



Neutral Citation Number: [2026] EWHC 921 (Comm)

Case Nos: CL-2023-000385 and CL-2023-000428

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/04/2026

Before :

MR JUSTICE BUTCHER

Between :

(1) RON HOFFMAN
(2) LIRON GREENBAUM

Claimants

- and -

(1) FINALTO GROUP LIMITED
(2) GOPHER INVESTMENTS

Defendants

And between

FINALTO (IOM) LIMITED

Claimant

-and-

RON HOFFMAN

Defendant

Edward Brown KC and Edward Mordaunt (instructed by **Mishcon de Reya**) for the
Claimants and Defendant in the second action
Craig Morrison KC, William Hooper and Yanni Goutzamanis (instructed by **Hogan**
Lovells) for the Defendants/Claimant in the second action

Hearing dates: 21, 22, 26-29 January, 2-6 February 2026

Approved Judgment

This judgment was handed down remotely at 10.00am on 21 April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE BUTCHER

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Mr Justice Butcher :

1. The claim in action CL-2023-000385 is brought by Ron Hoffman ('Mr Hoffman') and Liron Greenbaum ('Mr Greenbaum') (together 'the Claimants'), for non-payment of sums said to be due to them under or for damages pursuant to an Equity Term Sheet ('ETS') which the Second Defendant, Gopher Investments ('GI') is alleged to have wrongly repudiated, and for sums due or damages as a result of the summary termination of what they contend were their Employment Contracts with the First Defendant, Finalto Group Ltd ('FGL'). GI and FGL make counterclaims, and in action CL-2023-000428 Finalto (IOM) Ltd ('FIL') makes claims against Mr Hoffman based on materially the same alleged facts as those counterclaims.
2. FGL is a financial services technology provider operating internationally. The dispute arises out of the purchase of FGL by GI in 2022 from Playtech plc ('Playtech'). Prior to their termination Mr Hoffman was FGL's CEO and Mr Greenbaum was its COO.

Background

The origins of FGL

3. FGL was originally known as 'Markets.com'. It had been co-founded by Mr Greenbaum in 2009 as an online FX and CFD brokerage platform. Playtech acquired TradeFX, Markets.com's parent company, in 2015, via TradeTech Holding Ltd ('TradeTech'). Mr Hoffman had been employed at Playtech and its group companies since 2004, and had been CEO of TradeTech since January 2016. After its acquisition of TradeFX, Playtech appointed Mr Hoffman as CEO of Markets.com. Mr Greenbaum became its COO. After various acquisitions the business was rebranded as 'Finalto'. TradeTech became FGL in 2021. FGL is registered in the Isle of Man.

The Consortium Bid

4. In the first half of 2021, Mr Hoffman and Mr Greenbaum sought to arrange what, in effect, would have been a management buy-out of FGL. They assembled a consortium of investors ('the Consortium') to support such a bid. The Claimants, with the leaders of the Consortium, negotiated the terms of a deal ('the Consortium Deal'), which was announced by Playtech on 26 May 2021.
5. The Consortium and Playtech agreed a series of documents to give effect to the Consortium Deal, including:
 - (1) A Sale and Purchase Agreement dated 22 June 2021 ('the Consortium SPA');
 - (2) A Shareholders' Agreement between the Consortium members in respect of an Israeli-incorporated holding company ('Finalto SPV') which was intended to hold the entire share capital of FGL after the Consortium Deal; and
 - (3) Various financing documents including a 'Mezzanine Loan Agreement' and a 'Senior Facility Agreement'.
6. The Consortium Bid was an all-cash offer of up to US\$210 million. Under the Consortium Deal, the Claimants stood to receive equity in Finalto SPV.

The Gopher Bid

7. On 29 June 2021, TT Bond Partners ('TTB'), a Cayman incorporated entity, sent to Playtech an unsolicited 'Non-binding indicative proposal for Finalto', setting out the terms on which GI, 'an affiliated entity of TTB', would be prepared to acquire Finalto. The letter stated that TTB was 'an investment and advisory firm based in Hong Kong'. As the evidence in this case has shown, TTB is owned by Teresa Teague, Chris Scoular and Jonathan Bond. It has emerged that TTB had no economic rights in GI. At least part of the economic rights in GI are held by Excite Opportunities Fund LP, a Cayman Islands entity ('Excite'), which at the material times was the only preferred shareholder of GI. There was some debate at the trial as to who is the ultimate beneficial owner of GI, and when that was revealed to the Claimants.
8. The proposal put forward by TTB in their letter of 29 June 2021 was that GI would 'acquire 100% of Finalto for cash at an enterprise value of USD 250 million'. The letter stated that TTB had worked with advisers 'to develop a targeted list of due diligence requirements and envisage a period of only 3 weeks being required to convert our Indicative Offer proposal into a fully binding offer for Finalto'. In relation to management and employees, the letter said that TTB rated Finalto's management highly and looked forward 'to appropriately incentivise and retain key management in addition to investing further in the management team to support our growth strategy for Finalto under Gopher's stewardship.'
9. At a general meeting on 18 August 2021, Playtech's shareholders rejected the Consortium Deal, and Playtech moved to engage with GI on its proposal. An accelerated due diligence process ran through late August / early September 2021.
10. On 29 September 2021, GI and Playtech entered into a Share Purchase Agreement ('the SPA') pursuant to which GI agreed to purchase and Playtech agreed to sell (a) 100% of the shares in FGL and (b) the benefit of a €172,703,191 loan between Playtech, as creditor, and FGL, as debtor. Alongside the SPA, the following further agreements were entered into: (1) an escrow agreement between Playtech and GI under which GI agreed to pay a US\$10 million deposit into an escrow account; (2) a Management Warranty Deed (or 'MWD') under which the Claimants gave certain warranties to GI, and an accompanying disclosure letter to GI signed by the Claimants ('the Disclosure Letter'); (3) the ETS; and (4) a Buyer-Side Warranty & Indemnity Insurance Policy in favour of GI.
11. The ETS states that it is made between GI and 'the Managers', defined as the Claimants 'and certain other directors, officers, consultants and employees of the Group'. The most material terms of the ETS are set out in Annexe 1 to this Judgment. As will be returned to in more detail below, the ETS set out 'the proposed key terms on which [GI] or a subsidiary undertaking of the same (together the "Lead Investor") ... Ron Hoffman, Liron Greenbaum, and certain other directors, officers, consultants and employees of the Group ... will be invited to participate in the equity of a company set up as a direct or indirect holding company ("Holdco") of Finalto Group Limited (the "Target") ... following completion ... of the acquisition of the Target by the Lead Investor pursuant to a share purchase agreement...'
12. At 4 pm on 29 September 2021, Playtech publicly announced the proposed sale of FGL to GI and its entry into of the SPA. The SPA provided for Completion to take place

only after a number of conditions had been fulfilled. These conditions included the obtaining of regulatory approvals.

13. Between September 2021 and February 2022 the parties' focus was on progressing the transaction towards completion. On 9 February 2022, Mr Scoular emailed the Claimants to ask for their 'proposed list of people with MIP allocation' (ie those who were to be part of the Management Incentive Plan). Other than the Claimants no individuals had been identified in the ETS, and the identities of others who might be part of the MIP and any entitlements were to be subject to further negotiation and to anticipated total caps (of 10.5% for Sweet Equity and 3% for Further Sweet Equity (or 'FSE')).
14. Later on that day, Mr Hoffman sent Mr Scoular a spreadsheet listing 33 people whom the Claimants proposed should be allocated FSE, including proposed allocations to each of Mr Hoffman and Mr Greenbaum of 0.25%. On 13 April 2022, Mr Scoular sent the Claimants' proposals on Sweet Equity and FSE allocation to Mr Sam Wang, Ms Nora Liu and Mr Raymond Tang, who were representatives of Excite. On 23 May 2022, Mr Hoffman sent Mr Scoular a proposal for 'performance conditions' for any grant of FSE. Mr Scoular replied stating that he was 'not sure' he understood the calculations or agreed with the concept. His evidence was that he thought that the proposed conditions did not appropriately reward sustained long-term growth as opposed to short term financial performance.
15. On 26 May 2022, Mr Scoular raised certain commercial matters with the Claimants relating to potential allocations of equity, including as to how MIP beneficiaries would hold any shares that might be allocated.
16. On 6 June 2022 Mr Scoular sent to the Claimants drafts of: (1) proposed MIP Scheme Rules, (2) clauses to be incorporated into the articles of 'Holdco', which was the entity in whose equity it was intended that the Claimants (and others) should participate, and (3) subscription letters.
17. Under the ETS, it was provided that the terms there set out, and others 'will be reflected in an investment agreement relating to Holdco and its subsidiaries ... (the 'Investment Agreement')'. On 10 June 2022, Mr Scoular sent the Claimants a draft of the Investment Agreement.
18. The Claimants contend, and the Defendants deny, that on 21 June 2022, Mr Scoular orally approved the 9 February FSE proposal. I will return to that dispute below.
19. On 26 June 2022, Mr Hoffman emailed Mr Scoular, copying Mr Greenbaum, a somewhat revised version of the proposed allocations and performance conditions. On 27 June 2022, Mr Scoular sent the revised spreadsheet and proposed performance conditions to Mr Wang, Mr Tang and Ms Liu.
20. Negotiation of the documents, including of the Investment Agreement, continued between the lawyers then advising the Claimants, Zemah Schneider & Co ('ZES'), and those acting for GI, White & Case LLP ('White & Case').
21. On 11 July 2022, Completion under the SPA occurred. GI acquired FGL. As at the time of Completion, GI had not implemented a corporate reorganisation or established

the Holdco which it had been envisaged would, directly or indirectly, hold the shares in FGL. Nor had the parties finalised the terms of the Investment Agreement.

22. Negotiations in relation to the Investment Agreement and related documents did not, however, immediately cease. On 12 August 2022, Skadden, Arps, Slate, Meagher & Flom LLP ('Skadden') emailed ZES to say that they were replacing White & Case and were working with GI in relation to the outstanding agreements. Discussions and interactions between the Claimants, GI and its representatives continued, which I will need to examine further below. Relations between the Claimants and GI's representatives deteriorated.
23. On 26 September 2022, Skadden circulated a draft 'Issues List' in respect of the draft Investment Agreement. On 29 September 2022, Skadden cancelled a meeting with Ropes & Gray, who were the English lawyers advising the Claimants, and no further substantive discussions took place in relation to the Investment Agreement or related documents thereafter. On 7 October 2022, Skadden sent an email to Ropes & Gray saying that their client had instructed them to cease all work on the matter until certain commercial issues had been resolved between principals. In fact there were no discussions between principals.
24. What had happened was that, from at least 27 September 2022, as shown in WhatsApp messages between Mr Lee and Ms Tam, Excite were aiming to replace Mr Hoffman as CEO with Mr Matthew Maloney. The instruction to Skadden to down tools was given in that context and was doubtless connected with the decision to dispense with Mr Hoffman. By 14 October 2022 it had been decided within Excite and by those representing GI that Mr Hoffman and Mr Greenbaum were to have their engagements with FGL terminated.
25. On 4 November 2022, Mr Hoffman's Employment as CEO of FGL was terminated. On the same day Mr Greenbaum was notified of the intention to terminate his engagement. On 24 November 2022, FGL stated that it was terminating Mr Greenbaum's engagement with Clear Consulting Services Ltd ('Clear Consulting'), the entity within the Finalto Group by which, the Defendants contend, Mr Greenbaum was engaged as COO.
26. The Investment Agreement has not been agreed, and there has been no restructuring of the GI group. The anticipated Holdco has not been incorporated, and no equity in any such company has been allocated to the Claimants.
27. On 12 December 2022 a Letter Before Claim was sent by Keidan Harrison, then acting for the Claimants, to Skadden. On 8 February 2023 a response to the Letter Before Claim was sent by Hogan Lovells, who had been instructed on behalf of GI and FGL. One feature of that letter (in its paragraph 18) was that it stated that 'the overall effect is that the [ETS], in the absence of a definitive agreement, had no binding legal effect.'
28. The Claim Form in Action CL-2023-000385 was issued on 10 July 2023.

The Claims Made

29. The claims which the Claimants have made can be summarised as follows:

(1) *Management Equity Claims.* These claims are based primarily on the ETS and are brought only against GI. The Claimants' contention is that GI was and is in breach of its obligations to procure the issue to each of the Claimants of:

(a) 2.25% of the Ordinary Shares in issue in the capital of Holdco;

(b) 1.5% of sweet equity in Holdco (which should have been issued on or around Completion);

(c) A further portion of sweet equity up to 3%.

The Claimants further contend that, in the case of each of (a) –(c), GI was under an obligation to use reasonable efforts to procure that the grants would be made under the 'capital gains route' under Section 102 of the Israeli Tax Ordinance.

(2) *Employment Claims.* The Claimants bring a claim for damages for breach of their services contracts upon the termination of these in November 2022. Mr Hoffman's claim is brought against FGL. Mr Greenbaum's claim is brought against both FGL and GI. The amounts claimed are as follows:

(a) Mr Hoffman

Head of Claim	Amount (£)
Contractual Severance	409,722
Payment in Lieu of Notice ('PILON')	500,000
2022 Bonus	375,000
2023 pro rata bonus	316,483
Holiday	39,076
Total	1,640,281

(b) Mr Greenbaum

Head of Claim	Amount (£)
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PILON	360,000
2022 Bonus	270,000
2023 pro rata bonus	227,835.62
Holiday	35,058.46
Total	892,894.08

30. To the *Management Equity Claims* the Defendants advance three main defences.
- (1) That the ETS did not impose the obligations on GI that are alleged by the Claimants. Rather, (a) the only unconditional obligation upon GI was to ‘negotiate in good faith’ the terms of ‘Definitive Documents’, GI did negotiate in good faith, but no Definitive Documents were executed; (b) in any event, any entitlements that the Claimants might have had under the ETS were conditional upon a structure being agreed and implemented post-acquisition, which never happened.
 - (2) That even if the Claimants have viable prima facie claims under the ETS, those claims have only nominal value, because (a) after the Claimants’ termination, GI discovered that they had been responsible for making fraudulent misrepresentations during the acquisition of FGL (as alleged in the Counterclaim in CL-2023-000385); and (b) accordingly, in a counterfactual where the Claimants were retained and received their claimed entitlements under the ETS, they would later have been dismissed for ‘Cause’, namely for dishonest acts or fraud against a ‘Group Company’, within the meaning of the ETS. That would have made them ‘Bad Leavers’ and they would have forfeited any equity they had received.
 - (3) The value of any equity that the Claimants might have received is far lower than that claimed. In particular, any equity would have been subordinate to the other debts owed by FGL post-completion.
31. To the *Employment Claims*, the Defendants give the following main answers:
- (1) That Mr Greenbaum was not, in fact employed by FGL;
 - (2) The terms relied upon by the Claimants formed no part of their Service Agreements, even if they were otherwise employed by FGL;
 - (3) The claims fail in circumstances where the Claimants were liable to be summarily dismissed for misconduct, such that there was always a proper basis for dismissing them. They were, therefore, either entitled to no further payment, or would have been liable to repay any payment they had received.

32. The Defendants have brought *counterclaims* against the Claimants. These are pleaded on three grounds, which can be summarised as follows.

(1) *Alleged fraudulent misrepresentation.* GI says that the Claimants made various representations during the acquisition of FGL. These included that there was no material business between any FGL group company and any former ‘Worker’ or shareholder in a ‘Group Company’, other than on normal commercial terms in the ordinary course of business or as otherwise disclosed. The Defendants contend that there were, in fact, a significant number of such transactions with a Mr Mark Lauterstein or companies associated with him; that the Claimants must have known that their representations were untrue; and that they were therefore made fraudulently. Those representations induced GI to acquire FGL and enter into the ETS. GI seeks rescission of the ETS, or alternatively damages equivalent to any liability that it might have under the ETS. It also alleges that it would not have acquired FGL at all, but for the misrepresentations, or would have acquired it at a lower price. It therefore claims damages in deceit equal to the difference between the price it paid for FGL and the value it actually had, alternatively for the difference between the price it paid for FGL and the price it would have paid for FGL on different terms.

(2) *Breach of the Services Agreements.* FGL contends that the Claimants breached their obligations under their respective agreements and/or as fiduciaries. These breaches included the entry into arrangements with Mr Lauterstein on terms that were contrary to FGL’s interests. Further, where the Claimants made fraudulent misrepresentations to a prospective buyer of the business in relation to this issue, that was a further breach of their obligations to FGL.

Separately, FGL alleges that the Claimants engaged various law firms for their personal benefit, which they paid for using FGL’s money. This was a breach of duty by the Claimants.

FGL claims damages equivalent to any liability that it might otherwise have to the Claimants on their Employment Claims; and also damages equivalent to the sums that the Claimants improperly procured that FGL pay towards legal fees.

(3) *Breach of duties to GI.* As an alternative to its claim for rescission of the ETS, GI pleaded that the Claimants owed GI fiduciary duties. The Claimants’ misrepresentations and breaches of duty to FGL meant, so it is said, that there were also breaches of their fiduciary duties to GI, and also of the express term of the ETS that the Claimants were to negotiate the ‘Definitive Documents’ in good faith.

33. There is also a further claim, that made by FIL in Action CL-2023-000428, brought by FIL against Mr Hoffman only. This claim alleges breaches of duty to FIL by Mr Hoffman arising out of his procurement of (i) the sale by FIL of a domain name, ‘trade.com’, at an undervalue, (ii) a loan from FIL to Key Way Group Ltd on terms contrary to FIL’s interests, and (iii) the writing off of interest under that loan. The issues raised on this claim substantially overlap with those raised on part of the Defendants’ counterclaims because the same alleged facts are relied on as having given rise to a fraudulent misrepresentation by the Claimants.

The Evidence

34. I heard oral evidence from Mr Hoffman and Mr Greenbaum themselves. In the case of Mr Hoffman, I concluded that he was not immune to (unconscious) reconstruction of some aspects of the case in a way which suited his case. I considered him, however, to be an honest witness on the thrust of whose evidence on factual matters I could generally rely. The same applied to Mr Greenbaum, who appeared to me, furthermore, to be somewhat more objective than Mr Hoffman.
35. The Claimants also called Amit Zeevi, former CEO of Finalto Israel, and Jeremy Schlachter, former CFO of FGL. Both appeared to me to be honest and reliable witnesses, and Mr Schlachter gave his, limited, evidence, impressively.
36. The main witness called on behalf of the Defendants was Mr Scoular. His cross-examination, and a review of the documents which he created or which indicated his role and attitudes, revealed him as someone who is often unwilling or unable to take a robust and independent line. Mr Scoular, I am satisfied, did not seek to mislead the court, but I did consider that I should approach his evidence with some caution unless it had documentary or other independent corroboration.
37. The Claimants complained that the Defendants had failed to call most of the witnesses who could have given relevant evidence. They said, and I essentially agreed, that TTB had ‘operated as a front for the real corporate decision makers at Excite’, and that Mr Scoular and Ms Teague ‘function as nominees, implementing decisions taken elsewhere’. The decision-makers who were not called appeared to include Tang Hao, who appears to be the UBO of Excite and Gopher, Leung Wai Tai, who had authority to make decisions in relation to GI, Johnson Cheung, who was a representative of Excite and holds 8.16% of the issued share capital of GI, and Gary Lee who was the main operational conduit between Excite and TTB. I am in little doubt that the fact that none of these witnesses was called was because it was thought that it would be unhelpful to the Defendants’ case for any of them to give evidence. In this connexion it may be observed that the documents reveal that Mr Scoular and Ms Teague themselves expressed dismissive views about the Excite team, she referring to them, for example, as ‘so dodgy’.
38. As in most commercial disputes, the contemporary documents are of central importance in determining what happened and why. In the present case, each side accused the other of not producing all relevant documents. In the case of the Claimants, it is clear that they were in breach of disclosure obligations, in that, after they had instructed Keidan Harrison in October 2022, each deleted the WhatsApp thread between them. The Claimants say that this was because they were concerned about the monitoring of their devices by or on behalf of the Defendants and panicked. I am prepared to accept that that was the principal reason. I did not find persuasive the Defendants’ suggestion that the Claimants deleted the thread because it would have revealed adverse material as to the subject matter of the Defendants’ counterclaims. The WhatsApp chains most likely to contain material relevant to the Defendants’ counterclaims were communications with Mr Lauterstein, and they were not deleted. Furthermore, the deletion occurred some months before the Defendants’ allegations were articulated.
39. For their part, the Claimants contend that the Defendants’ disclosure has been inadequate. They pointed to the fact that the 12 August 2022 Board Resolution was disclosed at 0937 on Day 4 of the trial, and that the redactions effected on the Scoular/Teague WhatsApps were excessive. They complained also that the Defendants

had not been forthcoming about the identity of the relevant Excite decision makers, and thus had been unhelpful about the identification of appropriate custodians. I am not able to say that there have been any failures by the Defendants to give proper disclosure, but I was left with the clear impression that the Defendants had been as unforthcoming as they could, with arguable legitimacy, be in relation to the activities and involvement of Excite.

