabani] asked to be made in the early days of the project before you categorically stated that you did no [sic] want to be involved in passing on instructions from [Mr Talabani] to [Mr Alexander].

Those included apparent transfers which were unrelated to the project, such as that \$4 million payment to Doom. My understanding has always been that it happened because the project was not proceeding due to contractual breaches.

To the extent that LeeLanes got instructed on those transfers by the people it believed authorised to do that, no liability can attach. Also, LeeLanes would not be liable if it were itself a victim of fraud, internal and/or external.

220. The unauthorised payments of sums from the Deposit on the instructions of Mr Stoliarenko and/or Mr Alexander and/or Mr Talabani and/or the giving of the instructions themselves involved the following breaches of duty and/or offences (which constitute unlawful means for the purposes of the tort of unlawful means conspiracy pleaded more fully at paragraphs 30A-30G below):

- (1) breaches by LeeLanes of contracts, namely the Sale of Assets Agreement (including the terms referred to at paragraphs 11(3) and 11A above) and/or the Addendum Agreement (including the term pleaded at paragraph 20B above);
- (2) breach by LeeLanes of the tortious duty pleaded at paragraph 20B above;
- (3) inducement by Mr Alexander and/or Mr Stoliarenko and/or Mr Talabani of LeeLanes' breach of contract in that each of the individuals knew of the existence of the Sale of Assets Agreement and/or the Addendum Agreement, and knew that the instructions given (if carried out) would constitute a breach of those contracts;
- (4) breach of trust by LeeLanes in that LeeLanes acted in contravention of the duties imposed on it by the trust pleaded above at paragraph 22A;
- (5) dishonest assistance by Mr Alexander and/or Mr Stoliarenko and/or Mr Talabani in the breach of trust by LeeLanes referred to above. In this respect, Monde relies upon the particulars set out below at paragraphs 30A to 30C;
- (6) on the part of Mr Stoliarenko and/or Mr Alexander, the offence of fraud contrary to s.4 of the Fraud Act 2006 and/or on the part of Mr Stoliarenko, Mr Alexander and Mr Talabani, the common law crime of conspiracy to defraud.

Failure of the Transaction to proceed

23. Due to default on the part of KRG, the Turnkey Contract was never entered into and (so far as Monde is aware) no further payments made into the Escrow Account. Until about November 2007 Allenborough and Mr Alexander continued to have discussions about arranging a further inspection of equipment on behalf of the KRG. However, by about November or December 2007 it had become clear that the Transaction would not proceed.

23A. The principal or predominant reason for the collapse of the Transaction was LeeLanes' failure to pay to Allenborough its share of the Deposit (contrary to its obligations as escrow agent) and the misappropriation of the Deposit funds. Specifically:

- (1) LeeLanes failed to pay the sum of \$18.75 million or \$16.75 million (i.e. the \$18.75 million less the US\$2 million due to Monde) to Allenborough within 21 days of receipt of the Deposit;
- (2) LeeLanes paid no sums at all directly to Allenborough, thereby depriving it of the working capital it required, including the capital required to secure the relevant power plant equipment;
- (3) instead LeeLanes paid away sums from the Escrow Account to third parties not entitled to those sums, thereby depriving LeeLanes of the ability to pay to Allenborough the sums due to Allenborough.

23B. Allenborough needed to receive the payment of the sums due to it from the Deposit, in order to be able to progress the Transaction. In support, Monde will refer to the following facts and matters:

- (1) In an email from Mr Lee Derr (of Allenborough) to Mr Stoliarenko sent on 31 July 2006, Mr Derr explained that Allenborough needed the Deposit funds in order to secure the equipment (which it did not yet own);
- (2) In an email from Mr Len Stafford (of Allenborough) to Mr Al-Fekaiki dated 24 August 2006 (which was forwarded on to Mr Stoliarenko and Mr Alexander on 30 August 2006), Mr Stafford explained the importance of cash flow to Allenborough;

