Neutral Citation Number: [2023] EWHC 2638 (Comm)

Claim Nos. CL-2019-000752 and CL-2018-000182

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

In an Arbitration Claim

Rolls Building,
Royal Courts of Justice,
London
Date: 23/10/2023

Before :
THE HON MR JUSTICE ROBIN KNOWLES CBE

- -

Between :
THE FEDERAL REPUBLIC OF NIGERIA

Claimant

- and -

PROCESS & INDUSTRIAL DEVELOPMENTS LIMITED

Defendant

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Mark Howard KC, Philip Riches KC, Tom Ford, Tom Pascoe and Sebastian Mellab (instructed by **Mishcon de Reya**) for **The Federal Republic of Nigeria**

Lord Wolfson of Tredegar KC, Alexander Milner KC, Henry Hoskins and Max Evans (instructed by **Quinn Emanuel**) for **Process & Industrial Developments Limited**

Hearing dates:
16-19, 23-26, 30-31 January;
1-2, 6-9, 13-17, 20-24, 27 February;
6-9 March 2023

- -

JUDGMENT

(as handed down physically in open court, and electronically by email to the parties, and by publication in the National Archives)

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Robin Knowles J CBE:

Introduction

1. On 11 January 2010, in Nigeria, a document was signed between two parties, one a state and one a company.

2. Twenty pages long, not counting a schedule of works that was proposed to be attached, the document bore the title "Gas Supply and Processing Agreement for Accelerated Gas Development" ("the GSPA").

3. One party to the GSPA was the Federal Government of Nigeria ("Nigeria"). Nigeria did almost nothing to perform the GSPA after signing, but, according to Nigeria, neither did the other party.

4. On the face of things, a dispute followed and then an arbitration to resolve that dispute. The result, according to the decision of an arbitration tribunal in 2017, was that Nigeria owed the other party US$6.6 billion, a sum so vast that it is material to Nigeria's entire federal budget. With interest at the rate awarded by the Tribunal, the amount now exceeds US$11 billion.

5. The other party to the GSPA was a company registered in the British Virgin Islands. Its name was Process & Industrial Developments Limited ("P&ID"). It was one of many companies co-founded by two Irish businessmen, Mr Michael Quinn and Mr Brendan Cahill.

6. The GSPA has its place part of the way along a timeline that spans two decades. Nigeria had a chronic shortage of electric power. Yet gas from the recovery of oil in Nigeria was being flared rather than used to generate electricity, causing harmful pollution in the process. The GSPA came as Nigeria embarked on a policy named the Accelerated Gas Development Project to tackle this.

7. As summarised by the parties, under the GSPA Nigeria was to supply specified quantities of "wet" gas to Gas Processing Facilities (GPFs) constructed by P&ID. P&ID was to strip the wet gas into "lean" gas, to be delivered to Nigeria to be used for power generation. The remaining natural gas liquids were to be retained by P&ID for onward sale either domestically or by export.

8. The stated duration of the GSPA was 20 years (or more, on one scenario). It is common ground that in the event Nigeria did not supply any wet gas to P&ID, and nor did P&ID construct any Gas Processing Facilities.

9. In the third year of the GSPA, the arbitration ("the Arbitration") was commenced by P&ID against Nigeria, relying on an arbitration clause in the GSPA. The arbitral tribunal ("the Tribunal") was of the greatest experience and standing. Sir Anthony Evans was nominated to the Tribunal by P&ID. Chief Bayo Ojo SAN was nominated by Nigeria. Lord Hoffmann was appointed Chairman on 29 January 2013.

10. After rejecting a challenge to its jurisdiction, the Tribunal in due course found, by a part final award dated 17 July 2015 ("the Award on Liability"), that Nigeria had committed

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a repudiatory breach of the GSPA, that the GSPA was terminated on P&ID accepting that repudiatory breach, and that Nigeria was liable in damages. The Tribunal published a further award dated 31 January 2017 dealing with quantum ("the Final Award"). Chief Ojo SAN published a dissenting opinion. The Final Award required Nigeria to pay P&ID US$ 6.6 billion. Interest was awarded at the rate of 7%.

11. Before this Court, the Commercial Court in London, Nigeria challenges the Award on Liability and the Final Award ("the Awards"), and an award on jurisdiction. It makes allegations of bribery, corruption and perjury. The allegations extend to the GSPA, but they then extend further across the arbitral process as a whole from arbitration agreement to Final Award.

12. The allegations by Nigeria include allegations of bribery and corruption by P&ID before, at and after the time the parties entered into the GSPA. It alleges that some of its own lawyers at the time of the arbitration, including two Leading Counsel, were corrupted by P&ID. The allegations extend further still to early stages of the challenge before this Court. In turn, for its part, P&ID expressly describes Nigeria's case against it as "false and dishonest".

13. I address Nigeria's challenge and P&ID's defence in this judgment. The judgment follows an 8-week hearing by way of trial in the first quarter of this year. I intend no criticism of the legal teams when I record that Nigeria made almost every allegation it could. The express concessions by either Nigeria or P&ID were limited. I have read and listened to extensive evidence from witnesses of fact, including rigorous cross examination of witnesses tendered by P&ID. There has been evidence from expert witnesses, and argument from legal teams of true distinction, experience and expertise. A large amount of documentation, some of it incomplete, has had to be reviewed and re-reviewed, including in the months after the hearing. Many of these features are highly unusual in the context of the proper limits to the role of the Court where the parties have chosen arbitration.

14. But this is a highly unusual case, although one that draws attention to matters of wider importance. Quite apart from the consequences for the parties, the matter touches the reputation of arbitration as a dispute resolution process.

Some preliminary, general, points on the evidence

15. The documents available through the process of disclosure have illustrated the importance of that process to a fair trial, and to achieving a just outcome. I will return to that point.

16. I consider it important to observe that crucial documentation, some damaging to P&ID, was disclosed by P&ID, and without it material parts of some of the progress made by Nigeria would have been difficult. By the time of the trial the level, detail and content of disclosure by P&ID showed it, under supervision of its present solicitors Quinn Emanuel who took over at a late point, respecting its duties and (where made) orders.

17. However I still cannot be confident about the completeness of disclosure, and that is on either side. I acknowledge that some of the gaps in documentation may be accounted for by poor custodianship and by loss over time.

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18. I have striven to consider all evidence in context, and with regard to the age and complexity of events. I have had close regard to consistency of witness testimony with the documentary record where a record exists and appears to be reliable.

19. Witnesses called by P&ID were cross examined over a number of weeks by Mr Mark Howard KC and Mr Philip Riches KC, leading for Nigeria at the trial. That cross examination was rigorous; part of a "powerful and unforgiving microscope" was how P&ID put it. I have made allowance where appropriate for the demanding style of the cross examination when assessing the witness testimony. At some points the cross examination included questions that invited views from witnesses of fact rather than their recollection or claimed recollection, with the result that some exchanges were not of evidential value (I say this with no lack of respect and with genuine understanding of how demanding was the task of questioning in this case). Some observations on individual witnesses appear in the course of the judgment.

20. The witness evidence that could have been available to the Court has been limited by the deaths of a number of significant individuals, among them Mr Michael Quinn (who died in 2015), his son Mr Lloyd Quinn (who died in 2014), Dr Lukman (who died in 2014), Mr Hitchcock (who died in 2015) and Mr Tijani (who died in 2021). P&ID did not call all the witnesses it could. But the witness evidence has also been limited by Nigeria's decision to tender no witnesses of fact for cross examination.

21. At various points I am asked to accept there is a case to answer on an issue, and to draw adverse inferences from the absence without good reason of a witness who could otherwise have given material evidence. I approach the question whether it is appropriate to draw such an inference as one requiring judgment based on "common sense" and depending on the circumstances of this individual case: Royal Mail Group Ltd v Efobi [2021] UKSC 33, [2021] 1 WLR 3893 per Lord Leggatt at [41]. In the result I have not found it appropriate to draw adverse inferences. I have considered each "missing witness" in turn before reaching that judgment, and explain the most material instances below. The fact remains that neither party chose to put before the Court all relevant witnesses; each (as it was entitled to do) called the witness evidence it wished to call. In this overall sense the playing field was level.

22. The expert evidence was principally in the fields of chemical engineering, project finance and Nigerian law. Expert evidence on the cash economy in Nigeria was also provided by Nigeria and not challenged by cross examination from P&ID. The expert evidence contributed useful background but was ultimately not central to the issues that I have found to be decisive. I am grateful to each expert and did not regard one expert as more reliable than another.

