Neutral Citation Number: [2024] EWHC 835 (Comm)

Case No: CL-2022-000383

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 15/04/2024

Before :

SIR NIGEL TEARE
Sitting as a Judge of the High Court

- -

Between :

CRESCENT GAS CORPORATION LIMITED	**Applicant/ Judgment Creditor**
- and -	
(1) NATIONAL IRANIAN OIL COMPANY	**Defendant/ Judgment Debtor**
- and -	
(2) RETIREMENT, SAVING AND WELFARE FUND OF OIL INDUSTRY WORKERS	**Defendant**

- -
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Joe Smouha KC, Ricky Diwan KC, Tariq Baloch, Luka Krsljanin and Moeiz Farhan (instructed by **McDermott Will & Emery UK LLP**) for the **Applicant**
Bankim Thanki KC, Jonathan Nash KC and Freddie Popplewell (instructed by **Eversheds Sutherland (International) LLP**) for the **Judgment Debtor**
David E. Grant KC and Joshua Hitchens (instructed by **Blackstone Solicitors Ltd**) for the **Defendant**

Hearing dates: 13-15,18-19 March 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on Monday 15 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Sir Nigel Teare :

Introduction

1. This is a claim by a judgment creditor, CGC, for relief under s.423 of the Insolvency Act 1986 and/or ss.1-2 of the Charging Orders Act 1979 against: (i) NIOC, the Iranian state-owned oil and gas company, and Judgment Debtor, and (ii) the Retirement Fund, a closely related entity.

2. The Judgment Creditor, CGC, is a private limited company incorporated pursuant to the laws of the British Virgin Islands. CGC is a wholly owned subsidiary of Crescent Petroleum Company International Ltd (CPCIL). CPCIL is a privately owned exploration and production company in the Middle East headquartered in the DIFC, United Arab Emirates.

3. NIOC is responsible for Iran's crude oil and gas exploration, development and marketing operations. It has been found liable in arbitration to pay very large sums to CGC.

4. On 25 April 2001, CPCIL entered into a long term (25-year term) Gas Sales and Purchase Contract (the GSPC) with NIOC. CPCIL assigned its rights under the GSPC to CGC (its wholly owned subsidiary) on 26 July 2003. NIOC failed to supply any gas pursuant to the GSPC leading to CGC commencing arbitral proceedings pursuant to the GSPC by Notice of Arbitration of 15 July 2009.

5. CGC eventually secured an award of damages. There was, first, an Award on Jurisdiction and Liability of 31 July 2014 declaring NIOC to be in continuing, daily breach of its obligations under the GSPC since 1 December 2005 (the Liability Award). Challenges by NIOC under s.67 and s.68 of the Arbitration Act 1996 were dismissed by Burton J: *NIOC v Crescent* [2016] EWHC 510 (Comm) and [2016] EWHC 1900 (Comm). Secondly, there was a Partial Award on Remedies of 27 September 2021 (the Remedies Award) by which NIOC was ordered to pay to CGC, by no later than 27 December 2021, the total principal amount of USD 2,429.97 million (the Total Principal Amount) plus post-award interest at the rate of 12 months EIBOR plus 1 percentage point, compounding annually from 27 December 2021 (Post Award Interest). Post Award Interest is now accruing at approximately USD 15 million per month. The Total Principal Amount awarded comprised the following: (i) USD 1,344.70 million in respect of CGC's loss of profits (Lost Profits); and (ii) USD 1,085.27 million in respect of CGC's liability to a partly Crescent-owned subsidiary named Crescent National Gas Corporation Limited (CNGC) for CNGC's lost profits, pursuant to an on-sale agreement between CGC and CNGC (Liability Losses).

6. NIOC has failed to pay any part of the Total Principal Amount or Post Award Interest in breach of its obligations to honour the Remedies Award.

7. The relief sought by CGC is in respect of a property known as NIOC House, being prime commercial real estate located in the centre of London, with an estimated value of at least £80-£104 million which, at the date permission was given to enforce the Remedies Award as a Judgment, 15 August 2022, was registered as being in the sole ownership of

NIOC (as it had been since its purchase in 1975). Although NIOC House is a significant asset against which CGC seeks to execute, the value of NIOC House represents a small fraction of the ever-increasing Judgment Debt.

8. However, when CGC sought to register an interim charging order on NIOC House at the Land Registry on 15 November 2022 CGC learnt that NIOC House was no longer registered in the name of NIOC. On 23 August 2022 NIOC House had been transferred into the name of the Second Defendant, the Retirement Fund (or "Fund").

9. The Fund provides pensions for current and former employees of both private and public sector workers within the Iranian oil, gas and petrochemical industry. Its membership includes but is not limited to current and former employees of NIOC. The Fund has responsibility for receiving mandatory deductions from workers in the oil industry, managing the funds received and paying out pensions and other allowances. The Fund is one of Iran's largest pension funds, with over 170,000 members. The Fund did not have legal personality in 1975 but does now have legal personality. There is a dispute as to whether it acquired legal personality in 2001 or 2019. (From time to time reference will be made to the Funds as opposed to the Fund. No material distinction is intended. The plural is sometimes used in the contemporaneous documents rather than the singular.)

10. CGC seeks an order requiring the transfer of ownership of NIOC House to CGC, alternatively relief in the form of a final charging order in respect of NIOC House. Given that the Judgment Debt presently exceeds USD 2.6 billion (and is increasing), CGC submits that the appropriate relief is a transfer of ownership to avoid yet still further costs in execution.

Section 423 of the Insolvency Act 1986

11. This section, entitled "Transactions defrauding creditors" provides as follows:

> "(1) This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if—
>
> > (a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;
> >
> > (b) he enters into a transaction with the other in consideration of marriage or the formation of a civil partnership; or
> >
> > (c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself.
>
> (2) Where a person has entered into such a transaction, the court may, if satisfied under the next subsection, make such order as it thinks fit for—
>
> > (a) restoring the position to what it would have been if the transaction had not been entered into, and
> >
> > (b) protecting the interests of persons who are victims of the transaction.

(3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose—

(a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or

(b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.

(4) In this section "the court" means the High Court or—

(a) if the person entering into the transaction is an individual, any other court which would have jurisdiction in relation to a bankruptcy petition relating to him;

(b) if that person is a body capable of being wound up under Part IV or V of this Act, any other court having jurisdiction to wind it up.

(5) In relation to a transaction at an undervalue, references here and below to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it; and in the following two sections the person entering into the transaction is referred to as "the debtor".

12. Thus, if a creditor seeks an order under sub-section (2) he must show that there is a transaction at an undervalue within sub-section (1) which was entered into with the purpose of putting assets beyond the reach of a creditor within sub-section (3).

The Charging Orders Act 1979

13. Section 2 provides as follows:

"(1) Subject to subsection (3) below, a charge may be imposed by a charging order only on—

(a) any interest held by the debtor beneficially—

(i) in any asset of a kind mentioned in subsection (2) below, or

(ii) under any trust; or

(b) any interest held by a person as trustee of a trust ("the trust"), if the interest is in such an asset or is an interest under another trust and—

(i) the judgment or order in respect of which a charge is to be imposed was made against that person as trustee of the trust, or

(ii) the whole beneficial interest under the trust is held by the debtor unencumbered and for his own benefit, or

(iii) in a case where there are two or more debtors all of whom are liable to the creditor for the same debt, they together hold the whole beneficial interest under the trust unencumbered and for their own benefit.

(2) The assets referred to in subsection (1) above are—

(a) land,

……"

14. Thus, in order for a charging order to be made, the beneficial title to the property must rest with the judgment debtor. However, the primary order sought by CGC is an order pursuant to the Insolvency Act for the transfer of NIOC House to CGC.

The Issues in the case

15. The Parties have been able to agree that the "central" issues are the following:

Beneficial Ownership of NIOC House

Issue 1: At the time of the August Transfer, who was the beneficial owner of NIOC House?

The S.423 IA86 Claim

Issue 2: Was the August Transfer at an undervalue or is/was it justifiable on the basis that at the date of the August Transfer, Retirement Fund beneficially owned NIOC House?

Issue 3: Was a purpose of the August Transfer one of the purposes set out in s.423(3) IA86?

Issue 4: In light of the foregoing, is the Claimant a victim of the August Transfer within the meaning of s.423(5)?

Issue 5: If CGC were to satisfy s.423 IA86, should relief be granted to CGC pursuant to ss.423-425 of IA86 and if so in what form?

The COA79 Claim

Issue 6: Should a Final Charging Order (FCO) be made on the same terms as the ICOs, pursuant to the Charging Orders Act 1979 and CPR Part 73?

16. Issues 1, 2 and 3 are core issues of fact.

17. On Issues 1 and 2, the questions of beneficial ownership and undervalue, the case of CGC is that NIOC was the "absolute" owner of NIOC House from 1975, Iranian law knowing no distinction between legal and beneficial ownership. The case of NIOC and the Fund is that from 1975 the Fund was the absolute owner of NIOC House in respect of

which NIOC was *amin*, a role known to Iranian law which did not involve ownership. The dispute as to ownership turns on the question whether NIOC bought NIOC House in 1975 with its own funds or with monies belonging to the Fund.

18. NIOC and the Fund said that NIOC's relationship with NIOC House under Iranian law was to be recognised as a trust pursuant to the Recognition of Trusts Act 1987 and the Hague Convention on the Law Applicable to Trusts and their Recognition. CGC said that the relationship of NIOC with NIOC House was not to be recognised as a trust. But NIOC and the Fund also had an alternative argument that in English law NIOC held the legal title of NIOC House on trust for the Fund. CGC's case in response to the English law argument was that there was no declaration of trust and in any event none that sufficed for the purposes of section 53(1)(b) of the Law of Property Act 1925.

19. On Issue 3, the question of the purpose of the August Transfer, the case of CGC was that it was sufficient to show that the putting of assets beyond the reach of a person making a claim was a purpose of the transfer (it did not need to the sole or dominant purpose) and that such purpose was established on the facts. The case of NIOC and the Fund was that the purpose of the August Transfer was to reflect the understanding of NIOC and the Fund that the true beneficial ownership of NIOC House was the Fund.

20. Before seeking to resolve the Issues in the case it is necessary to mention the witnesses who gave oral evidence, describe the Iranian law concepts of an *amanat* and an *amin* and then to set out the principal events in a chronology which, even by the standards of this court, extends over a very long period time, namely, from 1970-2024.

The witnesses

21. NIOC called Dr. Seyed Mostafa Zeinoddin to give evidence. He is an Iranian-qualified lawyer and a visiting Professor at Shahid Beheshti and Tehran Universities. He has held various positions within NIOC and the Fund and its related companies. He was the Deputy Head of NIOC's Legal Affairs department from 1982 to 1987, and then the Head (or Director) of NIOC's Legal Affairs department from 1992 to 2010. He was also a Member of NIOC's Board of Directors and simultaneously a member of the Fund's Board of Trustees. He retired from NIOC (and therefore also from his position on the Fund's Board of Trustees) as from 22 May 2010. From 2015 to 2020 he was a member of the Fund's Presiding Board. In addition, between November 2015 and June 2020, he was a member of the Board of Naft Trading and Technology Company Limited (NTT), an English company incorporated in October 2009. It is a wholly owned subsidiary of the Fund and had a role in managing NIOC House. He was also a member of the Board of AHDAF, which is the investment arm of the Fund from 2017 to the present.

22. Dr. Zeinoddin made his statement at a time when it was the case of NIOC that the Fund had legal personality at the time of the purchase of NIOC House in 1975. But that is no longer NIOC's case. NIOC accepts that in 1975 (and until 2001) the Fund did not have a legal personality. Dr. Zeinoddin's evidence was that the Fund was:

> "a separate entity to NIOC. This is reflected by, among other things, the fact that the Fund has had its own financial records since the 1960s, and has also had its own banking arrangements. The bank account into which all deductions from oil industry employees' salaries are deposited is in the Fund's name."

23. Since it is no longer the case of NIOC that the Fund was a separate entity from NIOC before 2001 the court must inevitably be cautious when considering Dr. Zeinoddin's expressions of legal opinion concerning legal personality and, in consequence, his opinion about the ownership of NIOC House. In any event, he was called as a witness of fact and not as an expert on Iranian law. With regard to his evidence of fact the court cannot expect him to have a reliable recollection of events over the last 40 years concerning NIOC House. Unsurprisingly that was clear when he was cross-examined. But he also, when questioned, tended to give explanations of what he had said in his witness statement rather than give direct and clear answers. For that reason his evidence was not helpful. He was also prepared to give evidence in his witness statement about events of which he had no personal knowledge. This did nothing to encourage reliance on his evidence. For these reasons I do not think that I can rely upon his evidence in resolving the issues in this case, save where it is supported by the contemporaneous documents or is not in dispute.

24. The Fund called Mr. Peter James Cathcart, an English solicitor to give oral evidence. From some time shortly after the 1979 Revolution in Iran until about 2019 he was instructed from time to time to advise the Fund (and perhaps NIOC). In his evidence he reviewed certain of the documentation which is relevant to this case, "to understand the basis of the steps taken by him" in 2014 with regard to the Chief Land Registrar in England. When cross-examined he was fair, clear and honest. However, since he was unaware that as a matter of Iranian law the Fund had no legal personality (at least until 2001) and accepted when cross-examined that had he known of that matter certain of his advice would have been different there is a limit to the value which can be placed on his evidence when resolving the issues in this case.