- (3) In any email from Mr Derr to Mr Stafford dated 7 September 2006, which was then forwarded to Mr Al-Fekaiki and then on to Mr Stoliarenko, Mr Derr explained the importance of having funds available straight away in order to work out the turnkey contract between the engineers and construction companies;
- (4) In email sent by Mr Stafford to Mr Al-Fekaiki on 21 October 2006, Mr Stafford explained that "It is imperative that we get this agreement signed as soon as possible so we can work on getting money in escrow and the equipment locked up for good".
- (5) In emails from Mr Stafford to Mr Al-Fekaiki on 19 December and 20 December 2006, Mr. Stafford explained that Allenborough required funds from the Deposit to be paid to Allenborough to enable it to consolidate the equipment for shipping and to conduct soil and engineering tests at the proposed site for the power plant (which tests needed to be conducted prior to submitting plans to the KRG);
- (6) In an email from Mr Derr to Mr Al-Fekaiki on 21 December 2006, Mr. Derr explained that Allenborough would require payment of funds from the Deposit in order to conduct the full packing list inventory and inspection; and
- (7) In a letter sent by Allenborough dated 3 January 2007 to KRG requesting that it appoint a project manager (as it was required to do under clause 4.3 of the Sale of Assets Agreement), Allenborough explained that it needed access to the funds from the Deposit in order to begin scheduling the work required.
- (8) A letter dated 30 January 2007 from Allenborough to KRG requesting payment by KRG of the Deposit "without further delay to allow Allenborough to proceed with its obligations".

23C. Further or alternatively, Allenborough required confirmation that the Deposit monies were in place in order to give formal approval for a further inspection of the equipment, which confirmation LeeLanes could not and did not provide. In this respect, Monde will refer to the email sent from Mr Derr to Mr Alexander on 5 November 2007 (in connection with attempts by Allenborough to arrange for a further inspection of the equipment on behalf of the KRG), Mr Derr told Mr Alexander that:

"We have been asked to provide a letter from Lee Lanes that they are still holding the \$18,750,000 which is the down payment on the contract...Please attend to this as soon as possible. The inspection team needs to make travel plans and we cannot get formal approval until we show the funds are still in place".

Monde's demands for payment of its commission

24. Monde has demanded payment by LeeLanes of the commission due to it. In particular:

- (1) By a letter dated 1 July 2009 from Monde to LeeLanes Solicitors (for the attention of Mr Stoliarenko), Monde requested payment of Monde's commission in the sum of US\$3 million. Receipt of this letter by LeeLanes was acknowledged by Mr Stoliarenko in a conversation with Mr Al-Fekaiki on 6 July 2009, however LeeLanes failed to respond substantively or to pay to Monde the sum requested.
- (2) By a letter dated 2 November 2010 from solicitors then acting for Monde to LeeLanes, Monde sought confirmation that the sum of US\$3 million would not be paid to anyone else. LeeLanes responded by letter dated 4 November 2010, denying Monde's entitlement to payment of any commission and refusing to provide the confirmation sought.

25. No payment of US\$3 million, or of any sum, has been received by Monde from LeeLanes, Allenborough or any other party in respect of the commission due to Monde pursuant to the Agency Agreement and/or the Addendum Agreement. Monde's contractual claims as against LeeLanes to payment of the sum of US\$3 million, alternatively US\$2 million, are pleaded at paragraphs 33 to 34 below.

Settlement of claims by other parties to the monies held in the Escrow Account

25A. On 29 June 2009 Mr Stoliarenko (acting on behalf of LeeLanes and/or LeeLanes Solicitors) sent to Mr Al-Fekaiki a draft "Deed of Settlement and Release" pursuant to which Allenborough and KRG would settle any claims they may have against the "Beneficiaries" (defined as "LeeLanes, each of its members, principals and agents, and "past and future parents, subsidiaries, assigns...") and agreed not to sue the "Beneficiaries". The draft agreement was directed solely at protecting LeeLanes (and its members) from claims and made no provision for any payment to KRG or to Allenborough of the Deposit (or what remained of it).