40. I further received expert evidence in two fields. In the area of Israeli tax law, the Claimants called Harel Perlmutter, and the Defendants Yaron Sever. Mr Perlmutter is a partner and head of the Tax Department at Barnea Jaffa Lande & Co, an Israeli law firm. Mr Sever is a partner with Goldfarb, Gross, Seligman, a large law firm in Israel, and is co-head of its Tax Department. Each was highly qualified for the role of expert witness, and gave helpful evidence.
41. In the field of business valuation, the Claimants called Adrian Martin. Mr Martin is Managing Director of Ankura Consulting (Europe) Ltd, and a Fellow of the Institute of Chartered Accountants in England and Wales. The Defendants called Victoria Richards. She is a Director at Forensic Risk Alliance Ltd. She also is a fellow of the Institute of Chartered Accountants in England and Wales. She was formerly a Senior Director of Kroll, and before that a Senior Manager at BDO. They each displayed appropriate expertise and were of assistance to the Court.

The Management Equity Claims

42. The principal issues which arise on this claim may, I think, be summarised as follows:
 - (1) To what extent were the terms of the ETS binding and enforceable? This includes a consideration of the extent to which any obligations were subject to conditions precedent. This issue also involves a characterisation of the nature and ambit of any enforceable obligations which were created by the ETS.
 - (2) Is there any relevant estoppel which precludes GI from alleging that the ETS only took effect subject to conditions or that the Claimants' equity entitlement was not to be calculated as a percentage of US\$ 252,520,000?
 - (3) Did GI or did the Claimants act wrongfully and in repudiatory breach of any binding obligations under the ETS? Was any repudiatory breach by GI accepted by the Claimants?
 - (4) Did Mr Scoular on 21 June 2022 agree 0.25% FSE as proposed by the Claimants, and did he have the actual or ostensible authority of GI to do so? If he did, what was the effect?
 - (5) Did any breach by GI of the ETS cause loss to the Claimants, and if so what is the quantum of any claim for damages which the Claimants may have?
43. I will address these issues in turn, while recognising that there is some overlap between the different issues, and with other aspects of the case.

To What Extent were the Terms of the ETS Binding and Enforceable?

44. The questions which arise under this heading are questions of the construction of the ETS, against the background of the legal principles as to the making of contractually binding agreements.

Legal principles

45. As to these legal principles and the proper approach to questions of contractual construction, there was little dispute. The dispute was rather in their application. In summary, the following principles are applicable.
46. In construing a contract, the court is required to ascertain what a reasonable person who has all the background knowledge which would have been reasonably available to the parties in the situation in which they were at the time of the contract, would have understood the contracting parties to have meant by the language used: Wood v Capita Insurance Services [2017] AC 1173, [11]-[12].
47. The process of construction is to be undertaken by assessing the meaning of the relevant words in their factual, commercial and documentary context. Thus what is involved is a consideration of the meaning of the words, in the light of: (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the contract, (iii) the overall purpose of the clause and the contract itself; (iv) the facts and circumstances known or assumed by the parties at the time the documents was executed; (v) commercial common sense; but (vi) disregarding subjective evidence of any party's intention: see Westfield Park Ltd v Harworth Estates Investments Ltd [2025] EWCA Civ 1374 at [34].
48. If the parties must be taken to have intended to leave some essential matter to be agreed between them in the future, on the basis that either would remain free to agree or disagree about that matter, there is no bargain that the courts can enforce: BJ Aviation Ltd v Pool Aviation Ltd [2002] 2 P&CR 25 at [21] per Chadwick LJ. An agreement may also lack contractual force because it is so vague or uncertain that no definite meaning can be given to it without adding further terms: *Chitty On Contracts* (36th ed), [4-188]. Provided, however, that there is no 'conceptual uncertainty', it is not a bar to finding a binding agreement that the matter may be difficult 'to resolve in practice': *ibid*, [4-189]. Vagueness in one or some of the terms of an agreement does not necessarily vitiate the agreement as a whole: *ibid*, [4-195].
49. In Pagnan SpA v Feed Products Ltd [1987] 2 Lloyd's Rep 601, Lloyd LJ said, at 619 (in a passage cited with approval by Lord Clarke JSC in RTS Flexible Systems Ltd v Molkerei Alois Muller GmbH & Co KG [2010] UKSC 14):
- ‘... the parties may intend to be bound forthwith even though there are further terms still to be agreed or some further formality to be fulfilled ... (5) If the parties fail to reach agreement on such further terms, the existing contract is not invalidated unless the failure to reach agreement on such further terms renders the contract as a whole unworkable or void for uncertainty. (6) It is sometimes said that the parties must agree on the essential terms and it is only matters of detail which can be left over. This may be misleading, since the word “essential” in that context is ambiguous. If by “essential” one means a term without which the contract cannot be enforced then the statement is true: the law cannot enforce an incomplete contract. If by “essential” one means a term which the parties have agreed to be

essential for the formation of a binding contract, then the statement is tautologous. If by “essential” one means only a term which the court regards as important as opposed to a term which the court regards as less important or a matter of detail, the statement is untrue. It is for the parties to decide whether they wish to be bound and if so, by what terms, whether important or unimportant. It is the parties who are, in the memorable phrase coined by the judge [Bingham J] “the masters of their contractual fate”. Of course, the more important the term is the less likely it is that the parties will have left it for future decision. But there is no legal obstacle which stands in the way of the parties agreeing to be bound now while deferring important matters to be agreed later. It happens every day when parties enter into so-called “heads of agreement”.

50. An express obligation to negotiate in good faith may be enforceable: Petromec Inc v Petroleo Brasileiro SA Petrobras [2005] EWCA Civ 891, esp at [121], *Chitty, op cit* at [4-174].
51. A contract may contain contingent conditions, whereby the obligations of both parties are contingent on the happening of some event. Contingent conditions may be precedent or subsequent. A contingent is precedent if it provides that the contract is not to be binding until the specified event occurs. Where an agreement is subject to a contingent condition precedent there is, before the occurrence of the condition, no duty on either party to render the principal performance promised by them. Further, in the usual case of a true condition precedent, neither party will have undertaken that the condition will occur. Even if that is the case, however, an agreement subject to a condition precedent may impose some degree of obligation on both or one of the parties. Various possible degrees of obligation have been identified: including an unrestricted right of the parties to withdraw, a restricted right to withdraw, a duty not to prevent occurrence of the event, and a duty of reasonable diligence to bring about the event. See *Chitty op. cit.* [4-198 – 4-206]. Whether a term is a condition precedent, and the nature of any secondary obligation which may be imposed on the parties as to the occurrence of the event depends on the proper construction of the contract.

The parties' positions

52. The Claimants' case is that the ETS is a binding agreement under which the Claimants are entitled to the equity allocations in the amounts prescribed in 'Issue 1.2' of the ETS. GI had binding obligations to issue equity in those prescribed amounts and, in order to do so, to enter into Definitive Documents and arrange an appropriate corporate structure. They contend that this is the effect of the language used, especially when considered against the factual matrix in which the ETS was entered into. They further contend that the obligations on GI under the ETS were not subject to a condition precedent that the parties should have agreed on the relevant corporate structure and Holdco's in fact acquiring shares in FGL. This was not clearly specified, and it would be inconsistent with section 10.9, and the document as a whole, to construe GI's obligations as subject to such a condition.
53. For GI, it is contended that the only binding obligation imposed upon it by the ETS was to 'negotiate in good faith the Definitive Documents'. That negotiation would involve a broad range of further matters, many of which were, it contends, critical to any agreement to allocate equity to the Claimants. If such terms were not agreed, then the Definitive Documents should 'otherwise contain terms which are customary for a

transaction of this nature’ (see Afterword). There is no evidence that there was, in fact, any such set of ‘customary’ terms; and therefore the only way in which such terms could be supplied was if the parties reached a further agreement.

54. Alternatively, if, on its proper construction, the ETS did give rise to an obligation to allocate equity to the Claimants, GI’s liability to perform that obligation was conditional upon the new corporate structure being implemented. Until that point, there was no relevant company in which equity could be allocated, so the obligation could not be performed.

Analysis

55. In construing the ETS, one matter which should be considered, to the extent that it helps in ascertaining what a reasonable person would have understood the parties to mean by the words used, is the factual and commercial background (or ‘matrix’) to the contract. The parties disagreed, however, on whether there was any relevant background or matrix which provided any help in this regard.
56. In my judgment, there are certain obvious features of the background to the ETS, which can be taken into account in construing the agreement. These include that the GI bid was a counterbid to what had effectively been a management buy-out, under which the Claimants stood to gain; and that, as referred to in TTB’s letter of 29 June 2021, TTB/GI recognised that it was necessary, to ensure that the deal happened, to engage with Finalto’s management, and appropriately to incentivise and retain key management.
57. Turning to consider the terms of the ETS itself, a number of features are of importance.
58. In the first place, there is the nature of the document. It is called a ‘key terms’ document, but it nonetheless contains a significant number of detailed and lawyerly terms.
59. Secondly, there is the structure of the ETS. It contains a preamble, stating the basis of the agreement, then the Issues/Terms table which sets out the operative obligations, and then what, for want of a better term, may be called an ‘Afterword’ which, essentially, deals with implementation mechanics. All provisions of the ETS need to be read in their context within the document as a whole. There is force in the Claimants’ submission that GI’s construction unduly elevates the importance of the provisions of the ‘Afterword’.
60. Thirdly there are the terms of section 10.9 ‘Legal Effect’. I set it out again here.

’10.9 [Issue] Legal Effect. [Term] This Term Sheet is legally binding on the parties, subject to a definitive agreement.

The Term Sheet may be executed in any number of counterparts, each of which when executed and delivered is an original and all of which together evidence the same agreement.

This Term Sheet and all matters arising from it are governed by English law. The courts of England have exclusive jurisdiction

to settle any dispute arising from or connected with this Term Sheet.’

61. The stipulation in this clause that the Term Sheet is legally binding ‘subject to a definitive agreement’ means, in my view, that it is binding, but will be superseded and replaced by a definitive agreement. It does not mean that it will only be binding if there is a definitive agreement. If that were its meaning, it would effectively mean that the Term Sheet was not legally binding on the parties, which would contradict what appears to be the purpose of incorporating a ‘Legal Effect’ clause; and would bring about that effect in a distinctly unclear fashion. That the Term Sheet is intended to have an immediate legal effect gains support from the emphasis in section 10.9 on the formalities of counterparts, and delivery, and the stipulations as to law and jurisdiction. Furthermore, certain provisions of the Term Sheet were undoubtedly intended to have an immediate binding effect, including the provision as to Confidentiality in section 10.8.
62. More generally, I consider that the stipulation that the Term Sheet is legally binding is a strong indicator that it was intended that the key provisions in section 1.2 were intended to have legal effect, in the sense of creating rights and obligations capable of effective enforcement. On GI’s construction of the ETS, it has almost no legal effect, save to impose an obligation on the parties to negotiate the Definitive Documents in good faith prior to Completion. I would regard it as surprising, and unlikely to have been intended, that section 10.9, which appears in the Issues/Terms table, only had effective application to a provision in the ‘Afterword’.
63. Fifthly, there is obligatory language in centrally important provisions of the ETS. Thus, in the preamble, it is provided that ‘the below terms and others **will** be reflected in an investment agreement relating to Holdco and its subsidiaries...shall own ordinary shares in the capital of Holdco ... on and following Completion’ (emphasis added). The second of these provisions means, in my view, that GI has an obligation to implement a Holdco structure to take effect on or following Completion. Clearly the obligation to have a structure in place is conditional upon Completion occurring, but that is the only relevant contractual condition: the obligation, in that circumstance, to have a Holdco is not otherwise conditional. The first provision means that GI is under an obligation to enter into an investment agreement. As further specified in the Afterword, that investment agreement is to incorporate the terms set out in the Term Sheet.
64. The provision in section 1.2 that ‘On the completion of the Investment Agreement, the following securities will be issued to the following members of Management ...’ has to be taken in conjunction with the provision in the preamble to which I have just referred. There is an obligation on GI to enter into the Investment Agreement, and accordingly there is an obligation on GI to ensure that there will be the issue to the members of management identified the securities which are specified in section 1.2.
65. The parties envisaged that there would be negotiation of Definitive Documents, and the ETS provided that that negotiation should be conducted in good faith. What the ‘Afterword’ indicates is that it was intended that that process of negotiation should have been completed by Completion. Rather than this obligation to negotiate in good faith being, in effect, the only binding obligation under the ETS, in my judgment it reinforces the analysis which I favour and which I have set out above. The parties envisaged that,

by the time of Completion, there would be Definitive Documents; but if there were not, then the terms of the ETS (including in sections 1.1 and 1.2) remained binding (as provided for in section 10.9), and if not fulfilled would give rise to a potential claim in damages.

66. Accordingly I conclude that there were binding obligations on GI under the ETS to arrange an appropriate corporate structure and to issue equity in the prescribed amounts to the Claimants. Those obligations were to take effect only on Completion occurring but were not conditional on the completion of Definitive Documents.

Is there a Relevant Estoppel?

67. There are two aspects of the Claimants' pleaded case on estoppel. One is an alternative to their case on construction, namely that, if the ETS was not otherwise immediately binding, and not subject to conditions precedent, GI is estopped from contending that its obligations only took effect subject to conditions. On my construction of the ETS, this is of little significance. I will give, briefly, my reasons why, had it mattered, I would not have accepted it.
68. This case is essentially based on Mr Scoular's email sent to the Claimants on 17 September 2021. That email enclosed a draft of the ETS, but one in which section 10.9 was in significantly different terms from that in the executed version, and which provided, in part, that 'This Term Sheet does not constitute or imply any offer or commitment whatsoever on the part of Lead Investor.'
69. The email itself stated in part:

'[The enclosed draft term sheet] lays out the key points on the management equity incentive scheme that I hope will be acceptable to you guys. ...

You will notice that we have included 15% equity overall (with the same splits as before) as opposed to the overall 18% that you described from the consortium. This does take on more impact given the higher price we are paying compared to the consortium, and whilst we wanted to ensure you guys were in a \$ same position on day 1, and hence 15% @ \$250m = 18% @ \$210m (and I think the \$210m is being a little generous given the deferred), we don't want the lower headline % to be an issue and we have been mulling this internally.

There are two things that are not built into this document. The first is in relation to the above, where we are thinking about having that additional 3% to be available to be awarded but based on performance. I think we are very much open to that, but need to do more thinking so welcome your thoughts.

The other point that we have been mulling, and it would be good to get your views on this also, would be for some of the management teams vesting equity (say 2.5% of the 7.5%) to be awarded to them on completion as opposed to all vesting over 3

years. We are keen to ensure everyone is bought in on day one and motivated and think this may be a good way to achieve that. Perhaps we can discuss to get your views?

...

This is drafted as a term sheet as opposed to a final doc as there will be items we need to do more work on regarding structure (as we have discussed) and implications for employees in different locations, but we have tried to make it as fulsome as possible such that it covers commercial points....'

70. I do not consider that this email can found the estoppel (whether by representation or convention) contended for. The email cannot be read in isolation from the draft term sheet it attached, which stated that no commitment was being made. Furthermore, the email said that the term sheet had been drafted as such 'as opposed to a final doc'. In light of those points, it is not possible to read the email as containing a clear and unequivocal representation or shared assumption as to the effect of the agreement which was entered into on 29 September 2021.
71. The other aspect of the Claimants' case on estoppel is a contention that GI is estopped from alleging that the equity to be allocated to them was not to be calculated as a percentage of US\$252,520,000, ie as a percentage of the total consideration payable by GI to Playtech on the date of completion of the SPA. This point relates to the valuation of any entitlement to equity that the Claimants may establish, but as it is also based on the email of 17 September 2021 it is convenient to consider it here. This aspect of the Claimants' estoppel case is relevant even if the Claimants' case that the ETS contained binding obligations (other than only to negotiate in good faith) were to be accepted (as it has been).
72. As with the first aspect of the estoppel case, I do not accept this second aspect. I do not consider that there was any clear representation or communicated common assumption given that the email itself says that there need to be further discussions and work done, and what is attached is a draft term sheet which states that no commitment was being made.
73. Moreover, that there was no representation which could reasonably have been relied upon, and no shared assumption which could give rise to an estoppel by convention is, to my mind, demonstrated by what happened after the email of 17 September 2021. On or about 19 September 2021 ZES, acting for the Claimants, supplied to White & Case, acting for GI, a mark up of the proposed term sheet, which included a provision that 'The funds to acquire Target shall be provided by the Lead Investor by way of equity premium, and not through debt and not by diluting the Management. For the sake of clarification, the COO and CEO shall each hold 2.25% in the capital of Holdco, with a valuation of US\$250,000,000.' That was struck out by White & Case. Similarly, ZES had inserted a provision in the definition of 'Market Value' in clause 3.2, whereby 'Market Value shall in any case not reflect a company value of less than US\$250,000,000.' That was also struck through by White & Case. Neither provision was included in the ETS as executed.

Breach and/or Repudiation?

74. I have held that the ETS did create binding obligations on GI to create a Holdco structure and to issue to the Claimants the equity participations specified in the ETS.
75. I accept the Claimants' case that GI was in repudiatory breach of the ETS. That breach was manifested by the fact that, having failed to execute Definitive Documents and a Holdco structure prior to Completion, GI instructed Skadden to 'down tools' on the agreement of Definitive Documents in about early October 2022, and then proceeded to the termination of the Claimants' engagements. At latest there was a renunciation of the obligations under the ETS by Hogan Lovells' letter of February 2023, which denied that the ETS was legally binding. The repudiation or renunciation was accepted no later than by the Particulars of Claim (para. 25), served on 10 July 2023.
76. GI's answer to this was that it was not in repudiatory breach, because there needed to be Definitive Documents agreed, and the Claimants themselves were never willing to agree any such documents. GI had only, ultimately, withdrawn from a hopeless negotiation, given that the Claimants never proposed terms limited to those in the ETS, and when it was clear that the Claimants would never propose acceptable terms. The ETS was, accordingly, discharged.
77. I do not accept that this is an accurate description or analysis of what happened. It is true to say that in the negotiations of Definitive Documents, which continued after Completion, both sides were putting forward proposed terms which were not in the ETS, and were not in agreement on such terms. The Issues List circulated by Skadden on 26 September 2022 listed various of these. But that did not indicate that negotiations had broken down, or that any further negotiations would have been 'hopeless' had GI been willing to engage in them. What actually stopped them was that GI became unwilling to engage in further negotiations.
78. Specifically, I do not consider that the point had come at which it was clear that the Claimants would not sign an agreement which contained only the ETS terms. It was never, during the course of the negotiations, put by or on behalf of GI, that, unless the Claimants agreed a set of terms which included only those in the ETS, there would be an end to the negotiations. Without that having happened, I find it impossible to say that the Claimants would have refused to agree on a document which contained only ETS terms. The negotiations had not, as I see it, got to that point. Both sides had been proposing matters which were not strictly in the ETS, on the basis that they might be agreed by the other side, perhaps in exchange for some other term. By the point at which Skadden were instructed to cease work on the matter, it had not become apparent that that would be impossible, and the parties had not had to address themselves to whether they would sign 'minimalist' formal agreements which sought only to incorporate ETS terms.

Did Mr Scoular agree FSE for Claimants and did he have authority to do so?

79. The Claimants contend that in a telephone call on 21 June 2022 between them and Mr Scoular the latter agreed the allocations to them of 0.25% FSE, which had been contained in a spreadsheet sent by them to Mr Scoular on 9 February 2022. The Defendants deny that he gave any such agreement, and in any event say that he lacked authority to do so on behalf of GI.