25. The Fund also called Mr. Mohsen Bayat, since 2009 the Finance Manager of NTT. He said that NTT managed NIOC House on behalf of its parent company, the Fund. It was his belief that the beneficial owner of NIOC House was the Fund. He also said that he understood that "the Pension Fund did have separate legal personality from NIOC at all times," a proposition now abandoned by NIOC. In any event, he was not a lawyer. As a witness he was clear and appeared knowledgeable but he had a tendency to argue the Fund's case and his evidence that the sovereign immunity tax exemption had not been used in respect of rent from NIOC House was not supported by the contemporary documents. There was therefore reason to be cautious with regard to his evidence. But his evidence did show that it was the commonly held view in NTT (and of third parties such as Barclays Bank who had a lease of NIOC House from NIOC) that the Fund was the beneficial owner of NIOC House.

26. The final witness of fact called by the Fund was Mrs. Emma Rachel Nawaz, of Blackstone Solicitors Limited who acted for the Fund in connection with construction matters from about 2018 and acted for the Fund in these proceedings. After carrying out

due diligence she was satisfied that she could represent NTT in relation to matters affecting NIOC House, as she understood the Pension Fund to be the beneficial owner of the property, that NTT was wholly owned by the Pension Fund, and that NTT also had power of attorney from the Pension Fund. She gave evidence as to advice she had given in 2021 and 2022 for the transfer of title to the Fund and of the circumstances surrounding the transfer in August 2022. She advised that the transfer should take place because it would make obtaining insurance easier and assist in the redevelopment and future leasing of NIOC House. She had no knowledge of the arbitration award which had been made against NIOC. As a witness she gave clear and confident evidence. She did not seek to avoid any question although some, which related to the reasons why the Fund withdrew a particular witness on the eve of the trial, were professionally embarrassing for her. After she had completed her evidence she informed CGC's legal team (and, belatedly, the Court) that one of her answers had been in error. Subject to possible further errors of recollection there was no reason not to accept her evidence. However, in circumstances where no board member of NIOC was called to give evidence, the value of her evidence as to NIOC's reasons for the transfer was necessarily limited.

27. It is to be noted that no evidence was adduced from any person who was a member of the board of NIOC in the years since 2010 and in particular from 2015-2022 when significant events occurred. Also, although evidence was called from a former head or director of the Legal Affairs department of NIOC, no evidence was called from the head or director of the Legal Affairs department of NIOC who signed the August Transfer on behalf of NIOC and who was apparently observing this hearing remotely. Nor was there evidence from the Managing Director of NTT who signed the August Transfer on behalf of the Fund. Given the issue in this case as to the purpose of the transfer it is, to my mind, striking that there was no evidence from such persons.

28. The Parties called expert evidence of Iranian law.

29. CGC called Dr Mohammad Nayyeri. He has studied law both in Iran and in England. He has practised law in Iran and is a law lecturer in England. He has produced reports on legal issues in Iran and has given evidence on Iranian legal issues in the courts of England and Wales and in the courts of Scotland. He accepted that his particular interest was Human Rights and that on matters of private law the expert instructed by NIOC and the Fund, Dr. Eskini, had the greater experience. It was suggested to him in cross-examination that his evidence in this case was motivated by hostility to the regime in Iran. He did not accept that. His evidence in other cases to which I was referred shows that he is extremely critical of the regime in Iran. However, it is something of a leap to say that his evidence as to the nature of an *amanat* or as to the nature of ownership in the law of Iran is motivated by hostility to the state of Iran and by extension to NIOC. I accept that he sought to give honest and objective evidence to this court. Indeed there was much common ground between the experts and on some matters Dr. Eskini, the expert called by NIOC and the Fund, agreed with the view expressed by Dr. Nayyeri. Where there is a conflict of opinion as to Iranian law it will be necessary to examine the quality of his reasoning compared with that of Dr. Eskini in order to resolve such conflicts.

30. NIOC and the Fund called Dr. Eskini. He has taught in universities in Iran for many years. He is an attorney, has sat as a judge in the civil courts of Iran and has been the director general of the Legal Office of the Iran Atomic Energy Organisation. He also appears to be a distinguished author on Iranian commercial law. Dr. Eskini gave his evidence with authority and conveyed a sense of his enthusiasm for the subjects of ownership, *amanat* and *amins* in the law of Iran. He was entirely fair. However, there were aspects of his evidence where his view, though firm and unwavering, did not appear, at least to an English lawyer, to be buttressed by substantial reasoning. There was also at least one issue, the removal from NIOC (or the Board of Directors) of the status of *amin* in 2016, which he candidly accepted he had not considered. Thus, although Dr. Eskini had greater experience than Dr. Nayyeri of Iranian private law and spoke with greater authority on that subject, I was not able simply to accept his evidence on all matters in dispute. Rather, where there was a dispute I felt it necessary to examine the respective reasoning of the two experts in order to decide which expert view to prefer.

The Iranian law concepts of an *amanat* and an *amin*

31. NIOC was incorporated in 1948.

32. In 1958, pension regulations were implemented for NIOC, ss. 2 and 3 of which directed NIOC to: (i) establish a segregated pension fund; (ii) open a specific account for those pension funds; and (iii) ensure that those monies did not form part of NIOC's assets. By 16 June 1962 (if not earlier), a bank account was opened at Bank Melli Iran, under the name "Retirement and Saving Funds of Oil [Industry Workers]". The Fund has had its own financial accounts since at least 1968.

33. By operation of law, pursuant to Article 36(m) of the 1964 Ministerial Decision, "the funds of the pension and saving funds of the oil industry employees" were mandated to the Board of Directors of NIOC as "*Amin*" of the funds, with Article 36(m) providing that the funds were not to be treated as part of NIOC's assets and funds. The scheme in respect of the funds of the pension and saving funds of the oil industry employees at that time had no legal personality and were pools of cash, managed either by NIOC (as the Defendants assert), or NIOC's Board of Directors (as CGC asserts), as "*Amin*", and given their own separate accounting treatment.

34. Article 36(m) of the Ministerial Decision was then reflected in NIOC's Articles of Association of 1968 as Article 35(m), in 1974 as article 34(m), and in 1977 as article 35(m) in substantially similar terms to Article 35(m) of the 1968 Articles. CGC and NIOC have each proposed slightly different translations of Article 35(m) of the 1977 Articles. CGC's translation provides that "*Retirement and saving funds of oil industry employees that are entrusted to the board of directors do not constitute part of the company's assets and funds. Nonetheless, the company's board of directors shall be deemed as an amin for these funds*." The Defendants' translation provides that "*Pension and saving funds of the oil industry employees which are entrusted to the Board of Directors are not part of the company's assets and funds. The Board of Directors of the company is considered an Amin of these funds*". It was not suggested that there was

anything materially different between the 1964, 1968, 1974 or 1977 Articles or between the different translations proposed by the Parties.

35. It is necessary at this stage to explain the Iranian concepts of an *amanat* and an *anim.* It is common ground between the experts that where an *amanat* exists the owner entrusts an asset to the *amin* but retains ownership of the asset. The *amin* has no ownership of the asset and has no right to deal with the asset or to enjoy the fruits of ownership other than in accordance with the terms of the *amanat.* An *amin* cannot be equated to an English law trustee since a trustee has the legal proprietary interest in the asset which is the subject of the trust. As Dr. Eskini said with clarity. A trustee and an *amin* "are not the same thing". In Iranian law there is no division between legal and beneficial ownership. There is one concept of absolute ownership.

36. An *amanat* may be created by contract or by operation of law. The experts agreed that the *amanat* established by NIOC's Articles of Association, which have the force of law, was a legal *amanat* and that it was not established by the consent or will of any party.

37. In the case of the Funds the *amin* was described as the Board of Directors of NIOC. Thus the Funds were managed by NIOC's Board of Directors through an internal department of NIOC known as the Fund or Administrative Affairs and was frequently referred to as "NIOC (Pension Fund)" or "(NIOC) Pension Fund."

38. There was an issue between the Parties and the experts as to whether the *amin* was the Board of Directors of NIOC or NIOC itself. Dr. Nayyeri relied upon the express language of Article 35(m) but Dr. Eskini said that NIOC must have been the *amin* because the board of directors lacks legal personality and acts in the name of the company. Counsel for CGC did not in the end press this point (in cross-examination or in submissions) and was content, without making any formal admission, to proceed on the basis that NIOC was the *amin*.

39. It is common ground that there can be an *amanat* in respect of public property. CGC contends that the funds or "pools of cash" were "public property subject to the supervision of the State". Whilst it is common ground that in 1975 the Funds at this time did not have legal personality and so could not own the "pools of cash", NIOC contended, based upon the expert evidence of Dr. Eskini, that the funds or "pools of cash" belong "in a co-ownership relationship to the oil industry workers". This was not accepted by Dr. Nayyeri who pointed out that the employees of the oil industry were "a constantly changing pool of thousands of inter-generational individuals". Dr. Eskini accepted that his view was based upon the employees being a partnership within article 571 of the Iranian Civil Code of 1932. Article 575 provides for each of the partners to share in the profits in proportion to his shares and article 583 provides that each of the partners may transfer to a third party the whole or a part of his share. These provisions sit uncomfortably with the *amanat* created by article 35(m) of NIOC's Articles of Association. Indeed Dr. Eskini said they did not apply. However, articles 575 and 583 do not provide for such non-application. When pressed to explain the basis of his reasoning he said the non-application of those articles was the result of the law evidenced by NIOC's Articles of Association. He did not refer to any provision of Civil Code which

made the provisions of articles 575 and 583 subject to an agreement of the partners to the contrary or subject to a law which provided for a different arrangement in the case of certain partnerships. In my judgment, the language of those articles was clear and did not contemplate that they might in certain circumstances be inapplicable. So in the end, and with respect to Dr. Eskini who expressed his opinion firmly and with confidence, I was not able to accept his opinion. There is, as Dr. Eskini accepts, a conflict between the *amanat* created by the Articles of Association and articles 575 and 583 of the Civil Code. That suggests to me that the *amanat* is not a partnership within article 571 of the Civil Code. Further, there is, as it seems to me, force in Dr. Nayyeri's point about the constantly changing pool of thousands of inter-generational individuals. Such a pool is difficult to equate with the partnership contemplated by article 571 of the Civil Code. For these reasons I accept Dr. Nayyeri's opinion that the funds were public property (ie non-private, yet distinct from state-owned and national resources) subject to the supervision of the state.

The Chronology

1970-2000

40. On 14 April 1970, the Chairman of NIOC's Board of Directors sent a note to NIOC's Administration, Financial, and Commercial Director, noting that a property in London would be purchased with the Fund's money. It said that it had agreed that "a suitable building in London…be purchased from the Company's Retirements' funds at a price of about 60 to 80 Million Rials [approx. £300,000-£400,000]…and be availed to the Company [i.e., NIOC] by way of a rental agreement."

41. On 29 November 1973 HMRC informed Iranian Oil Services Limited that it was prepared to grant NIOC a sovereign immunity tax exemption in respect of any income that is beneficially that of NIOC.

42. It was suggested by counsel for CGC that the tax exemption was sought in respect of the proposed London property and the income which it would generate. However, counsel for NIOC referred to an arbitration award dated July 1987 (which was in the public domain) which concerned a dispute to which NIOC was party and an Agreement dated July 1973. The award referred to Iranian Oil Services Limited as a company incorporated in the UK which was to conduct operations outside Iran. Counsel for NIOC suggested that the tax exemption may have been sought in respect of income of NIOC stemming from the Agreement of 1973 mentioned in that arbitration award. Given that the addressee of the letter from HMRC was Iranian Oil Services Company that is the more likely explanation.

43. On 12 September 1975 NIOC purchased premises in Central London for *c*. £7.5m. NIOC was described as the purchaser and was registered as the proprietor of the property with the Land Registry. There is no other contemporaneous evidence from 1975 in the form of board minutes or accounts showing the source of the monies used by NIOC to purchase the premises. It is curious that, although the Fund's accounts for 1973 and 1976 were disclosed, accounts for 1975 were not disclosed. One would expect all the accounts to

have been kept together. I was not referred to any disclosure statement which explained why the 1975 accounts were not disclosed. None of NIOC's accounts were disclosed. It is surprising that those for 1975 were not disclosed because one would expect them to be relevant. Indeed, NIOC relied upon a statement by Dr. Zeinoddin that NIOC's accounts never recorded NIOC House as one of its assets (see paragraph 68 of Counsel's Skeleton Argument). Yet the accounts of NIOC were not disclosed.

44. On 1 February 1976 the Board of Directors resolved that "Pension and Savings Funds Affairs" will pay the cost of purchase and construction of NIOC House and will insert the amount paid in the books as a 9% loan to NIOC.

45. Accounts for the Funds for the year end 1976 have been produced and, consistently with the Board decision of 1 February 1976, they show a 'loan' from the Funds to NIOC in respect of the "London Building". The list of immovables did not include NIOC House.

46. The source of the funds used by NIOC in 1975 to make the purchase is not clearly identified in the few documents in evidence. The candidates are (i) NIOC's own funds, (ii) "the pools of cash" managed by the Board of Directors as "amin", and (iii) a loan from "the pools of cash" at 9% interest.

47. I consider that it more likely than not that the monies used to purchase NIOC House were taken from the "pools of cash" of the Funds as a loan in respect of which NIOC would pay interest of 9% per annum to the "pools of cash". (This is CGC's alternative case; see paragraph 20(1D) of the Amended Reply). I have reached that conclusion for these reasons:

    i) Although the decision of 1 February 1976 was over 3 months after the purchase, that decision, coupled with the recognition of the loan in the Funds' 1976 accounts, is evidence of the funding of the purchase by means of a loan.

    ii) There is no evidence that the purchase was funded out of "the pools of cash" without any loan to NIOC (although in 1970 it was contemplated that the purchase of a property in London would be made "with the Fund's money").

    iii) Had the purchase been funded out of the pools of cash without any loan to NIOC, it is difficult to see why the Funds would have recognised the loan in their 1976 accounts and not listed NIOC House as an immovable.