25B. On 3 July 2009 Mr Alexander emailed Mr Karamani (copying Mr Al-Fekaiki) addressing the status of the Deposit. Mr Alexander stated that the Deposit was held as to 50% for Allenborough (i.e. 5% of the total contract sum) and 50% for KRG. In fact, as set out in Schedule 1 hereto and contrary to the representations made in that email, by that date Mr Alexander and others had misappropriated a substantial proportion of the Deposit, totalling more than US\$15.5 million. In his email, Mr Alexander also purported to explain various "US tax issues" which meant that what Mr Karamani was proposing (which appeared to envisage an assignment of Allenborough's rights to a company controlled by Mr Karamani) would not work due to LeeLanes' alleged status as a "US paying agent".

25C. At this stage Monde was concerned that Mr Alexander and Mr Stoliarenko were attempting to reach agreements with parties other than Allenborough and KRG in order to divide up the Deposit, thereby depriving Monde of its right to commission (as against LeeLanes and/or Allenborough). Mr Al-Fekaiki therefore emailed Mr Stoliarenko on 12 July 2009 and reiterated that Monde was looking to LeeLanes and Mr Stoliarenko (which had acted for Monde) to protect its interests and its contractual right to commission from any "*underhanded tactics including and not limited to any agreements and or side agreements between the principle parties to the contract...*".

26. Throughout July and early August 2009 a number of draft settlement agreements were circulated by Mr Stoliarenko, Mr Alexander and Mr Karamani and also (in early August) to Mr Al-Fekaiki. However, as Mr Al-Fekaiki feared might happen, it appears that negotiations continued and were concluded without Monde's involvement and without Monde's right to commission being acknowledged. In particular: ~~In order to seek to settle disputes arising out of the failure of the Transaction, Allenborough, KRG, LeeLanes and other related parties (but not Monde) appear to have entered into negotiations and then into various deeds of settlement in about late November 2009:~~

- (1) By a Deed of Settlement dated 30 November 2009 between Allenborough and KRG, KRG and Allenborough agreed to release and discharge each other from their liabilities, duties and obligations connected with the Transaction subject to two conditions:

- (a) that LeeLanes (as Escrow Agent) would pay to KRG US\$9.375 million;
and
 - (b) that a deed of release would be executed by KRG and Allenborough in favour of LeeLanes and other named beneficiaries.
- (2) By another Deed dated 30 November 2009 between Allenborough, Corduen Corp⁴ and LeeLanes, Corduen would pay Allenborough US\$1.7 million as final settlement of any claims Allenborough might have in connection with the Transaction.
 - (3) By a Deed of Release dated 30 November 2009 between Allenborough, KRG and LeeLanes, Allenborough and KRG released LeeLanes from any liabilities arising out of the Transaction. Specifically, clause 2 of the Deed of Release provided that Allenborough and KRG released and discharged all rights, demands and claims against LeeLanes arising out of or in connection with any acts or omissions by LeeLanes, "*howsoever arising in connection with the Sale Agreement and the transaction contemplated thereby*".

26A. In support of its case that these settlement agreements were concluded and were in fact carried out, Monde will refer to the fact that (in an apparent partial payment of the sums due to Allenborough):

- (1) On 21 December 2009 Mr Alexander sent an email to Ms Parks (copying Mr Stoliarenko) in which he stated: "We need to send a payment immediately to Doom to reimburse Bafel as he paid Allenborough \$500,000. Please wire this morning express".
- (2) On 22 December 2009 a payment of US\$500,000 was made from the Deposit held in the LeeLanes USD Client Account to Doom.

27. As a result of the deeds pleaded in the preceding paragraph, Allenborough no longer has any claim of any kind against LeeLanes in respect of the sums in the Escrow Account. Specifically, LeeLanes has been released from any overriding obligation to pay to Allenborough the amount of US\$16.75 million referred to at sub-paragraph (a) of clause

⁴ Corduen Corp is said to be a Panamanian company and is believed by Monde to be associated with and/or controlled by Mr Karamani. Corduen Corp's role in the settlement agreements is unclear to Monde.