80. I will deal first with the question of authority. As I have concluded that Mr Scoular did not make any such agreement, this issue is not critical. My finding, however, is that formally he did have actual authority to make such an agreement, and would have had authority to sign a document giving effect to such an agreement. I consider that he had this authority pursuant to the Written Resolutions of all shareholders of GI dated 29 June 2021 and the Written Resolutions of All Directors of GI dated 22 September 2021. The first of those had given a general authorisation to each Director (of whom Mr Scoular was one) to do such further acts and things as that Director should consider necessary or appropriate in order to put into effect the Non-Binding Proposal of 29 June 2021. The second had approved the entry into of the Transaction Documents, including the ETS; and had also given to each Director authority to approve any amendments to the Transaction Documents, and to approve any documents ancillary to those Transaction Documents, as well as giving a general authority to each Director to do such further acts and things as the Director should consider necessary or appropriate to further the intent of the other resolutions. Given that the ETS envisaged the negotiation of an amount of FSE up to 3%, it seems to me clear that the Directors had authority to agree amounts of FSE up to that percentage, as being an arrangement ancillary to the Transactions Documents.
81. With that said, however, I accept Mr Scoular's evidence that he did not think that he had authority to agree the proposed allocations without the specific approval of GI's Board and/or of Excite. This is consistent with my view of his general attitude as director of GI, which was one of being anxious to ensure that Excite's interests were taken into account, and of reluctance to act without knowing that Excite was content.
82. In relation to the question of whether Mr Scoular did agree an allocation of 0.25% FSE to each of the Claimants, it is necessary to consider both the evidence of Mr Hoffman, Mr Greenbaum and Mr Scoular, and the documentary evidence. Mr Hoffman's evidence was that, on 21 June 2022, Mr Scoular had said, of the 9 February 2022 spreadsheet (which, Mr Hoffman said, 'contained different allocations and performance conditions for each member of the FGL management team'), 'I'm happy with it'. Mr Greenbaum's evidence is that Mr Scoular 'orally approved the allocations set out in the spreadsheet'. Mr Scoular's evidence is that he never orally approved an allocation of FSE, had no authority to do so, and that the parties had continued to negotiate the allocation of FSE and the performance conditions which would attach to it for several months after 21 June 2022.
83. As to the documentary evidence, there was an email sent by Mr Hoffman to Mr Scoular on 26 June 2022 headed 'Performance conditions – new version', which said '... please see attached a new version we prepared addressing your points', and contained an explanation of the thinking behind the proposed performance conditions. The attached document related only to performance conditions. On the same day, Mr Hoffman sent to Mr Scoular another email, which was headed 'Awards to employees – small changes made – updated list attached', and stated that 'nothing major changed, changed some small numbers with 3 people added with small amounts and reduced ours to 1.45%'. The attached spreadsheet was a list of proposed awards of equity, both base and subject to performance amounts.
84. Thereafter on 1 July 2022, Mr Hoffman and Mr Scoular had a WhatsApp chat in which Mr Scoular said that he had 'been pushing Johnson [Cheung] to make sure he is happy with MIP allocation' and that 'He doesnt have any objections to as far as I can tell but

think he wants more info as to how [indistinct] been arrived at'. Mr Hoffman objected on the basis that 'these guys need to trust that we know what we're doing' and 'they can't come in now and reshuffle based on zero knowledge and honestly this intervention level is not something I can live with'. Mr Scoular replied that he agreed but talking through the rationale would allow that to happen; and that 'the allocation was always subject to shareholder approval and that is what we are doing.' There was then a conversation between the two, as a result of which Mr Hoffman contacted Mr Tam to say: 'spoke to Chris and I understand that you want to go over the equity allocation and the performance conditions mechanism'. He arranged a time for a Teams call, which took place. The WhatsApp thread then indicates that Mr Tam had spoken to Johnson, who wanted to have a further call the next day. Again that apparently happened on 2 July 2022. A further entry in the WhatsApp thread from over a day later, on 3 July 2022, when Mr Scoular wrote 'Good result!', may or may not relate to that meeting.

85. The conclusion which I draw from this material is that Mr Scoular had not agreed the FSE allocations on 21 June 2022. The most he may have done is to have said that, subject to shareholder approval, he did not object to them. I say this for the following reasons:
- (1) As I have already said, I find that Mr Scoular did not believe that he had authority to agree the allocations by himself, and this makes it unlikely that he would have done so.
 - (2) In the communications of 26 June 2022, it is only that relating to the performance conditions which says that Mr Scoular's points have been addressed. The other, which relates to allocations, does not say or suggest that they have been agreed by Mr Scoular, and contains certain alterations to what was in the version which Mr Scoular had on 21 June 2022.
 - (3) The communications on 1 July 2022 do not contain any suggestion by Mr Hoffman that the allocations had been finally agreed by Mr Scoular and therefore were not open for discussion. Furthermore, Mr Scoular's stance was that allocations were always subject to shareholder approval, which reinforces my view that the most he would have said on 21 June 2022 was that he himself had no objections but it was subject to the approval of shareholders.
86. The Claimants did not plead a case of agreement to the FSE allocations other than by Mr Scoular on 21 June 2022. There was, for example, no case of their having been orally agreed by Mr Johnson Cheung on 2 July 2022.
87. Finally under this head, it is to be noted that the Claimants' case is that what Mr Scoular agreed was the 9 February 2022 allocation spreadsheet. The ETS provided that FSE would be 'subject to performance vesting based on financial performance goals and operational KPIs', which were to be negotiated. The February 2022 spreadsheet did not include the performance conditions to which vesting was subject. Accordingly, even had Mr Scoular agreed that spreadsheet, it would only have been part of what was required to be agreed, and there is no pleaded case that the performance conditions were agreed. Accordingly, oral approval of the February 2022 spreadsheet would not have given rise to a binding entitlement on the part of the Claimants to FSE.

88. In those circumstances, I conclude that the Claimants' case as to the agreement of the FSE allocation percentages does not succeed.

Loss and Quantum

89. The Claimants' pleaded case is as follows:

- (1) That had GI honoured the terms of the ETS, they would have been allocated Initial Subscription Shares, Sweet Equity and FSE on or shortly after the Completion of GI's acquisition of FGL from Playtech. Accordingly, as their primary case, they are entitled to damages by reference to the value of the equity promised them as at or around 11 July 2022.
- (2) This is unaffected by the fact that they were given notices of termination of Employment because (i) pursuant to sections 3.1 and 3.2 of the ETS they were 'Good Leavers', (ii) hence they would have been entitled to receive Market Value for the same in accordance with the Market Value criteria described in section 3.2, and (iii) their damages should be computed by reference to their loss of such Market Value.
- (3) Pursuant to the ETS the Claimants' equity entitlements were in Holdco. In accordance with a Finalto Group Restructuring Memo dated September 2022, Holdco was to hold both the loan between Playtech and FGL which was assigned to GI under the SPA and the entire share capital of FGL; and that, in the premises, the value of the equity in Holdco would reflect the value of both that loan and the share capital.
- (4) The most reliable measure of the Claimants' damages is the value of their equity entitlements under the ETS as a relevant pro rata share of the total consideration paid by GI to Playtech on the date of completion of the SPA. Alternatively they claim such damages as the Court thinks fit.
- (5) The Claimants further claim damages in respect of the loss of the tax benefits which they would have obtained but for GI's failure to issue the Management Equity, Sweet Equity and FSE in accordance with section 1.2 of the ETS. In particular, had the equity allocation been made pursuant to the 'capital gains route' under Section 102 of the Israeli Tax Ordinance, this would have resulted in an effective tax rate reduced from 50% to 30%. But for the wrongful termination of their Employment Contracts they would have retained shares in Holdco for a period of no less than two years after Completion and would consequently have been entitled to the reduced effective tax rate.

90. This claim gave rise to the following issues for consideration and determination.

- (1) Would the Claimants have received, or been permitted to retain, any equity in FGL, given that they left FGL after Completion? Does this depend on whether they are to be regarded as Bad Leavers, Intermediate Leavers or Good Leavers?
- (2) If the Claimants were or are to be regarded as Good Leavers, have they made out a case which is consistent with the ETS as to the 'Market Value' they would have been entitled to receive?

- (3) What is the date at which the value of any equity in Holdco should be assessed?
- (4) What were the valuations of equity in Holdco at the relevant dates?
- (5) Should any damages be assessed by reference to the value of the equity in Holdco on the assumption that the loans from Playtech to FGL were transferred to Holdco or otherwise absorbed into the Holdco capital structure?
- (6) Is the value of the Claimants' equity entitlements to be calculated by reference to the tax saving that would have applied under Section 102 of the Israeli Tax Ordinance?

What is the effect of the Claimants' having left FGL after Completion?

91. Under Clause 3.2 of the ETS, if the Claimants were 'Bad Leavers' they would receive only US\$1 for all equity held. If they were 'Intermediate Leavers' they would receive Market Value for their Initial Subscription Shares and vested Sweet Equity, and US\$1 for unvested Sweet Equity. If they were 'Good Leavers' they would be entitled to receive Market Value for their equity, both vested and unvested.
92. The Defendants' case is that the Claimants are to be treated as Bad Leavers, on the basis that they acted wrongfully and in breach of their engagements, that that wrongdoing meets the definition of 'Cause' in the ETS and would have justified their dismissal for cause, and they would have been so dismissed. Thus in a counterfactual where the Claimants were retained and received entitlements under the ETS, they would later have been dismissed and they would have forfeited any equity they had received. Alternatively they are to be regarded as Intermediate Leavers. By contrast, the Claimants contend that any case that they were not, or not to be regarded as, Good Leavers is bad as a matter of law. Further the case that they were Bad Leavers or could have been dismissed for Cause is wrong in fact.
93. I am prepared to assume that the Defendants are correct that, if the Claimants were in breach of their engagements in the ways pleaded they could have been dismissed for cause, and that they would then have fallen to be regarded as Bad Leavers for the purposes of assessing the quantum of their loss. I find, however, that the allegations of breach of their engagements are not made out, and that they could not have been dismissed for Cause. My reasons for this conclusion are given below in the context of my consideration of the Defendants' Counterclaims. This part of the Defendants' case accordingly fails. The damages recoverable should be assessed on the basis of a counterfactual under which the Claimants were Good Leavers. Whether that means that they are entitled to substantial damages under this head depends, however, on the further points which I consider below.

Is there a case for damages compatible with terms of ETS?

94. The Defendants take the further point that, even if the Claimants are to be treated as being Good Leavers, their claim for damages is not compatible with the terms of the ETS. Thus, the Claimants advance the positive case that their equity should be valued by reference to the criteria in section 3.2 of the ETS because they were Good Leavers, and therefore they would have received 'Market Value'. Under section 3.2 'Market Value' is to be assessed on one of four bases: (i) a new issuance which provides a

valuation, (ii) if there is no issuance, a valuation by a ‘big four’ accountancy firm, (iii) if there is no issuance and no independent valuation, a valuation to be agreed between the leaver and the ‘Holdco Board’, and (iv) failing such agreement, a valuation by ‘Holdco’s auditors or an expert firm of independent accountants (if the auditors are unwilling to act or if directed by Holdco)’. The Defendants point out that none of those things has happened, and also that the Claimants have not advanced a case that they would have happened but for the Defendants’ breach, pleading instead a denial that section 3.2 has any application to the assessment of damages.

95. This point is a somewhat technical one, and I am reluctant to find that the Claimants’ case on valuation fails because it has not been adequately pleaded. Given that there is expert (and some other) evidence as to the value that equity in Holdco might have had, I regard this as evidence of Market Value, and in particular as evidence of what would, but for GI’s breach of the ETS, and had equity been allocated to the Claimants, have been produced as a valuation by independent accountants for the purposes of basis (iv).

Valuation Date

96. The issue of the appropriate valuation date is an important one. The Claimants’ case is that contractual damages are typically assessed as at the date of breach. Their primary case is that, in accordance with that approach, damages should be assessed as at the date on which GI failed to procure the relevant entitlements under the ETS, namely on 11 July 2022, or as at the date of repudiation, which the Claimants contend was 24 November 2022, at the latest.
97. The Defendants say that on no basis can 11 July 2022 (or 24 November 2022) be the correct date. The Claimants’ own case is premised on a counterfactual that they would have retained their shares for a period of no less than two years after Completion; and the Claimants would never have received Sweet Equity or FSE by 11 July 2022.
98. It is the case that the usual date for the assessment of damages is the date of breach, but ‘the rule is applied with a good deal of flexibility’ (see *Chitty op cit* at 30-016). There are many exceptional cases.
99. In the present case, I do not consider that 11 July 2022 was the date of breach. At that point, although Completion occurred, the parties were still seeking to agree the Definitive Documents. In my judgment, repudiation occurred in October or November 2022, or at latest in February 2023. It would, however, be incorrect, in my view, to take any of those dates as that for assessing damages, and it would not be just to do so.
100. The reason is that the exercise which the court is seeking to perform is to put the Claimants, as far as money can do so, in the same position as they would have been had the contract been performed. Here, had the ETS been performed, Sweet Equity would have been allocated quarterly over a three-year period, with the first vesting date on the first anniversary of grant/issue (section 3.3 of the ETS). FSE would have depended on performance vesting based on financial performance goals and operation KPIs. They were not in fact agreed but would on any view have required assessment of performance over a period. Furthermore, it is the Claimants’ own case that they would have retained any equity for a period of two years after Completion. In those circumstances I consider that the earliest date on which valuation should be assessed is 11 July 2024. Even that date is, strictly, too early for the purposes of some of the Sweet Equity, which would

not have been allocated by then, and it assumes that there would have been a dismissal of the Claimants otherwise than for Cause at that point, for otherwise they would not have been Good Leavers until the third anniversary of Completion (see section 3.1 of the ETS). Nevertheless, applying a broad brush approach indicated by various of the authorities, and subject to the point in the next paragraph, I consider it reasonable to take a date of 11 July 2024.

101. The valuations of both experts as at 11 July 2024 are appreciably lower than the amount paid by GI under the SPA, and lower than the estimates of both experts of the value of FGL as at July and November 2022. The Claimants contend that the court should not use a valuation as at 11 July 2024 because, even though they needed to have kept any equity for two years (for Section 102 Israeli Tax Ordinance purposes), they would not necessarily have sold as soon as the two years had elapsed, and would have been especially unlikely to do so in unfavourable market conditions. That may be so, but there is no evidence that FGL has had a higher value since July 2024. The experts' assessments of its 'current' value (which Mr Martin took as at 31 March 2025, and Ms Richards slightly later) were the same for each expert as their valuation as at 11 July 2024. There is thus no basis in the evidence for considering that taking 11 July 2024 rather than a later date is prejudicial to the Claimants.

Valuation of Holdco Equity at relevant date(s)

102. Evidence in relation to the valuation which the equity of Holdco (as holding the business of FGL) would have had as at 11 July 2024 was given by both Ms Richards and Mr Martin. Assuming that the loan had been transferred to Holdco, an issue to which I will come, Ms Richards gave a value to FGL of US\$150-160 million, while Mr Martin gave it a value of US\$200 million.
103. As between the experts on this issue, I prefer the evidence of Ms Richards. This is for two principal reasons. In the first place, Ms Richards relied on a number of types of evidence for her estimate, based on comparable companies, comparable transactions (with adjustments for control premiums and private company discounts) and distributable cash. These appeared to me to be reasonable exercises, competently performed. Ms Richards was not cross-examined on these matters in relation to her 2024 (or 2025) estimates.
104. Secondly, Mr Martin's estimate relied to a considerable degree on a TTB Finalto 2023 Year End Valuation, which gave a value for FGL (ignoring the loan) of US\$200 million, and on the adoption of that figure in GI's Audited Financial Statements for the Year Ended 31 December 2023. However, GI's Audited Financial Statements for the Year Ended 31 December 2024 show a value for FGL (ignoring the loan) of US\$155 million. This throws into doubt the reliability of referring to the 2023 Financial Statements for a valuation as at 11 July 2024.
105. In this regard it is notable that in paragraph 2.3.7 of his Supplemental Report, Mr Martin, after referring to the fact that Ms Richards' valuation for 11 July 2024 was some US\$40 to US\$50 million less than that given FGL by GI in its Financial Statements for the Year Ended 31 December 2023, commented that he had asked for (but had not yet received) the Financial Statements for the Year Ended 31 December 2024, 'to confirm whether it revalued its investment in Gopher (sic) at the amount stated by Ms Richards'.

He clearly considered that it would be a significant indicator that Ms Richards' view was wrong if there had been no such revaluation. In fact, there had been.

106. The Claimants argued that the use of the low valuations in July 2024 reflected the fact that the dismissal of the Claimants in November 2022 and their replacement with a less experienced CEO itself had an adverse effect on the business of FGL, and thus on its value. The Claimants also contended that GI's actions appear to have triggered others in the senior leadership team to depart, and its resiling from the promise of equity will have had a disincentivising effect. Accordingly it was not appropriate to take the July 2024 valuations as the basis for the calculation of the Claimants' loss.
107. Parts of this argument are speculative. There was no good evidence as to the effect of GI's actions on other members of the senior leadership team, or in disincentivising other employees. I accept, however, that it is reasonable to consider that the Claimants had a value to the business, and that their dismissal will have had an effect on its proper valuation. The extent of that effect is not easy to estimate. Ms Richards considered that the ETS offers a reasonable proxy for the value of the Claimants' contribution to FGL, and that the amount of equity that the Claimants were to receive thereunder could be taken as their value to the business. This was in part because the Claimants themselves negotiated the terms of the MIP and the terms of the ETS were, in this respect, similar to those of the proposed Consortium Deal. She thus considered that, as at 11 July 2022, 'a key person adjustment based on an equity share of 4.5% of FGL to be a reasonable indication of the value of the Claimants' contribution to the business as at Completion'. She added that, 'the more time that passes after the key person leaves then the smaller the key person discount as the company will have had more time to adjust and / or replace the key person', and that 'the current value of FGL will be less impacted by the absence of the Claimants than the value as at 11 July 2022.'
108. For his part, Mr Martin stated that he had been unable to identify any cashflows or profits specifically related to the Claimants, individually or in combination, but did not find this surprising. He did not consider that he had sufficient information to determine a market value for FGL without the Claimants as at 11 July 2022. He did not consider the 4.5% equity envisaged to be provided to the Claimants as part of the GI acquisition to indicate any specific part of the value of FGL which was attributable to them. Neither expert produced a valuation of FGL in July 2024, or currently, on the basis of a counterfactual whereby the Claimants were still employed.
109. Faced with this evidential position, I recognise that it is impossible to form a precise view as to the extent to which the absence of the Claimants from the business since November 2022 has affected the value of the business in 2024 or 2025. The best proxy, imperfect though it is, nevertheless appears to me to be the percentage amount of equity which it was envisaged should be transferred to the Claimants under the ETS, including the Sweet Equity, which was to vest over a period of three years. What that means for present purposes is that, if it were otherwise appropriate to take a valuation date of 11 July 2024, the relevant valuation, which has been produced on the basis of the absence of the Claimants since November 2022, should be increased by 7.5% to give a valuation of FGL hypothetically unaffected by the absence of the Claimants.

The Loans

110. How the loans are to be regarded in any estimation of the value of Holdco is another matter of considerable importance and again is not straightforward.
111. To recap, under the SPA, GI agreed to acquire two assets. One was 100% of the shares in FGL. The other was the benefit of a loan of € 172,703,191 between Playtech, as creditor, and FGL, as debtor. By a further loan agreement entered into between Playtech and FGL on the Completion Date, Playtech advanced a further US\$18,612,947 to FGL. Together these have been called 'the Loans'.
112. If the Loans would have been transferred to Holdco, so that Holdco had the benefit of the debts thereunder, then their value will be taken into account in the value of Holdco. If, on the other hand, those Loans are not to be regarded as having been transferred to Holdco, they will have remained as a liability of FGL to GI, and thus as a c. US\$200 million liability on FGL's books. That in turn would render the value of Holdco's only asset, the shareholding in FGL, much smaller or nil.
113. The Claimants contend that the Loans are, for relevant purposes, to be regarded as assets of Holdco for, essentially, two groups of reasons. One group is based on contentions as to the effect of the ETS or an estoppel. The other is based on a contention that the Loans would in fact have been transferred to Holdco had it been set up. I will look at these two groups of points in turn.
114. In relation to the construction of the ETS, it is, in my view, impossible to say that it requires the Loans to be transferred to Holdco, or otherwise provides that they should be taken into account in valuing Holdco or the equity in it. The Loans are not mentioned. There is no term dealing with their transfer.
115. The Claimants rely on a number of provisions of the ETS which, they contend, provided for the preservation of the economic value of their equity and thus, they say, dictated treating the Loans as an asset of Holdco.
116. Specifically, they point to the second full paragraph of section 1.2 ('If the Lead Investor's ...'). They contend that the effect of this clause is that whatever investment structure was implemented by GI, it was required to 'ensure that the economic rights of the Initial Subscription Shares are not adversely affected as compared to the instruments held by the Lead Investor', and that this means that if the Loans were otherwise relevant to valuation, they 'would fall to be ignored by reference to this paragraph as, otherwise, the economic rights of [the Claimants] would be adversely affected as against an investment by way of purchase of Ordinary Shares.'
117. In my view this clause is of no relevance to the present issue. It is dealing with GI's investment in Holdco, and providing that if its investment takes a form other than the holding of Ordinary Shares, the management's investment in Holdco will take the same form, or at least GI should ensure that the economic position of the Initial Subscription Shares is not adversely affected. An example of what is being dealt with might be if GI invested in Holdco by way of a convertible bond, which might be converted into new shares. The clause cannot be read as placing any obligation on GI to transfer its investment in FGL to Holdco.
118. Much the same can be said about the other clauses relied on by the Claimants in this connexion. Section 7.1 provides that management will have the benefit of a standard

suite of minority protections. These are to be minority protections in respect of their shareholdings in Holdco, once issued. It does not provide for the assets which GI must transfer to Holdco. Section 10.3 provides for a restriction on the ability of the Lead Investor to change the structure of the investment after it has initially been entered into. Section 10.5 is a provision that, after the entry into of the Investment Agreement and adoption of Articles of Holdco, the Lead Investor may, inter alia, make amendments to those documents, but subject to the constraint that no amendment should be made which would be materially or disproportionately adverse to the position of the Managers. It does not provide for there to be a change from the status quo (under which GI is the creditor under the Loans) so that Holdco is the creditor or otherwise entitled to the benefit of the Loans.