48. Since the Fund had no legal personality there could not be a contract of loan between NIOC and the Fund. But, as explained by Dr. Nayyeri, the loan was an exercise of the management powers of NIOC as *amin* to generate a return for the Fund.

49. Dr. Zeinoddin said in his statement that the property was purchased using the resources of the Fund and that the reference to a loan was "an error" and a "misunderstanding". He did not explain why that was so and in any event he had no personal knowledge of such matters. Although he referred to some documents he made no reference to the mention of the loan in the Fund's 1976 accounts. I am unable to accept his evidence.

50. I therefore find as a fact that the purchase of NIOC House in 1975 was funded by monies borrowed by NIOC from the "pools of cash" on terms that interest of 9% be paid.

51. The consequence of the purchase having been funded by a loan from the pools of cash at 9% interest is that NIOC purchased NIOC House with its own monies and NIOC became the owner of NIOC House. The experts on Iranian law agreed that:

> "If NIOC purchased NIOC House in 1975 with its own monies, NIOC was the owner of NIOC House as a matter of Iranian law. We also agree that, given the ownership-transferring nature of loans, if a loan was given to NIOC from the funds, the loaned money and whatever it purchased with the loaned money would belong to NIOC, subject to an *in personam* debt obligation."

52. It also follows that NIOC House was not within the *amanat* created in 1964 and that NIOC did not purchase NIOC House as *amin*. An *amin* has no ownership of the asset in respect of which he is *amin* whereas NIOC was the owner of NIOC House and the Fund was not. There was thus no scope in 1975 for the Funds, even if they had legal personality (which it is now common ground that they did not) to be the owner of NIOC House. The "pools of cash" in the Fund were public property within the *amanat* but NIOC House was not. The registration of NIOC as the sole registered owner of NIOC House in the Land Registry was consistent with NIOC being in Iranian law the owner of the property.

53. The accounts for 1979 continued to record a loan to NIOC in respect of the "the London building". The schedule of immovables was not translated but if it had included NIOC House I am sure that counsel for NIOC would have told me.

54. On 4 December 1979 a contract was entered into by NIOC as Landlord and Barclays Bank PLC as Tenant for a 25 year term commencing 25 March 1979.

55. Also on 4 December 1979 there was a report from the Ministry of Petroleum, apparently following a visit to London, which suggested that NIOC House might be sold.

56. On 15 December 1979 "a board of supervisors" met in the offices of the deputy Minister of Petroleum. The supervisory board (which I assume to be the board of directors of NIOC or at least acting as such) gave consideration to the selling of NIOC House and then the minute notes:

> "The case of the building costs and expenses received as a loan from the Pension Fund was raised and considering that for this case, no interest was paid to the Fund by the company and basically, the repayment of the loan also is not determined, it was concluded that the House is the property of the Pension Fund and it was decided that the proceeds from selling the House must be returned completely to Pension Fund".

57. This minute confirms that the costs and expenses of the building had been "received as a loan from the Pension Fund" but also states that no interest had been paid and that the

repayment of the loan is not "determined". The "conclusion" that the building was the property of the Pension Fund and the "determination" that the proceeds of sale must be returned to the Pension Fund appear to be based upon the fact that no interest had been paid and that repayment of the loan was not "determined". They reflect an understanding that in circumstances where the "pools of cash" of the Fund had not been increased by the payment of interest and where there was no provision for the repayment of the loan it was appropriate that in the event of a sale of NIOC House the proceeds of sale should be added to the "pools of cash" of the Fund.

58. The "conclusion" that "the building is the property of the Pension Fund" was, arguably, legally incoherent, given that the Pension Fund lacked legal personality. Counsel for CGC described this as a "legal impossibility". Counsel for NIOC described it as a "conundrum" but suggested that it could be resolved by saying that the Fund was owned either by the employees (a proposition which I have been unable to accept) or by the state. The nature of the public ownership (which I have accepted) and its consequences in this context were not fully explored with either expert.

59. Counsel for CGC submitted that the reference to "property" was not meant to reflect a view as to the ownership of NIOC House but a recognition that, as a matter of accounting, and given the fact that interest had not been paid, the proceeds of sale should be attributed to the Fund in the event of a sale. This view was described by counsel as "internal" to NIOC. Counsel for NIOC relied upon the words of the document which referred to the building being "the property of the Pension Fund".

60. I consider that the most probable explanation for the building being described "as the property of the Pension Fund" is that this reflected a view formed by the Board, some four years after the purchase, without fully considering the legal impact of the fact that the purchase had been made by NIOC with monies borrowed from the Fund and so belonging to NIOC. That view, on the basis of the expert opinion before this court, was a mistaken view. Dr. Eskini put the matter clearly when being cross-examined: "In a relationship of loan, when you –– I borrow money from you, I become the owner of the money, and if I purchase with that money a building, I will be the owner of that building."

61. There is evidence that on 20 December 1981 the Board of Directors decided that a Rial equivalent of rental received in respect of NIOC House should be remitted to the "Funds Affairs Account", but no expenses were to be inserted into "this Affairs" accounts. There is no dispute that the rent from NIOC House, notwithstanding that NIOC may have been entitled to payment of the rent, was credited to the Fund's accounts. It appears likely that this was done because no payments of interest were being made to the Fund.

62. The Fund's accounts for 1981 continued to refer to the loan in respect of the London building. This suggests that NIOC's "internal" conclusion as to NIOC House being the property of the Fund had not by this stage been communicated by NIOC to the Fund. There was no translation of the list of immovables but had the list contained NIOC I am sure that counsel for NIOC would have informed me of that.

63. On 20 June 1982, a minute of a meeting of the Board of Directors referred to a proposal from "internal auditing" and agreed that documents relating to NIOC House were to be handed over to the Fund. It was said that NIOC House "is under ownership of Pension, Saving and Welfare Funds of Employee Affairs".

64. The Funds' accounts for 1982 note NIOC House ("London building") in annex 10 relating to real property or immovables. This appears to be the first time that NIOC House is recorded in the Fund's accounts as an asset.

65. Thus it would appear that by 1982 NIOC's "internal" conclusion or opinion had been communicated to the Fund.

66. In a report headed "Affairs of the Pension, Savings and Welfare Funds of Employees" which appears to concern the Fund's 1980 accounts but to have been written after July 1983, the date of a letter referred to in the report, and was not, I think, the subject of submissions) reference was made to discussions and correspondence concerning "the London Building" with the Ministry of Oil. The result of the "negotiations and correspondence" was that the Funds were to be "recognised as the Owner of the building". However, this "ownership" was limited in that the Ministry of Oil would not permit the Funds to sell the building and the Funds were not allowed to have a representative in the building.

67. The Funds' accounts for 1983 referred to the London Building under "immovables".

68. The Funds' 1984 accounts referred to depreciation on the London building.

69. On 17 or 18 March 1984 (the two rival translations have different dates) there was a meeting of the NIOC Board of Directors. The minute noted a letter dated 7 March 1984 which referred to "a lease contract of National Oil Company's building in London" and that the Rial equivalent of the rent of £2m was to be paid to the Pension, Savings and Welfare Funds Affairs.

70. On 29 April 1985, a letter was sent headed "Dealing with the Income and Expenses of the London Office House". One translation says it was from the "Head of the Pipeline, Exploration and Loan Auditing" to the "Acting Head of Internal Auditing". The other says it is from the "Supervisor of Internal Auditorship" to the "Chief of Pipelines, Exploration and loan's auditorship". Given its content it was probably from the internal auditing department. Either way it was an internal NIOC document. It stated that NIOC House had been purchased with funding from the Fund. This letter refers to the above minutes (of 1 February 1976, 15 December 1979, 20 December 1981, 20 June 1982 and 8 March 1984) but the author of the document appears to have noted the five minutes without any critical enquiry, for example, as to how the building could be said to be the property of the Pension Fund in circumstances where the money had been borrowed from the Fund. No mention was made of the Fund's accounts for 1976, 1979 and 1981 which referred to the loan.

71. When cross-examining Dr. Nayyeri counsel observed that the 1982 accounts included NIOC House as an asset of the Fund. In closing submissions counsel for NIOC, basing

himself on this observation, advanced what appeared to be a new argument. It was submitted that if, as I have now found, NIOC bought NIOC House and became its owner in 1975, NIOC had transferred NIOC House to the Fund by 1982. (I did not understand it to be alleged that the minute of 15 December 1979 was a transfer.) Counsel for CGC submitted in his reply that this case was not open to NIOC because it had not been pleaded. This appears to be correct. The Amended Defence of NIOC, at paragraphs 33(i), 39 and 86(7), pleads that the Fund was the beneficial owner of NIOC House since 1975. To the same effect is the Amended Defence of the Fund at paragraphs 7(i)(zb) and 19(i). The case of NIOC as summarised in NIOC's Skeleton Argument at paragraph 6.1 is that "in 1975, NIOC became the *amin* in respect of NIOC House". The case of the Fund was that "from the outset" the Fund's members were beneficial owners of the property; see paragraph 39 of Fund's Skeleton Argument (and see also paragraph 91.2). Neither the Amended Defences nor the detailed "sub-issues" carefully agreed by the Parties make reference to an alternative case that, if NIOC House was not within the *amanat* in 1975, NIOC transferred NIOC House to the Fund by 1982. The most that can be said is that when referring to the disputes between the experts reference was made (in paragraph 102.3 of NIOC's Skeleton Argument) to NIOC House being an asset of the *amanat* "upon its acquisition by NIOC in 1975 or at some later point" and to the experts' disagreement as to whether formalities were required for a transfer. But there was no pleaded allegation at any time that that such a transfer had taken place by 1982.

72. The court therefore has to decide whether this new case is open to NIOC in circumstances where the facts appear to be at least consistent with this new case in that they show that the treatment of NIOC House in the Fund's accounts had changed by the date of the 1982 accounts. NIOC House (or "London building") was stated as an asset in those accounts in 1982 for the first time. Despite that circumstance NIOC's Amended Defence (served on 17 November 2023) did not allege that there had been a transfer by 1982. There was no application to re-amend to plead a transfer by NIOC to the Fund by 1982 at the Pre-Trial Review on 4 March 2024, which was 9 days before the first day of the hearing. I can only conclude that the first time that the potential significance of the change in the accounting treatment of NIOC House in the 1982 accounts was appreciated was at trial.

73. This was a trial in which the Parties had come prepared to deal with detailed issues in a compressed time-table. No case had been articulated by NIOC or the Fund that NIOC House had been transferred by NIOC to the Fund by 1982 so that NIOC House then became subject to the *amanat*. The focus of attention was clearly on whether NIOC House was, from the moment of purchase in 1975, within the *amanat*. NIOC adduced evidence from Dr. Zeinoddin that the reference to a loan in the minute of 15 December 1979 and in the document dated 29 April 1985 was an error or misunderstanding, which evidence ignored the reference to the loan in the 1976, 1979 and 1981 accounts. In that context I think that it was fair for Counsel for CGC to submit that the alternative case first articulated in closing was not open to NIOC. There was no application to re-amend. Moreover, there is a risk of unfairness to CGC in allowing NIOC to introduce a new factual case in the course of closing submissions. Had the new case been pleaded before trial CGC would have had the opportunity to deal with it in the opening Skeleton Argument. In circumstances where not all issues could be dealt with at trial orally

(because of the compressed time table) the Skeleton Argument was an important document in which a party was able not only to set out its own case but also to answer the case of the other party. CGC did not have the opportunity to deal with the suggested new case in its Skeleton Argument because it had not been advanced before the trial. Had the new case been pleaded it would have been necessary to consider at least the following questions: (i) when and how was the suggested transfer effected by 1982 and (ii) what was the nature, meaning and effect of the "negotiations and correspondence" with the Ministry of Oil referred to above? Neither of these issues was explored during the trial. Instead, the issue was whether there had been a loan in 1975 or not. Had the new case been pleaded it would surely have been necessary for disclosure to be given of NIOC's accounts from 1975 to 1982 to see what they recorded about NIOC House (especially in circumstances where Dr. Zeinoddin relied upon NIOC's accounts in support of NIOC's pleaded case). After the new case was first articulated in closing, CGC's only opportunity to deal with it was in a brief reply in the last half hour of the trial. In reality that was no opportunity at all.

74. I therefore consider that to allow NIOC to advance this new case would risk substantial prejudice to CGC. That risk of prejudice has to be balanced against the possible harm to NIOC and the Fund in not being able to advance this new case. But the 1976, 1979, 1981 and 1982 accounts of the Fund and the report concerning the 1980 accounts must have been available to NIOC and the Fund long before the trial and yet this new case was not articulated until closing submissions. I appreciate the potential importance of this new case but in my judgment it would be unfair to allow the suggested new case of a transfer by 1982 to be advanced by NIOC and the Fund. CGC had no reasonable opportunity to deal with it.

75. On 30 November 1995 NIOC, as applicant, submitted a planning application to make alterations to NIOC House. The Owner's Certificate was signed on behalf of NIOC.

76. In 2000 an independent auditor's report for the year ended March 2000 stated that the Pension Fund "does not have an independent legal identity from the National Iranian Oil Company but is managed as a separate and independent unit within the Administrative and Financial Affairs department of the National Iranian Oil Company". That appears to be a correct assessment. The Fund did not have a legal personality but was managed by NIOC and kept separate from other funds or assets of NIOC.

77. Thus, by the year 2000, the position was that NIOC had purchased NIOC House in 1975 with monies which it had borrowed from the "pools of cash" of the Funds. The proper conclusion to be drawn in those circumstances as a matter of Iranian law, as agreed by the experts, was that NIOC was the owner of NIOC House. Since it is common ground that there is no concept in the law of Iran of legal and beneficial ownership, NIOC was the absolute owner of NIOC House. NIOC House was therefore not within the *amanat* of which the Board of Directors was *amin*. An *amin* has no ownership. Consistently with that conclusion NIOC was registered as the owner of NIOC House in London. The references in the 1982,1983 and 1984 accounts of the Funds to NIOC House being the property of the Funds reflected the (mistaken) expression of opinion by the Board of NIOC first formed in 1979, some 4 years after the purchase of NIOC House in 1975. The

crediting of rent from NIOC House to the Fund came about because the loan interest which NIOC was to pay the Funds had not in fact been paid and in those circumstances it was considered appropriate for rent from NIOC House to be credited to the Fund.