Dishonesty

23. I am asked to make many findings of dishonesty.

24. I have approached dishonesty as guided by Lord Hughes in Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67, [2018] AC 391, at [74]:

> "74. … When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts.

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> The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

See also Royal Brunei Airlines Sdn Bhd v Tan [1995] AC 378 and Group Seven Ltd v Nasir [2019] EWCA Civ 614, [2020] Ch 129.

25. This is civil and commercial litigation, and the standard of proof is on the balance of probabilities. That said, to be satisfied of dishonesty to that standard requires convincing evidence.

26. Many allegations of dishonesty were made that concerned matters that were collateral to the central issues between the parties. Where, in order to fulfil my task, I do not need to decide collateral issues, especially those involving or affecting individuals who are not parties to the case, I shall not decide those issues. This is partly in fairness to those individuals; no individual had the facility to make legal representations to me. I have some but not all of the material that would be relevant. In particular, I have only some but not all of the material that will have been available to authorities that have become involved, including the Economic and Financial Crimes Commission (EFCC), a Nigerian law enforcement agency.

27. Over the history of the matter, Nigeria has had many parts of Government involved at different times and in different ways. These included a Ministry of Petroleum Resources, a Department of Petroleum Resources, a Department of Gas, and a Ministry of Energy, its Ministry of Finance, its Ministry of Land and Urban Development, its Ministry of Justice, the office of its Attorney General, its state owned oil corporation (NNPC or Nigeria National Petroleum Corporation) and its National Petroleum Investment Management Services (NAPIMS), as well as a number of Ministers. At one hearing before the Tribunal, Nigeria's Leading Counsel explained that the Minister for Petroleum Resources was not the minister responsible for gas or in charge of gas.

28. P&ID pointed to what it said was evidence of what it termed "catastrophic incompetence, both individual and institutional" that was "all - pervasive". This it said was "the hallmark of Nigeria's handling of at least (i) the GSPA; (ii) [all other Advanced Gas Development Project] contracts; (iii) the arbitration; and (iv) the initial stages of these proceedings". That there is evidence of this nature will be clear from this judgment, taken as a whole. P&ID argued that:

> "… at least in the context of this case – the prevailing standard against which the conduct of any given official must be judged is not one of scrupulous professionalism, or even reasonable diligence, but is (regrettably) one of abject incompetence."

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I take the argument into account, and it is important in understanding why and how some things happened, but it is only of limited assistance where what is to be judged is honesty.

Business in Nigeria; the ICIL Group

29. Mr Cahill gave evidence at the trial. I found him an intelligent man deeply seasoned by years of business. Much of that business had been in difficult conditions and his approach had been to do what it took to prevail. In this he would use the services of a relatively small number of loyal individuals, and operate through a relatively large number of companies.

30. On Nigeria's case he "lied and lied and lied to the Court", but I did not find that in the case of this witness. I did not accept all he told me, but I did accept much of what he told me. He had a considerable time in the witness box under hostile cross examination and he made mis-steps but not such as to cause me to reject every part of his evidence. Sometimes he found it difficult to hear out a full question and focus his answer. Some of what he told me contained his acknowledgement that he had done things in business that he should not have done. I found myself unable to accept any assurance in his evidence that business was conducted to proper standards.

31. In the years before the GSPA, Mr Michael Quinn and Mr Cahill had acquired a track-record of managing complex projects in Nigeria. An example is the conduct of geological surveys to explore for precious metals across Nigeria. Another is a contract in 2006 for the supply of communications radios for the Nigerian Army.

32. Where needed Mr Michael Quinn and Mr Cahill would bring in technical expertise from outside Nigeria. Projects to supply or refurbish military vehicles for the Nigerian military had the assistance of British-trained experts. A project to improve infrastructure at the ports in Lagos and Calabar had the assistance of a specialist British contractor.

33. In the course of this work Mr Michael Quinn and Mr Cahill established Industrial Consultants (International) Limited in 1979 in Ireland, and each became a director. An associated company of the same name was incorporated in October 1997 in Nigeria. This was used in managing administration and finances in Nigeria under the operational control of Mr James Nolan, a long-term employee, and Mr Adam Quinn, one of two sons of Mr Michael Quinn. At the trial, Mr Nolan gave evidence but his mental health prevented his cross-examination. Mr Adam Quinn did not give evidence.

34. Over time a number of other companies came within what may be termed the ICIL Group. Often two companies of the same or near same name formed part of the ICIL Group, and when this was so I do not as I continue this judgment distinguish between them as it is not relevant to do so.

35. Primetake Limited was one. Another was Albion Marine Company Limited, incorporated in Nigeria and which operated in the services and supply sector. Mr Cahill, Mr Michael Quinn and a Mr Ken Smyth were directors. Mr Smyth was not called as a witness at the trial. A Cyprus company by the name Albion Marine Limited was incorporated in January 2003.

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36. Then there was Goidel Resources Limited, incorporated in Nigeria and directed by Mr Nolan and Mr Adam Quinn, and which later took over drilling and exploratory work in Nigeria. The ICIL Group also included Hobson Industries Limited, operating in the services sector and incorporated in the BVI, and an associated company with the same name incorporated in Nigeria. SESFTF Progress Limited, controlled by Michael Quinn and Mr Cahill and operating in the services and supply sector was incorporated in Cyprus, with an associated company of the same name again incorporated in the British Virgin Isles.

37. Babcock Electrical Projects Limited was in the ICIL Group. Incorporated in Nigeria in February 1999, Mr Michael Quinn and Mr Cahill were shareholders and directors. An associated company with the same name was incorporated in Ireland. Yet further companies in the ICIL Group included Kristholm Limited, incorporated in Cyprus and controlled by Mr Cahill and Mr Michael Quinn, Kristholm Nigeria Limited had Mr Adam Quinn as a director. Marshpearl Limited was set up by Mr Michael Quinn and Mr Cahill and incorporated in Cyprus in February 2002, whilst Marshpearl Nigeria Limited had been incorporated in February 1999 in Nigeria in the services and supply sector. The latter was operationally controlled by a team there including Mr Lloyd Quinn, Mr Adam Quinn, Mr Nolan and a consultant Mr Neil Murray. Mr Murray gave evidence at the trial, called by Mr Max Evans. Mr Murray was disarmingly frank and concise at points in his evidence.

38. Mr Murray served as a director of Imperial JV Limited alongside Mr Nolan. Eastwise Trading Limited was incorporated in Cyprus and controlled by Mr Cahill (it had nominee shareholders appointed by Cypriot agents). An associated company with the same name was incorporated in the Cayman Islands. Trinitron Biotech Nigeria Limited was incorporated in Nigeria in 2004 and operated in the medical and pharmaceuticals sector. Trinity Biotech Nigeria Limited was incorporated in Nigeria in 2006. Mr Adam Quinn and Mr Nolan were directors and shareholders.

39. All these companies were in the ICIL Group. So too P&ID and its Nigerian counterpart P&ID (Nigeria) Limited. Transactions that form part of the track-record of Mr Michael Quinn and Mr Cahill involved companies in the ICIL Group and two particular Ministries in Nigeria's Federal Government, the Ministry of Police Affairs and the Ministry of Defence.

40. I record some of these transactions below. While doing so I bring in reference to certain contemporaneous payments made to individuals holding office or position or to those related or connected to them. It will be obvious that many of these payments on their face call for an explanation. I proceed with care, because my focus is on the GSPA and on the Arbitration, and I do not have anything like full evidence of these other transactions. But the transactions have their place as part of the background and I should not omit them. Having heard the evidence of Mr Murray and Mr Cahill, I do not accept that all the payments are explicable as the payment of legitimate business expenses.

41. Whilst Lord Wolfson KC, leading for P&ID at the trial, made clear that it was P&ID's position that "… nothing that was admitted has any bearing on this case", P&ID properly accepted in its written closing that:

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> "during the proceedings, some evidence of corrupt or apparently corrupt activity with the ICIL group of companies has come to light".

42. Beyond the instances I give below, other payments to other people featured in the evidence over the same period, but I need not offer further examples. I should state clearly that where payments were made in cash, the parties were agreed by the trial that ICIL Group companies frequently used cash to pay business expenses that were legitimate. That said, Mr Murray and Mr Cahill accepted that payments that were made purportedly in connection with inspection visits might actually have been kept in whole or in part by senior army officers. Mr Murray said:

> "… we gave them the money for their travel allowance for want of another description and they don't bring it with them, they leave it at home".