119. In addition to these arguments based on the terms of the ETS, the Claimants also sought to achieve the same result by another means, namely by arguing that the Defendants are estopped from denying that the true economic value of the Claimants' equity was less than US\$250 million. I have already considered and rejected that case.
120. The other group of points put forward a factual case. The contention here is that the Loans would actually have been transferred to Holdco. As I understood it, this is relied on to argue that this informs how one must understand 'the capital of Holdco' (ie that that phrase means equity in a company which has the benefit of the Loans), or at least that, given that there would in fact have been such transfer, all questions of valuation of Holdco for the purposes of the damages assessment must proceed on that basis. What is particularly relied on is the Finalto Group Restructuring Memo as showing that there would be a transfer of the Loans to Holdco.
121. The problem with this case is that there is no reliable evidence that GI said or indicated that the Loans would be transferred, or that this was discussed with GI during the period up to Completion, or indeed up to the breakdown of relations between the parties. Thus, there was no mention of this in the Action Plan created by KPMG Israel in April 2022, or in subsequent versions of this. The first reference to transfer of the Loans in the documentation relating to the restructuring came in a 'Restructuring Appendix' sent by Ms Gueta to Mr Schlachter on 21 September 2022. Using the Restructuring Appendix as a basis, and at Mr Hoffman's request, Mr Schlachter produced the 'Restructuring Memo' and sent this to the Claimants (and Ms Gueta) on 23 September 2022. It does not appear that either the Restructuring Appendix or Memo was sent to GI. Mr Scoular's evidence was that he had never seen the Restructuring Memo.
122. What did happen was that Ms Gueta prepared and sent to Mr Schlachter on 29 September 2022 a revised version of the Excel Action Plan which had previously been prepared by KPMG. This contained new language in steps 2.2 and 2.3 (rows 12 and 13) in relation to transferring the existing loan. Mr Schlachter sent this to the Claimants on 30 September 2022. On 21 October 2022 Mr Schlachter sent this document to the FGL Board, under cover of an email which described it as 'the step plan and structure that KPMG presented to the Gopher team on the 7th of July in the conference call we had with them'. I am satisfied that that was inaccurate, in that rows 12 and 13 had not been added until September 2022. The Defendants suggested that what was being done here was a deliberate attempt to slip in a revised version of the document, hoping that GI would agree to it without appreciating that it contained new language. I do not accept that, and I accepted Mr Schlachter's evidence that he believed that what was being sent on had been presented on 7 July 2022, even though it had not been. Be that

as it may, there was no agreement on the part of GI or its representatives to the revised Action Plan.

123. While there was evidence from Mr Hoffman to the effect that the transfer of the Loans had been agreed with Mr Scoular, this is an area in which I consider that the contemporary documents provide the best evidence, and they do not support a case that this was said or agreed on the side of GI or its representatives.
124. Finally, I reject the suggestion made by the Claimants that there was no commercial rationale which could have justified not transferring the Loans to Holdco. For GI to maintain a position where the Loans were owed to it, rather than being owed to Holdco, would give GI a better prospect of recovering a larger proportion of the Loans in the event of an insolvency of FGL by comparison with a structure whereby the Loans were owed to Holdco and there were other shareholders of Holdco. Moreover, such a structure (where the Loans remained owing to GI) would not preclude GI's making a sale of the FGL business to a third party: GI could transfer the benefit of the Loans by assignment and also sell its shares in Holdco.
125. On the basis of the foregoing, I conclude that there was no contractual agreement in the ETS, or elsewhere, that the Loans would be transferred to Holdco. There was no relevant estoppel. Furthermore, GI never indicated that the Loans would be transferred nor was it an inevitable part of the establishment of a Holdco that they would be.
126. This conclusion may have significant consequences for whether the Claimants can recover substantial damages on their Management Equity claims. It is the result, as I see it, of the Claimants having not been able to secure more by way of binding terms than those set out in the ETS. Even obtaining those as binding commitments was clearly a point which had been contested during negotiations. What was agreed cannot, however, be added to other than by way of conventional processes of construction or implication (or estoppel). None of those can yield a result whereby the Loans have to be regarded as transferred to Holdco.

Israeli Tax Treatment

127. The Claimants claim additional damages or the grossing up of damages awarded in respect of their claim for equity, to put them in the same net position as they would have been had the equity been made under the 'capital gains route' under Section 102 of the Israeli Tax Ordinance.
128. The basis of this claim is that any award of damages to the Claimants will be taxed as regular income in Israel. To put the Claimants in the same net position as they would have been if the 'capital gains route' under Section 102 had applied, additional damages must be awarded or damages must be grossed up, due to the marginal rate of tax being lower under the Section 102 scheme.
129. The Claimants illustrated the nature of their case as follows. Under the Section 102 regime, applying what it was common ground was the marginal capital gains rate of 30%, an equity award with a gross value of £100 would yield a net receipt to the Claimants of £70. By contrast, any damages awarded by the Court will be subject to Israeli income tax at 50%. In order to place the Claimants in the same position (£70),

an award of £140 is required. Therefore damages in respect of breach of the ETS must be grossed up by 40% to reflect the loss of the Section 102 tax treatment.

130. The Claimants point to section 1.2 of the ETS, where it provides:

‘The Lead Investor will use reasonable efforts to procure that the grants will be under the “capital gains route” under Section 102 of the Israeli Tax Ordinance’.

They contend that, given that provision, the further, or grossing up, damages are to be awarded either as giving effect to the classic compensatory principle in Robinson v Harman (1848) 154 ER 363, or as damages for consequential loss payable as compensation for loss of use of the equity interest that the Claimants would have received under the ETS; alternatively by way of an adjustment to the award of damages to take account of the differential rates of tax applicable to the award of damages compared with the position the Claimants would have been in had there been no breach of duty, on the basis of the decision in British Transport Commission v Gourley [1956] AC 185.

131. The Defendants did not seriously challenge that, if it were correct that any equity allocation would have been subject to a Section 102 tax treatment, the Claimants would be entitled to further damages or an uplift on damages. That appears to me to be correct, in order to give effect to the compensatory principle.
132. What was at issue here was whether any equity allocation would have been subject to a Section 102 tax treatment. The Defendants point out that the only relevant obligation on GI in section 1.2 of the ETS was to use reasonable efforts to procure that the grants should be under Section 102. They contended that any grants would not have been eligible for Section 102 treatment, or at least that ‘reasonable efforts’ could have been used without achieving that they were eligible.
133. As I have said above, I had the benefit of expert evidence from Israeli tax lawyers in relation to Section 102. There was much common ground between them. There was no dispute, as a starting point, that the terms of Section 102 of the Israeli Tax Ordinance are as set out in Annexe 2 to this judgment.
134. The experts were agreed that Section 102 of the Israeli Tax Ordinance regulates the tax treatment applicable to employee equity compensation in Israel, including stock options, restricted stock units and shares granted by an employer (or its affiliate as provided in Section 102(a) of the Ordinance) to employees or office holders; and that the purpose of Section 102 is to encourage employee participation in company ownership while providing tax advantages to employees.
135. They agreed also that, under the ‘Capital Gain Route’ of Section 102(b)(2) of the Israeli Tax Ordinance, if a trustee nominated by the company and approved by the Israeli Tax Authority (‘ITA’) holds equity issued under an ITA-qualified plan for the benefit of an employee for a period of at least 24 months from its date of grant, the resulting benefit from the sale (or transfer) of the equity will be subject to a 25% tax rate only (plus a possible surtax of 5%). This was instead of tax as ordinary work income at a significantly higher rate (of up to 50% including surtax). They agreed further that an employee holding qualified equity should be employed by, or be an office holder of, an

‘Employing Company’ (as defined in Section 102(a) of the Ordinance), which includes an Israeli resident company that is an affiliate of the issuing company or a foreign resident issuing company with an Israeli ‘permanent establishment’ of the issuing company.

136. The experts also agreed that, while the provisions of Section 102 are relatively straightforward, the ITA has, over the years, adopted numerous interpretations and conditions that are not explicitly set out in the Ordinance or the Rules, and that the ITA influences practice in relation to Section 102 and the ‘capital gains route’ through its guidelines and publications. The Israeli courts have only rarely addressed Section 102 and its interpretation.
137. In light of the evidence given by the experts, there were, by the end of the case, as I understood it, essentially four issues in this area.
138. The first was whether any grant of equity to the Claimants would not have qualified for the ‘capital gains route’ under Section 102 by reason of the employing entity. As to this, there was, as I understood it, no dispute that the putative ‘employing company’ would have been Holdco, and Holdco would not have been an Israeli entity. However, the Defendants also accepted that it was intended that the Claimants would have been directors of Finalto Israel, and thus that Section 102 was potentially applicable, because the Claimants might have qualified as officers (and thus ‘Employees’) of a subsidiary of the Employing Company. What was in issue was as to whether Section 102 would be inapplicable because it would not have been possible to demonstrate (in particular to the ITA’s satisfaction) that the Claimants had received their equity in consideration of work done for that subsidiary.
139. I regarded it as unlikely that this would have proved a difficulty which could not have been overcome with reasonable efforts. The Claimants would have been directors of an Israeli entity, and documentation to that effect could have been provided to ITA. Finalto Israel had about 250 employees. I think it likely that the ITA could have been satisfied that the Claimants’ equity was sufficiently related to their work as directors of this significant Israeli company and operation.
140. The second issue was as to call options. What is in issue is Holdco’s repurchase rights over the Claimants’ equity once they should become ‘Leavers’ under the ETS. Mr Sever’s evidence was that it is the ITA’s position that a company’s right to repurchase shares from its employees disqualifies Section 102 Capital Gain treatment for that equity. His evidence was that this position was formalised in ITA guidance published in December 2024.
141. What that guidance indicates is that provisions in a scheme whereby there should be repurchase of the shares without consideration due to cause (ie a type of Bad Leaver provision) is considered to be compliant with the ITA’s guidance that the allocating company should have no right to repurchase the rights allocated to the employee. It also indicates that an application can be made for a ‘green route’ ruling (using Form 931) in cases where the employee is required to return his shares only on the occurrence of ‘absolute termination of the employer-employee relationship’ and where the consideration to the employee is at market value, and ‘there must have been no prior agreement or understanding with the employee for cash settlement.’

142. In my judgment, what are envisaged by way of repurchase rights under the ETS are either compliant with the ITA guidance in relation to 'Bad Leaver' provisions, or were, or using reasonable efforts could readily have been made, suitable for a successful tax ruling using Form 931.
143. The third point related to the vesting period. Mr Sever gave evidence to the effect that the ITA would look with suspicion at arrangements where the vesting period was less than 12 months because 'they would be concerned that ... the award is not being provided for the work expected in the role for which they are granted but for something else, normally a previous role or a previous service.'
144. Mr Sever accepted that if shares were immediately vested and transferred to a trustee and held for two years, that would not be objectionable for the purposes of qualification under Section 102.
145. Mr Perlmutter agreed that an ITA Unofficial Instruction Letter required the disclosure of awards with a vesting period shorter than a year, but referred to the fact that that Letter does not mention that an award would be disqualified if there was a vesting period shorter than one year. He said, furthermore, that, even if that were the ITA's view, it would contradict the wording of Section 102.
146. What the Instruction Letter appears to indicate is that the ITA would require persuasion if there was a short vesting period, rather than having a view that such a period would necessarily disqualify the award from Section 102 treatment. It becomes somewhat speculative to ask whether the fact of a short vesting period would, in the counterfactual case of no breach of the ETS, have led to any award made being found not to be Section 102 compliant. I incline to the view that if there had been an award made, and there had been disclosure of the vesting period, the award would have been accepted for Section 102 purposes. The question would have been essentially a factual one: could a cogent case be advanced that the awards were referable to work over a period of time, rather than for past or different services? I suspect that, given reasonable efforts, such a case could have been put forward.
147. The fourth point relates to vesting on termination. Mr Sever's evidence, which I accept, was that the ITA's long-standing position (which since March 2025 has been incorporated into ITA published guidelines) is that 'where an acceleration mechanism is applied upon the termination of the employer-employee relationship and not as part of an exit or IPO, the income classification in respect of options whose vesting is accelerated will be Employment income and the tax liability will be calculated in accordance with the tax rates set out in section 121 of the Ordinance and section 121B of the Ordinance'.
148. The Claimants' pleaded case is that they would have retained the equity awarded pursuant to the terms of the ETS for a period of at least two years. They claim for damages in the amounts of the initial equity, the Sweet Equity and the FSE, and the uplift on all those amounts. I think it clear that the Claimants are not entitled, insofar as they claim on the basis of leaving the equity with the trustee for a period of two years, to claim an uplift on any Sweet Equity or FSE which had not been vested by the end of that period. They could only claim for such amounts as at the end of that period if there had been an acceleration of vesting on their termination at that stage as Good Leavers. But if that is the counterfactual, those amounts would not qualify for Section 102

treatment. Further, there is no evidence that the Claimants would have arranged for these amounts to be with the trustee after the end of the two year period. In those circumstances I think it right to say that the Claimants have not made out a case that they are entitled to an uplift on those amounts of equity (assuming that they are entitled to claim in respect of them).

Summary as to Loss and Quantum

149. My findings in relation to the issues in relation to loss and the quantum of loss may be summarised as follows:

- (1) The Claimants are to be treated as if they would have been Good Leavers for the purposes of the ETS.
- (2) A case has been made as to 'Market Value' by reference to the expert and other evidence called.
- (3) The date at which the value of equity in Holdco should be assessed is 11 July 2024.
- (4) The valuation of Holdco at that date, assuming the transfer of the Loans to it, was US\$150-\$160 million. Some adjustment to that figure would be appropriate to seek to take account of the fact that the Claimants had not been employed by FGL since November 2022.
- (5) However, the valuation should not proceed on the basis that the Loans were transferred to Holdco. There was no contractual agreement that GI should transfer the Loans to Holdco, nor a relevant estoppel. It was also not established that GI would in fact have transferred the Loans.
- (6) An award of damages to the Claimants in respect of management equity should, to the extent I have described, be 'grossed up' to reflect the fact that the Section 102 capital gain route would probably have been applicable.

Employment Claims

150. The Claimants contend that, upon their termination, they were entitled to certain amounts under what they claim were their Employment Contracts with FGL. These claims have themselves given rise to a number of sub-issues.

Introduction to the Employment Claims

151. The basic facts are clear. On 4 November 2022, FGL, through Mr Tam, wrote to Mr Hoffman stating:

'In accordance with Clause 2.1 of your employment contract dated 5 December 2012 (which transferred from PTVB Management Limited to the Finalto Group on completion of Gopher's acquisition of the Finalto Group Limited from Playtech plc) which is governed by English law (the "Employment Contract") and the amendment letter to that Employment Contract dated 9 January 2017 (the "Amendment Letter"), we write to provide you with twelve months' notice of termination

of your employment with effect from today's date. In accordance with Clause 14.2 of your Employment Contract we have exercised our sole and absolute discretion to make a payment to you in lieu of such notice. As such, your last day of employment with us is today's date and we shall make the following payments to you:

- i. Termination payment: we believe will amount to the equivalent of nine and 10/12 months' basic salary;
- ii. Payment in lieu of notice: the equivalent of 12 months' basic salary in lieu of 12 months' notice of termination;
- iii. Bonus payment: a pro rata amount of the bonus paid to you in respect of the last financial year; and
- iv. Holiday pay: pay in respect of any outstanding but untaken holiday in the current holiday year carried forward from the previous holiday year.'

152. On 4 November 2022, Ms Teague wrote to Mr Greenbaum providing a notice of intention to terminate Mr Greenbaum's consultancy agreement. On 24 November 2022 Mr Tam for and on behalf of Clear Consulting sent a notice of termination terminating Mr Greenbaum's consultancy agreement with immediate effect.
153. The Claimants have not been paid any of the sums they contend were due on termination.
154. Before considering the points which arise, it is helpful to record, as the Claimants submitted, that in Employment cases it is far from unknown for the arrangements between the parties not to have been entirely documented in the formal contracts. It may be necessary to look at other communications and how the parties conducted themselves to ascertain the true nature and terms of the relationship. An example is provided by the case of Carmichael v National Power Inc [1999] 1 WLR 2042.

Was FGL the Claimants' employer?

155. The first issue which arises is as to whether FGL was the Claimants' employer as at the date of termination. In the case of Mr Hoffman this is not (now) in dispute. The Defendants accept that, although he had been employed by PTVB Management Ltd prior to the acquisition, he had been employed by FGL since that. That amounts to an acceptance that an Employment Contract had come into existence with FGL.
156. In the case of Mr Greenbaum, this is not accepted by the Defendants. Prior to the acquisition he had undoubtedly been engaged as an 'independent contractor' under a 'Consultancy Agreement' with Clear Consulting. One of the provisions of that Consultancy Agreement was that nothing in it 'shall be deemed to imply that the relationship between [Clear Consulting] and [Mr Greenbaum] ... is an employment relationship.'

157. The Claimants argue that there was, after Completion, the creation of a new Employment agreement with FGL. They say that, just as a contract between Mr Hoffman and FGL came into existence, so did one between Mr Greenbaum and FGL. They rely on the terms of draft Employment contracts prepared on 28 June 2022 for Mr Hoffman and Mr Greenbaum. Both referred to FGL as employer. The salary provision for Mr Greenbaum was £360,000. That was an increase on the sum in his Consultancy Agreement. They also refer to an email from Mr Schlachter dated 24 October 2022, which confirmed that Mr Greenbaum had been paid a bonus for 2020, which was 125% of his annual salary for that year, and that ‘since July 2022 Finalto has paid you a monthly salary of GBP 30K + 20% social benefits.’
158. The Defendants contend, by contrast, that the draft Employment contracts had no effect unless and until they were executed, which they never were. They refer to the fact that Mr Schlachter’s email of 24 October 2022 does not itself refer to a transfer of Employment to FGL, and also point out that Mr Greenbaum continued to invoice Clear Consulting a monthly fee until September 2022.
159. While this point is not free from doubt, I conclude that FGL had not become an employer of Mr Greenbaum on Completion. What was instead the position was that the parties intended that Mr Greenbaum should be remunerated at the levels agreed in the ETS and specified in the draft Employment agreement, and he was; but that this should be done by way of payments under the Consultancy Agreement until a new Employment agreement was signed (which did not occur).
160. This is what is indicated by Mr Greenbaum’s email of 13 September 2022 to Mr Hoffman and Mr Schlachter, which stated:
- ‘Hi, I’m attaching an invoice for the months of July and August.
Sums are aligned with the new commercials agreed with Gopher.
- For now, Still going out as invoices. After the signing on the new
employment agreement, the consideration will switch and be
paid as a salary.’
- The invoice attached was addressed to Clear Consulting and was
for an amount of £36,000 x 2, for ‘Consulting July+August
2022’.
161. Furthermore, Mr Greenbaum’s own evidence was that he had submitted an invoice to Clear Consulting because ‘as far as I understood it from finance the entity did not exist or was not in position to pay me yet, so this was in a transition period.’ And Mr Schlachter’s evidence was that Mr Greenbaum had continued to be paid by way of invoices ‘because he didn’t have any employment agreement.’ The invoices had been paid, according to Mr Schlachter, by ‘the Finalto group’, and not specifically by Clear Consulting; but I drew from that evidence that they had not been paid specifically by FGL either. It was Clear Consulting that terminated Mr Greenbaum’s engagement under the Consultancy Agreement on 24 November 2022.
162. My conclusion is, accordingly, that Mr Greenbaum had not become an employee of FGL by the time his Consultancy Agreement was terminated. It had been intended he

should become an employee of FGL and be paid a salary, on signature of an Employment Contract, but this never happened.

163. This is a somewhat technical conclusion, and one which I reach without enthusiasm, as it seems clear to me that it was intended that Mr Greenbaum should have, including in the 'interim period' prior to the execution of an Employment Contract, the same 'commercial' terms as had been provided for in the ETS, and which were specified in the draft Employment Contract. But in the interim period it was Clear Consulting which was the counterparty to the arrangement, and Clear Consulting has not been made a party to the present proceedings.

What were the terms on which the Claimants were engaged?