2001-2011

78. In 2001 a law was passed in Iran which, on the case of NIOC, gave the Fund a legal personality. This is disputed by CGC. This is an issue of Iranian law which I will discuss at a later stage in this judgment. But I record here my finding that the Fund did not acquire legal personality in 2001.

79. The independent auditor's report for 2002 correctly stated that "the Fund does not have legal personality and in accordance with paragraph M of Article 35 of the National Iranian Oil Company's Articles of Association, its administration is carried out as per the resolutions and decisions of the board of directors of the said company, which serves as the *amin* for the Pension, Savings, and Welfare Funds of Oil Industry Employees". It is to be inferred from the ordinary course of business that the auditor's report had been approved by the Board of NIOC.

80. On 14 June 2004, NIOC issued a certificate (said in the Opening Submissions to be in the course of negotiations for a loan) which said that further to the NIOC Board of Directors' resolution of 14 December 1979, NIOC House had "been purchased out of Funds of Pension, Saving, and Welfare Funds of the Iranian Oil Industry Employees and belongs to the above mentioned Funds." (The reference to a board resolution dated 14 December 1979 appears to be a reference to the board resolution noted above dated 15 December 1979.) The certificate fails to mention the loan and does not explain how in 1979 or 2004 NIOC House could belong to the Funds which lacked legal personality.

81. The independent auditor's report for the year ended March 2004 again stated that the Pension Fund "does not have legal personality". The accounts record NIOC House and income from NIOC House.

82. On 16 May 2005 lease contracts were entered into in respect of NIOC House between NIOC as Landlord and HSBC Bank for a period of 15 years. (It is fair to note, however, that a schedule of leases provided to me recorded that many leases of a much shorter length (eg 1, 3 or 5 years) were entered into by the Fund. How that was done given that the Funds had no legal personality was not explained.)

83. On 26 January 2005 Mr. Cathcart provided a "draft letter of comfort" which had been requested by Qatar National Bank in connection with a loan of $100m. to the Funds by Qatar National Bank. The draft is in English and states that NIOC House "is held by National Iranian Oil Company on trust for the National Iranian Oil Company Pension Fund as beneficial owners". It further said that NIOC was the legal owner of the property and agreed on behalf of the Fund to enter into a legal charge over NIOC House as security for the Qatar National Bank. Mr. Bayat gave evidence that the Fund did not proceed with this loan facility. This appears to be the first mention of a trust. Since the draft was never signed it does not represent the views of NIOC. Rather, it represents the

views of Mr. Cathcart who was unaware that the Funds lacked legal personality. There is also no suggestion in his evidence that he was aware of the loan or of its legal consequences.

84. On 29 May 2007, NIOC issued another certificate which, I was told in Opening Submissions, was for the purposes of obtaining a loan from the London branch of the Iranian bank, Melli Bank. It stated that: "… it is certified that the ownership of the Building located in London, address: NIOC HOUSE, 4 VICTORIA ST., LONDON, SW1 H0NE [sic], belongs to the Retirements, Deposit Funds of Oil Industry Staff ". This certificate, like that of 14 June 2004, relied upon the resolution of 14 December 1979. It was signed by the head of Legal Affairs, Dr. Zeinoddin, who gave evidence before me. He said in his witness statement that he recalled that he signed it in connection with a loan by Melli Bank to the Fund. However, it was clear from his oral evidence that he had no reliable recollection that it was in connection with Melli Bank. He also said in his witness statement that he reviewed the files of NIOC's archive but the document states that it is based upon the Board decision of 14 December 1979. In his oral evidence he confirmed that that was so. The certificate therefore takes matters no further than the decision of 14 (or 15) December 1979.

85. On 23 June 2011, the legal department of NIOC wrote to NIOC's executive, with the subject line "The building belonging to Pension Fund in London" and suggested that legal title to NIOC House be transferred to the Fund. It said that:

> "based on documents and records concerning NIOC House…the building located in London address NIOC House, 4 Victoria St, London, SW H0NE [sic], is bought from funds of 'the Pension, Savings, and Welfare Funds of Oil Industry Employees' and belongs to mentiond [sic] Fund. However, due to some consideration like lack of independent legal personality at that time, ownership documents of the building had been registered in the name of NIOC".

86. This letter makes no reference to the loan and speculates that NIOC House was registered in the name of NIOC because the Fund lacked legal personality. There is no document dating from 1975 which suggests that. The registration of NIOC House in the name of NIOC was consistent with NIOC having purchased NIOC House as owner.

87. The letter went on to say that the head of the executive board of the Fund, in a confidential note dated 17 April 2011, had said that, if the deeds to NIOC House were not transferred to the Fund, "properties of the government of the Islamic Republic of Iran may be subject to transgression and possibly confiscation by foreign government". It was therefore requested that there be a transfer of the title deeds to the Fund.

88. On 3 July 2011, there was a meeting of the Board of Directors of NIOC. A note dated 16 August 2011 of the 3 July 2011 meeting recorded that it had been:

> "resolved that the Legal Affairs Department of the National Iranian Oil Company 'NIOC' shall take action to have the title deeds of the foregoing building transferred to the original owner of the said building i.e., 'the Pension, Savings,

and Welfare Fund for Oil Industry Employees', in collaboration and coordination with the Funds".

89. In summary, during the period 2001-2011 NIOC continued to be, in Iranian law, the owner of NIOC House. This was not however the way in which NIOC and the Fund perceived it. Those in NIOC continued to rely upon the Board's decision of 14 (or 15) December 1979 as evidencing that NIOC House belonged to the Fund without considering the implications of the fact that NIOC House had been purchased with monies borrowed from the Fund. The Fund's accounts also recorded NIOC House and the rent from NIOC House. In 2011 the Board of NIOC resolved to transfer title to NIOC House to the Fund. This appears to be the first resolution to transfer NIOC House to the Fund. The motivation for such a transfer appears to have been a fear that properties of the Islamic Republic of Iran might be seized by a foreign government. I infer that one such property was thought to be NIOC House. No such transfer in fact took place.

2012-2020

90. On 5 February 2012, the USA imposed sanctions on the Government of Iran and any persons owned or controlled by the Government of Iran (Executive Order 13599). Further sanctions on 1 May 2012 and 30 July 2012 imposed a secondary sanctions regime and prohibited banks from dealing with NIOC specifically (Executive Orders 13608 and 12622).

91. On 15 October 2012, the EU imposed sanctions on Iranian State-owned entities in the oil and gas sector, including NIOC (Council Decision 2012/635/CFSP and Council Implementing Regulations No. 945/2012).

92. On 1 November 2012, the Land Registry notified NIOC that as a result of the sanctions, an entry on the Land Register had been made against NIOC House, prohibiting any disposition without the consent of HM Treasury.

93. On 15 November 2012, Mr Nigel Kushner of W Legal, the Fund's then sanctions lawyers, emailed HM Treasury to clarify whether HMRC considered the Fund, which he said he had been informed was "a distinct entity from NIOC", to be sanctioned/caught by the EU asset freeze. The email also addressed the ownership of NIOC House. Under the heading: "Who owns NIOC House?", he said that NIOC House was beneficially owned by the Fund.

94. On 19 December 2012, HM Treasury responded to Mr Kushner, stating its understanding that NIOC and the Fund were indeed separate legal entities and that the Fund was not subject to EU sanctions. It added "… we accept that NIOC Pension Fund is the beneficial owner of the property…"

95. On 21 December 2012, HM Treasury emailed NIOC International Affairs (London) Limited (NIOC IA) (a wholly owned subsidiary of NIOC) and NTT, asking for clarification as to whether: (i) the Fund was entitled to rental payments in relation to NIOC House; and (ii) NTT was collecting rental payments as the Fund's agent and on its behalf. On 23 December 2012, Mr Parsaei (of NIOC IA) replied, saying: "I confirm

NIOC Pensions and Savings Fund (NIOC PSF) is the beneficial owner of the building at 4 Victoria Street and they are entitled to the rental contract payments", and confirming that NTT acted as the Fund's agent in collecting the rent.

96. On 27 December 2012 Mr. Kushner wrote to HM Treasury thanking them for their letter of 19 December 2012 but noting that since that letter the Fund had been made subject to sanctions. He requested a meeting and such a meeting took place on 7 January 2013. Discussions by email with regard to insurance and leasing in the context of sanctions continued throughout 2013.

97. On 11 January 2014, Mr Mazraei (a member of NTT's Board of Directors), wrote to Mr Rahimi, Chair of the Fund's Presiding Board, with the subject line: "Title Deed of Nioc House Building in London". The letter said:

> "Based on the available documentation and records, the Funds' ownership on the "NIOC House" building is definite and undeniable; one of the most essential of these documents is the "Trust Deed" which is available with the Funds' lawyer, Mr. Cath Carts. This document, which has been approved by the Fund Affairs Board of Amins and the National Oil Company Board of Directors, demonstrates that the National Iranian Oil Company's position as a "Custodian Trustee" or *amin*."

98. The letter concluded that there was no need to change the legal owner of NIOC House from NIOC to the Fund, because (i) such a change might affect the tax exemption which the UK had granted to NIOC in 1973; (ii) there was an existing long lease on the property and (iii) Mr. Cathcart had said there was no necessity to change the name in the title deed. The letter concluded by saying that sanctions made it impossible for the Land Registry to transfer ownership and change the name.

99. This is a confused letter. The statement of ownership appears to be based upon a Trust Deed. There is no such deed. What was approved by the Fund and NIOC is therefore a mystery. Counsel for CGC suggested that this letter must have been a misunderstanding of advice from Mr. Cathcart. That seems likely. Certainly, the reference to a Custodian Trustee appears to have originated from him. It is common ground that the statutory term "custodian trustee" did not apply in this context. Mr. Cathcart explained in his evidence that the notion of a Custodian Trustee derived from his understanding of the basis upon which the Scouts organised their affairs in England. Whatever the explanation, the recommendation was not to change the title registration because the Funds had benefitted from the tax exemption and a change could affect that.

100. On 1 February 2014, both Mr Rahimi and Mr Mahmoudreza Firoozmand, NIOC's Director of Legal Affairs, wrote (separately) to Cathcarts, saying:

> "We hereby authorize and request you to apply to HM Land Registry to change the designation of ownership of 4 Victoria Street so that in future it confirms that NIOC holds the land as Custodian Trustee for NIOC Pension Fund".

101. It is to be noted that this was not a request to change the registered owner from NIOC to the Fund but to change the entry on the register so that NIOC was still the registered owner but that NIOC held title as Custodian Trustee for the Fund.

102. On 11 February 2014, Cathcarts duly wrote to the Land Registry on behalf of NIOC and the Fund, saying that it had acted for both entities in relation to NIOC House since 1979, and that "This property does not belong to National Iranian Oil Company per se. The property is held by the National Iranian Oil Company as Custodian Trustee for National Iranian Oil Company Pension Fund". The letter then explained that NIOC and the Fund "wish to ensure that the registered entries properly reflect the position so that the Registered Proprietor should be [NIOC] as Custodian Trustee for [the Fund]".

103. The Land Registry responded on 24 February 2014, saying that it could not amend the registered proprietor, which prompted a response from Cathcarts on 27 February 2014, explaining that it was not asking the Land Registry to amend the registered proprietor, but simply to record that NIOC held NIOC House as custodian trustee for the Fund.

104. On 14 March 2014, the Land Registry said that an application should be made for a restriction on the Land Register in "*form A*", and on 18 March 2014, Cathcarts responded, reiterating that NIOC held NIOC House on trust. Cathcarts said that one option was for NIOC to enter into a declaration of trust confirming that it holds the land as custodian trustee for the Fund and sought confirmation that the Land Registry would recognise a declaration of trust in favour of the Fund. On 26 March 2014, the Land Registry said that declarations of trust are not referred to in the register of title. This appears to have been accepted because the request to recognise a declaration of trust does not appear to have been pursued.

105. In 2015 the Fund took steps to acquire a legal personality. In March 2015 it adopted Articles of Association which were ratified by NIOC's Board of Directors. In the same month the Fund was registered as a non-commercial institution and given registration number 35720. However, the Articles of Association were subsequently declared null and void on account of the absence of approval by the Council of Ministers by a judgment of the Administrative Court dated 13 August 2019.

106. In 2016 NIOC's Articles of Association were amended. Article 35(m) was deleted so that there was no provision for the Board of NIOC to be the *amin* of the Fund. It seems likely that this change was brought about because the Fund had taken steps to acquire its own legal personality and article 5 of the Fund's article provided for the assets of the Fund to be transferred to the Board of *Amins* of the Fund.

107. EU sanctions on NIOC were lifted in January 2016, pursuant to EU Council Regulation 2015/1862, although NIOC remained subject to US sanctions. So after January 2016 the EU sanctions can no longer have prevented a change of registered ownership of NIOC House in England. Indeed, Dr. Zeinoddin gave evidence to this effect.

108. In June 2018 there was a meeting between NTT and Mr. Cathcart to discuss NIOC House and the concerns NIOC had about its name appearing on the title deeds of NIOC House.