Ministry of Police Affairs

43. On 22 November 2005, a contract for the refurbishment of approximately 100 armoured personnel carriers was signed by Marshpearl and the Ministry of Police Affairs. On about 10 February 2006, a further contract for the supply of spare parts for armoured personnel carriers was signed by Kristholm. The value stated was US$3,026,239. On 3 August 2006, a further contract for supply of goods in connection with the refurbishment of armoured personnel carriers was signed by Marshpearl and the Ministry of Police Affairs. The value stated was US$18,487,240.

44. At Nigeria's Ministry of Police Affairs, Mr Broderick Bozimo served between July 2003 and January 2007 as Minister. Mr Bozimo's wife was named Joyce and they had a daughter named Yvonne. On 25 April 2006, a payment of £2,000 was made from Marshpearl to "J Bozimo" This was followed in June 2006 with a payment of US$7,458.17 referenced "Bozimo" and a payment of US$19,461 referenced "Bozimo London Clinic". On 25 August 2006 there was a payment of US$3,790 referenced "J Bozimo" and in October and November 2006 payments of £3,341.11 referenced "Mrs Bozimo Medical Bill", £3,372.70 referenced "Joyce Bozimo", £8,043.40 referenced "Joyce Bozimo", US$2,850 referenced "Mrs Bozimo", and £1,534.61 referenced "Joyce Bozimo". According to Mr Murray, Ms Yvonne Bozimo worked in the ICIL office as a secretary for "about a year", but I find the size and pattern of these payments, taken with those mentioned below, is such that most were not for Ms Yvonne Bozimo's secretarial services.

45. On 15 May 2007, a contract for the supply of ammunition and bulletproof vests was signed by SESFTF Progress and the Ministry of Police Affairs. The value stated was US$3,173,354.08.

46. On 3 April 2007, US$10,046.41 was paid referenced "Mr E E Bozimo". On 11 June 2007, £10,046.41 was paid by Marshpearl referenced "Joyce Bozimo". Payments from Trinity Biotech of NGN 400,000, NGN 190,000, NGN 140,000, NGN 140,000 and NGN 42,000 were made on 14 August 2007, 6 September 2007, 27 September 2007, 1 November 2007 and 21 November 2007, respectively. The payments were variously described as cash withdrawals, expenses or salary payments for "Yvonne Bozimo". On 12 September 2008, a payment of £10,051.73 was made by Marshpearl referenced "EE Bozimo". Payments from Trinity Biotech to Mrs Bozimo of NGN 1,500,000, NGN

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500,000 and NGN 500,000 were made on 17 September 2008, 6 February 2009 and 28 May 2009, respectively.

47. On 23 July 2009, a contract for supply of protective equipment for marine police was signed by Albion Marine and the Ministry of Police Affairs. The value stated was US$596,012.57. This was followed on 16 September 2009 with a contract for supply of night vision goggles and protective equipment for marine police, to a value stated of US$760,263.08. Then on 30 October 2009, a contract for supply of long-range shells was signed by Primetake and the Ministry of Police Affairs. The value stated was US$536,927.59 and US$596,302.31.

Ministry of Defence

48. In May 2002, a contract for the refurbishment of 36 Scorpion tanks (the Scorpion Contract) was agreed by Marshpearl and the Ministry of Defence (by Dr Kaigama, the Permanent Secretary from May 2002 to May 2003). The stated value was £5,794,757 and N172,465,000.

49. On 31 October 2002 US$22,650 was paid by Kristholm to Ambassador Danladi, who worked at the Ministry of Defence between 2000 and 2004. In December 2002, a further US$20,000, and on 7 March 2003 a further US$50,077.46. On 30 December 2002, US$30,000 was paid by Marshpearl to Dr Kaigama, with a further US$60,087.46 on 7 March 2003.

50. An extension of the Scorpion Contract to four further tanks followed on 19 March 2003 to a stated value of £760,000. It was signed by Dr Kaigama for the Ministry of Defence. A further extension of the Scorpion Contract to another eighteen tanks was signed by Dr Kaigama for the Ministry of Defence on 9 May 2003. The value stated was £3,420,000.

51. On 6 May 2003 US$100,127.86 was paid by Kristholm to Ambassador Danladi and US$100,127.86 to Dr Kaigama. Further payments were made of US$50,077.31 to Dr Kaigama by Marshpearl on 5 September 2003, and of US$5,041.46 to Ambassador Danladi by Kristholm on 19 December 2003. On 26 January 2004 US$50,081.13 was paid by Kristholm to Dr Kaigama and in February 2004 a further US$50,081.10 by Marshpearl.

Ministry of Defence (continued): Mrs Grace Taiga

52. Mrs Grace Taiga had also worked with the Ministry of Defence. Before the GSPA was entered into in early 2010, she had become the Legal Director at the Ministry of Petroleum Resources and she will feature centrally below. Mrs Grace Taiga was called as a witness by P&ID and not Nigeria, and as a result was cross-examined by Nigeria.

53. Whilst at the Ministry of Defence Mrs Grace Taiga had some involvement in all or most of the following contracts between the Ministry and ICIL Group companies. On 3rd December 2004, a contract for the supply of 19 fast response rescue craft was signed between "Albion Marine Co (Cyprus) Ltd" and the Ministry of Defence, to a value stated of US$8,140,000. The same day a contract for supply of an ambulance craft was signed by Goidel and the Ministry of Defence, to a value stated of US$928,000. Shortly after that, an extension of the Scorpion Contract to include supply of communications

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equipment was signed by Marshpearl and the Ministry of Defence, to a value stated of US$5,835,196. Meanwhile on 30th December 2004, a contract for the supply of an integrated communications system was signed by Marshpearl and the Ministry of Defence. The value stated was US$5,488,001.84. In 2005, on 15 August, a contract for the refurbishment of 36 armoured personnel carriers was signed by Hobson Industries and the Ministry of Defence, to a value stated of £7,249,100 and N88,414,211. The next year, on 4 December 2006, an extension of the Scorpion Contract to include the supply of further communications equipment was signed by Marshpearl. The value stated was US$3,557,668.

54. Mrs Grace Taiga had been married, to Moses, but then separated. Vera Rominiyi Taiga (also known as Enameg Vera Moses Taiga), Isha Taiga (who also went by the names 'Ise' and 'Aisha') and Omafuvwe Taiga (who also went by the name 'Oma') were her daughters. Over the years whilst at the Ministry of Defence and before joining the Ministry of Petroleum Affairs, Mrs Grace Taiga or members of her family received payments from Mr Michael Quinn and Mr Cahill and their ICIL Group companies. Some of the alleged payments are disputed and the reasons for any payments are in dispute. I am satisfied that the payments to which I refer below were made, and that is sufficient for present purposes.

55. In June and October 2004 sums of US$5,000 and US$2,000 were paid by ICIL to Mrs Grace Taiga by Western Union transfer. In September and November 2004 US$5,057.63 was paid by Kristholm and £2,020.60 was paid by Marshpearl to one of her daughters, Isha. From January to May 2005 the following payments were made by Marshpearl to Ms Isha Taiga: £2,038.22 (24 January 2005), £5,045.98 (16 February 2005), £5,032.09 (9 March 2005), £17,050.72 (19 April 2005), £15,000 (28 April 2005), £15,040.83 (6 May 2005), and £10,036.19 (23 December 2005).

Oil and gas, and Project Alpha

56. It is now necessary to go back in time a little. Between 1992 and 1996, through MF Kent West Africa Limited and pursuant to contracts with NNPC (Nigeria's state-owned oil corporation), Mr Michael Quinn and Mr Cahill had been involved in building infrastructure at six sites in Nigeria for high-pressure tanks for the storage of gases, including butane and propane.

57. They had long been interested in addressing the issue of gas being flared rather than used. In June 1993 their companies Kent Steel Limited and Kent Steel West Africa Limited entered into a Memorandum of Understanding with NNPC regarding a project to build a plant to process associated gas into methanol. That project ultimately did not proceed. But in the summer of 2005, Mr Michael Quinn and Mr Cahill were asked by General Theophilus Yakubu Danjuma, a Nigerian politician and businessman, to propose a petrochemical plant project outside Lagos. The General knew them from previous projects.