3.3 of the Agency Agreement (as amended by the Addendum Agreement), pleaded at paragraph 20 above.

Monde's entitlement to payment of commission

28. Pursuant to the Agency Agreement (as amended by the Addendum Agreement), once the Deposit had been paid into the Escrow Account Monde became entitled as against Allenborough to payment of commission in the sum of US\$3 million (the *Commission*), irrespective of whether or not the Transaction completed and/or whether any further payments were received from KRG.
29. As against LeeLanes, Monde's primary case is that, pursuant to its request for payment of the commission pleaded at paragraph 24 above, LeeLanes was and remains obliged to pay the Commission due to Monde from the sums held in the Escrow Account, subject only to the overriding obligation to arrange for payment of US\$16.75m to Allenborough. However, because (as pleaded at paragraph 0 above) LeeLanes no longer has any overriding obligation to pay Allenborough US\$16.75 million (or any other sum), LeeLanes is now obliged to pay to Monde from the funds held in the Escrow Account the full amount of Monde's commission, namely US\$3 million.
30. In the alternative, if (which is denied for the reasons pleaded above) LeeLanes' obligation to pay the Commission to Monde remains subject to any overriding obligation of LeeLanes to pay US\$16.75 million to Allenborough, LeeLanes remains obliged to pay to Monde the balance of the Deposit (i.e. the difference between the Deposit of US\$18.75m and US\$16.75m plus any accrued interest), namely the sum of at least US\$2 million.

Additional claims: conspiracy, breach of contract and/or duty, inducement of breach of contract

Conspiracy

30A. Both Mr Stoliarenko and Mr Alexander, and (by virtue of their and in particular Mr Stoliarenko's knowledge) LeeLanes and LeeLanes Solicitors, knew the following facts and matters:

- (1) LeeLanes held the Deposit solely in its capacity as Escrow Agent;

- (2) LeeLanes was obliged to hold the Deposit and deal with it only on the terms set out in the Sale of Assets Agreement and/or the Addendum Agreement;
- (3) LeeLanes was obliged to pay the full US\$18.75 million (less any sums owed to third parties) to Allenborough, in accordance with the Sale of Assets Agreement. In this respect, Monde will rely upon the fact that:
- (a) Mr Stoliarenko and/or Mr Alexander, acting on behalf of LeeLanes/LeeLanes Solicitors, had drafted the Sale of Assets Agreement; and
- (b) Mr Stoliarenko sent an email to Mr Karamani (copying Mr Alexander) on 18 July 2009 in which he explained that
- under the Sale Agreement, we had to send the whole deposit to Allenborough upon receipt (we have not done this because obviously at that time there was already the issue of contractual breaches on both sides, but this is beside the point). This means that under the Sale Agreement Allenborough was contractually entitled to get the whole 10% deposit.*
- (4) The Talabani "Agreement" (pleaded at paragraph 21D above) would, if valid, purport to impose on LeeLanes Solicitors terms inconsistent with LeeLanes' obligations in relation to the Deposit pursuant to the Sale of Assets Agreement.
- (5) The transfers made from the Deposit (as set out in detail above and in Schedule 1) were not authorised by any of the KRG, Allenborough or Monde; nor were they authorised by KRG through Mr. Talabani in accordance with the terms of the Talabani "Agreement" (even assuming (contrary to Monde's case) that the same was valid and effective).
- (6) Monde was entitled (as against Allenborough) to be paid the sum of US\$3 million, irrespective of the level of the "Proceeds" (as set out in the Schedule to the Agency Agreement pleaded at paragraph 6(3)) above;
- (7) Monde was entitled (under the terms of the Addendum Agreement) to be paid US\$2m of its commission directly from the Deposit by LeeLanes.
- (8) The effect of misappropriation of the Deposit would almost certainly, alternatively probably, be that:
- (a) the Transaction would not proceed and/or would collapse;

- (b) Monde would not receive any or all of the commission to which it was entitled to be paid by LeeLanes; and
- (c) Monde would not receive any or all of its commission to which it was or would be or become entitled from Allenborough, because Allenborough would not have received the funds from which to pay Monde's commission.