After that meeting Mr. Cathcart wrote to NTT on 18 June 2018 with the subject line "4 Victoria Steet – Ownership Issues". In the email, Mr Cathcart noted that NIOC House had been purchased in NIOC's name with the Fund's money and "what is clear is that NIOC Pension Fund has exercised all rights of ownership over the property". He added that: "I have been dealing with this property since the early 1980s" and that "NIOC holds, and has always held, the property on trust for the Pension Fund". Mr Cathcart then advised that NIOC should not transfer title to the Fund because it would result in the loss of sovereign immunity from taxation that had been granted to NIOC in 1973.

109. In December 2018 there was a further meeting between NTT and Mr. Cathcart to discuss the development of NIOC House and the possible transfer of the property into the name of the Fund. After the meeting Mr. Cathcart wrote to NTT on 20 December 2018. In this email he referred to a "strong wish" on the part of the Fund to have NIOC House transferred into its name. He said that the transfer would lead to a loss of sovereign immunity with the result that the property would be subject to "normal tax". He was concerned that the ownership of NIOC House was not documented in a Declaration of Trust and advised a search for documentation. He was also concerned as to the capital gains tax position and said the "key" was to establish that NIOC was only ever a trustee.

110. In January 2019 Mr. Cathcart visited NIOC House to go through the papers there which related to the building and in particular those from the 1970s. He was particularly concerned with the issue of sovereign immunity and the consequential tax advantage. The documents he found showed that the immunity from tax extended to income which was beneficially that of NIOC. Since the income from NIOC was (to his understanding) beneficially that of the Fund, he advised there could be no "dis-benefit" in transferring the property from NIOC to the Fund.

111. Notwithstanding this advice there was no transfer of the property from NIOC to the Fund (until the August Transfer of 2022). There is no evidence as to why Mr. Cathcart's advice was not accepted.

112. It does not appear that Mr. Cathcart had any further involvement with NIOC, the Fund, or NTT. It was at about this time that Blackstone Solicitors were instructed to act for the Fund in connection with construction related issues at NIOC House. In 2019 planning permission was given for certain works to take place at NIOC House.

113. On 2 February 2019 Mr. Rahgozar of NTT wrote to Mr. Rahimi of the Fund requesting that consideration be given to the transfer of title from NIOC to the Fund. He said it was desirable because it might avoid problems with the new US sanctions and also assist with managing NIOC House. He also noted possible disadvantages, namely, capital gains tax and the loss of tax immunity.

114. On 25 September 2019 (and following the annulment of the 2015 Articles of Association) the Fund's Articles of Association were approved by the Council of Ministers. Thus the Fund acquired legal personality. Article 5 provided for the assets of the Fund to be transferred to the Board of *Amins*. Article 8 provided that the Board of *Amins* were three ministers, principal members of the Board of NIOC, the managing directors of three

affiliated companies and two retired personnel of the oil industry. Thus, although there were members of the Board of NIOC on the Board of *Amins*, NIOC (or the Board of NIOC) was no longer the *amin* of the Fund.

115. On the very same day NIOC and the Fund entered into a Mortgage agreement with Bank Melli as security for financing. The mortgaged property was NIOC House. At clause 1.4 it was stated as follows:

> The National Iranian Oil Company is the legal owner of the Mortgaged Property and the Pension Funds, Savings and Staff Welfare of Oil Industry is the sole beneficial owner of the Mortgaged Property.

116. The mortgage was executed by NIOC, acting by its attorney, NTT. The mortgage was signed by Mr Rahgozar: (i) in the name of NIOC; (ii) in the name of NTT; and (iii) as the authorised signatory of NTT, in the presence of Mr Bayat as witness.

117. The Land Registry refused to register the mortgage for several reasons, one of which was that in the absence of a trust deed the link between NIOC and the Fund was not clear. Eversheds requested a copy of the trust deed and were provided with a document (which is not in evidence) and which Eversheds said was not a trust deed. On 29 November 2019 Eversheds wrote to the Land Registry saying that "as the full amount of the purchase price had been paid by the Pension Fund, then the beneficial ownership transferred to the Pension Funds, Savings and Staff Welfare of Oil Industry, for the benefit of the employees". However, this was incorrect. NIOC had borrowed the purchase price from the Funds and agreed to pay interest of 9%. On 9 January 2020, as part of the same financing transaction, a Certificate of Title was provided by Eversheds to the effect that NIOC was legally and beneficially entitled to the property. However, that statement was "subject to any disclosures" and there was a material disclosure to the effect that the legal interest in the property was in NIOC and the beneficial interest in the property was held by "the Beneficial Owner", defined as the Fund.

118. Thus, in summary, during the period 2012-2020 NIOC continued to be, in Iranian law, the owner of NIOC House. However, those in NIOC continued to be of the view that the Fund was the owner of NIOC House without addressing the relevance of the loan and its effect on ownership. There was a reluctance to transfer the registered title in England to the Fund though there was a willingness to state on the register that NIOC held as trustee. On 25 September 2019 the Fund acquired legal personality and all the Fund's assets, which did not include NIOC House, were entrusted to the Fund's Board of *Amins*, which did not include the Board of NIOC.

2020-2022

119. The Fund's accounts show that the Fund was involved with and funding the redevelopment of NIOC House.

120. The Fund's accounts for May 2021 recorded that the transfer of the London Building was not possible "due to the sanctions of the EU". EU sanctions had been lifted in 2016 and there was no evidence provided to the court of what EU sanctions were in force in 2021.

It seems likely that there were no EU sanctions in force but that banks and other financial institutions were unwilling to deal with Iranian entities because of US sanctions. This is how the position was summarised by Eversheds (writing on behalf of NTT) to HMRC in September 2019:

> "This is because of the progressive onset of trade and financial sanctions against Iran soon after 2010. NTT, its parent and its group companies are all considered Iranian entities, leading banks, financial institutions and businesses in the UK and European Union countries (EU) to have gradually severed their relationship with NTT. Although UK and EU sanctions were lifted in early 2016 the restrictions imposed by banks and financial institutions remain in place from continuing United States of America (USA) sanctions against Iran."

121. During the course of the redevelopment works at NIOC House Mrs. Nawaz discussed with NTT the desirability of transferring the legal title into the name of the Pension Fund. One such occasion was 20 September 2021 when she strongly recommended to NTT that the title to the property be transferred into the Pension Fund's name at HM Land Registry in order to assist in obtaining insurance.

122. On 27 September 2021 the Arbitration Tribunal (Murray Gleeson AC, Sir Jeremy Cooke and Lord Phillips) published its Partial Award on Remedies.

123. On 25 October 2021 NIOC challenged the Partial Award on Remedies.

124. On 7 March 2022 Mrs. Nawaz advised NTT that transferring the property to the beneficial owner, the Pension Fund, would make matters easier moving forward.

125. On 8 May 2022, the Fund's Presiding Board met, at which it "determined that the official transfer of ownership of [NIOC House] in the name of Welfare, Savings, and Pension Funds of Oil Industry's Employees in London (England) [i.e., the Fund] shall be done by giving a delegable power of attorneys to NTTco".

126. On the same day, Mr Abbas Hajisadegh, Chairman of Funds, wrote to Mr Bayat, the Chair of the Presiding (or Executive) Board of the Fund. I set out the whole of this letter:

> Respectfully, following the detailed reports provided by Naft Trading and Technology Trading Company [NTTCO] regarding the above matter [as per the images of attached documents] and with regard to the following matters, please take close attention, if appropriate, to the raising the subject of "issuing the permit for complete and definitive transfer of title deeds of the said building from the National Iranian Oil Company to Pensions, Savings and Welfare Funds of Oil Industry Employees through NTTCO" in the honourable Executive Committee of the Funds and taking the appropriate decision in this regard.
>
> A) This request has been made at the high level with the view of the need to remove the obstacles caused by extending the current international sanctions in the petroleum sector to various measures related to the indicated building.

> B) All the initial costs of purchasing the land of the said building and the costs of its construction were paid by the Pensions, Savings and Welfare Funds of Oil Industry Employees, and therefore, the board of directors of the National Iranian Oil Company has been introduced as the Board of Trustees and the group of Funds as the beneficial owner of the building in all correspondence and all matters related to repairment, maintenance, security and lease of the building have been operationalized under the supervision and management of the Executive Committee of the Funds and through its subsidiaries.
>
> C) Although the National Iranian Oil Company has officially announced the transfer of the ownership of the building to the Funds and has assigned all rights related to the ownership of the said property to that fund, and according to the information received, the said ownership has been removed from the financial books and statements of NIOC, the above-mentioned transfer has not been officially registered in the London's Land Registry and this issue has caused significant problems so far.
>
> D) The existence of the name of the National Iranian Oil Company in the mentioned building's identity certificate as the owner has always made many challenges to the Executive Committee of Funds in arranging the current affairs of the building [including maintenance, repair, lease, etc.] and designating NIOC in the list of companies under international sanctions caused double problems for NTTCO [as a representative of the Funds] in performing its assigned duties.
>
> E) The results of professional consultations received from Cathcart and W. Legal Ltd. legal firms, which have always been trusted by London Oil Goods Company and the Funds since the early days of the above-mentioned building, as well as the Robert and Partners Institute, which is the independent auditor of NTTCO, regarding the analysis of the conditions and aspects of International sanctions, the said legal profitable position of the National Iranian Oil Company and the financial consequences of the transfer of ownership [focusing on tax exemptions and the possibility of confiscation of the building with regard to its nominal ownership status] on the one hand and the result of legal investigations carried out by local independent experts, on the other hand, indicates the realization of considerable benefits as a result of the mentioned transfer of ownership.

127. It is to be noted that paragraph B repeats the (mistaken) belief that the costs of purchase of the building had been paid by the Fund. It is also to be noted that paragraph C refers to an official announcement by NIOC of the transfer of ownership of the building to the Funds. However, no such announcement is in evidence and none was pleaded. Paragraph D notes the challenges caused by the continued registration of NIOC. Paragraph E notes the financial consequences of a transfer of ownership to NIOC, namely loss of a tax exemption and the possible confiscation of the building, but notes that there were nevertheless considerable benefits in a transfer.

128. On 11 and 12 May 2022 NIOC's section 69 challenge to the Partial Award on Remedies was heard.

129. On 20 May 2022 CGC seized NIOC's Rotterdam office and property in Greece.

130. On 6 June 2022 Mrs. Nawaz received a call from Mr Rahgozar of NTT instructing her to proceed with the transfer of the title to the Pension Fund. He said he had been given authority to do so but as the trustees of the Pension Fund change from time to time it was important that it be done promptly.

131. On 30 June 2022 Picken J. dismissed NIOC's section 69 challenge to the Partial Award on Remedies.

132. On 20 July 2022 CGC sought permission to enforce the Partial Award on Remedies as a judgment.

133. On 15 August 2022 Knowles J. granted permission to enforce the Partial Award on Remedies.

134. On 17 August Knowles J.'s order was served on NIOC, via its solicitors and by courier at NIOC House.

135. On 23 August 2022 there was much activity.

i) NTT sent an email to NIOC in connection with "Ownership Transfer Form" marked TOP URGENT.

ii) Mr Khojastehmehr (NIOC's Managing Director) authorised Mr Alamolhoda (NIOC's Director of Legal Affairs) to sign such documents as would give effect to the transfer of ownership to the Fund. The letter explained as follows:

> With due consideration of the fact that the building located at 4 Victoria Street London SWI HONE ("NIOC House") had been purchased from the financial resources of Pension, Saving and Welfare Fund of Oil Industry Workers ("the Fund") and also with reference to the Board Resolution No. 85 of the Board of Supervisors of NIOC dated 15.12.1979 (corresponding to Iranian Solar Calendar date: 24.9.1358), and since at that time, even though the NIOC House actually belonged to the Fund, the latter entity did not have an independent legal identity, it was decided that NIOC House to be registered in the name of NIOC. On the other hand, in 2011, NIOC as per its Board of Directors' Resolution No. 1757/304-29365 dated 16.8.2011(corresponding to Iranian Solar Calendar date: 25.5.1390) has approved and instructed the NIOC Legal Department to transfer the ownership of NIOC House to its real owner (namely "the Fund" which until now has been known as the beneficial owner). Additionally, such title was also accepted by HM Treasury.

It is to be noted that reliance is placed on the "fact" that NIOC House had been purchased from the financial resources of the Fund and that reference is made to the board minute of

December 1979. Reliance is then placed on the board of NIOC's resolution of 16 August 2011 as authority to transfer ownership to the Fund. That was 11 years earlier.

iii) The title transfer form TR01 was executed as a deed by NIOC's Director of Legal Affairs on behalf of NIOC. The transfer was for no value; "The transfer is not for money or anything that has a monetary value". The transfer was also witnessed as a deed by Mr. Rahgozar, the managing director of NTT and authorised representative of the Fund.

iv) An application was made by Blackstone Solicitors for registration of the transfer of ownership.

136. On 24 August 2022 the Managing Director of the Fund authorised Mr. Rahgozar to sign as a deed any documents on behalf of the Fund in connection with the transfer. The letter of authorisation referred to the Board's resolution of 8 May 2022.

137. There seems no doubt that the signing of the transfer form was conducted in circumstances of great expedition. NTT sent an email marked TOP URGENT, NIOC's Director of Legal Affairs was given authority to sign on 23 August and the Managing Director of NTT was only given authority to sign on 24 August, the day after the Transfer had been signed.

138. On 1 September 2022 Knowles J.'s order became finally enforceable.

139. On 13 October 2022 the Claimant applied for an interim charging order against NIOC House.

140. On 19 October 2022 Blackstone Solicitors, by telephone, sought expedition of its application to register the August Transfer.

141. On 21 October 2022 Butcher J. dismissed the section 67 challenge.

142. On 2 November 2022 the August Transfer was registered.

143. On 7 November 2022 an interim charging order (ICO) was granted against NIOC House.

144. On 15 November 2022 the CGC sought to register the ICO and learned of the August Transfer.

145. On 24 November 2022 a License for Alterations between the Fund and Barclays was completed.

146. On 23 December 2022 a second ICO was granted in respect of the Fund's legal interest in NIOC House.

2023-2024

147. On 13 July 2023 the Court of Appeal dismissed NIOC's appeal from the decision of Butcher J. on the section 67 application.