58. On 1 November 2005 Mr Cahill, Mr Michael Quinn and others delivered a presentation to General Danjuma entitled "Natural Gas To Export Market Chemical Product". This was a proposal for a plant which would convert wet gas into dry gas suitable for generating power, and would extract butane and propane and then convert the propane to propylene which could be sold. Technical expertise was provided by Mr Neil

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Hitchcock and a Mr Karel Vlok. Each of these was an engineer who had worked with Mr Cahill and Mr Michael Quinn on other projects. Mr Vlok later became a director of Kran Developments. Mr Hitchcock would in due course be employed as Project Director by P&ID.

59. Based on the proposal, General Danjuma signed a Letter of Intent on 2 May 2006 agreeing in principle to award a contract to an entity owned by Mr Michael Quinn and Mr Cahill, Lurgi Galba Joint Venture Limited, for the provision of engineering services to undertake what was to be known as Project Alpha. Three new corporate entities were incorporated by July 2006.

60. One of these was Tita-Kuru Petrochemicals Limited in Nigeria. Owned by General Danjuma, this would own Project Alpha. The others, one offshore and one in Nigeria, were P&ID and P&ID Nigeria. In this judgment I do not distinguish between them unless it is relevant to do so. They were both owned by Mr Michael Quinn and Mr Cahill. They were part of the ICIL Group, and to be engaged by Tita-Kuru as project managers for Project Alpha.

61. Tita-Kuru and P&ID entered into two agreements. The first, an Engineering Services Agreement of 27 June 2006, required P&ID to provide "the combined Basic Engineering Package and Front End Engineering Design associated with the Engineering, Procurement and Construction and Commissioning" of Project Alpha, for a price of up to approximately US$ 25 million. The second was a Services Agreement of 6 September 2006, under which P&ID was to provide "Bankable Package Documentation associated with the Engineering, Procurement and Construction" of the facilities required for Project Alpha, with a maximum permitted expenditure of US$ 39,182,000.

62. On 27 November 2006, after preparatory work by P&ID on the project, a first review meeting for Project Alpha was held with General Danjuma to determine whether to proceed. P&ID delivered a presentation. It explained that it had, among other things, obtained "data on local gas feedstock composition and meteorological conditions to enable Basic Engineering Studies" to be carried out for Project Alpha. It had obtained average gas compositions for the relevant fields from which it proposed to source wet gas for Project Alpha. P&ID's view was that Project Alpha should proceed, since in its view it was economically viable, and the technology was proven and in wide use internationally.

63. The decision was to proceed. Substantial engineering work was completed between 2006 and 2008, under P&ID's direction as project manager. By about January 2009, P&ID and its team of internal and external experts had put together a 'bankable package' for Project Alpha, in accordance with its agreements with Tita-Kuru. The extent or quality of the work was not disputed by Tita-Kuru, and its cost was around US$ 37-40 million. US$29 million of that cost was spent on work done by specialist contractors.

64. The specialist contractors included Lummus Technology Group, a licensor of gas processing technologies. Lummus completed a Propane De-Hydrogenation Unit Process Design. On 31 July 2007 Tita-Kuru entered into a licence agreement with ABB Lummus Global Inc for use of key technology required to operate the Project Alpha

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plant, and for which it paid US$9,500,000. Kran Developments completed plant engineering work. ABB Limited, a provider of electrical and automation systems in the oil and gas industry, completed the electrical, control and instrumentation Front End Engineering Design.

65. P&ID incurred significant costs in project managing this work. It had an office in Abuja and recruited a team of about twenty people, including engineers led by Mr Hitchcock and Mr Vlok, and also accountants. The engineering work itself filled about 100 hard-copy folders, and included about 7,500 engineering documents.

66. While the engineering work progressed, P&ID also made arrangements to obtain debt funding for Project Alpha from Fortis, a French private bank. The debt finance was intended to supplement equity finance provided by General Danjuma. Following a series of meetings with P&ID, Fortis did express interest in providing finance, subject to the project securing an agreement for the supply of wet gas, among other things. Fortis was comfortable with P&ID's capability to manage the engineering and construction, and agreed with the approach of engaging external contractors to do the work.

67. All this represented significant progress in developing Project Alpha. However, the Project hit an obstacle, and this obstacle concerned the supply of wet gas. It had been contemplated that both P&ID and Tita-Kuru would be responsible for negotiating and agreeing a supply of wet gas. They initially planned to obtain wet gas from the Aje Field, operated by Yinka Folawiyo Petroleum Company Ltd. Folawiyo did express interest in supplying the gas in 2007. By April 2008, Folawiyo proposed a formula for calculating the price of the gas, and the parties scheduled a further meeting to finalise an agreement. But then Chevron took a major shareholding in Folawiyo in about early 2008, and was interested in taking the gas itself.

68. I accept P&ID's characterisation of Project Alpha as a genuine project, beginning in 2005, and in which General Danjuma invested, and on which P&ID worked, and one in respect of which there was no suggestion of a technical barrier to completion. The obstacle to Project Alpha was that Tita-Kuru and P&ID could not reach an agreement with Folawiyo to acquire the wet gas required. The experience of this obstacle caused P&ID to seek a supply of gas in the public sector from Nigeria. Mr Michael Quinn approached NNPC who, as Mr Cahill put it, "are the owners of all associated gas".

69. The opportunity sought arose from two initiatives launched by Nigeria. These were Nigeria's Gas Master Plan followed by its Accelerated Gas Development Project.

Nigeria's Gas Master Plan and the Accelerated Gas Development Project

70. In 2007 Nigeria announced a Gas Master Plan to address issues in the domestic gas supply market. This was the year in which President Umaru Yar'Adua began his Presidency, from May 2007. In February 2008 the Federal Executive Council of Nigeria gave approval, sought by the President, for a short-term gas supply plan.

71. On 24 January 2008 P&ID wrote to NNPC. It said that it was retained by Tita-Kuru as managing contractors in relation to a project for a gas treatment and propylene production plant. It explained that it was applying on behalf of Tita-Kuru for that project

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to be included in the Gas Master Plan. A meeting with Nigeria was proposed, to discuss in detail the requirements of Tita-Kuru regarding Project Alpha.

72. On 22 February 2008 Mr Hitchcock and a Mr Isa Yusuf, a Consultant of P&ID and former employee of NNPC, met Mr Bello Rabiu, Technical Assistant to the Group Managing Director of Executive Strategy at NNPC. Mr Hitchcock reported back to Mr Cahill that the clear picture that emerged from meeting with Mr Rabiu was that the ideal location for Project Alpha was Calabar, not Lagos, and that NNPC had shown interest in the Project Alpha plant being located at Calabar. This relocation would make use of the gas infrastructure which Nigeria planned to build in that region.

73. Mr Rabiu sent Mr Hitchcock a Gas Master Plan presentation showing the position of proposed gas processing facilities, including one at Calabar. It also appeared that a consortium of investors led by a friend of General Danjuma was looking at investment in centralised gas processing facilities in Calabar as part of the Gas Master Plan and was preparing a proposal for the installation and operation of the facilities. Upon the recommendation of Mr Rabiu, P&ID made contact with the consortium.

74. P&ID considered internally the viability of relocating Project Alpha from Lagos to Calabar. On 28 April 2008 Mr Yusuf sent to Mr Michael Quinn gas compositions for platforms operated by Mobil/ Exxonmobil (operating field for Oil Mining Licence (OML) 67), Shell and Chevron. He had obtained these from Nigeria's National Petroleum Investment Management Services (NAPIMS), which managed the oil and gas assets of Nigeria.

75. An Investors Road Show was scheduled for Nigeria's Gas Master Plan for 5 May 2008, to take place in Abuja. Nigeria was to emphasise to the Tribunal that this was organised by the Ministry of Energy and not the Ministry of Petroleum Resources. It is common ground that a representative from P&ID attended the Road Show. The programme indicated that Dr Rilwanu Lukman was due to attend and on balance I conclude he did. At this date Dr Lukman was not a Minister although he had served a previous term from 1986-1990, and he would take up the office again later in 2008. The Road Show featured (among other things) a "Proposed Gas Master Plan Central Processing Facility".

76. The day before and on the day of the Roadshow a large sum was removed from the accounts of P&ID-related entities, recorded as "Dublin Expenses" and "PR" in internal ICIL spreadsheets. Of the term "Dublin expenses", in an email exchange of September 2007, Mr Murray had referred Mr Lloyd Quinn to the need to record Dublin expenses in a coded list which "can be instantly destroyed or is illegible to a stranger". Nigeria alleges that some of this sum was used to make cash payments to Nigerian officials present at the Roadshow. This has not been properly explained by P&ID, despite the allegation and the opportunity to explain properly, the concern for secrecy and the timing of the withdrawal. I accept that some of this money was used in the way alleged.