30B. Further, Mr Talabani knew that:

- (1) LeeLanes held the Deposit solely in its capacity as Escrow Agent;
- (2) LeeLanes was obliged to hold the Deposit and deal with it only on the terms set out in the Sale of Assets Agreement;
- (3) LeeLanes was obliged to pay the full \$18.75 million (less any sums owed to third parties) to Allenborough, in accordance with the Sale of Assets Agreement;
- (4) Monde was acting as Allenborough's agent and was due to be paid commission of at least US\$3 million;
- (5) The Talabani "Agreement" (pleaded at paragraph 21D above) would, if valid, purport to impose on LeeLanes Solicitors terms inconsistent with LeeLanes' obligations in relation to the Deposit pursuant to the Sale of Assets Agreement.
- (6) The transfers which he instructed to be made from the Escrow Account (as set out in detail above at paragraph 22M and in Schedule 1) were not authorised by any of the KRG, Allenborough or Monde and/or were not given in accordance with the terms of the Talabani "Agreement".
- (9) The effect of misappropriation of the Deposit would almost certainly, alternatively probably, be that:
 - (a) The Transaction would not proceed; and
 - (b) Monde would not receive the commission to which it was entitled.

30C. Further, Mr Stoliarenko, Mr Alexander, LeeLanes and/or LeeLanes Solicitors attempted to conceal from Monde and others (including in some respects Mr Talabani)

what had happened to the Deposit and their wrongdoing and/or to seek legal protection from claims against it as a result of such misappropriation.

PARTICULARS

(1) On 22 February 2008 Mr Alexander emailed Mr Talabani and purported to set out a “deposit statement” showing the state of the funds in the Deposit, which stated that \$18.75 million had been received and that the only payments out of the account had been to:

- (a) Allenborough for “inspection fee” (\$46,000);
- (b) Simmons & Simmons (\$127,487);
- (c) Trade Bank Iraq (\$56,250); and
- (d) payment to Doom for expenses (\$500,000).

That statement was false and was known by Mr Alexander to be false. In truth, as set out in Schedule 1, the position was that by that date 39 payments had been made from the Deposit totalling US\$8,433,539.35.

(2) A similar “Schedule” was sent by letter from LeeLanes (Ref: SA/EFM) to Mr Talabani dated 22 February 2008, which letter also stated that the “contract remains fully in force”.

(3) In an email dated 18 July 2009 sent by Mr Stoliarenko to Mr Karamani (copying Mr Alexander) in the context of settlement discussions, Mr Stoliarenko referred to the “very real legal threat” that Allenborough might sue LeeLanes “if they find out how the funds were in fact divided”.

(4) On 13 May 2010 Mr Alexander emailed Ms Parks and requested her to draw £4,000 cash “from fund” (i.e. the Deposit) in order to “make a small payment to H [i.e. Mr Karamani] to keep him quiet”. During a subsequent email exchange on the same date, Mr Alexander asked for the payment to be made to his personal account so he did not need to provide a receipt.

(5) In an email dated 15 October 2010 to Mr Talabani (copying Mr Al-Fekaiki and Mr Alexander) Mr Stoliarenko informed Mr Talabani that it would be difficult to prepare a statement of account showing the Deposit and that he “had never

been authorised to operate these funds and transact any business in relation thereto". However this statement was false and was known by Mr Stoliarenko to be false, because Mr Stoliarenko was a signatory on the LeeLanes USD Client Account and had in fact given numerous instructions for the disbursement of funds from the Deposit.

- (6) The continued attempts by LeeLanes in this litigation to withhold disclosure of documents evidencing the misappropriation, which conduct was described by Master Cook as constituting "open defiance" of the order of the Court.