148. On 8 January 2024 the Supreme Court refused NIOC permission to appeal from the decision of the Court of Appeal.

The issues

Beneficial ownership

149. NIOC had two cases, said to be alternatives. First, it was said that under Iranian law the Fund owned NIOC House as an absolute owner under an *amanat* arrangement from 1975 which the English Court is bound to recognise by reason of Article 11 of the Convention on the law applicable to Trusts and their Recognition (which is part of English law pursuant to the Recognition of Trust Act 1987). Second, it is said that under English law the Fund was the beneficial owner of NIOC House. On either basis, the transfer for nil value was justified and so, it was argued, an order under section 423 of the Insolvency Act is not available and since the Fund is not a judgment debtor a charging order against the Fund's interest is also not available.

The Iranian law case

150. The Iranian law case falls at the first hurdle. NIOC seeks to establish that the Fund owned NIOC House as an absolute owner under an *amanat* arrangement from 1975. But, for the reasons I have given earlier in this judgment, NIOC was the absolute owner of NIOC House under Iranian law from 1975 and, whilst there was an *amanat* arrangement between NIOC and the Fund from 1964, NIOC House was not within that *amanat.*

151. There is therefore no Iranian law relationship which falls to be recognised as a trust pursuant to the Convention.

152. I appreciate that this is not how NIOC or the Fund viewed matters since 1979. But such views all stem from the "conclusion" of the Board of NIOC in 1979 which was reached without recognising the legal consequence of NIOC House being purchased by NIOC using funds borrowed from the Fund. On the basis of the agreed opinion of the Iranian law experts in this case that view was mistaken. It was nevertheless repeated in the many years that followed. No case was advanced that under Iranian law a third party such as CGC was bound by the apparent agreement of NIOC and the Fund (or by what is described in NIOC's Skeleton Argument as "the commercial reality") that ownership of NIOC House lay with the Fund.

153. An argument was suggested by Dr. Eskini based upon Article 196 of the Civil Code which provided as follows:

> "Anyone who makes a transaction, it is deemed that he is doing it for himself, unless he explicitly states the opposite at the time of the contract, or it is proven otherwise afterwards. Nevertheless, when making a contract for himself , anyone can make a provision for the benefit of a third person."

154. Dr. Eskini suggested in his supplementary report that there were "documents post-dating the acquisition of NIOC House in 1975 including documents involving third parties which are consistent with NIOC House having been purchased on behalf of and/or owned by the Retirement Fund (and not NIOC which is sometimes instead described in certain documents as "Custodian Trustee" ie Amin of NIOC House)" and that "such evidence would be a significant indicator that the acquisition of NIOC House had been undertaken for the members of the Retirement Fund (rather than for NIOC itself), as permitted under Article 196". This opinion was mentioned in NIOC's Skeleton Argument when recounting the disputes between the experts but no case based upon Article 196 was developed; see paragraph 102.3.

155. However, it was, I think, clear from the account of Dr. Eskini's opinion in the Joint Report at questions 7 and 8 that the suggested argument based upon Article 196 did not relate to the situation where NIOC House had been purchased by means of monies borrowed from the Fund and so belonged to NIOC. Rather, it related to the situation where NIOC House had been purchased with monies taken from the Fund and which did not belong to NIOC. In the former case there was clear agreement that NIOC House would belong to NIOC. It was in the latter case that Dr. Eskini was suggesting that documents post-dating the acquisition might indicate that the acquisition had been for the members of the Retirement Fund. I therefore do not consider that Article 196 applies on the facts as I have found them to be.

156. Had NIOC House been within the *amanat* from 1975 it would have been necessary for NIOC and the Fund to show that the legal relationship created had the characteristics set out in Article 2 of the Convention. This was disputed; see paragraphs 97-101 of NIOC's Skeleton Argument and paragraphs 105-113 of CGC's Skeleton Argument. In the light of my findings of fact these questions do not arise for decision and it would be unwise and serve no purpose for me to express my views on them on the basis of assumed and hypothetical facts.

157. Furthermore, even if NIOC House had been within the *amanat* referred to in NIOC's Articles of Association from 1975 (or by 1982 pursuant to the transfer suggested in closing but not pleaded by NIOC) that circumstance or situation was no longer in place as at the time of the August Transfer. There had been two changes. First, in 2016 article 35(m) was removed from NIOC's Articles of Association. Second, in 2019 the Fund's Articles of Association were approved by the Council of Ministers and the *amin* in respect of the Fund's assets was no longer the Board of NIOC but a different Board of *Amins*. The relationship between NIOC and NIOC House after 2016 was not a matter addressed by Dr. Eskini in his reports, because he did not know that Article 35(m) had been removed. Whilst he suggested when being cross-examined that NIOC's responsibility would continue as *amin* after 2016 his evidence on this topic was not clear (perhaps unsurprisingly because he had not previously considered the matter). But in any event he accepted when being cross-examined that from September 2019 NIOC was not an *amin* of the Funds. From then the relationship of *amanat* was between the Fund and the new Board of *Amins*, which was a much wider body than the Board of NIOC. The nature of NIOC's responsibility after 2019 when there was a new Board of *Amins* was not a matter addressed by Dr. Eskini in his report. Furthermore, NIOC had no pleaded case as

to the nature of NIOC's responsibility after 2019 in the light of the Fund's 2019 Articles of Association. One can speculate as to what that relationship might be (for example NIOC might remain an *amin*, albeit one with no power or duty to manage NIOC House) but with regard to a matter of Iranian law on which Dr. Eskini was silent it would not be right for me to rely upon speculation. That is a further reason why the Court cannot, or at least ought not (because it would be unsafe), to consider the application of the Hague Convention to the Iranian law relationship between NIOC and the Fund from September 2019 to August 2022.

The English law case

158. However, NIOC and the Fund have an alternative case based upon English law. Article 14 of the Hague Convention states that the Convention shall not prevent the application of rules of law more favourable to the recognition of trusts. It was submitted that this article enables NIOC to say that as a matter of English law NIOC held NIOC House as trustee for the Fund. This submission was not challenged by CGC and I accept it. I note from the Explanatory Report of Alfred E. von Overbeck on the Convention at paragraph 134 that the Convention "was not intended to prevent a State from recognising trusts, even in cases which were not covered by the Convention".

159. There was no dispute that in English law a trust can be established by the declaration of a trust. There was also no dispute as how the court determines whether there has been a declaration of trust. For present purposes it is sufficient to state:

a) a trust can be created without using the words "trust" or the like; the question is whether in substance a sufficient intention to create a trust has been manifested; see *Re Kayford* [1975] 1 WLR 279 at p.282 per Megarry J.,

b) whether an intention to create a trust is sufficiently evinced is a question of objective intention; see *Bellis v Challinor* [2015] EWCA Civ 59 at paragraphs 57 and 59 per Briggs L.J..

160. In the present case one has the feature or circumstance that the person who is alleged to have created the trust is NIOC, an Iranian entity, in circumstances where Iranian law does not recognise a distinction between legal and beneficial ownership. I was therefore concerned as to whether NIOC, on any objective basis, could be regarded as having created a trust.

161. Counsel for NIOC submitted that the fact that the law of Iran did not recognise a distinction between legal and beneficial ownership was no reason why an objective intention to create a trust could not be established as a matter of English law. First, reliance was placed on *Akers and others v Samba Financial Group* [2017] AC 424 where it was established that in the eyes of English law a trust may be created, exist and be enforceable in respect of assets located in a jurisdiction the law of which does not recognise trusts in any form; see Lord Mance at paragraph 34 and Lord Collins at paragraph 102. Second, it was submitted that in the present case the court was concerned

with the question whether a trust had been declared over NIOC House, a property situated and registered in this jurisdiction in the name of NIOC.

162. I accept that for both of those reasons there can be a declaration of trust by an Iranian entity over property in this jurisdiction notwithstanding that Iranian law does not recognise a distinction between legal and beneficial ownership. However, whether there has been a declaration of trust depends upon a consideration of the language used having regard to all the circumstances of the case. I accept the submission of counsel for CGC that one of those circumstances must be the provisions of the law of Iran with which the Iranian entity must be regarded as familiar. However, the weight to be given to that circumstance will depend upon the clarity of the language – the more clearly that the language appears to declare a trust the less significant will be the law of Iran, especially where, as in the present case, the asset in question is within this jurisdiction.

163. In their opening submissions counsel for NIOC relied upon 11 documents between 2004 and 2020 as declarations of an express trust. In his closing submissions counsel for NIOC noted that these documents were all after 2001, that is, after the Fund had, on NIOC's case, obtained legal personality. I asked counsel what would be the position if there was no legal personality until 2019. Counsel said that it might be arguable that declarations of trust before the Fund had acquired legal personality were "prospective" and took effect when the Fund acquired legal personality but that his "better argument" was to rely upon declarations after 2019. That was an understandable and realistic assessment. It might be possible to rely upon a declaration of trust which is expressly prospective and is stated to take effect when the beneficiary acquires legal personality but there was nothing like that in the present case.

164. Thus it is necessary to decide when the Fund acquired legal personality, 2001 or 2019.

Legal Personality

165. The experts agreed that, pursuant to article 584 of the Commercial Code, as a matter of general principle non-commercial institutions such as the Fund will acquire legal personality from the date of registration. Article 584 provided:

> "Entities and institutions that are established or will be established for non-commercial purposes will acquire legal personality from the date of registration in the special registration book designated by the Ministry of Justice."

166. Thus institutions must first be established before they can be registered and so acquire legal personality. Establishment or formation is achieved, in the case of non-commercial institutions, by the adoption of valid articles of association.

167. Whilst that is the general principle there can be a *lex specialis* which enables legal personality to be established in some other way. Dr. Eskini said that the 2001 Law Amendment of Some Articles of the Law Amending the Retirement and Pensions Regulations and the Duty of the Governmental Recruitment Law ("the 2001 law") was such a *lex specialis*. Article 1 of the 2001 law provides:

> "A coordination council is established, consisting of the heads of pension funds, with the purpose of coordinating the plans of various pension Funds and other responsibilities and positions held within ministries, institutions, and government entities. …….
>
> Note 1- All pension funds subject to this article have independent legal personality and will be managed according to their rules.
>
> Note 2- The Cabinet of Ministers will be responsible for approving the establishment of new pension funds, as well as the approval and amendment of their Articles of Association…….starting from the effective date of this law.
>
> Note 3 - ……
>
> Note 4 - ……"

168. Dr. Eskini gave evidence that the Fund had legal personality from 2001 by virtue of the 2001 Law, Note 1. He also said that this was the conclusion of the Administrative Court in 2019.

169. Dr. Nayyeri did not agree. His opinion was that Note 1 was a restatement of the existing law which applied to funds which were already established and had acquired legal personality. Note 2 provided a further route by which "new" funds could acquire legal personality. He did not consider that the 2019 decision of the Administrative Court supported Dr. Eskini's position. He regarded it as reiterating the applicable law in general terms.

170. I have considered the detailed views of Dr. Eskini and Dr. Nayyeri in their respective reports.

171. So far as the language of Note 1 is concerned the language appears to state that all funds have legal personality. However, I was impressed by Dr. Nayyeri's comparison of that language ("have independent legal personality") with the language of article 583 of the Commercial Code ("have legal personality") which relates to trading companies. The language of article 583 still requires the relevant entity to be formed or established (and in this context Dr. Nayyeri relies upon Dr. Eskini's own textbook on Commercial Law). He considers that the language of Note 1 must also do so. Thus Note I appears to apply to already existing funds. Note 2 refers to new funds, that is, to funds yet to be formed or established. As at 2001 the Fund had not yet been established or formed. I note Dr. Eskini's criticism of Dr. Nayyeri's view of Note 1 that it would serve no legislative purpose if it simply restated the exiting position. But article 583 of the Commercial Code would also appear to restate the existing position with regard to trading companies. I found it significant that Dr. Eskini did not challenge in his Supplementary Report what Dr. Nayyeri had said about the similar wording of article 583 of the Commercial Code.

172. Dr. Eskini was of the opinion that Note 2 was not concerned with the granting of legal personality at all. It is true that it does not say in terms that it so concerned. But it is

concerned with the establishment of new pension funds which appears to me to be a necessary pre-requisite to acquiring of legal personality. In his supplementary report and when cross-examined Dr. Eskini said that "established" included funds which had, for example, an account but had no legal personality. I found this difficult to accept. It seems to me much more likely that "established" in note 2 referred to the process of forming and giving legal personality to a new fund. The use of "established" in article 584 of the Commercial Code (see above) would appear to support this.

173. Much reliance was placed by Dr. Eskini on the 2019 decision of the Administrative Court. (I was told that the judgment was given by "around 74 judges".) In that case a claimant sought and obtained the annulment of the Fund's 2015 Articles of Association. The reasoning which led the Court to annul the 2015 Articles of Association is in paragraph 3 of the judgment, namely, the Fund's Articles of Association had not been approved by the Board of Ministers. However, for present purposes the relevant passage of the judgment is paragraph 2 of the Judgment. That paragraph refers to Notes 1 and 2 of the 2001 Law and also to a 2004 law which refers to certain public property under the supervision of the state. The judgment then says:

> "Those provisions confirm that, firstly: the retirement funds of workers in all administrating bodies have an independent and juridical personality; secondly, they are excluded from the governance of the general laws and regulations, but are under the supervision of the State; thirdly, the Board of Ministers is responsible for enactment and amendment of their Articles of Associations after receiving the proposal."