77. P&ID met again with Mr Rabiu on 28 May 2008. P&ID drafted a memorandum stating that it had been urged by Nigeria:

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> "… to present a proposal, based in the main on the Addax available wet gas, for the Design, Installation & Operation of a Gas Processing facility, in the Calabar area".

78. The reference to Addax was to the international oil company Addax Petroleum, which was operating field OML 123. The proposal was to be "independent of the Proposed Gas Master Plan Central Processing Facility" featured at the Roadshow. On 3 June 2008 Mr Yusuf emailed NNPC (to Mr Farouk Said, who served a period as its Chief Operating Officer (Corporate Services)) and NAPIMS, enclosing a list of questions relating to P&ID's proposal for the design, installation and operation of a gas processing facility in Calabar. On 18 June 2008 P&ID attended a meeting with Addax to discuss the possibility of Addax providing gas for the project at Calabar.

79. The day before, Mr Michael Quinn wrote to General Danjuma. He explained that:

> "… there might be an excellent opportunity to utilise the Engineering Work on Project Alpha already completed and paid for in order to develop a similar Gas Stripping Plant at Calabar".

He invited the General to participate.

80. Later in June 2008 Mr Michael Quinn discussed the position with Dr Lukman and also with the then Permanent Secretary to the Government. Both were supportive and suggested that P&ID make a proposal to the President. Mr Michael Quinn wrote to President Yar'Adua on 7 August 2008 setting out a proposal for a Natural Gas Processing and a Polymer Grade Propylene Plant. The proposal stated that P&ID had already purchased and held the licences for the plant and had already completed the detailed engineering. Mr Michael Quinn's written evidence to the Tribunal was that he was later granted an audience with the President to discuss the proposal. Nigeria does not admit the meeting occurred. I am prepared to accept there was a meeting, but that fact adds little of significance to events.

81. In October 2008, Mr Hitchcock delivered a further presentation to the Ministry of Petroleum Resources, and to Mr Emmanuel Odusina, then Nigeria's Minister for State Energy (Gas) and employed by the Petroleum Products Marketing Company Limited. As recorded on 21 November 2008 in a "Project Alpha Status Synopsis", discussions continued between Mr Michael Quinn and the Ministry for Energy (Gas), NNPC and NAPIMS.

82. On 18 December 2008 Dr Lukman was re-appointed as Nigeria's Minister of Petroleum Resources. Dr Lukman had a distinguished record. This included service as Secretary General of OPEC (the Organisation of Petroleum Exporting Countries). He had also served as Special Advisor to the President of Nigeria. The formal launch of Nigeria's Accelerated Gas Development Project was in February 2009.

83. On 21 January 2009 Mr Henry Ajumogobia SAN, then Minister of State for Petroleum Resources, had requested that Mr Taofiq Tijani (Senior Technical Assistant at the Ministry) be responsible for coordinating gas related projects at the Ministry.

84. On 18 February 2009, at a meeting with Dr David Ige (who became Group General Manager/Technical Assistant to the General Managing Director of NNPC and Group

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Executive Director - Gas & Power), and others, Dr Lukman directed that a team including officials from NNPC, the Department of Petroleum Resources and Mr Ajumogobia SAN's office at the Ministry of Petroleum Resources should evaluate five proposals that had already been received.

85. The proposals were from Remington, Southfield, Global Gas, Octopus and Turan. The evaluation required by Dr Lukman was with a view to recommending to him by 26 February 2009 candidate investors that might be allowed to progress with investments. This would be subject to selection principles including a "demonstrable ability to deliver dry gas to the grid within 12 months from approval". The time pressure imposed was enormous, as indeed was the scale of the Accelerated Gas Development Project. Any project at Calabar would be but one among a number.

86. In the event, on 25 February 2009 a summary technical report was sent to Dr Lukman by the relevant Technical Committee in relation to proposals made by nine companies for projects.

87. P&ID made a proposal and several presentations to the Ministry on gas processing and treatment facilities. Ahead of the deadline of 26 February 2009 set by Dr Lukman, Nigeria wrote to P&ID on 23 February 2009 asking for a response the same day with further information including evidence of its financial capability. P&ID responded with further information on 24 February 2009. Its letter stated that:

> "The Project is being funded by South Atlantic Petroleum (SAPETRO) which is 100% owned by General T.Y.Danjuma (Rtd). To date in excess of $40 Mio has been invested in the Process Licenses and complete detailed engineering".

88. I heard expert evidence from two technical engineering experts, Mr Newenham and Mr Bunten. They agreed that, as at this date, P&ID was proposing a project that included a propane dehydrogenation unit and that was based on the technology licences and design for Project Alpha. I accept that this reflected P&ID's then understanding to the effect that a project at Calabar would adopt the same design as had already been developed for Project Alpha. On that basis P&ID believed that the extensive engineering work that had already been done on Project Alpha would continue to be of at least some use for the Calabar Project. In February 2009, Mr Cahill said to Mr Vlok that "[a] vast amount of engineering work has been done to date on the propylene project […]", and asked "[t]o what extent if any is the engineering work done to date applicable and usable". As P&ID contend, Mr Vlok's answer was, in essence, that as the concept changed, P&ID could continue to reuse and adapt the existing engineering work as well as carrying out new engineering work where required.

89. Nigeria requested from P&ID further information and verification in relation to the P&ID expenditure to date, to which P&ID had referred, of more than US $40 million in respect of licences and engineering "for the 250,000 MTA Polymer Grade Propylene Plant". The reference was still, and transparently, to a propylene plant; and propylene is achieved by dehydrogenating propane. On 23 March 2009 P&ID sent to Nigeria:

> "three Engineering Contracts [which] represent over US$ 29 million of the over US$ 40 million expended to date, the balance being made up of the initial feasibility studies, smaller engineering studies and our internal Project Management Costs".

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90. At the invitation of the Ministry of Petroleum Resources, P&ID attended a meeting with the Technical Committee on 1 April 2009. Across the Accelerated Gas Development Project, meetings were held with a total of, now, eleven potential investors between 1 and 8 April 2009. In mid April 2009 an updated document listing out "follow up actions" for the eleven proposals that had been submitted to Nigeria was circulated.

91. But the proposed project at Calabar was to change very substantially, including to the point of removing the propylene plant altogether. A first major change to the project at Calabar came on 1 April 2009. Nigeria's Technical Committee proposed selling the butane and propane and avoiding the further step of a propylene plant to convert the propane into propylene.

92. Within P&ID one reaction was that dropping the propylene plant would make the Calabar project "extremely profitable and much simpler and cheaper to implement", compared with Project Alpha. A little later, in the interests of moving more quickly, the Ministry and P&ID discussed a second major change. This involved dividing the gas processing plant into two 'trains'. The idea was that an initial train with a capacity (then of) 180-200 million standard cubic feet per day (MMSCuFD) of wet gas could get up and running first; to be followed by a second train with a further capacity (then of) 250 MMSCuFD.

93. A consequence of these changes was of course that new engineering work would be required. The technical engineering experts whose evidence I heard agreed that by 20 April 2009 at the latest the Tita-Kuru design became unserviceable for (what was to be) the GSPA because of changes made by then. The propane dehydrogenation unit was removed from scope, the gas processing was split into two trains, and the products changed from propylene and a butane/condensate mix to propane, butane, and condensate.

94. At the same time, it is also fair to take into account the point that the new work would be simpler than the work which P&ID had already done for Project Alpha. It is common ground between the technical engineering experts that I heard that the concept for the project at Calabar was "more straightforward" than that for Project Alpha. Mr Newenham's expert evidence (which was particularly clear and careful; he strove to be fair throughout) made the further point that modular components could be used that could be built in factories by specialist contractors before being assembled in Calabar.

95. Straight away, on 20 April 2009, Mr Hitchcock wrote to AET (Advanced Extraction Technologies) on behalf of P&ID regarding designs and full engineering services for an LPG recovery unit. AET explained the limits of its services but at the end of the following month was to send P&ID notes from a meeting, and what was described as "an initial stab" at the basis of a design document for the project at Calabar. It said:

> "many of the items are to be determined (TBD) and others are assumed. This is just a starting point, but it indicates the information we require to produce the Process Information Package".