164. I have already set out my conclusions on this question insofar as it relates to Mr Greenbaum in the foregoing. He was not employed by FGL, but his engagement was intended to be on the commercial terms specified in the draft Employment Contract.
165. There remains the question of the terms on which Mr Hoffman was employed by FGL post Completion, it being conceded in his case that FGL became his employer. The specific issue in dispute is as to whether he was entitled by way of PILON to a bonus payment. Under his Employment Contract with PTVB, clause 14.2(b), there was provision for a payment based on his bonus for the previous year. He had, however, received no bonus for 2021. But he contends that his contract with FGL after Completion incorporated a provision, in line with section 8.3 of the ETS, for a bonus of 75% of his 2022 salary. Further he contends that he is also entitled to claim in respect of a bonus for the financial year 2023, calculated as 75% of Mr Hoffman's pro rata salary for 308 days of 2022 (ie until 4 November 2022).
166. I consider that Mr Hoffman's Employment after Completion, at this stage by FGL, must be taken to have been on terms including an entitlement to a bonus for 2022 of 75% of his 2022 salary. It was understood between the parties that the 'commercials' of the Employment arrangement, as set out in the ETS, and reflected in the draft Employment Contract, should apply for Mr Hoffman, just as they applied for Mr Greenbaum. This appears to me to be evidenced by communications between Mr Hoffman and Mr Scoular on 13 and 27 September 2022. In those, Mr Hoffman forwarded an email from Mr Greenbaum, which referred to the sums he had included in his invoice for August and September as being 'aligned with the new commercials agreed with Gopher'. Mr Scoular did not challenge that there were new 'commercials' which had been agreed or which were applicable to the engagement; instead he asked 'Presume this includes the 20% pension contribution', thus indicating that he considered that the current arrangements for Mr Greenbaum should be on those terms. Then on 27 September 2022 Mr Scoular wrote to Mr Hoffman 'I presume you have been getting paid from a Finalto entity now?' What these emails indicate to me is that Mr Scoular was aware that Mr Greenbaum and Mr Hoffman considered that there were 'commercials agreed with Gopher' which governed their engagements; and aware also that the formal documentation might not have caught up with the current realities or the basis on which Mr Greenbaum and Mr Hoffman understood themselves to be working, which included those 'commercials'. I also accept Mr Greenbaum's evidence that Mr Scoular knew very well about what had been agreed as to his bonus arrangements in the ETS. He must have had the same knowledge of the bonus arrangements for Mr Hoffman.

167. In the circumstances, I consider that the right analysis is that the new contract of Employment which the Defendants accept must have come into existence between Mr Hoffman and FGL was on terms that he should be entitled to the benefit of the bonus policy indicated in section 8.3 of the ETS and clause 10.2 of his draft Employment Contract.
168. These conclusions mean that Mr Hoffman is entitled to recover in respect of his Employment Claims for contractual severance, PILON, the 2022 bonus and holiday, as set out above. I cannot, however, see that he had an entitlement to a bonus in respect of 2023. Section 8.3 of the ETS does not, unlike for 2022, provide specifically for a 2023 bonus. Neither clause 10 nor clause 23.1 of his draft Employment Contract (nor indeed clause 14.2(b) of the Employment Contract with PTVB) can, in my view, be read as establishing any entitlement to a bonus in relation to 2023.

Whether the Defendants are not liable to make any termination payments because of the Claimants' misconduct

169. The case made here by the Defendants is that the Claimants were in breach of their services agreements, by reason of their having, during the course of their engagements, 'repeatedly mismanaged FGL's commercial affairs, abused their senior positions within FGL, and misused FGL's funds.' These breaches, the Defendants say, were 'serious' within the meaning of Mr Hoffman's Employment Contract and 'material' within the meaning of Mr Greenbaum's Consultancy Agreement, and entitled FGL / Clear Consulting to terminate those agreements without making post termination payments. Alternatively they were repudiatory breaches. Accordingly, the Defendants say, there was no obligation to make the post termination payments, or, if the obligations accrued, the Claimants' claim fails for circuity of action.
170. The conduct of the Claimants relied on here is essentially that which is the subject matter of the Defendants' counterclaims, and I consider it in detail in that context. Here it suffices to say that, even if there had been the misconduct alleged, I do not consider that it would provide an answer to the Claimants' claim for post-termination sums. The position is that, as at the date of termination, the engagements were on foot. Even if there had been repudiatory breaches of contract by the Claimants, there had been no acceptance of that repudiation by the time of termination. When the terminations occurred, FGL/Clear Consulting opted for immediate cessation of Employment / consultancy. In the case of Mr Hoffman, FGL expressly opted for PILON. In each case, the termination was lawful, and led to an accrual of debt obligations to the Claimants.
171. The position in this regard appears to me indistinguishable from that in Cavenagh v William Evans Ltd [2012] EWCA Civ 697. At [37] Mummery LJ said:
- '[37] Having chosen to terminate the service agreement in that way [ie pursuant to a contractual power to terminate with PILON], the company was not entitled to resile from the contractual consequences of its choice by later following the different common law route of accepting repudiation by relying, after the termination event, on an earlier act of misconduct by Mr Cavenagh of which it was unaware on [the date of the exercise of the contractual power]'.

172. The position was explained further by Tomlinson LJ, in particular at [55]:

‘When an employer elects to terminate a contract on notice and offers payment in lieu of that notice it elects for a clean break. It takes the risk that it may subsequently discover matters which would have justified summary termination for breach, just as it takes the risk that the employee might subsequently have died or found a more attractive job elsewhere. The employers here obtained precisely that for which they had bargained. There is no basis upon which they either can or in my view should be able to deny to their employee that for which correspondingly he bargained.’

173. For these reasons I would answer this question to the effect that the Defendants cannot successfully contend that they have no liability for the post termination payments by reason of the Claimants’ alleged misconduct.

174. This conclusion does not, however, deal with the question of whether the Defendants may have counterclaims in respect of the Claimants’ misconduct, which might possibly give rise to a defence of circuity of action. I turn to deal with the Defendants’ counterclaims now.

The Defendants’ Counterclaims

175. Both GI and FGL bring counterclaims against the Claimants.

(1) GI’s counterclaims comprise (i) rescission of the ETS for fraudulent misrepresentation; (ii) damages for deceit; and (iii) damages for breach of the ETS.

(2) FGL’s counterclaims comprise damages for breach of the Services Agreements.

Alleged fraudulent misrepresentations

176. GI’s counterclaims for rescission and damages for deceit are based on allegedly fraudulent representations made by the Claimants in the MWD. The statements relied upon are in Schedule 2 thereto. In paragraph 8.2 it was stated that:

‘(a) There are no existing contracts or arrangements between, on the one hand, any Group Company and, on the other hand, any Management Warrantor, any person who is or was a shareholder in a Group Company, or any person connected with any of them other than on normal commercial terms in the ordinary and usual course of business.

(b) No Group Company is a party to any material contract, arrangement or understanding with any current or former Worker, or any person connected with any of such persons, or in which any such persons is interested (whether directly or indirectly) other than on normal commercial terms in the ordinary and usual course of business.’

177. ‘Group Company’ was defined to comprise FGL and any subsidiary undertaking (and together the ‘Group’). A ‘Worker’ was defined to comprise ‘the Employees, directors, officers, workers and self-employed contractors of the Group’.

178. The MWD was supplemented by the Disclosure Letter. The Disclosure Letter contained a number of statements. One of the effects of the Disclosure Letter was to limit the scope of the Warranties in the MWD: pursuant to clause 2.3 of the MWD, the warranties given were ‘subject to ... the matters being Disclosed.’
179. The Schedule to the Disclosure Letter included certain statements relating to Mark Lauterstein, including:

‘Mark Lauterstein

Trading related arrangements are in place with Finalto 360 client Lead Capital (see documents in folder 2.7.5.8 – Client E) which is owned (or majority) owned by a former employee of the Group, Mark Lauterstein. These are on ordinary course (and arms-length) terms.

...

A loan was made in 2019 to Mark by [FGL] ... to support his business activities (See document 2.7.15) This loan has been repaid. Mark Lauterstein (as a former employee) participated in the Tradetech Holding Limited Performance Share Plan (see document 1.6.4.1.2 for his option agreement). By agreement between Mark and Finalto (see document 2.7.5.8.2.1 para 7), the Loan was repaid by Mark out of the proceeds of the award from that plan (in November 2020).

Pursuant to a domain name sale agreement (doc 2.7.9) the tradefx.com domain was sold to a company in the Lead Capital group (called Silverclip Holdings at the time and now called Trade Capital Holdings Limited) with the consideration of \$3m to be paid over a period of 20 years. This payment obligation was novated to Mark Lauterstein in March 2020 (see novation doc at 1.3.22.4).’

180. The Defendants contend that the MWD (considered with the Disclosure Letter) contained fraudulent false representations to the following effects:
- (1) That there was no Employment arrangement with Mr Lauterstein other than on normal commercial terms;
 - (2) That there were no arrangements between the Finalto Group and Lead Capital which were not on normal commercial terms and in the ordinary and usual course of business. This was a misrepresentation because:
 - (a) The domain name purchase agreement in relation to trade.com; and/or
 - (b) The Lead Capital Key Terms; and/or
 - (c) The Key Way Loan and Key Way Key Terms

was or were not on normal commercial terms in the ordinary and usual course of business.

181. These misrepresentations are said to have been fraudulent, and to have induced the entry of the SPA and the ETS.
182. This claim gives rise to a number of issues, which I think may fairly be summarised as follows:
- (1) Is GI precluded from bringing a counterclaim in respect of these alleged misrepresentations in excess of £1 on the basis that recourse is only against GI's insurer?
 - (2) Were any of the representations alleged made?
 - (3) If so, were the representations untrue?
 - (4) Did the Claimants know that the representations were false or were they reckless as to their truth?
 - (5) Were the representations made in order to induce GI to enter into the ETS, the SPA and complete the acquisition? Did GI rely on the representations by entering into the ETS, the SPA and by completing the acquisition?
 - (6) What if any relief is GI entitled to?

Is there a contractual bar to these claims?

183. The first of these issues is whether GI's counterclaim is barred contractually. The Claimants' contention here relies on Clause 3 of the MWD. That provides in part:

'3.1 The Purchaser [ie GI] agrees that, notwithstanding any other provision of this Deed:

(a) it will not be entitled to make, and will not make:

(i) any Claim against the Management Warrantors [viz the Claimants] (other than a Conduct Claim) [viz a claim in respect of conduct between the date of the MWD and Completion] except to the extent of £1.00 (one (1)) pound sterling in aggregate; or

...

(b) its sole recourse in respect of all Claims (other than any Conduct Claim) shall, except to the extent of £1.00 (one (1)) pound sterling, be to make a claim under the W&I Policy; and

(c) the absence of a recourse of the Purchaser under the W&I Policy in respect of any Claim (other than any Conduct Claim, including, without limitation, as the result of any limitation, exclusion, deduction or derogation under, or any invalidity or

illegality of, the W&I Policy) and/or any inability of the Purchaser to obtain any remedy in respect of a Claim (other than any Conduct Claim) under the W&I Policy for any reason whatsoever (including, without limitation, any winding up, bankruptcy or other insolvency proceedings affecting the W&I Insurer, any failure of the W&I Insurer to perform its obligations under the W&I Policy or any deductible, threshold or other financial limitation applying to the W&I Policy) shall not affect or increase the liability of the Management Warrantors under this Deed.

...

3.3. The Purchaser covenants and warrants to the Management Warrantors that:

(a) the W&I Policy includes terms pursuant to which the W&I Insurer agrees to not exercise any rights of subrogation it may have against any Management Warrantor except where any loss that is under the W&I Policy arises as a result of any fraud by that Management Warrantor in giving the Warranties (provided always that the fraud or fraudulent misrepresentation of any such Management Warrantor shall not in any way increase or otherwise affect the liability of, or the ability for the W&I Insurer to exercise any rights of subrogation against, any other Management Warrantor)...

184. 'Claim' is defined in the MWD as:

"'Claim'" means any claim, proceeding, suit or action against any Management Warrantor arising out of or in connection with this Deed (including for the avoidance of doubt and without limitation any claims relating to Tax or the Tax Covenant)'.

185. GI contends that the limitation in the MWD is not applicable to its claims for fraudulent misrepresentation because its claim 'is not a breach of warranty claim under the MWD' but is 'a claim in fraudulent misrepresentation / deceit'; and thus that there were 'no words (let alone clear words) in the MWD to exclude or limit liability for fraud'. GI also refers to paragraph 12 of Schedule 3, which provides that the liability cap should not apply to claims in fraud.

186. In my judgment, the MWD properly construed does not confine a claim against the Management Warrantors for fraudulent misrepresentation / deceit to £1, or provide that the sole recourse in respect of such a claim is under the W&I Policy. I say this for these reasons:

(1) While the definition of 'Claim' is wide, and the language of Clause 3.1(a) precludes the making of 'any Claim', there is no express mention of fraud. Given that it will ordinarily require clear words for an exclusion or restriction on suit to apply to fraud, this is of some significance.

- (2) There is an indication in another part of Clause 3 that those words are not intended to refer to claims based on fraud or fraudulent misrepresentations by the Management Warrantors. This is in Clause 3.3. What is there provided for is an undertaking by GI that the W&I Policy includes restrictions on the W&I Insurers' exercise of rights of subrogation 'except where any loss that is insured under the W&I Policy arises as a result of any fraud by that Management Warrantor in giving the Warranties'. What that envisages is that the W&I Insurers may be subrogated to and permitted to exercise rights of GI in respect of fraud or fraudulent misrepresentation by the Management Warrantors in giving the Warranties. There would be no such rights, however, if the effect of Clause 3.1 of the MWD was to preclude any such claim. Consistently with that provision, the W&I Policy contained (in clause VIII B (ii)) a waiver of subrogation 'unless and to the extent that the Loss arose as a result of fraud or fraudulent misrepresentation by that Seller and/or Warrantor...'
- (3) Schedule 3 to the MWD makes provision for various 'Limitations on Liability'. Clause 1 of Schedule 3 provides that notwithstanding any other provision of the MWD the aggregate liability of each Management Warrantor in respect of all Claims shall not exceed £1. By clause 4 of Schedule 3 it is provided that the Management Warrantors should not be liable for any Claim if and to the extent that such Claim is covered by a policy of insurance and payment is made by the insurer. Clause 12 then provides:

'Fraud

None of the limitations contained in this Schedule 3 shall apply to any claim against a Management Warrantor which arises or is increased, or to the extent to which it arises or is increased, as the consequence of his own fraud.'

- (4) The Claimants argue that Clause 12 is not relevant because the limitations they rely on are in Clause 3 of the main body of the MWD, which are not part of Schedule 3. I do not consider that that is a sufficient answer. Clause 1 of Schedule 3 reflects the provisions of Clause 3.1. If the limitation in Clause 1 of Schedule 3 is subject to the restriction contained in Clause 12 of Schedule 3, the most natural reading of the Deed as a whole is that it was intended that the same restriction applies to the same limitation as it appears in Clause 3.1.

Were the representations made?

187. The second issue is as to whether the representations alleged were made. The Claimants contend that they gave warranties only. The warranties in the MWD are, they contend, contractual promises only, not pre-contractual representations.
188. In this regard, the Claimants referred to Sycamore Bidco Ltd v Breslin [2012] EWHC 3443 (Ch), Idemitsu Kosan Co Ltd v Sumitomo Corp [2016] EWHC 1909 (Comm) and to *Fraud and Breach of Warranty* (2nd ed) (Salzedo, McIntyre, Shaw) at para. 7.41.
189. In Sycamore Bidco, at [203], Mann J found that the provisions relevant there were warranties only. He said:

‘It does not seem to me that they have that dual quality. I find that they are warranties only, and not representations, for the following reasons:

(i) There is a clear distinction in law between representations and warranties, and that would be understood by the draftsman of the SPA. That is likely to be the case in any transaction of this nature, but is also apparent from the SPA itself. Representations are referred to in clause 16.3, and Warranties (with a capital “W”) are referred to elsewhere.

(ii) The warranties in this case are clearly, and at all times, described as such, and are nowhere described as representations. Those giving the warranties are described as “Warrantors” (again with a capital “W”). The relevant wording is always in terms of warranties.

(iii) The words of the warranting provision (clause 5) are words of warranty not representation. There is a legal distinction between the two and (subject to a point made about a later reference to representations, as to which see below) there is no reason to extend the words beyond their natural meaning. In order to make the relevant material a representation one has to find something in the SPA which is capable of doing that. It is not enough that the subject matter of the warranty is capable of being a representation. One has to find out why those words are there. One finds that in clause 5; and what one finds is words of warranty, not words of representation.

(iv) The Disclosure Letter (itself referred to in the SPA) also distinguishes between representations and warranties - “The disclosure of any matter shall not imply any representation, warranty or undertaking not expressly given in the Agreement ...”.

(v) Clause 8 of the SPA contains significant limitations on the liability under the “Warranties”. It does not refer to representations. The clause is obviously a significant part of the overall structure of liability. If the warranties were capable of amounting to representations as well, then on the strict wording of this clause it would not apply to any such misrepresentation. The sellers would thus be deprived of a large part of their protection and limitation. That would be a strange and uncommercial state of affairs, and can hardly have been intended. This is strikingly so in relation to clause 8.2 containing the overall cap on recoveries and on what could be recovered from each warrantor, (unless, in relation to the overall cap a misrepresentation claim were construed as a claim under the Agreement, which would be a forced construction). If this cap does not apply then Mr Dawson could find himself liable for £17m, when he had contracted for a cap of £317,000. It is also

true of clause 8.1. This consequence would be avoided if one construed claims under the “Warranties” as including representations made in the warranty provisions, but again that would, in my view, be a very forced construction.

(vi) There is a conceptual problem in characterising provisions in the contract as being representations relied on in entering into the contract. The timing does not work. The normal case in misrepresentation involves the making of a representation, and as a result the entering into of the contract. That does not work where the only representation is said to be in the contract itself. Miss Newman expressly disclaimed the relevant representations being made at any earlier time. In some cases that problem is solved by an express provision making certain contractual statements representations. In such a case the parties have agreed as to their nature and how they should be treated. However, that is not the present case.’

190. In Idemitsu the claimant buyer alleged that, by presenting an execution copy of the agreement for signature, the defendant seller had made representations in the terms of the matters of fact contained in the warranties inducing the buyer to enter into the SPA. Andrew Baker QC, sitting as a High Court Judge said, at [14]:

‘When a seller, by the terms of the contract under which he sells, “warrants” something about the subject matter sold, he is making a contractual promise. Nothing less. But also I think (and all things being equal) nothing more. That is so just as much for a warranty as to some then present or past matter of fact as it is for a warranty as to the future. By contracting on terms by which he warrants something, the seller is not purporting to impart information; he is not making a statement to his buyer. He is making a promise, to which he will be held as a matter of contract in the sense that any breach of the warranty will be actionable as a breach of contract, subject to any other relevant terms of the contract and to general principles of the law of contract, for example as to remedies. In argument in the present case, I posed the simple case of a seller contracting to sell grain from a warehouse, “warranted at date of contract free from” some identified impurity. It would I think be quite novel, and wrong, to suggest that this would amount to a statement of fact, made by the seller to the buyer, that the grain was then free from the impurity in question. In the absence of additional facts, I do not think there could be any question of claiming rescission for misrepresentation, or damages for misrepresentation under the 1967 Act, if in fact the grain contained the impurity (so that there was a breach of the warranty). The same would be true, I think, in respect of any buyer’s warranty given by him by the terms of the contract (for example, in this case Clause 7.1 and Schedule 5 of the SPA contained various warranties by Idemitsu about itself

and its entitlement and ability to enter into and complete the transaction).’

191. After citing from the decision in Sycamore Bidco, Andrew Baker QC said, at [19]-[21]:

‘[19] As I said before quoting Mann J.’s reasoning, it seems to me its basic underlying premise, I think a sound premise, is that the act of concluding a contract on terms that include contractual warranties does not amount to or involve the making by the warrantor to the counterparty of any relevant statement. That is seen most clearly, perhaps, if even then it is not stated quite so explicitly as I have done, in the following sentences from [203(iii)]: “*In order to make the relevant material a representation one has to find something in the SPA which is capable of doing that. It is not enough that the subject matter of the warranty is capable of being a representation. One has to find out why those words are there. One finds that in clause 5; and what one finds is words of warranty, not words of representation.*”

[20] By contrast, in *Invertec Ltd* at [363], Arnold J. simply asserts the conclusion that contractual warranties, if they be as to matters of past or present fact, “*also amount to representations of fact*”. With respect, it seems to me, as it did to Mann J., that Arnold J. there confused a finding of material that is by nature factual, so that a statement in terms thereof could be in law a representation, with a finding that there was a communication amounting to or involving such a statement in the first place. Arnold J. further concluded that the fact that the warranties in *Invertec Ltd* had been negotiated over a period prior to the conclusion of the contract (as is typical) might be an answer to the possible conundrum that a representation only made by the act of concluding a contract could not induce that act. That view as to inducement in a claim for damages for misrepresentation may itself be difficult: see, e.g., *Leofelis SA et al. v Lonsdale Sports Ltd et al.* [2008] EWCA Civ 640, *obiter per* Lloyd LJ at [140]-[141], and *Sycamore Bidco*, *supra*, *per* Mann J. at [203(vi)]. But even if prior knowledge of what was to be in a contract might be used to claim that representations made by it induced its conclusion, the question will remain whether indeed any representations were so made in any given case. For the reasons I have expressed, and those of Mann J. in *Sycamore Bidco*, in my judgment if a contractual provision states only that a party gives a warranty, that party does not by concluding the contract make any statement to the counterparty that might found a misrepresentation claim.