174. The earlier part of the report setting out the respective arguments shows that lack of legal personality had been relied upon by the claimant. Paragraph 2 is therefore relied upon to show that the court found that the Fund had legal personality. I am not persuaded that it does. Rather, it appears to be laying the ground work for paragraph 3 of the judgment by referring to the 2001 Law and in particular note 2 thereof which requires the Board of Ministers to approve Articles of Association. The particular statement that "the retirement funds of workers in all administrative bodies have an independent and juridical personality" is, I think, a reference to Note 1 and the subject of legal personality but, as Dr. Nayyeri observed, it is in general terms and does not discuss the issues which have been debated in this case concerning the respective scope of Notes 1 and 2. I would have been delighted to find that there was a decision of the Iranian Court which clearly answers the question which I have to answer but I am not persuaded that this decision does so.

175. For these reasons, and again with respect to Dr. Eskini, I prefer the reasoning of Dr. Nayyeri. I have therefore concluded that the 2001 Law did not grant legal personality to the Fund. It is of interest to note that the passing of the 2001 Law cannot have been thought to have given the Fund legal personality. In 2002 and 2004 the independent auditors considered that the Fund had no legal personality. Their reports must have been approved by NIOC and the Fund. It was not until July 2007, when the Fund applied to register a trademark, that there was a reference to the 2001 Law as a source of legal personality.

176. I therefore accept the submission made on behalf of CGC that the Fund acquired legal personality on 25 September 2019 when its Articles of Association were approved by the Board of Cabinet of Ministers.

Suggested declarations of trust before 25 September 2019

177. These are strictly not in point because NIOC could not declare a trust in favour of the Fund at a time when the Fund lacked a legal personality. I shall therefore deal with them briefly.

178. Two certificates, dated 14 June 2004 and 29 May 2007, that NIOC House belonged to the Fund are relied upon. They do not purport to be declarations of trust and I do not consider that they would be understood by the reasonable person with knowledge of the background as being declarations of trust. Rather, they were statements that NIOC House belongs to the Fund. Ownership in the law of Iran is absolute and so, understood objectively with knowledge of that context, they would reasonably be understood in that sense.

179. The draft letter dated 26 January 2005 which referred to NIOC holding NIOC House on trust for the Fund as beneficial owner was also relied upon. This was a draft prepared by Mr. Cathcart. Since it was never signed it cannot amount to a declaration of trust.

180. The resolution of the Board of NIOC dated 16 August 2011 which instructed the Legal Affairs Department to have the title deeds transferred to the "main" or "original" owner (there are two different translations) of NIOC House was relied upon. This does not purport to be a declaration of trust. However, the reference to the title deeds is probably a reference to the Land Registry's registration of NIOC as owner of NIOC House. If, as is stated in one translation, the Fund is the "main" owner of NIOC House it would arguably follow that there is an implied statement that NIOC was holding the registered title as trustee for the Fund. If, however, the instruction is being given because the Fund is the "original" owner then I am not persuaded that the reasonable person would understand this to be a declaration of trust.

181. The letter from NTT to the Fund dated 11 January 2014 was relied upon as a declaration of trust. This is a confused letter (see above in the Chronology) which refers to NIOC being "a Custodian Trustee or *amin*". As is common ground an *amin* is not a trustee. However, it is not a statement by NIOC and is not purported to be made on behalf of NIOC. I do not think therefore that it can properly be relied upon. It is a confused opinion by NTT.

182. The letter from the Director of Legal Affairs of NIOC to Cathcarts dated 1 February 2014 which instructed Cathcarts to change the designation of ownership on the Land Register so that it records that NIOC holds as Custodian Trustee for the Fund appears to be a clear declaration of trust. (The letter of the same date with the same instruction to Cathcarts but from the Fund is also relied upon. But that was not a declaration by NIOC.)

183. Finally, three letters from Cathcarts to the Land Registry dated 12 November 2012, 11 February 2014 and 18 March 2014 are relied upon. They all state that NIOC holds NIOC

House as custodian trustee for the Fund. On the basis that Cathcarts were instructed by NIOC to make these statements they are declarations of trust.

184. So, with reference to the pre-25 September 2019 documents, it is possible, depending upon the correct translation, that the reasonable person would regard the Board resolution of 16 August 2011 as a declaration of trust. It is however clear that the reasonable person would understand from NIOC's instruction to Cathcarts dated 1 February 2014 and from Cathcarts' correspondence with the Land Registry that NIOC had created a trust over the registered title of NIOC House in favour of the Fund. However, since these were all written before the Fund acquired legal personality no trust can have been created.

Declarations on or after 25 September 2019

185. Since the Fund acquired legal personality on 25 September 2019 it is necessary for NIOC to point to a declaration of trust on or after that date. Remarkably, it was on 25 September 2019 that a mortgage was created over NIOC House to Bank Melli and clause 1.4 stated:

> The National Iranian Oil Company is the legal owner of the mortgaged property and the Pension Funds, Savings and Staff Welfare of Oil Industry is the sole beneficial owner of the Mortgaged Property.

186. The mortgage was executed by NIOC, acting by its attorney, NTT. The mortgage was signed by Mr Rahgozar: (i) in the name of NIOC; (ii) in the name of NTT; and (iii) as the authorised signatory of NTT, in the presence of Mr Bayat as witness.

187. Clause 1.4 does not refer to a trust or state in terms that it is a declaration of trust. However, it states that NIOC is the legal owner of NIOC House and that the Fund is the sole beneficial owner of NIOC House. The necessary consequence of those statements is that NIOC is trustee of NIOC House for the Fund.

188. Objectively, this was a clear manifestation of an intention to create a trust in favour of the Fund. A reasonable person would surely conclude that NIOC had created a trust in favour of the Fund.

189. Counsel for CGC made a number of points in response. First, the suggestion that this was a declaration of trust was said to be implausible. It was argued that since Mr. Cathcart had advised that a declaration of trust was required there would surely have been a formal document, not a statement in a transaction with a third party. However, none of that detracts from the clear objective meaning of clause 1.4. Second, it was said that evidence ought to have been called from the signatories of this mortgage as to the suggested intent of this clause. But the intent of the clause is to be assessed objectively and that is done by construing the words used which are clear. Third, although Blackstones acted in connection with this mortgage Mrs. Nawaz in her witness statement made no reference to this mortgage. Instead, she understood that a board resolution in Iran was sufficient. It is true that she made no reference to the mortgage but that does not detract from the clear meaning of clause 1.4 of the mortgage. Fourth, reliance was placed on the circumstance that the Land Registry refused to register the mortgage because they had not seen the

Trust Deed. That is true but again it does not detract from the clear and objective meaning of clause 1.4. Counsel summed up his objection in this way:

> "On the evidence …….there is no reason to believe that clause 1.4 was inserted into this agreement intending it to be a declaration of trust and with there being the intention of NIOC to split title and transfer beneficial interest to the second defendant on the day it came into existence."

190. Whether the signatories to the mortgage deed had those subjective intentions is not relevant. What matters is the objective construction of clause 1.4; and that is clear.

191. On 9 January 2020, as part of the same financing transaction, a Certificate of Title was provided by Eversheds to the effect that NIOC was legally and beneficially entitled to the property. However, that statement was "subject to any disclosures" and there was a material disclosure to the effect that the legal interest in the property was in NIOC and the beneficial interest in the property was held by "the Beneficial Owner", defined as the Fund. This was a further declaration of trust.

Section 53(1) of the Law of Property Act 1925

192. Section 53(1)(b) provides as follows:

> "Subject to the provision hereinafter contained with respect to the creation of interest in land by parol-
>
> (a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;
>
> (b) a declaration of trust respecting any land or any interest thereon must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;
>
> (c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.
>
> This section does not affect the creation or operation of resulting, implied or constructive trusts."

193. Counsel for CGC submitted that a declaration of trust signed by an agent will not suffice for the purposes of section 53(1)(b). Counsel for NIOC submitted that signature by an agent will suffice but told me that this was an "open question of law" by which he meant that there was no authority on the question. The textbooks to which I was referred appeared to show that this was indeed an open question. Counsel for NIOC further submitted that section 53(1)(b) goes not to the validity but to the enforceability by a beneficiary of a declaration of trust in land.

The signing – by whom?

194. As to the first question the required signing must be by "some person who is able to declare such trust". That language is to be contrasted with section 53(1)(a) and (c) both of which provide expressly that signing may be by an agent. In that context the phrase "some person who is able to declare such trust" appears to me to indicate the settlor himself, not an agent.

195. Counsel for NIOC submitted that when a company declares a trust it necessarily does so through a natural person who is an agent and so signature by an agent must be permitted by section 53(1)(b). It was said that the officer of a company must be the alter ego of the company for the purposes of that section and so must be able to declare a trust of the company's property. It was said that there is no meaningful distinction between a duly authorised officer and another duly authorised agent such as a lawyer. Furthermore section 53(1)(b) is not limited, as it could have been, to the legal or beneficial owner himself to the exclusion of his agent.

196. Counsel for the Fund submitted that the law takes a flexible approach to the requirement for signing and that the touchstone for determining what is a signature is an intention to authenticate the document; see *Hudson v Hathway* [2022] EWCA Civ 1648 at paragraph 55. It may be that this submission was not directed to the question whether signature by an agent would suffice for the purposes of section 53(1)(b), but I mention it in case it was.

197. In my judgment the drafting of section 53(1) as a whole makes clear when signature by an agent is sufficient and when signature by an agent is not sufficient. Section 53(1)(a) and (c) expressly include signature by an agent whereas section 53(1)(b) does not and instead refers to signature "by some person who is able to declare such trust". A corporate body acts by its officers or, as it was put by counsel for NIOC, the alter ego of a corporate body is its board of directors. Thus a signature by a director of a company would be a signature by "some person who is able to declare such trust". In my judgment, a person who is not an officer but only an agent is not "some person who is able to declare such trust". He may be an agent authorised to sign but he is not "some person who is able to declare such trust". He is not the alter ego of the corporate body.

198. *Hudson v Hathway* [2002] EWCA 1648 was not concerned with this question but with whether a signature by email sufficed for the purposes of section 53(1). I note however the comment (at paragraph 32) that the formalities required by section 53 are necessary in order that property rights in land should be certain. Thus the formality required by section 53(1)(b) reflects a need, perceived by Parliament, for declarations of trust to be signed by some person who is able to declare such trust, rather than by an agent lawfully authorised in writing.

199. The mortgage deed dated 25 September 2019 was executed by NIOC, acting by its attorney, NTT. The mortgage was signed by Mr Rahgozar: (i) in the name of NIOC; (ii) in the name of NTT; and (iii) as the authorised signatory of NTT, in the presence of Mr Bayat as witness..

200. Thus the declaration of trust contained in the mortgage deed was not signed by a director of NIOC but by NTT as its attorney or agent. Likewise the Certificate of Title signed by Eversheds on 9 January 2020 to the effect that the legal interest in the property was in NIOC and that the beneficial interest in the property was held by Fund was signed by an agent. It must follow that those two declarations of trust were not signed by a "person who is able to declare such trust" within the meaning of section 53(1)(b) of the PLA 1925.

No signing – the effect

201. The second question relates to the consequence of there being no signature required by that section. Counsel for NIOC submitted that the failure to comply with the formality required by section 53(1)(b) did not mean that the declaration of trust was invalid. It prevented the enforcement of the trust by a beneficiary. I note that in the agreed list of sub-issues this is stated to be an issue at paragraph 12(b) but that CGC noted that the point had not been pleaded. However, I accept NIOC's response that it is a point of law and as such does not need to be pleaded.

202. I shall first set out the textbook commentaries on which reliance was placed.

203. *Snell on Equity* 34th.ed. at paragraph 22-036 states:

> "An unwritten declaration of trust is valid but unenforceable by the beneficiary against the trustee."

204. *The Law of Trusts* by Thomas and Hudson 2nd.ed. at paragraph 5.12 states:

> "A trust found to exist by appropriate evidence satisfying the statute takes effect as from the date of its creation, and not the date on which the evidence comes into existence or the date on which the question is determined or there is part performance of the trusts. In other words, the trust is unenforceable but not void, which may have significant implications, for example, in the event of the settlor's insolvency."

205. *The Law of Trust and Trustees* by Underhill and Hayton 20th ed. at paragraph 14.14 states:

> "The trust is not required to be created by signed writing but only evidenced, so that the writing may come into existence at any time after the declaration of the trust and retrospectively validate it. Absence of the written evidence does not appear to make the trust void……,"

206. *Lewin on Trusts* 20th ed. at paragraph 3-013 and 014 states:

> "The section is satisfied if the trust is manifested and proved by any subsequent acknowledgment by the trustee as by an express declaration by him, or any memorandum to that effect. A letter under his hand, his answer in Chancery, a recital in a bond or other deed, or a statement in a sales contract; and in cases

> under section 4 of the Statute of Frauds, an affidavit, recital in a will and in a post-nuptial marriage settlement have been held to constitute a sufficient memorandum.
>
> The trust, however late the proof, operates retrospectively from the time of its creation."

207. I begin with the language of section 53 which has been set out above. It is to be noted that section 53(1)(a) provides that "no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same or by his agent……" Similarly, section 53(1)(c) provides that "a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent……." So in those contexts an absence of a signed document will invalidate the creation or disposition of an interest in land or of an equitable interest. The wording of section 53(1)(b) is different: "A declaration of trust …….must be manifested and proved by some writing signed by some person who is able to declare such trust". The sub-section does not state that "no trust can be created except by "some writing signed by some person who is able to declare such trust". The difference of wording shows that whilst a declaration of trust need not be in writing the declaration must be "manifested and proved by some writing".