It included "a block flow diagram (BFD) of the overall facility scope as we understand it" for the project at Calabar.

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96. There was another change from Project Alpha, and this change was of a different nature. P&ID now saw the project at Calabar as an opportunity for its involvement more by way of ownership rather than simply as the project manager. It also saw the possibility of a commitment from Nigeria to supply the wet gas required, and viewed this as very attractive after its experience with Project Alpha.

97. Overall, and confirmed by a reading of the available contemporaneous documentation as a whole, I am prepared to accept P&ID's contention advanced in these terms by Lord Wolfson KC, Alexander Milner KC, Henry Hoskins and Max Evans:

> "The very fact that P&ID was refining and honing the concept for the Calabar Project – even though this required more engineering work to be carried out – is … further proof that this was a genuine project which P&ID intended to deliver. … The reality is that P&ID believed the necessary engineering work for the [project at Calabar] could and would be completed, just as it had been for Project Alpha. The reason P&ID honed and developed the concept was that it had every intention of delivering the [project at Calabar]".

98. However from about 20 April 2009 I find that P&ID could not have believed that the engineering work for Project Alpha could be used for the project at Calabar as the project at Calabar was by then proposed. Indeed by the end of July 2009, as described below, P&ID would be using that very point itself for the purpose of discussion with General Danjuma.

99. Nor was it clear how the engineering work that would now be required for the project at Calabar would be financed. And of course, P&ID and Nigeria had yet to enter into any binding contractual relations.

100. Meanwhile Mr Hitchcock advised Mr Michael Quinn on 21 April 2009 that as P&ID had not received any payments from Tita-Kuru since a December 2008 invoice, he had no option but to lay off the remaining four members of P&ID's local Nigerian staff.

Towards a Memorandum of Understanding

101. On 25 May 2009 P&ID sent a draft Memorandum of Understanding to the Ministry of Petroleum Resources.

102. A revised report of 4 June 2009 updated the status of the eleven projects. It identified the involvement of the Gas Master Plan team, NNPC, Mr Ajumogobia SAN and others in respect of certain of the projects, and the intended involvement of the Gas Master Plan team in respect of P&ID's project, with further meetings arranged over the following days.

103. On 9 June 2009 P&ID attended a meeting with the technical committee at the Ministry of Petroleum Resources. Two days later Mr Michael Quinn wrote to Dr M M Ibrahim, Special Senior Technical Assistant and Chair of the Technical Committee at the Ministry. Mr Michael Quinn chose these words:

> "As agreed at the meeting, we enclose a copy of our letter to the ministry dated the 18th of March 2009 detailing our expenditure of more than 40 million US dollars to date on the project"

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He referred to P&ID's letter to President Yar'Adua dated 7 August 2008:

> "wherein we identified our interest in procuring 50% of the associated wet gas we require for the project from [field] OML 123…".

104. Meanwhile on 9 June 2009 a Mr Trevor Akindele provided P&ID with a document regarding a gas processing project and field OML 123 operated by Addax Petroleum. He requested "Please use this discreetly as this is strictly confidential". On 13 June 2009 Mr Michael Quinn and Mr Hitchcock received from Mr Akindele a hand-drawn sketch of concept. On 15 June 2009 Aker Solutions, an engineering company, sent Mr Akindele a cash flow analysis for the project at Calabar, which Mr Akindele then forwarded on to P&ID.

105. On 23 June 2009 Dr Ibrahim wrote separately to Mr Ajumogobia SAN and to Dr Lukman updating them on the status of the Advanced Gas Development Project. A ceremony was due to take place on 24 June 2009 between eleven Nigerian officials, including Mrs Grace Taiga, and six investors in order to sign Memoranda of Understanding, but in the event it was decided that these needed to be redrafted before they could be signed. On 25 June 2009, Mr Murray sent Mr Cahill the "new MoU".

106. A meeting took place on 10 July 2009 between Dr Lukman and Mr Funsho Kupolokun, representing Tita-Kuru and General Danjuma. Mr Kupolokun sought to persuade Dr Lukman to transact with Tita-Kuru rather than P&ID on the basis that Tita-Kuru "actually paid for all the studies, technology licensing fees and engineering design". Dr Lukman refused.

107. A Memorandum of Understanding dated 22 July 2009 was signed between the Ministry of Petroleum Resources and P&ID regarding the project at Calabar. The clause headed "Objective" read:

> "The objective of this MOU is to construct a Natural Gas Processing Plant and to incorporate two process streams with a total capacity of 400 MMSCuFD together with all utilities and storage facilities at Calabar".

108. This was not the only Memorandum of Understanding signed at that point by the Ministry. Seven Energy /Turan Oil Consortium had signed an MOU with the Ministry on 26 June 2009. A number of others were signed and dated the same day as the MOU with P&ID; these were between the Ministry and Octopol Energy, Remington Energy, Colechurch, Ibeto Energy, Gerfin, Petrolog, and Global Gas. An MOU was signed with GfD Energy on 13 August 2009.

109. But what of the legacy of Project Alpha? P&ID was, opportunistically, adopting two different positions. It was seeking to ride two horses, one as regards General Danjuma and one as regards the Ministry.

110. Thus on 30 July 2009 Mr Smyth emailed Mr Cahill a draft P&ID memorandum, prepared ahead of a meeting with General Danjuma. Entitled "Memo: Gas Projects – Issues to be Resolved", it stated:

> "None of the engineering or licensing for Project Alpha will be used in the Calabar Project as the design is completely different".

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And on 26 August 2009 P&ID produced an internal timeline concerning the "Feedstock Gas for Project Alpha". This stated, attributing a date of December 2008, that it was "clear that because the two projects are totally dissimilar"; adding:

> "the Engineering work carried out for Project Alpha will not be applicable in any way to the Calabar Project. Similarly, the technology licensed for Project Alpha would be of no use for the Calabar Project".

111. But at the same time in an email of 4 August 2009 Mr Hitchcock noted that the presentation given to the Ministry of Petroleum Resources had "used the Project Alpha Site General Arrangement Drawing". In the email Mr Hitchcock expressed the opinion to Mr Cahill and Mr Michael Quinn that they "need to be very careful" about attempting to separate Project Alpha from the project at Calabar. Mr Michael Quinn produced a Question & Answer document on 21 August 2009 stating that all of the letters, discussions and meetings with the Ministry, NNPC and the President had centred around the engineering designs for Project Alpha and around General Danjuma as the financier, but that none of that was known or available to Tita-Kuru except the original letter to the President.

112. The MOUs contemplated the use of a Joint Operating Committee. Dr Lukman had invited NNPC, the Minister of Power and the Acting Director of the Department of Petroleum Resources each to submit two nominations to serve as members. The first meeting of the Joint Operating Committee was held in August 2009. For P&ID, attendees included Mr Michael Quinn and Mr Hitchcock. By this point a Mr Alhaji Mohammed Kuchazi was also involved as a representative of P&ID, attending meetings of the Joint Operating Committee on its behalf. Mr Kuchazi was called by P&ID as a witness at the trial. He struggled to add usefully to the evidence otherwise available to the Court. He had difficulty grasping some questions, to the point that I could not be clear about his level of understanding so as to be clear about his answers. This also affected my confidence in his written evidence prepared before the trial.

113. A proposed Implementation Schedule for the anticipated GSPA with P&ID was tabled by P&ID at the Joint Operating Committee. Mr Hitchcock sent a copy to Mr Tijani (at the time a member of the Ministry's Technical Committee). In a letter from Mr Hitchcock to the Ministry of 12 August 2009 summarised:

> "In respect of the Commercial Terms of the Gas Agreement, the Process & Industrial Developments standpoint remains unchanged to that presented at the various meetings, presentations and discussions to date, namely that the Government shall deliver to the Calabar site boundary, 400 MMSCuFD of Associated Gas having a minimum C3 (Propane) content of 3.5% mol and C4 (Butane) of 1.8% mol at No Cost, other than a nominal transmission fee (to be agreed). In turn, P&ID will process the gas, recompress the residual C1 and C2 (pipeline quality lean gas), representing approximately 85% of the wet gas feed, and make it available, for power generation, at the Calabar site boundary at No Cost to the Government."

114. On 27 August 2009 Dr Lukman wrote to the Acting Director at the Department of Petroleum Resources requesting "all relevant data that will facilitate the successful execution of the Accelerated Gas Development Programme" He placed particular

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emphasis on confirmation of volumes, committed volumes and available volumes in the "target fields", and gas composition. He requested two "gas maps", one showing all flare points in Nigeria and one showing "all existing and future Gas projects in Nigeria."