[21] Mr Choo-Choy QC submitted that Mann J.’s reasoning asserted or assumed either or both of two unsound propositions, and so was erroneous. Mann J., it was said, erred by reasoning that: (1) a statement of fact must be agreed to be, or expressly

designated as, a representation in order to be one; or (2) an express agreement to give a statement of fact the status of a contractual warranty excluded it from being or having been (also) a representation. I do not think Mann J. erred in either respect. Rather, he simply searched for a communication that could amount to a statement of fact in the first place. That search was in vain in circumstances where the only material relied on was the existence, in the contract as concluded, of a contractual warranty. In such a case, as I see it and have sought to explain above, there is no representation, at all events in the absence of some provision saying otherwise, i.e. saying (in so many words or in effect) that the warranty is also to take effect as, or to be treated as, a representation. An example of a case involving provisions saying otherwise, decided some months before *Sycamore Bidco* but not, I think, referred to by Mann J., is the decision of Simon J., as he was then, in *Bikam OOD, Central Investment Group SA v Adria Cable S.a.r.l.* [2012] EWHC 621 (Comm), another share purchase case. There “*Sellers’ Warranties*” was defined to mean “*the representations and warranties of the Sellers contained in Schedule 2 ...*” (my emphasis), and Clause 7 (the equivalent of Clause 6.1 in the present case) provided that “*Each of the Sellers represents and warrants to the Buyer that each Sellers’ Warranty is true and accurate as at the date of the Agreement and as at Completion*” (my emphasis) and that “*The Sellers acknowledge that the Buyer is entering into this Agreement in reliance upon the Sellers’ Warranties*”. But there was nothing like that in *Sycamore Bidco* and there is nothing like it in the present case.’

192. The passage in *Fraud and Breach of Warranty* to which the Claimants referred is in these terms:

‘The better analysis is that a warranty does not, without more, imply any representation, because a vendor might quite properly agree to compensate the purchaser if losses exceed a given figure without representing that they will not do so. As explained most clearly by Andrew Baker QC in *Idemitsu*, parties may agree that a matter (for example an accounting quantity) is warranted so that the vendor will compensate the purchaser for any difference between the true figure and the warranty, without the vendor necessarily representing that it is true. A warranty itself cannot be a representation, because it is not pre-contractual, but given at the moment of contracting. A promise to enter into a warranty is also not a representation because it is a mere promise. The real issue that arises in these cases is whether there is any other context, statement or conduct that transforms the promise to enter into a warranty into a representation that the subject matter of the warranty is true. That may be the position, but equally it may not, and it certainly does not follow from the mere

willingness of the vendor to give the warranty. If this is the correct analysis, then the consequence is that even a fraud claim cannot be based on a promise to enter into a warranty, nor on a warranty once given, without some further fact to turn that promise into a representation.’

193. GI answered this point by contending, first, that it was not open to the Claimants on the pleadings. But, if the Claimants were permitted to argue the point, GI contended that it failed on the merits because here statements in the MWD or Disclosure Letter constituted misrepresentations in relation to other contracts within the suite of documents, and that this point was reinforced given that the execution of contracts in the suite had been sequential. Furthermore, GI contended that certain clauses in the MWD indicated that it was understood that statements within it could constitute representations.
194. As to the first point, whether it is open to the Claimants to argue this issue, I agree with the Defendants that the Claimants’ pleadings did not raise this issue. The Claimants’ pleading in relation to the Defendants’ case on misrepresentations was that ‘the representations pleaded are incomplete’ and that ‘the Claimants will rely on the full terms meaning and effect of the [MWD] and Disclosure Letter at trial.’ This did not give notice of a case that there were no relevant representations at all. The point was, however, opened clearly and explicitly. I was not persuaded that the Defendants could not deal with it fairly. Accordingly, I regard it as a point which is in play, and which it is necessary to consider on its merits.
195. Turning to those, I accept the statements of principle contained in Sycamore Bidco and in Idemitsu which I have cited above. I also consider that the passage in *Fraud and Breach of Warranty* which I have quoted above, is accurate. The position is stated with concision and simplicity in Veranova Bidco v Johnson Matthey [2025] EWHC 707 by Sean O’Sullivan KC, sitting as a High Court Judge, at [58]-[59] as follows:

‘[58] Stepping back from all of this, I would suggest that the simple proposition of law which emerges (especially from Idemitsu, but also from Sycamore Bidco and the various cases which have followed those two decisions) is that the giving of a contractual warranty does not, without more, amount to the making of an actionable representation.

[59] Beyond that, I would suggest, it all depends. There is no doubt that providing draft contractual documents which are not themselves warranties can involve making representations (see Eurovideo and MDW Holdings), but will certainly not always do so (see Arani). It seems likely that it is necessary to show that a reason for making the factual statement is to provide information to the other party, as opposed to only for the purpose of making a contractual promise (see Sycamore Bidco). However, as Males LJ put it in SK Shipping, it “would depend on the particular facts of any given case”.’

196. Here, in my view, it cannot be said that all the statements in the MWD and Disclosure Letter only have effect as warranties and not as representations. I say that for these reasons:

- (1) The nature of many of the statements was such as to be consistent with providing information about the past or present, on matters which would be unlikely to be within the knowledge of the buyer.
- (2) These statements were contained in drafts of these documents which were seen before the entry into of the final deal documentation, including the SPA. Furthermore, as a matter of sequence, as set out in the ‘signing protocol’, the execution of the SPA followed the execution of the MWD and the Disclosure Letter.
- (3) The MWD and Disclosure Letter contain provisions which indicate that it was understood that statements within them could constitute representations. Thus Clause 17.2 of the MWD is a provision confirming that each party has not entered into the MWD or other Transaction Documents on the basis of any representation, warranty, undertaking or other statement ‘which is not expressly incorporated into this Deed or into any other Transaction Document’. That clause assumes that there may be representations or statements incorporated into the MWD. Further, Clause 17.3 excludes liability for misrepresentation ‘whether negligent or innocent and whether made prior to and/or in this Deed’. That provision does not seek to exclude liability for fraudulent misrepresentation, a point confirmed by Clause 17.6, but does assume that there may be misrepresentations ‘prior to and/or in this Deed’.
- (4) In the Disclosure Letter it is stated that ‘the Management Warrantors make no representation or warranty in relation to any disclosed matter or document which is not expressly given in the Warranty Deed’. That envisages the possibility that there may be representations given in the MWD.

197. Accordingly I do not consider that GI’s relevant counterclaims are answered by saying that no representations were made and only contractual promises given.

Were the representations untrue?

198. I turn to the issue of whether the representations were untrue, and will consider in turn the matters relied upon as meaning that they were untrue.

Mark Lauterstein’s contract of Employment

199. The first is as to Mr Lauterstein’s contract of Employment. There was considerable evidence and argument about this. The Defendants contend that Mr Lauterstein’s Employment agreement, which they say was backdated from September 2017 to July 2017, was a ‘sham’, in that it provided for his full-time Employment, which was never the case and was agreed for the purposes of his obtaining Section 102 relief. The Defendants say that such an agreement could not have been on normal commercial terms in the usual and ordinary course of business. They further contend that the agreement in clause 8 of the Lead Capital Key Terms to terminate that agreement was also not on normal commercial terms.

200. I do not consider that it is necessary to explore whether Mr Lauterstein's contract was a 'sham' or otherwise not on normal commercial terms, because in my judgment, whatever the position as to that, Mr Lauterstein's contract of Employment does not fall within the ambit of the statements in paragraph 8.2 of the MWD. This is because, whatever its substance, Mr Lauterstein's Employment arrangement came to an end by the beginning of December 2020. The Employment Contract or arrangement he previously had was not, therefore, an 'existing contract or arrangement' between any Group Company and Mr Lauterstein within paragraph 8.2(a), even granting that he was a past shareholder of a Group Company, namely FIL. Equally, that he had been party to an Employment Contract or arrangement before December 2020 does not mean that a Group Company was, as at the date of the MWD, a party to a contract with him, which is what is required by the present tense ('is') in paragraph 8.2(b). Insofar as the Defendants contend that the relevant contract is the Lead Capital Key Terms, which stated that Mr Lauterstein's Employment agreement was terminated with immediate effect, I do not consider that that provision was a 'material contract, arrangement or understanding' to which a Group Company was a party as at 29 September 2021. Whether it can be said that the other provisions of the Lead Capital Key Terms mean that it should, taken as a whole, be considered a material contract, arrangement or understanding is one to which I will come.

The trade.com domain name sale

201. In relation to the 'trade.com' domain name sale pursuant to what was termed the Domain Name Purchase Agreement (or 'DNPA'), the Defendants contend that this was not on normal commercial terms in the ordinary and usual course of business for essentially four reasons.
202. The first reason pleaded by the Defendants is that the sale price of US\$3 million specified in the DNPA executed on 31 July 2017 was 'a material undervalue'. They failed, however, to demonstrate that. No expert issue on the issue of the domain name's valuation was permitted, on the basis that it would be dealt with in the factual evidence. No evidence was called by the Defendants from relevant market participants, including Mor Weizer, who was involved in making the arrangement with Mr Lauterstein. Mr Hoffman's evidence was that he had not been involved in making the arrangements, which were made between the very senior figures of Teddy Sagi and Mor Weizer, who had the relationship with Mr Lauterstein, but that he considered, having discussed the matter with those men, that what was agreed was what the brand was worth at the time. He pointed to the fact that the trade.com brand had both reputational and regulatory risks, because its business was driven by business introducers, or call centres, which 'was frowned on by regulators', and tended to produce complaints from customers. This had led to Playtech deciding to cease using business introducers. These matters, he said, 'deteriorated the value of the trade brand'.
203. The second reason relates to the payment terms of the deal. This involved 20 years interest free monthly instalments of US\$12,500. I do not consider that it has been shown that these were other than normal commercial terms in the ordinary course of business. Again, there was no expert evidence. Mr Hoffman's evidence, which I saw no reason to reject, included the following, in relation to the suggestion that the payment terms significantly reduced the headline value and made the transaction uncommercial:

‘I disagree with how you’re describing it. You’re detaching it from the rest of the arrangement with Mark Lauterstein. This was not sold to a third party for 3 million and that’s it. This is not the arrangement. The arrangement was we will sell it for this amount over a long time, whereby the logic was Lead Capital to operate that business, using business introducers, transferring the flow to Finalto for us to enjoy to generate revenues. This was a super commercial agreement for Finalto and for Playtech, which made significant revenues and profits throughout the years.’

That evidence was not contradicted by any market participant.

204. The third aspect focused on the structure of the transaction as amended by clause 5 of the Lead Capital Key Terms. Under that provision, the sums due under the DNPA were to be set off against revenue due to FGL by way of ‘TTG ITA Revenue’ under the Key Terms. Once again, I considered that the Defendants had not shown that this was not on normal commercial terms. Mr Hoffman’s evidence in relation to this, which I considered reliable, included the following:

‘That is a commercial decision. From this point onwards, it was agreed that that amount would be deducted. It still keeps the mechanism of the loan arrangement and the stickiness to the company there, meaning the concept was always you buy the trade brand for 3 million. You pay it over time. As long as you continue to generate revenues for Finalto, then we’re getting – we are generating revenue, we benefit from it. If you at any point want to decide that you leave the business, you have to pay the outstanding balance. That was the mechanism. It made sense. So deducting that 12.5 amount, not deducting – first of all, 12.5 amount is not a material amount in the context of the revenue generated so eventually we generated between 3 to 6 million a year from Lead Capital. That [ie the \$12,500] is immaterial in the context of the numbers, but it still kept and that’s a commercial decision, which I stand behind. I believe it was agreed with Mor but I stand behind it 100%.

Even if it’s deducted, that’s fine. We still generate between \$3 to \$6 million every single year. We still have the mechanism that if Mark leaves, he needs to pay the outstanding balance of the loan so netting it or crediting it or however you want to call it, is a commercial decision that I stand behind.’

205. The final aspect was a suggestion that Mr Hoffman had ‘personally promised’ by a ‘side-arrangement’ with Mr Lauterstein, that the instalments would not be required to be paid in full in any event. I reject this suggestion, which, in my view, was made on flimsy grounds, and was denied by Mr Hoffman. The basis for the suggestion was (i) that ‘Mr Hoffman’s WhatsApp chat with Mr Lauterstein revealed a close and friendly relationship’; (ii) that ‘they frequently used terms of endearment’; (iii) that a communication from Mr Lauterstein to Mr Hoffman of 10 January 2018, in which Mr Lauterstein referred to ‘what you promised me, that on the 19th they would stop paying’, and said ‘I need a letter like that in my drawer’; (iv) that on 22 April 2020 Mr

Lauterstein had spoken to Mr Latner and had said that the brand was supposed to be his for free; and (v) that Mr Hoffman contacted Mr Lauterstein on 23 April 2020 to say that they should sit down and talk ‘because in a second this whole thing will be off my desk and it will go to the Playtech board...’ This last was said to show that Mr Hoffman ‘was concerned their earlier side deal would be exposed’ and that ‘they needed to agree a narrative and position directly’, for ‘otherwise the Playtech board ... would take matters out of their hands.’

206. Having read the communications referred to and heard Mr Hoffman give evidence, I concluded that the Defendants’ case is a misreading of the position. The Whatsapp communications between the two men did not appear to me to reveal a particularly ‘close and friendly relationship’, but one which was essentially businesslike. The email from Mr Latner of 22 April 2020 shows, I think, that he understood there to be a widespread feeling amongst the recipients (who included Mr Hoffman) that Mr Lauterstein was prone to making statements which were unwarranted and highly tendentious, and that whilst ostensibly discussions might be ‘friendly’ (the quotation marks are in the original), Mr Lauterstein, and what he said, were to be treated with caution. I accepted Mr Hoffman’s evidence:

‘I didn’t provide any personal promises. Anything I did was always in full co-ordination with Playtech’s management, with Mor Weizer, with Alex, either with one of them or both of them. I did nothing by myself. I had no personal interest anywhere. There is no side deal or anything that you’re implying to.’

And:

‘To clarify, I most definitely did not have any side deals with Mark or any promises from me to him to give him the brand for free.’

Lead Capital Key Terms

207. The third aspect relates to the Key Terms between TradeTech Group, Lead Capital Markets Ltd and Mark Lauterstein dated 7 May 2020. These concerned the terms on which FGL licensed its 360 technology product to Lead Capital, a brokerage customer, which would in turn offer a trade platform to its retail clients. The Defendants say that this agreement was not on normal commercial terms because of the profit split agreed, which would be either 90:10 or 94:6 of revenues in favour of Lead Capital depending on the profits made.
208. I do not consider that the Defendants have shown that this arrangement was other than on normal commercial terms. The evidence showed, and the Defendants accepted, that this deal produced significant profits to TradeTech. The suggestion was that a better deal could have been done. The Defendants did not, however, adduce any evidence from anyone concerned in the negotiations to suggest that this was the case. Equally, there was no expert evidence suggesting that this deal, in a highly specialised area, was not on commercial terms.

209. The evidence of Mr Groves, who was not involved in the negotiations, and who accepted that he did not know the background to them, did not demonstrate this. Instead, he agreed when the point was put to him that, in relation to this business, where 75% of the revenues were charged by the business introducer and where Lead Capital would have overheads, a 50:50 split, such as he had mentioned in his witness statement, was very unlikely. He accepted that ‘good money’ was actually made and that, given that he had no background with the relevant customers - Lead Capital or Key Way - his suggestion that the deals made did not maximise profits for FGL / Playtech was, to a certain extent hypothetical.
210. I accepted the evidence of Mr Hoffman that the Lead Capital Key Terms were the product of a robust negotiation with Mr Lauterstein who said that he had received competitive offers, and that he was not making money while TradeTech was making ‘a lot of money’ from the 360 licensing; that Mr Hoffman discussed the matter with Mor Weizer, and there was an internal discussion involving Neil Offord, Amit Zeevi and Mr Greenbaum; that the deal done was somewhere in the middle between Mr Lauterstein’s demands and TradeTech’s position; and that Mr Latner was satisfied with the deal. As Mr Hoffman put it: ‘I don’t see how that is not commercial.’ Mr Zeevi’s evidence was that he had wished that there were more deals like this one with Lead Capital, and that the terms were good for FGL: ‘We are trying to bring much more deals like this. ... I specifically tried for many years to bring such much more deals to Finalto and they did not succeed it. And you can see that they continuously negotiate the terms with us in order to push them down.... 90% for the broker and 10% for us is a very good deal to Finalto...’

Key Way Key Terms, Loan and Interest

211. Key Way Group Ltd was another FGL counterparty to whom FGL provided technology and liquidity services. The Defendants contend that the Key Terms agreed between TradeTech and the Key Way Group Ltd on 27 May 2020 were uncommercial for two reasons. In the first place, they incorporated a profit sharing arrangement with the same split of profit as in the Lead Capital Key Terms. In the second, the terms of a loan of US\$ 2 million to Key Way, agreed on 5 December 2017, were varied so that the interest rate was reduced to 4% over LIBOR (from 5% over LIBOR), and Key Way was given extra time to pay the outstanding amount (which was of US\$1 million plus some accrued interest).
212. The Defendants’ case, as put to Mr Hoffman, was that this was ‘another friendly arrangement where you’re doing a favour ... for Mr Lauterstein’. I did not accept that. While Mr Lauterstein was, apparently, a shareholder in Key Way, the main owner was Mr Octavian (Tavi) Patrascu. I saw no reason to doubt Mr Hoffman’s evidence that Mr Patrascu is ‘a harsh negotiator... he was always trying to negotiate a better deal for him and a better deal for him.’ For reasons I have already given, I do not accept that the Lead Capital profit share arrangements were uncommercial. Once those terms had been agreed, moreover, and given that Mr Patrascu came to know of them, it was clearly more difficult for TradeTech (and Mr Hoffman) to agree significantly different terms with Mr Patrascu. That is, as Mr Hoffman said, a fact of commercial negotiations, and does not mean that the resulting arrangements were uncommercial.
213. In relation to the variations of the loan terms, Mr Hoffman’s evidence was that Mr Patrascu contended that he had cash flow difficulties and could not pay; that there was

a negotiation; and that the new terms were ‘very acceptable’. He said: ‘this is the nature of business negotiations ... [i]t’s a give and take relationship’. He also said: ‘We generate significant revenues from Tavi.’ In my view, there is no basis for rejecting any of this evidence. Neither the rate nor the period of the loan can be said on their face to be obviously uncommercial. As Mr Hoffman said, it is in the nature of business arrangements that it may sometimes be necessary to make some concessions. Overall, the arrangements with Key Way appear to have been significantly profitable.

214. The Defendants make another criticism of the loan arrangement with Key Way, however. They point to a write off by FGL, in about March 2022, of an amount of US\$99,002.12 which represented interest on the Key Way loan which had accrued between January and May 2019. That write off postdated the MWD, and would not in itself have indicated that there was a misrepresentation included in the MWD. The Defendants made the suggestion, however, that Mr Hoffman had already come to an understanding or arrangement that all the interest would not be charged, and a further suggestion that, before the interest was written off there had been a ‘prior agreement’ with Mr Patrascu, made by Mr Hoffman and/or Mr Greenbaum, that there should be such a write off. Neither suggestion was established by the evidence. It was suggested to Mr Zeevi that he had agreed to the write off because Mr Hoffman had confirmed to him that there had been ‘an undocumented prior agreement not to charge this interest’, and he said that he disagreed completely.
215. As to the write-off itself, Mr Zeevi said that this had to be taken in the context of a profitable business relationship with Mr Patrascu. It was, he said, ‘a business decision’. Mr Schlachter’s evidence was that it was Mr Zeevi who had made the decision and agreed that with Mr Hoffman and Mr Greenbaum. He said that the write off was a commercial decision with a customer who generated significant revenues for FGL year on year, and that ‘It’s common in B2B business that some decisions to give a discount or write-off is common from a commercial point of view.’

Misrepresentation as to ZES fees?

216. The Defendants also sought, towards the end of the trial, to add a further respect in which it was said that the MWD involved a misrepresentation. This relates to legal fees paid in respect of work by ZES on behalf, as the Defendants contend, of Mr Hoffman and Mr Greenbaum.
217. The Defendants’ Defence and Counterclaim (and Amended Defence and Counterclaim) pleaded the engagement of Ropes & Gray and of ZES as being breaches of the Claimants’ services agreements (paragraphs 46.4 and 46.5). Both in relation to Ropes & Gray and in relation to ZES, the work done was identified by reference to invoices, all of which dated from 2022. The plea was not put forward as relating to the claim for misrepresentation in the MWD.
218. After the evidence of the Claimants had been given, the Defendants issued an application to amend the Defence and Counterclaim to add a plea that ‘paragraphs 46.4 and 46.5 below are repeated’, and that ‘from in or around August 2021 ZES provided advice to the Claimants for their own benefit... Mr Hoffman instructed that ZES’s fees be discharged by FGL using FGL’s funds. FGL did discharge those fees.’ The draft amendment further pleads that, in the circumstances, the MWD contained a misrepresentation because as at the date of the MWD and/or Completion there was an

existing arrangement between a Group Company (ie FGL) and Management Warrantors (ie Mr Hoffman and Mr Greenbaum), and because there was an arrangement or understanding between FGL and the Claimants which was not on normal commercial terms.