30D. In the premises, in and after about May 2007 Mr Talabani, Mr Stoliarenko, Mr Alexander, LeeLanes and LeeLanes Solicitors (the latter two entities acting through Mr Stoliarenko and/or Mr Alexander), pursuant to a combination or agreement between all or some of them, conspired to injure Monde (and others) by unlawful means, with intent to injure Monde (and others).

PARTICULARS

- (1) The principal object of the conspiracy was to misappropriate the Deposit for the personal benefit of the conspirators.
- (2) As for the combination or agreement between the parties, Monde relies upon the inferences to be drawn from:
- (a) the instructions given and acted upon for the misappropriation of the Deposit, as set out in detail above at paragraphs 22E to 22N and more fully particularised at Schedule 1;
 - (b) the particulars of knowledge set out above at paragraphs 30A-30B;
 - (c) the attempts to conceal the wrongdoing set out above at paragraph 30C;
and
 - (d) the Talabani "Agreement" referred to above at paragraphs 21B-21D, which (as was known to each of the conspirators alternatively to Mr. Alexander and Mr. Talabani) was an attempt to set up an arrangement or "cover" to enable the funds deposited by KRG with LeeLanes to be used in a manner contrary to and inconsistent with the Sale of Assets Agreement and/or the Addendum Agreement.

- (3) As for the unlawful means, Monde relies upon the facts and matters pleaded at paragraph 22O above.
- (4) As for the conspirators' intention to injure Monde (and others), Monde relies upon:
- (a) the acts constituting the misappropriation of the Deposit (as set out in detail above at paragraphs 22E to 22N and more fully particularised at Schedule 1);
 - (b) the particulars of knowledge set out above at paragraphs 30A-30B; and
 - (c) the attempts to conceal the wrongdoing set out at paragraph 30C.

Monde's case is that although the conspirators' predominant purpose was to benefit themselves, they knew that by misappropriating the deposit they would be depriving Monde and Allenborough (and KRG to the extent that it might become entitled to repayment of any part of the Deposit) of monies to which they were entitled and/or jeopardising the Transaction to the detriment of those parties.

30E. Further or alternatively, to the extent that Mr Stoliarenko, Mr Alexander and LeeLanes and/or LeeLanes Solicitors concealed some of the misappropriation of funds from Mr Talabani (as pleaded at paragraph 30C above), Monde contends that those four persons or entities together conspired, pursuant to a combination or agreement between them or some of them, to injure Monde (and others) by unlawful means, with intent to injure Monde (and others).

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The Particulars under paragraph 30D above are repeated.

Inducing Breach of Contract

30F. As set out above at paragraph 22O(3), the instructions given by Mr Alexander, Mr Stoliarenko and Mr Talabani to transfer monies from the Deposit to recipients who were not entitled to receive them constituted an inducement by each of them of LeeLanes' breaches of its contractual obligations to Monde (as to which see above paragraph 22O(1)).

Further breach of contract and/or duty by LeeLanes

30G. For the reasons set out above, the payment by LeeLanes of sums from the Deposit to persons not entitled to them constituted breaches of contract and/or duty as pleaded at paragraph 20B above.

Causation

30H. By reason of the conspiracy and/or breach of contract and/or breach of duty and/or inducement of breach of contract pleaded above, LeeLanes failed to deal with the Deposit in accordance with the Sale of Assets Agreement and/or the Addendum Agreement and to pay it to Allenborough or (as to US\$2m) to Monde. As a result:

- (1) On the basis that the Addendum Agreement was valid and binding: Monde did not receive from LeeLanes the US\$2m commission which it was entitled to paid from the Deposit.
- (2) Further and in any event (and regardless of whether the Addendum Agreement was valid and binding): because Allenborough was not paid the Deposit to which it was entitled (namely the sum of US\$16.75m or US\$18.75m):
 - (a) Allenborough did not pay to Monde its minimum commission of US\$3m, alternatively the sum of US\$2m to which Monde was entitled under the Addendum Agreement, because (as pleaded at paragraphs 23-23B above) Allenborough had not received the monies from which it could and would have paid Monde;
 - (b) the Transaction collapsed, and as a result Monde lost the opportunity to be paid the further commission (in excess of the US\$3 million) to which it would have been entitled pursuant to the Agency Agreement had the Transaction proceeded.