115. Mr Hitchcock wrote to Mr Cahill on 28 August 2009 enclosing a first draft of the GSPA. Mr Hitchcock offered this explanation and assessment:

> "Herewith my draft of the agreement. I have drafted it on a government "lock-in" basis in respect of gas supply and commercial terms. From everything I am hearing, it is my belief that politically (both Federal and State) they have no where else to go in terms of gas supply for power generation. The other companies being considered for the Short Term Gas Agreements have not even clearly identified their requirements. On these grounds I believe that supply locations and delivery pipelines should be left in the Ministry's court at this juncture. The detail can be sorted out under the ongoing JOC."

116. Mr Tijani, writing for Mr Ajumogobia SAN on 6 November 2009, requested a meeting with P&ID in view of Nigeria's "wish to progress discussions on [P&ID's proposal] to enable you commence [sic] implementation of the project soonest". On 10 November 2009 Dr Lukman, through Dr Ibrahim, convened a meeting of GfD Energy, Shell, Exxon, Global Energy, Octopol, the Turan Consortium, Colechurch, Addax Petroleum, Chevron, Petrolog and P&ID at the Ministry of Petroleum Resources for 24 November 2009. The available contemporaneous documentation evidences the presence of political pressure within Nigeria to get the Accelerated Gas Development Project moving and to show results in the form of agreements.

117. Meanwhile P&ID was active externally. It had a meeting on 20 August 2009 in Norway with Aker to discuss the project at Calabar. On 15 September 2009 Aker sent P&ID a further budgetary proposal regarding the project. On 9 September 2009 P&ID wrote to the Governor of Cross River State formally requesting the allocation of land for the project at Calabar. Mr Michael Quinn discussed with Arcadia Petroleum Ltd ("Arcadia"), an oil and gas investment company, an outline proposal for financing the project at Calabar. Within the ICIL Group, a "letter of comfort" was prepared undertaking to finance, on P&ID's behalf, the construction of a pipeline required for what was to become Phase 2 of the GSPA.

118. Separately P&ID had commissioned a study from A.B-Jones Global Ventures (Nigeria) Limited, a consultancy, to conduct feasibility studies on fields OML 67 and OML 123 and in late September 2009 this study projected the gas output of fields OMLs 67 and 123 across a proposed 20-year duration of the GSPA.

119. On 13 November 2009 a meeting took place between P&ID, Addax Petroleum and the Ministry of Petroleum Resources (including Mrs Grace Taiga) to discuss the provision of gas for the project at Calabar. At this, Addax stated that they were willing to deliver up to 100 MMSCuFD of wet gas to P&ID and agreed to provide its data regarding the composition quality and volumes of gas presently flared from field OML 123.

120. But on 19 November 2009, P&ID wrote to the Ministry of Petroleum Resources stating that the data Addax Petroleum had provided regarding the composition of the gas at field OML 123 was not what was requested. The Ministry's assistance was sought in

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re-confirming the composition and volumes of gas. The available contemporaneous documentation does not show whether and how this important matter was addressed to a conclusion before the GSPA was signed in the terms that it was. P&ID was later to state to the Tribunal in written submissions for the hearing on liability that:

> "It was not necessary to resolve the issue of the precise composition and quantity of Wet Gas in OML 123 prior to entering in the GSPA because [Nigeria's] obligation under the GSPA as signed on 11 January 2010 was to supply a specified quantity and quality of gas, rather than gas from any particular source."

121. As regards field OML 67, where Exxon-Mobil were involved rather than Addax, there was a meeting between Exxon-Mobil and P&ID on 15 October 2009. For P&ID Mr Michael Quinn, Mr Hitchcock and Mr Kuchazi attended. The minutes of this meeting were, I am satisfied, provided to Nigeria at the time. They showed Exxon-Mobil had different plans for the NGLs (hydrocarbons remaining after processing) and intended to re-inject all lean gas (likely for the purpose of maintaining gas cap pressure). Exxon-Mobil informed P&ID that this strategy had been presented to NAPIMS and had been accepted.

122. The minutes end with a note on the way forward, in the mind of P&ID. This included that the facts contained in the consultancy report that P&ID had commissioned "must be verified with NAPIMS". And that "alternative sources of gas supply need to be identified and their suitability and availability confirmed". The note ends:

> "The Ministry of Petroleum Resources assistance is now urgently required to ensure this Accelerated Gas Development Project is not delayed."

As with OML 123, the available contemporaneous documentation does not show whether and how this important matter was addressed to a conclusion before the GSPA was signed in the terms that it was.

123. There was support among the witnesses, and the experts, for a broad understanding that (the Federal Republic of Nigeria) "owns the gas" in Nigeria. I have not been asked to go into the detail of that understanding and the way in which contractual obligations on the part of Nigeria may affect it. It is appropriate to take the position found by the Tribunal, which is as follows:

> "…there is nothing to show that upon suitable terms the Government could not have obtained gas from their fields, as provided for and contemplated in Article 3c) under the heading "Scope of the Work" [see below]. … There is nothing to show that the Government could not have obtained the gas from the other sources mentioned in recitals b) and c)."

The GSPA

124. It was a little more than a month after the signing of the MOU between P&ID and Nigeria, that on 27 August 2009 Mr Hitchcock had met Mrs Grace Taiga to discuss the "format" for the GSPA. As already noted, the next day Mr Hitchcock sent a first draft of the GSPA to Mr Cahill. On 1 September 2009 Mr Hitchcock sent a draft to the Ministry of Petroleum Resources.

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125. A copy of the draft was also made available to Arcadia by P&ID. On 18 November 2009 Arcadia provided comments to Mr Cahill on the draft by phone and later by email. Mr Cahill produced a "list of issues raised by Arcadia". Notably, the first query identified by Arcadia was whether the document should rather be entitled a "Project Scoping Document" rather than a Gas Processing Contract. Arcadia made their assumption clear:

> "Both a Gas Processing Contract and construction contract will be more detailed and I guess these documents will follow in due course".

Mr Hitchcock's response, provided in markup, was "Not necessary, everything is up to us".

126. The same day, 18 November 2009, Mrs Grace Taiga sent to P&ID a draft of the GSPA for comments. Two days later Mr Cahill sent Mr [Michael] Quinn a revised draft of the GSPA, incorporating certain of Arcadia's comments. He added a note in these terms:

> "Arcadia in discussions asked if there would be provision for a later more detailed contract covering specifications and delivery etc. I said yes but have not referred to it in the draft as I think it could introduce an element of conditionality".

127. Mrs Grace Taiga was not the only person involved for Nigeria in the drafting. On 17 December 2009 Mr Murray sent a draft GSPA to Mr Cahill to reflect observations in a memorandum that Dr Ibrahim (Chair of the Ministry's Technical Committee) had provided to Mr Quinn that day, and some handwritten markings. Mr Hitchcock also met Mr Tijani at the Ministry of Petroleum Resources.

128. Originally (as at 1 September 2009) the draft had contained a Nigerian law clause. There was an arbitration clause, and that said that the "venue" of the arbitration should be "Abuja, Nigeria or otherwise as agreed by the Parties". Arcadia commented in November: "English law is preferable". On this Mr Michael Quinn wrote: "Arcadia want English Law – We have located Arbitration in London instead but staying with Nigerian Law". The revised draft changed the "venue" of the arbitration to "London, England or otherwise as agreed by the Parties".

129. On 18 December 2009, Mrs Grace Taiga wrote to Dr Lukman in these terms:

> "[Honourable Minister of Petroleum Resources],
>
> 1. Please refer to the Draft Agreement attached a.b.c between the Ministry of Petroleum Resources and Process and Industrial Developments Limited for your signature.
>
> 2. Please recall that the MOU signed between the Ministry and P&ID was for the purpose of constructing a Natural Gas Processing Plant and to incorporate two process streams with a total capacity of 400MMSCuFD together with all utilities and storage facilities at Calabar.
>
> 3. P&ID has set a bench mark for the Short Term Project, by granting Government 10% of the Equity free of charge.