219. The Claimants objected to the amendment on a number of bases, including that it had not identified the work involved, or the invoices in question; that it stood no reasonable prospect of success; and that it would be unfair for it to be introduced as it would have required different investigation and other disclosure.
220. I was not addressed on the merits of the application before closing speeches, and was not asked to decide it during closing speeches. I indicated, without objection, that I would deal with it in my judgment. I refuse the amendment. The existing pleas in relation to ZES fees (in paragraph 46.5) relate to work in 2022 (and most of the invoices are dated September or November 2022). Although the proposed new plea commences that ‘paragraphs 46.4 and 46.5 are repeated’, those pleas do not cover 2021. Accordingly a different period would be relevant for the new plea. Furthermore, the proposed new plea is not properly particularised, as it does not identify what invoices are being referred to which Mr Hoffman is said to have given instructions should be discharged using FGL’s funds, or which FGL did discharge. I also accepted Mr Brown KC’s submission that it would be unfair to permit the amendment, as there had not been proper disclosure in relation to invoices in that period.

Were the representations made fraudulently?

221. Had I concluded that there were misrepresentations in the MWD, I would have rejected the Defendants’ case that they were made fraudulently. Specifically, I reject the suggestion that either Mr Hoffman or Mr Greenbaum knew that the statements were false or were reckless as to their truth or otherwise.
222. I accepted Mr Hoffman’s evidence that the process of giving the representations was a careful one. It was designed to ensure that only true statements were made. I find that Mr Hoffman and Mr Greenbaum believed that the result of that process was statements which were true and accurate. Specifically, I accepted the following evidence given by Mr Hoffman:

‘Q. And you knew them to be false?’

A. Incorrect.

Q. May I ask when you made that statement, that disclosure, did you consciously think one way or the other about the Lead Capital terms and the manner in which they were negotiated?

A. This letter, the entirety of the warranty deed, was a process managed by Michael Jadeja, the GC of Finalto, a well experienced -- very experienced, very smart lawyer of Finalto. The process was cumbersome, long, included many of the management team of Finalto. He went through all the points with all of the management team. He interviewed different managers for different parts to make sure. There was a whole

questionnaire. He was managing the running draft. He managed the entire process impeccably and I trusted his judgment on what needs to be in there and what doesn't need to be in there and how it needs to be presented and we discussed this in numerous calls throughout that process with the management team on a call with everyone where he was leading that call, given his knowledge of doing processes like that.

Q. I'm sorry that's a process point. The substance of the representations were -- warranties were your statements, yes?

A. We signed the statements, we accept the statements, but there is a process to be made before doing that, which is to make sure that you don't just do it out of your memory, that you go through a process internally with entirety of the management team. Before we signed it, it was approved and agreed by the managers that this is correct and we all feel comfortable, all of us, not just myself, and you see from the emails there were meetings after meetings on this and Michael was doing his own interviews with specific people to make sure that whatever is drafted there is correct and right and we supported that.

Q. It does seem that it's always someone else. Did you care if these statements were true or false?

A. Of course.

Q. So you take personal responsibility -- it's not Mr Jadeja or anyone else, you personally considered each of these transactions and considered if these statements were true?

A. This is why we took this process very, very seriously. This is why we do this process accordingly, because it's not just about me just putting my words on a paper. It needs to be done properly with the involvement of the entire management team so we don't miss anything. So if someone has something to say that they disagree with it that we talk about it and we understand what are those comments and then we do a final draft that we all support and that was the case here.

Q. Yes, but it's not a collective responsibility, it's you and Mr Greenbaum's statements.

A. I'm not suggesting it's collective, I'm suggesting on how it was formed.

Q. Because I suggest to you either you didn't care about what was in here or you did think about it and then you must have known they were untrue?

A. They are not untrue, they are not untrue and I stand behind them.

Q. I suggest that for each of the points I'm putting to you the alternative is you didn't care?

A. I did.'

223. Although the allegation of fraudulent intent was not put to him as squarely as it was to Mr Hoffman, Mr Greenbaum's evidence was likewise that he had not known or intended the representations to be untrue. I accepted his evidence on this.

Inducement and reliance

224. Because of my conclusions that there were no relevant misrepresentations, and also that there was no dishonesty on the part of Mr Hoffman or Mr Greenbaum in making the representations in the MWD, the issues of whether those representations induced the SPA and the ETS and the acquisition of FGL do not matter, in the sense that the misrepresentation claims will fail in any event. I will, nevertheless, briefly record my factual findings in relation to those issues.
225. I did not understand there to be a dispute that the representations in the MWD were given in order to induce GI to enter into the ETS, the SPA and to complete the acquisition. I also accept that, had the representations in the MWD not been given, GI would not have entered into the transaction (including the ETS), without further negotiation as to the subject matter of those representations. I accept that, in this sense, GI relied on and was induced by those representations.
226. I should also record, however, that it would have made no difference to GI's willingness to enter into the transaction, on the terms that it did, had there been a fuller statement of the actual position in relation to FGL's / Playtech's dealings with Mr Lauterstein or Key Way, or as to the fees of ZES and Ropes and Gray. I was not persuaded that Mr Scoular had paid any real attention to the contents of the MWD, or read any documents in the VDR. There was no evidence from the persons who would have actually taken the decision. In the absence of such evidence, and given the fact that GI had made an unsolicited bid, and wanted from the outset - as stated in their letter of 29 June 2021 - a very short period in which to conduct due diligence, and given also that there was no evidence of any decision-maker asking any questions about what was disclosed in relation to Mr Lauterstein in the Disclosure Letter, I concluded that a fuller explanation of the relevant transactions would not have had any effect on the deal entered into.

What relief is GI entitled to?

227. This issue also does not arise given my previous findings. It was also not the subject of any detailed argument. A point was nevertheless in issue on which I will briefly express my view.
228. GI did not seek rescission of the SPA. Its claim is for rescission of the ETS, alternatively damages in any amount that it was found to owe to the Claimants under the ETS. It did not pursue any claim under s. 2(1) Misrepresentation Act 1967, but claimed damages for deceit arising out of entry into of the SPA.

229. The Claimants contend that rescission of the ETS is not an available remedy where there was a clear connexion between the ETS, the MWD and the SPA, and that one cannot be rescinded without the other(s). They refer to what was said in De Molestina v Ponton [2002] 1 Lloyd's Rep 271 at [6.9] per Colman J, as follows:

‘The crucial issue in the present applications ... is how one identifies the criteria for determining whether a number of separate contracts are part of a single overall transaction for the purposes of the rule against rescission of part of a transaction... If a representee is induced to enter into separate contracts A&B by the same misrepresentation, it may be that performance of contract B depends on the prior performance of contract A. In that case one cannot rescind contract A without also rescinding contract B. To permit the survival of contract B would be inconsistent with the principles of *restitutio in integrum*. But there may be cases where, although both contracts were induced by the same misrepresentation either can be performed without performance of the other. In that case the representee may rescind unless the contract not sought to be rescinded would never have been entered into by the parties without also entering into the other. Thus, for example, in a case where the transaction is divided into different contracts simultaneously negotiated, it may be that the consideration for the whole bargain is written into one contract, leaving only nominal consideration in the other contract. In that event it would not be open to the representee to leave open the contract that gave him the main consideration while rescinding the other contract under which his primary performance obligation lay. Again, to do otherwise would not effect *restitutio in integrum*. Or there may be cases where it is clear from the terms of the contracts and the matrix evidence that the subject matter of the contracts is so interrelated that, although it would be theoretically possible to perform each separately, one would never have been entered into without that contract sought to be rescinded. However, in the absence of structural interdependence between separate contracts, the most usual determinant of inseparability is likely to be the distribution of consideration for the whole bargain between the separate contracts.’

230. This passage was cited in the 31st edition of *Chitty on Contracts* (para. 6-123), and that paragraph was itself cited with approval in NGM Sustainable Developments Ltd v Wallis [2015] EWHC 2089 (Ch) at [226]. The principle was considered in Marme Inversiones 2007 SL v Natwest Markets plc [2019] EWHC 366 (Comm) at [332]-[349]. At [338] Picken J expressed the matter in this way:

‘[338] It is clear, therefore, that the bar on partial rescission applies not only to inseverable parts of a single contract but also to contracts which form part of an indivisible bargain. The underlying principle is that a party seeking rescission should not

be allowed to pick and choose which parts of the transaction to perform since that would involve rewriting the parties' bargain.'

231. In the present case, I consider that the SPA, the MWP and the ETS were parts of the same transaction or bargain, and that the SPA would not have been entered into without the ETS or vice versa. I therefore take the view that it was and is not open to GI to rescind the ETS but not the SPA.
232. GI's claim in deceit gave rise to a further argument as to what would have been the measure of any damages. This itself involved some questions of disputed expert valuation evidence. Given that the claim fails for reasons already given, it is not necessary for me to decide or express a view on these points.

GI Claim for Breach of Contract

233. GI makes a claim for breach of the obligation in the ETS on the part of the Claimants to negotiate the Definitive Documents in good faith. It contends that the Claimants did not do so, by failing to disclose that they had made fraudulent misrepresentations in the MWD and failing to disclose that they were in breach of their Services Agreements in a way which justified dismissal.
234. This claim was not the subject of any extensive argument. In considering it, I apply the test for good faith of whether the conduct in question would be regarded as commercially unacceptable by reasonable and honest people.
235. As I have already held that there were none of the fraudulent misrepresentations alleged, the Claimants were clearly not in breach of an obligation to negotiate in good faith in failing to disclose them. In relation to the alleged breaches of the Services Agreements, I will consider these (which overlap with the subject matter of the alleged misrepresentations) in rather more detail below. It suffices here to say that I am not persuaded that there were any breaches of the Claimants' Services Agreements, and in any event, I am not satisfied that there was anything in relation to the Claimants' conduct which required disclosure in order for the process of negotiation of the Definitive Documents to have been conducted in good faith.
236. GI indicated in the course of its written closing (paragraph 380) that it did not pursue its pleaded claims for breach of an implied obligation to give full and frank disclosure to GI during the course of the ETS and that the Claimants owed fiduciary duties to GI. These claims, GI accepted, added nothing material to the deceit claim and the breach of contract claim which I have already considered. I therefore need say nothing further about these additional claims.

FGL's claim for breach of the Services Agreements / directors' duties

237. FGL claims damages for breach of the Claimants' Services Agreements, in the event that it is the proper contractual party to that claim, and in any event on the basis that the Claimants were directors of FGL.
238. The basis on which this claim is put needs further explanation. In the case of Mr Hoffman, it is accepted by the Defendants that, from the time of the acquisition, he was employed by FGL. The terms of his Employment Contract included that he owed

obligations to ‘the Group’, which included ‘subsidiaries of [...] Playtech from time to time’, and this included FGL. Therefore, the Defendants say, FGL was either a party to or a third party beneficiary of Mr Hoffman’s duties under the Employment Contract at all material times, including prior to the transfer of his Employment from PTVB to FGL in July 2022. Those duties included devotion of the whole of his time, attention and abilities to the business of the Group, and by implication to act in the best interests of the Group, and to serve the Group with fidelity and good faith.

239. In the case of Mr Greenbaum, the Defendants rely, in particular, on the fact that he, like Mr Hoffman, was a director of FGL. As such, he will have owed the duties of a director. These, given that FGL is a Manx company, will mostly have been common law duties, but ones which broadly reflect the position in ss. 171 to 177 Companies Act 2006.
240. The Defendants contend that the Claimants acted in breach of these duties, and that, if the Claimants are entitled to damages under the Services Agreements against FGL, then such sums will represent a loss to FGL recoverable by it as damages for those breaches, and that the Claimants’ claims therefore fail for circuity of action.
241. I am prepared to assume that the Claimants did owe all the duties I have referred to above to FGL. I have, however, not been persuaded that the Claimants were in breach of those duties.
242. The main subjects of those allegations of breach are by now familiar, as they are central to the Defendants’ allegations of deceit. More specifically, the Defendants’ pleaded allegations are:
- (1) That Mr Hoffman ‘procured’ the entry into of the DNPA at a material undervalue and/or on uncommercial payment terms;
 - (2) That the Claimants ‘procured and/or orchestrated and/or oversaw and/or were involved in’ (a) the Employment arrangement with Mr Lauterstein, which was a sham alternatively illegal contract; (b) effecting the Key Way Terms and/or writing off the Key Way Loan, which were uncommercial; (c) the Lead Capital Key Terms;
 - (3) That the Defendants procured the engagement of Ropes & Gray and ZES in respect of their personal equity arrangements / matters personal to them.
243. As I have already said, I am not satisfied that the DNPA, the Key Way Terms, the Lead Capital Key Terms, or the writing off of the Key Way Loan were uncommercial or, where applicable, at an undervalue. Equally, I am not satisfied that in their involvement in those arrangements the Claimants were acting other than in what they considered the best interests of FGL
244. In relation to the nature of Mr Lauterstein’s Employment arrangements, these were not primarily the responsibility of the Claimants, or either of them, and were known to other senior managers within Playtech and Markets.com. Mr Lauterstein had been recruited to Markets.com before Mr Hoffman became involved with that business. Because of his seniority, Mr Lauterstein in practice generally reported to Mor Weizer, the CEO of Playtech.

245. I do not accept the Defendants' characterisation of Mr Lauterstein's Employment Contract of 2017 as a 'sham' to be correct. Mr Zeevi, who signed it, gave evidence that from July 2017, when he had replaced Mr Lauterstein as CEO of TradeTech, Mr Lauterstein had been managing the automation team, in charge of a team of some 7-10 people, 'and he was responsible to build the machine that will beat Google and will acquire more client for the B2C.'
246. It is clear that the arrangement was made to be as tax-efficient as possible for Mr Lauterstein, with a sum equivalent to his salary being transferred back to a Finalto entity. This was not shown to have been unlawful, and it seems to have been arranged or approved at a senior level within Playtech.
247. It is right that, by 2020, Mr Lauterstein's work for the company had decreased, though there was evidence that he did provide continued support for the automation team if required. It is not uncommon for Employment relationships to change over time.
248. Thus, in my judgment, Mr Lauterstein's Employment arrangements were not a 'sham' as contended for by the Defendants, and the Claimants' involvement in them, to the extent that they were involved, was not a breach of their engagements or duties to FGL.
249. A final aspect relates to fees of ZES and Ropes & Gray. The Defendants contend that the Claimants were in breach of contract / duty in having procured the engagement of ZES and Ropes & Gray to provide legal advice to them personally, and then charging such work to FGL. What is said is that during the course of the negotiation of the Consortium Deal ZES advised the Claimants personally. After the Consortium Deal had been rejected, ZES continued to advise ZES in relation to the Gopher transaction, and that their fees, insofar as they related to the Gopher transaction, were paid by FGL. Subsequently, the Claimants engaged Ropes & Gray. The engagement letter is dated 29 September 2022. Some invoices for work for the benefit of the Claimants were paid by FGL.
250. As already set out, the Defendants' pleaded case relates to invoices of ZES and Ropes & Gray dating from 2022, not 2021. Insofar as the Claimants were involved in instructing ZES and Ropes & Gray, I do not accept they were in breach of contract or duty to FGL in doing so. ZES and Ropes & Gray were not providing advice to or for the benefit of the Claimants alone, but also to the rest of the management team. There was no evidence or authority shown to me that demonstrated that there was anything unusual or irregular in legal advice being provided, in circumstances such as this, to the management of a company and paid for by the company. Specifically, the purpose of incentive schemes is to align company and management interests. There is no necessary conflict between the company's and the management's interests, as alignment furthers the company's interests. By its nature, an incentive scheme such as was in contemplation after the SPA required legal advice.
251. Mr Hoffman's evidence, which I accept, is that he, at or around the point of the Gopher bid, raised with Mor Weizer, the CEO of Playtech, that ZES should continue to provide advice to management and that their fees should be paid by a company within the Playtech group. I also find, consistently with Mr Hoffman's evidence, that Mr Scoular was informed of and accepted that ZES's invoices would be paid by FGL.

252. The fees fell to be, and were, approved for payment by FGL's CFO, Mr Schlachter. I accepted his evidence as follows:

'Q. Well, the case that's been run against us is this advice was for the benefit of the management team?

A. As I explained before, from first of all the management team is not only Ron and Liron, it was a wide group of employees within Finalto. And similar to other, for example in Playtech, when a share option plan, an employee share option plan, "ESOP", was created, then the company paid for the legal advice for that consulting about the ESOP. And in this specific case, with ZES for example, my employee Tal Gueta, the head of tax, had direct interaction with ZES on the 102 form for Israel and the options and the – a nominee how the whole process of ESOP was constructed in Israel, not only for Ron and Liron but for the rest of the employees.'

253. I also accepted Mr Schlachter's evidence that Mr Hoffman and Mr Greenbaum had told him that Mr Scoular had accepted that FGL could pay ZES's legal fees, and that Mr Schlachter had himself had a conversation with Mr Scoular in which Mr Scoular had accepted that FGL should pay those fees. As he said: 'I remember that I had an approval from him for ZES.' Insofar as Mr Scoular's evidence was to a different effect, I did not accept it. I considered that Mr Schlachter was a reliable witness, whereas Mr Scoular's evidence had to be treated with caution. Mr Scoular himself accepted that Mr Schlachter is 'a very good and respectable man', and had no explanation for why Mr Schlachter should say that he remembered having Mr Scoular's approval on this point, other than a suggestion that Mr Schlachter had been 'dragged into this by the claimants', a suggestion for which he then apologised.
254. In relation to Ropes & Gray, Mr Schlachter's evidence was that 'from my point of view it was an extension of ZES and the same services but for different specialities that Ropes & Gray had that ZES didn't.' Mr Schlachter signed the Ropes & Gray engagement letter of 29 September 2022 on behalf of FGL. This demonstrates that Mr Schlachter saw no problem with FGL's paying Ropes & Gray's fees. While the Defendants have referred to the fact that privilege has been asserted in relation to the advice of ZES and Ropes & Gray to say that FGL cannot have been their client, this did not appear to me to be a point of importance in relation to whether there was a breach of contract or duty on the part of the Claimants in being involved in the instruction of the two firms. That management may have been the recipient of the advice, and thus may have been entitled to assert privilege, does not mean that it was improper for FGL to engage and pay the firms to provide advice to management or for the Claimants to be involved in the arrangements for it to do so.

The FIL Claim

255. FIL makes a claim against Mr Hoffman. FIL was the group company which entered into the DNPA with SilverClip Holdings Ltd in July 2017, and the Key Way Key Terms. Mr Hoffman was at all material times a director of FIL, and owed it directors' duties under Manx law. FIL's claim against him is that, as a director, he at least approved the DNPA and the Key Way Key Terms, and agreed the writing off of

US\$99,000 by way of interest on the Key Way Loan. These matters were, the Defendants contend, contrary to FIL's interests. FIL does not pursue a claim based on the objective market value of the Domain Name, but does seek to recover the US\$99,000.

256. As the Defendants themselves accept, the facts relied on for the purposes of the FIL claim are materially the same as those relevant to the Defendants' counterclaims in Action CL-2023-000385. For reasons I have set out in the context of those counterclaims, I do not accept that there was a breach of Mr Hoffman's director's duties in respect of any of the relevant transactions, and the FIL claim must accordingly fail.

Conclusion

257. As set out above, I have reached the following principal conclusions:

As to the Management Equity Claims

- (1) That the ETS contained binding contractual obligations that, upon Completion, the Claimants should each be allocated 3.75% of the equity in Holdco;
- (2) That GI repudiated its obligations under the ETS;
- (3) That there was no agreement by Mr Scoular on 21 June 2022 to the allocation of FSE to the Claimants;
- (4) That the Claimants are entitled to recover damages on the basis of a valuation of Holdco as at 11 July 2024, when it had a value (if it is assumed that the Loans had been transferred to it) of some US\$150-US\$160 million;
- (5) However, neither there was no agreement that the Loans would be transferred to Holdco, nor other legal basis for saying that damages should be assessed on a basis which assumes that they would have been.

As to the Employment Claims

- (6) Mr Hoffman is entitled to the payments claimed in respect of contractual severance, PILON, 2022 bonus and holiday.
- (7) Mr Greenbaum had no Employment (or consultancy) relationship with FGL (or GI) and his Employment Claims in this action fail for this reason.

The Defendants' Counterclaims

- (8) The Defendants' counterclaims fail.

FIL Claim

- (9) FIL's claim against Mr Hoffman fails.