Loss

30I. By reason of the matters aforesaid, Monde has suffered loss and damage.

PARTICULARS

- (1) Monde has suffered loss equal to the Deposit to which it was or became contractually entitled in the sum of US\$3 million, alternatively US\$2 million (as to which see above paragraphs 28-30).
- (2) Alternatively, Monde has suffered loss equal to the minimum commission due to it from Allenborough pursuant to the Agency Agreement in the sum of US\$3 million.
- (3) Further or alternatively, Monde has suffered loss equal to such further total commission as Monde would have earned but for the collapse of the Transaction. Further particulars will be supplied in due course.

The 2010 Agreement

31. On or about 14 December 2010, a meeting took place between Mr Al-Fekaiki (on behalf of Monde) and Mr Bafel Ahmed Talabani (~~on behalf of KRG~~), with Mr Stephen Alexander (on behalf of LeeLanes) participating via Skype (the internet-based telecommunications / teleconferencing service), in order to discuss and resolve *inter alia* Monde's outstanding claim for the Commission.
32. During this conversation:
 - (1) All the participants agreed that Monde was entitled forthwith to be paid commission in the sum of US\$3 million from the Escrow Account; and
 - (2) LeeLanes (by Mr. Alexander) agreed to pay the sum of US\$3 million to Monde within 7 days (i.e. by Tuesday 21 December 2010), in consideration for which Monde would refrain from commencing proceedings against LeeLanes during that period (the *2010 Agreement*).

Monde's claims against LeeLanes

33. As pleaded at paragraph 29 above, LeeLanes is obliged by both the Addendum Agreement and the 2010 Agreement to pay to Monde the sum of US\$3 million and/or is in breach of contract by failing to pay the said sum or any sums at all.

34. Alternatively, as pleaded at paragraph 30 above, LeeLanes is obliged by the Addendum Agreement to pay to Monde the sum of US\$2 million and/or is in breach of contract by failing to pay the said sum or any sums at all.

35. By reason of LeeLane's breach of contract, Monde has suffered loss and damage in the pleaded amounts.

35A. As set out above at paragraphs 30C and 30G, Monde further claims damages against LeeLanes for the tort of conspiracy.

Monde's claims against Mr Stoliarenko and Mr Alexander and Mr Talabani

35B. As set out above at paragraphs 30C-30G, Monde claims against Mr Stoliarenko and Mr Alexander and Mr Talabani damages for the torts of conspiracy and inducing breach of contract.

Monde's claims against LeeLanes Solicitors

35C. As set out above at paragraphs 30C and 30F, Monde claims against LeeLanes Solicitors damages for the tort of conspiracy.

Interest

36. Further, Monde is entitled to and claims interest pursuant to section 35A of the Senior Court Act 1981 on such amounts as are found due to it from LeeLanes the Defendants at such rates and for such periods as the Court thinks fit.

AND THE CLAIMANT CLAIMS:

Against LeeLanes:

- (1) Payment of the sum of US\$3 million;
- (2) Alternatively, payment of the sum of US\$2 million;

Against all Defendants:

- (3) Alternatively, dDamages
- (4) Further or other relief;


- (5) Interest;
- (6) Costs.

MICHAEL McLAREN Q.C.
ADAM SHER

MICHAEL McLAREN Q.C.
ADAM SHER

Statement of Truth

The Claimant believes that the facts stated in this Amended Particulars of Claim are true. I am duly authorised by the Claimant to sign this Statement of Truth.

Signed: 

Name: Stuart Nash

Position: Partner

Firm: CANDEY LLP

For: Claimant

Date: 24 June 2011

Date: 21 June 2012

Served this 24 day of June 2011 by Candey LLP, solicitors for the Claimant.

Re-Served this [] day of June 2012 by Candey LLP, solicitors for the Claimant.