208. It has long been understood that the writing which manifests and proves the declaration of trust may be subsequent to the declaration and once there is such writing then the trust can be enforced. The authority which established this understanding was based upon the Statute of Frauds but the material sections of the Statute of Frauds were re-enacted (with some modification) by section 53 of the LPA 1925. That authority was *Gardner v Rowe* (1825) 2 Sim and St 346 and affirmed (1827-1828) 5 Russ 258.

209. The effect of section 53(1)(b) has recently been neatly stated by HHJ Paul Matthews (one of the Editors of *The Law of Trusts and Trustees* by Underhill and Hayton), sitting as a judge of the High Court, in *Taylor v Taylor* [2017] EWHC 1080 Ch at paragraph 50 as follows:

> "Under section 53(1)(b) of the law of Property Act 1925, it is not necessary that a declaration be *made* in writing. It is only necessary that it should be *evidenced* in writing. Accordingly, it is possible for an oral declaration of trust of land to be made on one day, and evidenced in writing on another. In such a case the oral declaration is rendered enforceable from the beginning."

210. Thus the sense in which the textbooks state that an unwritten declaration of trust is not invalid or void is that the trust can be enforced from the date of the declaration if there is later writing (appropriately signed) which evidences the declaration. I do not, however, understand the statements in the textbooks to say that a declaration of trust is valid even if there is no later writing (appropriately signed) which manifests and proves the trust. That would be to ignore the requirement in section 53(1)(b). To be enforced a trust of land must be manifested and proved by writing (appropriately signed).

211. Counsel for NIOC submitted that section 53(1)(b) went to the enforceability by a beneficiary of a declaration of trust in land. *Gardner v Rowe* (1825) shows that the sub-section is not restricted to cases where the beneficiary seeks to enforce the trust against the trustee but includes cases where a beneficiary seeks to enforce the trust against the trustee in bankruptcy of the person who claimed to have made a declaration of trust in respect of land. In such cases the trust is effectively enforced against the unsecured creditors of the trustee whose interests the trustee in bankruptcy represents.

212. The present case involves a trustee and beneficiary seeking to enforce a trust against a third party creditor of the trustee. The context may be different from the context which gave rise to the predecessor of section 53(1)(b) (as to which see *English Private Law* by Burrows 3rd. ed. at paragraph 4.205) but section 53(1)(b) nevertheless requires that the declaration of trust is "manifested and proved by some writing signed by some person who is able to declare such trust". If it is not so manifested, then the trust cannot be enforced. There is no language in the section which suggests that such manifestation is not required in the context of this case. Had a director of NIOC signed a document manifesting and proving the trust on or after 25 September 2019 there can I think be no doubt that NIOC and the Fund would have been able to enforce the trust against CGC. But neither of the two documents relied upon, the mortgage deed dated 25 September 2019 and the Certificate of Title dated 9 January 2020, is such a document.

213. For these reasons I must conclude that the answer to Issue I is that at the time of the August Transfer NIOC was the beneficial owner of NIOC House. The trust relied upon by NIOC and the Fund cannot be established. English law has very strict formalities with regard to the proof of a declaration of trust respecting land and requires such a trust to be "manifested and proved by some writing signed by some person who is able to declare such trust". The trust relied upon by NIOC and the Fund with regard to NIOC House was not so manifested and proved. I must also conclude that the answer to Issue 2 is that the August Transfer was at an undervalue. It was not justifiable on the basis that the Fund beneficially owned NIOC House.

The purpose of the August Transfer

214. I have been referred to a number of recent cases on the subject of "purpose" in the context of s.423 of the Insolvency Act. However, there was no material dispute as to the law, at any rate by the time of closing submissions. *JSC BTA Bank v Ablyazov* [2018] EWCA Civ 1176 establishes that it is sufficient to establish that a purpose of the transaction was the putting of assets beyond the reach of a person who is making a claim. It does not need to be the main or dominant or substantial purpose. No gloss should be put on the statutory language; see paragraphs 13-16 of the judgment of Leggatt LJ. "It is sufficient simply to ask whether the transaction was entered into by the debtor for the prohibited purpose. If it was, then the transaction falls within s.423(3), even if it was also entered into for one or more other purposes. The test is no more complicated than that."

215. Thus, adopting the approach of the trial judge in that case which Leggatt LJ said was correct, what I therefore have to determine is whether a purpose of NIOC in effecting the

August Transfer was to put NIOC House out of the reach of CGC. That depends upon whether NIOC positively intended that outcome.

216. Counsel for CGC relied upon the timing and circumstances of the transfer, coupled with the urgency with which it was brought and submitted that they gave rise to an inference that the transfer was made for the purpose of preventing CGC from being able to execute its judgment on NIOC House. The transfer took place on 23 August 2022, just 6 days after NIOC had been served with Knowles J.'s order. NIOC would have known that steps could be taken pursuant to the order as from 1 September 2022. On 23 August 2022 NTT marked an email on the subject of the "Ownership Transfer Form" "TOP URGENT" and the necessary authorisations for the proposed signatories were given on 23 and 24 August 2022.

217. There is, as it seems to me, a cogent case for concluding or inferring that the only credible explanation for such urgency is that NIOC and NTT were acting as quickly as they could to effect the transfer before CGC was able to enforce the judgment against NIOC House.

218. As against those matters there was no evidence given by the Managing Director of NIOC who was the author of the letter dated 23 August 2022, or by the Legal Affairs Director of NIOC who signed the transfer form on behalf of NIOC or by the Managing Director of NTT who signed on behalf of the Fund. No suggestion was made that any of those persons could not have been called. There can be no doubt that the Managing Director of NIOC and the Legal Affairs Director of NIOC would have known about the very substantial award and judgment against NIOC. They would have been able to give evidence as to the purpose of NIOC in effecting the August Transfer. Their absence gives rise to an adverse inference, namely, that they were not called because, had they been called, they would have given evidence that the purpose of the transfer was indeed to put NIOC House beyond the reach of CGC.

219. What is said by NIOC in response ? Counsel for NIOC submitted in writing that the evidence is clear that the August Transfer was effected (i) to give effect to NIOC's and the Fund's longstanding understanding of the beneficial ownership of NIOC House and (ii) to make the management of NIOC House more straight forward in light of the sanctions regimes. This case was not developed in oral submissions. Counsel for the Fund made essentially the same written submission to the effect that the purpose was to regularise the ownership position. Whilst the Managing Director's letter of 23 August 2022 supports the first part of this case (but makes no mention of the second part of the case) what is not explained is why, in circumstances where the transfer could have been effected from at least 25 September 2019 (when the Fund acquired legal personality) NIOC chose to effect the transfer on 23 August 2022.

220. There was, as noted above, a reference in the Fund's 2021 accounts to EU sanctions preventing the transfer of NIOC House. However, as also noted above, there was no evidence of what these EU sanctions were. Dr. Zeinoddin, whose witness statement served more as a statement of NIOC's case than as his recollection of events within his personal knowledge, made no reference to sanctions in 2021. No suggestion was made by

the Fund's Board in its email of 8 May 2022 that sanctions prevented the transfer. There was no suggestion that sanctions prevented the August Transfer. I am not persuaded that sanctions were an obstacle to a transfer of NIOC House from NIOC to the Fund between 2019 and 2022. What sanctions did do was to make management of NIOC House difficult because banks and other financial institutions were reluctant to deal with Iranian entities.

221. I have in mind that Mrs. Nawaz had advised that a transfer would be beneficial for management purposes in September 2021 and March 2022. But no evidence has been adduced from a director of NIOC that her perceived management advantages were a reason for the August Transfer. Even if there were such evidence that reason could not explain the urgency with which the transfer was carried out on 23 August 2022.

222. I also have in mind the memoranda of 8 May 2022 in which the Fund's Board resolved to authorise the transfer and in which the Chairman of the Fund listed reasons for a transfer. But there was no disclosure from NIOC or the Fund to indicate the response of NIOC to the Fund's preference for a transfer. There must have been Board minutes, internal memoranda, or emails evidencing the reasons which motivated the decision to effect the August Transfer but none have been disclosed. In the absence of such disclosure the Fund's memoranda of 8 May 2022 are not persuasive of NIOC's reasons for the transfer. The letter from NIOC's Managing Director dated 23 August 2022 to the Director of Legal Affairs makes no mention of the Fund's memoranda of 8 May 2022. In any event the 8 May documents from the Fund do not explain why urgent action was taken on 23 August 2022.

223. In his letter dated 23 August 2022 the Managing Director of NIOC identifies a board resolution of 2011 as his authority for giving instructions for the transfer. There is no explanation as to why, 11 years later, it was now necessary to effect the transfer. I find that it is more likely than not that it was the threat of action against NIOC House which precipitated the August Transfer. NIOC positively intended that the outcome of the August Transfer was that NIOC House would be put beyond the reach of CGC. It is clear that that was, at the very least, a purpose of NIOC in effecting the August Transfer. Indeed, whilst it is possible that the transfer might have been welcome to the Fund (for the reasons set out in its letter of 8 May) it is more likely than not that the only purpose of NIOC in effecting the transfer on 23 August 2022 was to put NIOC House beyond the reach of CGC. Thus the answer to Issue 3 is that the purpose of the August Transfer was one of the purposes set out in s.423(3) of the Insolvency Act 1986.

Conclusion with regard to the claim under the Insolvency Act

224. CGC has established that the August Transfer was a transaction at an undervalue. It was not "for money or anything which has a monetary value" and NIOC and the Fund cannot justify that undervalue by the requisite proof that NIOC was subject to a trust in favour of the Fund. CGC has also established that NIOC entered into the August Transfer for the purpose of putting NIOC House beyond the reach of CGC. The court therefore has power, pursuant to the Insolvency Act, section 423, to make such order as it thinks fit for the purpose of restoring the position to what it would have been if the transaction had not

been entered into and protecting the interest of persons who are victims of the transaction.

The appropriate order

225. Counsel for CGC submitted that the appropriate order was to impose an obligation on the Fund to transfer NIOC House to CGC, the "victim" in the language of section 423.

226. Counsel for NIOC and the Fund made no submissions as to the form of the order pursuant to section 423.

227. Section 425 of the Insolvency Act provides as follows:

> Provision which may be made by order under s. 423.
>
> (1) Without prejudice to the generality of section 423, an order made under that section with respect to a transaction may (subject as follows)—
>
> > (a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;
> >
> > (b) require any property to be so vested if it represents, in any person's hands, the application either of the proceeds of sale of property so transferred or of the money so transferred;
> >
> > (c) release or discharge (in whole or in part) any security given by the debtor;
> >
> > (d) require any person to pay to any other person in respect of benefits received from the debtor such sums as the court may direct;
> >
> > (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction to be under such new or revived obligations as the court thinks appropriate;
> >
> > (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction.
>
> (2) An order under section 423 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction; but such an order—
>
> > (a) shall not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest, and

> (b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.
>
> (3) For the purposes of this section the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under section 423 may be made in respect of the transaction.
>
> (4) In this section "security" means any mortgage, charge, lien or other security.

228. Section 425 permits the order sought by CGC. Such an order can be made, pursuant to section 423, for the purpose of restoring the position to what it would have been if the transaction had not been entered into and protecting the interest of persons who are victims of the transaction. Whether or not such an order is appropriate will of course depend upon all the circumstances of the case. The sort of considerations relevant in this context were discussed by Sales J. in *4 Eng Limited v Harper and another* [2009] EWHC 2633 (Ch) at paragraphs 9-16. It is unnecessary to set out the whole of this discussion but I take particular note of the following:

i) In may be appropriate to require the transferee to transfer the property direct to the creditors, if the position in relation to execution is clear and any further costs associated with execution ought to be avoided.

ii) Often the appropriate order will be for the transferee to transfer the property back to the transferor, leaving the distribution of the property as between creditors of the transferor to be governed by the general law. This may be important if the transferor is in liquidation.

iii) The court has a wide jurisdiction as to remedy to allow it flexibility in fashioning relief which is carefully tailored to the justice of the particular case.

229. In the present case the value of NIOC House, though substantial, is considerably less than the sum which NIOC has been ordered to pay CGC. Thus it is clear that NIOC House will be taken in partial execution of the judgment debt. An order that the Fund transfer NIOC House to CGC will avoid any further costs of execution. There is no suggestion that NIOC is insolvent and so there is no need for NIOC House to be transferred back to NIOC in order that its value may be distributed amongst unsecured creditors of NIOC. Since CGC was the victim of NIOC's "avoidance purpose" there is justice in ordering that the Fund transfer NIOC House to CGC for the purpose of restoring the position to what it would have been if the transaction had not been entered into and thereby protect the interest of CGC.

230. In the context of a charging order counsel for the Fund submitted that the Fund was a "creditor of NIOC in relation to the loan, with interest over nearly 50 years" It was further submitted that "the Fund would look to NIOC to make good the shortfall" in the value of the Fund caused by the loss of NIOC House which NIOC and the Fund believed to be part of the Fund. It was said that these circumstances should be taken into account when considering whether the Fund as another creditor of NIOC would be prejudiced by

the making of a charging order. I have asked myself whether these matters militate against the making of an order that the Fund transfer NIOC House to CGC. I do not consider that they do. First, instead of receiving loan interest the Fund received rent from NIOC House. In those circumstances it is unlikely that the Fund has any claim against NIOC in respect of the loan. Second, the juridical basis of any claim by the Fund against NIOC in respect of NIOC House has not been articulated. Third, even if the Fund had any such claims against NIOC, there is no suggestion that NIOC is unable to satisfy any legitimate claim that the Fund may have against it. Thus there is no reason to suppose that an order that the Fund transfer NIOC House to CGC will prejudice the Fund.

231. I therefore conclude that an order that the Fund transfer NIOC House to CGC will restore the position to what it would have been if the transaction had not been entered into and will thereby protect the interest of CGC who was the victim of the August Transfer. Such an order should be made.

232. No doubt Counsel will prepare a draft Order giving effect to my conclusion.