258. I invite the parties to agree an order embodying the conclusions in this judgment. If there is disagreement as to the terms of an order reflecting this judgment, I will resolve it on paper, unless I decide that an oral hearing is necessary.

ANNEXE 1

Management Equity Key Terms

Set out below are the proposed key terms on which Gopher Investments or a subsidiary undertaking of the same (together the “**Lead Investor**”), Ron Hoffman (the “**CEO**”), Liron Greenbaum (the “**COO**”), and certain other directors, officers, consultants and employees of the Group (as defined below) (together the “**Managers**” or “**Management**”) will be invited to participate in the equity of a company set up as a direct or indirect holding company (“**Holdco**”) of Finalto Group Limited (the “**Target**”) following completion (“**Completion**”) of the acquisition of the Target by the Lead Investor pursuant to a share purchase agreement (the “**SPA**”).

The below terms and others will be reflected in an investment agreement relating to Holdco and its subsidiaries (the “**Group**” or the “**Target Group**” and each a “**Group Company**”) (the “**Investment Agreement**”).

	Issue	Terms
1.	Investment Structure	
1.1	Lead Investor’s Investment	The Lead Investor shall own ordinary shares in the capital of Holdco (“Ordinary Shares”) on or following Completion. For the purposes of this Term Sheet, references to “fully diluted equity” assume that all of the Reserved Shares (defined in section 1.2 below) are in issue.
1.2	Management Equity	On the completion of the Investment Agreement, the following securities will be issued to the following members of Management (the “Initial Subscription”): (a) to the CEO, Ordinary Shares comprising 2.25% of the Ordinary Shares in issue in the capital of Holdco; and (b) to the COO, Ordinary Shares comprising 2.25% of the Ordinary Shares in issue in the capital of Holdco, in each case subject to the CEO and COO having entered into a management warranty deed relating to the Target and its business on terms acceptable to the Lead Investor. The Ordinary Shares comprising the Initial Subscription (the “Initial Subscription Shares”) shall be subscribed for by the CEO and the COO for nil (or, if required, nominal) consideration. If the Lead Investor’s investment in Holdco is otherwise than solely in Ordinary Shares, the Initial Subscription shall be into the same instrument or strip of instruments on the same terms and in the same proportions as the Lead Investor’s investment (taking into account the percentages set out in (a) and (b) above), or failing that, the Lead Investor shall ensure that the economic rights of the Initial Subscription Shares are not adversely affected as compared to the instruments held by the Lead Investor. Further, the Lead Investor expects that 10.5% of the fully diluted

		equity of Holdco at Completion will be reserved for Managers in a form (whether shares, options, warrants or any other form of equity or debt instrument) to be determined by the Lead Investor in its sole discretion, taking account of appropriate tax structuring considerations (“Sweet Equity”). The Sweet Equity will be issued/granted¹ for nil (or, if required, nominal) consideration. Sweet Equity will be allocated as follows: (a) on or around Completion, the CEO and the COO will collectively be issued/granted Sweet Equity representing 3.0% of the fully diluted equity of Holdco at Completion, and the allocation will be 1.5% for the CEO and 1.5% for the COO; and (b) a portion of the Sweet Equity (representing 7.5% of the fully diluted equity of Holdco at Completion) will be reserved for allotment before or after Completion to such other Managers on such terms as will be proposed by the CEO and the COO and approved by the Lead Investor, provided in each case that they shall not be allocated to the Lead Investor or the Investor Directors (“Reserved Shares”). In addition, the Lead Investor will negotiate in good faith with Management regarding the issue/grant to Management of Sweet Equity representing up to a further 3.0% of the fully diluted equity of Holdco, the allocation of which will be proposed by the CEO and the COO and approved by the Lead Investor, which shall be subject to performance vesting based on financial performance goals and operational KPIs, to be negotiated in good faith. Any upfront tax costs incurred by a Manager in connection with the issuance of the Initial Subscription Shares or Sweet Equity shall be funded by way of a loan from the Lead Investor or (at the Lead Investor’s election) the Company or Holdco. Any such loan will be repayable in full on an Exit or, if earlier, upon the relevant Manager becoming a Leaver, and other terms will be negotiated in good faith between signing and Completion. The Lead Investor will use reasonable efforts to procure that the grants will be under the “capital gains route” under Section 102 of the Israeli Tax Ordinance.
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2.	Ordinary Share and Sweet Equity Rights	
2.1	Ranking	The Ordinary Shares shall rank pari passu with each other.

2.2	Voting and Dividend Rights	All of the Ordinary Shares shall have the right to receive dividends and shall carry voting rights on a one vote per Ordinary Share basis. The Sweet Equity will not carry any voting or dividend rights unless, and then only to the extent that, the Sweet Equity has: (a) vested (see section 3.3 below); or (b) if applicable, been converted to Ordinary Shares, in each case, in accordance with the terms of the Investment Agreement and/or the articles of association of Holdco (the “Articles”).
2.3	Further Financing (Anti-Dilution)	For all issues of securities in the Group (other than Excluded Issues and Accelerated Issues (each as defined below)), each of the Managers (in respect of the Ordinary Shares held by them only) will have a pre-emptive right to subscribe for or acquire their <i>pro rata</i> portion of such securities. Notwithstanding the foregoing, at the Lead Investor’s election (in its sole discretion, to be determined on a case by case basis having regard to the relevant Manager’s individual circumstances), on any new issue of securities, each of the Managers (in respect of the Ordinary Shares held by them only) may be granted a “catch-up” right, exercisable within 20 business days after the issue to the Lead Investor, to be issued or transferred such number of securities as will result in his <i>pro rata</i> holding of securities, being the same as that which it was prior to the relevant issue (such an issue, an “Accelerated Issue”). Where an issue of securities includes more than one class of securities, each Manager shall be required to subscribe for the same proportion of his entitlement to each such class. “Excluded Issues” means any issue of securities: (a) constituting Reserved Shares; (b) in connection with an initial public offering or de-SPAC transaction with a non-affiliated third party (each, an “IPO”) or reorganisation transaction; (c) in connection with any issue of securities to a non-affiliated third party as consideration for the acquisition from such third party of any shares, undertaking or business by any Group Company; (d) only to another Group Company in relation to a restructuring or reorganisation of the Group for tax, regulatory or other reasons; (e) to a non-affiliated third party pursuant to any joint venture, partnership or other strategic transaction; (f) with the prior written consent of the Lead Investor and the CEO; or

		(g) to a non-affiliated third party in connection with the debt financing arrangements of the Group.
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3.	Leaver Provisions	
3.1	Leaver Transfer	An employee, officer or director of, or a consultant to, a Group Company who holds (or whose permitted transferees hold) Sweet Equity (including the CEO and the COO) or any Initial Subscription Shares and who ceases to be employed or engaged by the Group before an Exit (as defined below) (a “Leaver”) shall be required (unless otherwise agreed at the sole discretion of the Lead Investor), at any time over a twelve month period following being given notice of the same, which such notice must be given within twelve months of his leaving date (which shall be the date notice is served or is deemed to have been served under his service agreement (if applicable) (the “Cessation Date”)), to transfer all of the Sweet Equity (including, to the extent that the Sweet Equity comprises options, warrants or other rights convertible into shares, any shares held as a result of the exercise of such rights) and Initial Subscription Shares (if any) held by him (such Sweet Equity and Initial Subscription Shares, together, “Equity”) (and/or his permitted transferees) on the terms set out below. The price payable pursuant to the Leaver provisions will be based on the vesting provisions referred to in section 3.3 below as well as the concept of “Good Leaver”, “Intermediate Leaver” and “Bad Leaver” set out below. An “Exit” is a sale of a Controlling Interest in Holdco (a “Sale”), the sale of substantially all the assets of the Group (whether by way of asset or share sale), an IPO of Holdco or any parent company of Holdco (the “Holding Companies” and each a “Holding Company”) or the winding up of Holdco. A “Good Leaver” is a Leaver who ceases to be employed or engaged by the Group: (a) by reason of his death or permanent illness, incapacity or disability; (b) in the case of the CEO and COO only, if services are terminated by Holdco at any time for any reason other than for Cause; or (d) if services are terminated by the Leaver for any reason (other than in circumstances where the Leaver could be terminated for Cause) after the third anniversary of Completion. An “Intermediate Leaver” is a Leaver who is not a Good Leaver or a Bad Leaver. A “Bad Leaver” is a Leaver: (a) who leaves by reason of his

		resignation (other than due to constructive dismissal) at any time prior to the third anniversary of Completion; (b) who leaves by reason of being summarily dismissed for Cause or who is dismissed due to a material breach of the terms of the Investment Agreement and/or the Articles and, if capable of remedy, such breach is not remedied to the reasonable satisfaction of the Lead Investor within 10 Business Days of receipt of notice in writing of such breach; or (c) who is initially designated a Good Leaver or an Intermediate Leaver but who subsequently breaches his post-termination restrictive covenants, confidentiality undertakings or other surviving provisions of the Investment Agreement. “Cause” for the purposes of this section means where a Manager: (a) refuses continually or repeatedly to perform any of his material obligations under his employment contract or service agreement after being given reasonable notice of any such refusal and a reasonable opportunity to remedy the relevant breach; (b) commits a materially dishonest act against any Group Company (including a material breach of a fiduciary duty) or fraud against or misappropriation of property belonging to any Group Company; (c) is convicted of a criminal offence other than a motoring offence or other offence for which a non-custodial penalty is imposed; (d) is disqualified from acting as a director of a company by order of a competent court; or (e) is at any time before the fifth anniversary of Completion declared bankrupt or makes any arrangement with or for the benefit of his creditors generally or has an interim order made against him under any applicable insolvency legislation. A “Controlling Interest” means an interest (as defined in sections 820 and 825 of the Companies Act 2016) in the share capital of Holdco or the relevant Holding Company conferring in aggregate more than 50 per cent. of the total voting rights normally exercisable at any general meeting of Holdco or the relevant Holding Company.
3.2	Price for Transfer of Leaver Shares	On any transfer, Good Leavers will be entitled to receive Market Value for their Equity, both vested and unvested. On any transfer, Intermediate Leavers will be entitled to receive: (i) Market Value for their Initial Subscription Shares and vested Sweet Equity (as determined below); and (ii) US\$1 in aggregate for their unvested Sweet Equity. On any transfer, Bad Leavers will be entitled to US\$1 in aggregate in respect of all of the Equity they hold, save that Managers (other than

		the CEO and COO) who are Bad Leavers due to having voluntarily resigned at any time prior to the third anniversary of Completion (other than in circumstances justifying dismissal for Cause) will be entitled to 50% of Market Value in respect of all of the vested Equity they hold. “Market Value” will be: (a) the price per share for the fully diluted equity calculated on the subscription price paid on any new issuance to a bona fide third party which has been carried out within 6 months prior to the Cessation Date; or (b) if not such issuance has taken place, the price per share for the fully diluted equity based on any independent valuation performed by a “big four” accountancy firm within 6 months prior to the Cessation Date on the basis of a sale to a bona fide third party between a willing buyer and a willing seller, taking no account of any discounts to reflect a lack of control or illiquidity; or (c) if no such new issuance has taken place and no independent valuation has been carried out within 6 months prior to the Cessation Date, the price per share as agreed by the Leaver and the Holdco Board within 14 days of a notice being served on the Leaver at the direction of the Holdco Board, or (d) failing such agreement, the amount determined by Holdco’s auditors or an expert firm of independent accountants (if the auditors are unwilling to act or if directed by Holdco) on the basis of a sale between a willing buyer and a willing seller on the relevant transfer date assumption that the Equity is freely transferable, with no minority discount applied, having taken into account the ranking of securities within the Group’s capital structure, the economic rights of each class of security comprising the Equity, the business, operating and market position and the financial position and prospects of the Group.
3.3	Vesting Requirements	Sweet Equity awards will vest and (if applicable) be issued quarterly over a 3 year period from the date on which the relevant Sweet Equity was granted/issued (with the first vesting date commencing on the first anniversary of the date of grant/issue), subject to: (i) to the arrangements applicable to Good and Bad Leavers as set out above; and (ii) to full acceleration on Exit.

7.1	Consent Matters	The Lead Investor will expect customary veto rights over certain high value or non-ordinary course actions which will require written consent of the Lead Investor prior to being undertaken by the Group. Management will have the benefit of a standard suite of minority protections as set out in Annex1.
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8.1	Service Contracts	Each Manager will enter into a new employment contract on customary market terms not less favourable to the Manager as the terms of his existing engagement arrangement, approved by the Lead Investor and which shall, among other things, include an increase in the COO's basic salary to GBP360,000 annually + 20% pension contributions and the cross-default provisions referred to in section 8.2 below.
8.3	Bonus Policy	On completion of the Investment Agreement, the Group will implement a new bonus policy whereby the CEO and COO will be entitled to the following minimum bonus amounts for 2022: (a) in the case of the CEO, 75% of the annual salary (representing 50% of the current bonus entitlement of 150% of the annual salary); and (b) in the case of the COO, 75% of the annual salary (representing 50% of the current bonus entitlement of 150% of the annual salary). Additionally, for each year of employment thereafter, the Managers shall be entitled to bonus based on financial performance and operational KPIs, to be negotiated in good faith, and which won't be on less beneficial terms than the Managers' current agreements.
10.3	Tax Structuring	The Lead Investor will control the structure of the investment and shall be entitled to make such changes to the structure as it determines, <i>provided that</i> such changes do not materially and adversely affect the Managers. The Lead Investor will consider in good faith the reasonable requirements of the Managers to achieve a tax efficient structure.
10.7	Governing Law	All legally binding investment documentation will be governed by English law.
10.8	Confidentiality	No party shall disclose to any other person the contents of this Term Sheet, other than a disclosure to, in the case of the Lead Investor, any of its affiliates and its and their respective directors, officers employees and professional advisors, or in the case of the Managers, their professional advisers to the extent that such disclosure is reasonably necessary for the purposes of the transaction contemplated by this Term Sheet, and <i>provided that</i> each such recipient is made aware of and complies with the disclosing party's obligation of confidentiality under this Term Sheet as if the recipient were a party to this Term Sheet.

10.9	Legal Effect	This Term Sheet is legally binding on the parties, subject to a definitive agreement. The Term Sheet may be executed in any number of counterparts, each of which when executed and delivered is an original and all of which together evidence the same agreement. This Term Sheet and all matters arising from it are governed by English law. The courts of England have exclusive jurisdiction to settle any dispute arising from or connected with this Term Sheet.
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By executing this Term Sheet, dated as of 29 September 2021, the Lead Investor, the CEO and the COO agree to sign definitive documents (including the Investment Agreement) (the “**Definitive Documents**”) incorporating the terms set out in this Term Sheet at or prior to Completion.

The Lead Investor, the CEO and the COO agree to negotiate in good faith the Definitive Documents prior to Completion, which shall incorporate the terms set forth in this Term Sheet and otherwise contain terms which are customary for a transaction of this nature.

The Lead Investor, the CEO and the COO have executed this Term Sheet reflecting their agreement as to the terms contained herein as of the date first set forth above.

ANNEXE 2

Part E1: Allocation of shares to employees

102. (a) In this section:

“Election” means an election by an employing company to use one of two tax routes for the allocation of shares to employees through a trustee: the employment income route or the capital gains route;

“A person with control” has the meaning given in section 32(9);

“Allocation of shares through a trustee” means the allocation of shares of an employing company to an employee, provided that the employee is not a person with control at the time of allocation or thereafter, and all the following conditions are met:

- (1) the shares, including all rights attaching to them, were deposited with a trustee at the time of allocation for at least the duration of the relevant period;
- (2) the company notified the assessing officer of its election in its application for programme approval, submitted at least 30 days before the date of allocation;
- (3) the allocation programme and trustee were approved by the assessing officer, but if the assessing officer does not respond within 90 days of receiving the notification, the allocation programme or the trustee, as applicable, is deemed approved;

“Employing company” means any of the following:

- (1) an employer that is either an Israeli resident company or a foreign resident company with a permanent establishment or a research and development centre in Israel, if approved by the director (for this purpose, the “employer”);
- (2) a company that has control over the employer or over which the employer has control;
- (3) a company in which the same person has control over both the employer and that company;

“realisation date” means:

- (1) in relation to the allocation of shares through a trustee, the earlier of the date on which the share is transferred from the trustee to the employee or the date on which the trustee sells the share;
- (2) in relation to the allocation of shares not through a trustee, the date on which the share is sold, including the sale of a share derived from a right to acquire it;

“Share” includes a right to acquire a share;

“Share listed for trading on a stock exchange” includes a share in a company whose shares, in whole or in part, are listed for trading on a stock exchange in Israel or abroad;

“Trustee” means a person approved by the assessing officer as a trustee for the purposes of this section, including an employee;

“Employee” includes an officer of a company but excludes a person with control;

“Benefit value” means the consideration or value at the realisation date, less any expenses incurred by the employee in acquiring the share, adjusted from the date of expenditure to the realisation date, and any expenses incurred by the employee on disposal;

“End of the period” means any of the following:

- (1) When the company has chosen the employment income route, the end of the period is 12 months from the date the shares were allocated and deposited with a trustee;
- (2) When the company has chosen the capital gains route, the end of the period is 24 months from the date the shares were allocated and deposited with a trustee;
- (3) In a forced sale as defined in section 103 or in any other type of sale determined

by the minister, the end of the period is the date of such sale.

(b) An employee's income from the allocation of shares in an employing company through a trustee is not subject to tax at the time of allocation, and the following provisions apply at the date of realisation:

(1) If the employing company chooses the employment income route, the employee's income is treated as income under section 2(1) or (2), as applicable, in the amount of the benefit value;

(2) If the employing company chooses the capital gains route, and the trustee holds the shares for at least the end of the period, the employee's income is treated as a capital gain in the amount of the benefit value and is subject to tax at a rate of 25%;

(3) Notwithstanding paragraph (2), if the allocated share is a share registered for trading on a stock exchange, or a share in a company whose shares are registered for trading within 90 days of the allocation date, the part of the benefit value equal to the average value of the company's shares on the stock exchange during the 30 trading days preceding the allocation or following the registration for trading, as applicable, less expenses, is treated as income under section 2(1) or (2), as applicable, and the remainder of the benefit value is treated as a capital gain subject to tax at 25%, provided that the amount treated as income under section 2(1) or (2) does not exceed the benefit value at the date of realisation; for the purpose of adjusting expenses incurred by the employee in purchasing the allocated share, such expenses are multiplied by the index of the allocation or registration date, as applicable, and divided by the index of the date the expense was incurred, all adjusted from the allocation or registration date until the date of realisation.

(4) Notwithstanding this section, if the employing company chooses the capital gains route and the date of realisation occurs before the end of the period, the employee's income is treated as income under section 2(1) or (2), as applicable.

(c) (1) An employee's income from an allocation of shares not through a trustee is taxable at the date of allocation as income under section 2(1) or (2), as applicable, and at the date of realisation as income as set out in Part E or Part E3, as applicable.

(2) Notwithstanding paragraph (1), the income of an employee from the allocation of a right not registered for trading on a stock exchange to purchase a share otherwise than through a trustee is not subject to tax at the time of allocation and is subject to tax at the date of realisation as income under section 2(1) or (2), as applicable.

(d) (1) In the allocation of shares referred to in subsections (b)(1), (b)(3) and (c)(1), an employing company of which the employee is an employee may deduct wage expenses arising from such allocation, equal to the lower of the employee's income under section 2(1) or (2) or the amount of contributions for which it is liable due to its obligation to the employing company making the allocation, all in the tax year in which the tax is withheld on the employee's income and paid to the assessing officer.

(2) No deduction applies to the company on the sale of a share for which the employing company elects the capital gains route, even if the share is sold before the end of the period referred to in subsection (b)(4).

(e) Section 3(i) does not apply to the allocation of shares to employees in an employing company, including any obligation to allocate as aforesaid;

(f) Notwithstanding section 100A, the tax rate applicable to the taxable profit portion of an employee who ceases to be an Israeli resident, as defined in that section, is the rate set out in section 121 in any of the following cases:

- (1) an allocation of shares through a trustee for which the employing company elects the employment income route;
- (2) an allocation of shares through a trustee for which the employing company elects the capital gains route, provided the share is realised before the end of the period;
- (3) an allocation of shares not through a trustee to which the provision of subsection (c)(2) applies;

(g) The election under this section applies to every employee to whom shares are allocated and to every share allocation made in the year following the end of the year in which the first allocation was made and thereafter, unless the employing company elects otherwise; an employing company may not elect otherwise unless at least one year has passed since the end of the year in which the first allocation was made following the previous election.

(h) The director may determine any of the following:

- (1) Conditions for the purpose of the allocation;
- (2) Provisions regarding the employee's tax liability if all or some of the conditions under this section or pursuant to it are not met due to the realisation of shares in a sale not by choice;
- (3) (repealed);
- (4) Rules regarding the allocation of shares to an employee who is a non-resident concerning the employee's period of employment in Israel;
- (5) Rules on withholding tax and filing of returns by the employing company and trustee and determination of deadlines for such filings.