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4. Accordingly, P&ID at Article 8 of this Draft Agreement has agreed among other things to transfer to the Government or its nominee a total of 10% of the Equity of P&ID in the following manner:

I. Transfer to the Government or it's nominee five percent (5%) the Equity of P&ID upon the commencement of the delivery of not less than 150 MMSCuFD of Wet Gas to the Site as set forth as Phase 1 in Appendix A

ii. Transfer to the Government or its nominee a further five percent (5%) of the Equity of P&ID the said Equity to be transferred pro rata as the delivery of the remaining 250 MMSCuFD is successfully implemented as set forth as Phase 2 in Appendix A.

iii. All of the Equity to be transferred under Article 8 shall consist of fully-paid Ordinary Shares free of all liens and charges and no sums whatsoever shall be payable by the Government in respect of the Equity so transferred.

5. Most importantly, P&ID has agreed to build the Pipeline at no cost to the Government.

6. In addition the following concessions were made by P&ID:-

a. Article 5 dealing with the duration of the Agreement, P&ID submits that during the subsistence of this Agreement Government at all times have the right to audit the Accounts of P&ID.

b. Article 8 (e), dealing with Commercial Terms P&ID agrees that Government shall be given the right of first refusal where P&ID desires at any stage to dispose of its GPFs.

c. Article 8 (i) having agreed by Government and P&ID that the Project shall be designated a COM Project and by extension all earnings or revenues arising from the Project status will accrue 50% to P&ID and 50% to the Government

7. Noteably at back cover of the Agreement, P&ID has submitted Work Schedules/Programme up to its completion.

8. Subject to your comments to the contrary, I advise that [the Minister] signs these Agreements to ensure a leap forward for short Term Gas operations in the country as directed by Mr. President.

9. Submitted, please.

Mrs Grace E.O. Taiga

Director (Legal)

18th December 2009"

130. I do not take too far Mrs Grace Taiga's influence in the process, or the meaning of her reference to "advis[ing] that [the Minister] signs these Agreements" when writing. I

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accept the realism of Lord Wolfson KC's point that Dr Lukman "who had served as OPEC's Secretary General and nine times as its President was plainly able to decide for himself whether [Nigeria] should sign the GSPA". Here I can accept Mrs Grace Taiga's evidence that:

> "what I meant by that is that I am submitting the agreement as having been duly prepared for your signature. That is usual civil service language. 'I advise' does not mean he's bound to take what I said, and I advised 'subject' … means that he is an icon in the oil industry, he knows better."

But on the evidence I heard, I find Mrs Grace Taiga certainly had a role in bringing about the GSPA.

131. It is important to note that there was no emphasis by Mrs Grace Taiga to Dr Lukman about the responsibilities of Nigeria under the GSPA. There was no mention of Article 6 and how it might work. Mrs Grace Taiga did not say to Dr Lukman words to the effect, and in line with what the Tribunal would later find: "You do realise that if you do not source the gas then P&ID might terminate for breach and Nigeria could be liable for billions of dollars even if P&ID has not started on the GPFs at Calabar". There was no mention even of the desirability of further legal advice.

132. Mr Cahill wrote in an SMS message on 19 December 2009 that the GSPA had been "brought to min by Grace. He studied in detail and approved for signing Monday with others. He also confied [sic] to Mohammed".

133. A fortnight later, on 11 January 2010, the GSPA was signed. Dr Lukman signed for Nigeria, with Mrs Grace Taiga as a witness. Mr Michael Quinn signed for P&ID, with Mr Kuchazi as a witness.

134. Mrs Grace Taiga forwarded signed copies of the GSPA to NAPIMS, NNPC and the Ministry of Petroleum Resources on 15 January 2010. She wrote to Mr Ajumogobia SAN (Minister of State for Petroleum Resources) the next day enclosing a copy of the GSPA (which she said had been previously sent to his office) and asked Mr Ajumogobia SAN to sign off on a letter conveying the GSPA to the Department of Petroleum Resources. Mr Ajumogobia SAN wrote in these terms in manuscript on 16 January 2010: "D/Legal [Mrs Grace Taiga] Pls forward copy to DPR for comments". Mrs Grace Taiga then wrote to the Department of Petroleum Resources saying Mr Ajumogobia SAN had approved the letter and the Department being provided with a copy of the GSPA, and had directed the Department to comment on it with a view to its implementation "with the relevant [international oil companies]".

135. Over the next two years, at least nine further agreements under the Accelerated Gas Development Project were signed by the Ministry of Petroleum Resources. These included with Petrolog on 11 March 2010, with Global Gas & Refining Limited on 21 June 2010, with Davubic Energy Development Co. on 14 July 2010, with Drake Oil Limited on 25 August 2010, with Octopol Energy on 5 October 2010, with GFD Energy on 26 May 2011, and with Owel-Linkso Group on 27 May 2011.

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136. So, to the content of the GSPA. It had ten recitals. These were substantially taken directly from the text of the MOU (omitting one). Three of these, b), c) and e) expressed the then existing position of the Federal Government of Nigeria:

> "b) The Government of Nigeria has substantial undiscovered potential gas reserves, discovered but undeveloped gas reserves, developed gas reserves and associated gas reserves in its onshore and offshore territories largely in acreage allocated to international and indigenous operators."
>
> "c) The Government through the NNPC owns approximately fifty-seven (57) percent of the gas resources in acreage allocated to the international operators."
>
> "e) The Government is currently engaged in the development of a strategic natural gas policy, to ensure the smooth achievement of its objective for the effective development of gas in Nigeria to meet short term supply requirement for power generation."

137. A further three of the recitals, a), d) and g), expressed high level strategic objectives of the Federal Government:

> "a) The Government holds as a key strategic objective, the production of adequate quantities of natural gas to satisfy the power generation and other domestic uses needed for national economic growth."
>
> "d) The Government desires to develop and utilise its gas resources at optimal capacity to meet the growth in gas demand at the various sectors of the economy including domestic, regional and export markets."
>
> "g) The Government has identified certain number of oil/gas flared points and desires to eliminate gas flaring and wishes to set up a domestic LPG production base as well as make the lean gas produced available for various other domestic uses".

138. "The Project" was defined by Article 1 xi as meaning:

> "the establishment of the GPFs and the supply of Wet Gas thereto and the delivery of Lean Gas and their successful operation by the Parties as set out in this Agreement"

where, from the definitions in Article 1:

> ""GPFs" means the Gas Processing Facilities to be constructed and operated at the Site and off-shore from the site where applicable." (and "Site" means "the land in Calabar on which the GPFs are located")
>
> ""Wet Gas" means associated gas removed, during oil production, at the separator having a Propane content of not less than 3.5 mol percent and a Butane content of not less than 1.8 mol percent, compressed and delivered, via pipeline to the Site."

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> ""Lean Gas" means pipeline quality gas having a composition of not less than 95 mol percent Methane and Ethane"

139. Recitals f), h) and i) said of P&ID in relation to the Project:

> "f) The Government has explored viable structures that could be used to meet the highlighted objectives and considered P&ID as capable of implementing and executing the project."
>
> "h) P&ID possesses the requisite finance, technology and has competence for the fast track development of the Project."
>
> "i) P&ID has undertaken all necessary studies, including the identification of suitable associated gas fields and is ready to commence a fast track development of the project in accordance with the terms of this Agreement".

140. Recital j) of the GSPA recorded as follows:

> "j) The Parties are entering into this Agreement to ensure the Fastrack implementation of the Project and to ensure the timely provision of pipeline quality Lean Gas for power generation."

141. Article 1 included these definitions:

> "vii. MMSCuFD" means Millions of Standard Cubic Feet per Day;"
>
> "viii. "NGLs" means all hydrocarbons remaining after processing the Wet Gas removing the Lean Gas;"

142. Article 2 expressed "the objective of this Agreement" in these terms:

> "2. OBJECTIVE
>
> The objective of this Agreement is to provide for the construction of Gas Processing Facilities by P&ID encompassing the provision of Wet Gas by the Government and the processing of the said Wet Gas by P&ID utilising two or more process streams with a total capacity of up to 400 MMSCuFD together with all utilities, support and maintenance facilities at the Site and the provision of Lean Gas by P&ID to the Government as set forth in this Agreement and its Appendices and to operate and maintain the facilities in an efficient manner."

143. By Article 3:

> "3. SCOPE OF THE WORK
>
> The scope of works of this Agreement is as follows:
>
> a. P&ID shall construct GPFs on the Site allocated to them by Cross River State Government with related ancillary plant and equipment off-shore as required. The GPFs shall be constructed on a timely basis to ensure the earliest possible delivery

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to the Government, or its nominees, of approximately 340 MMSCuFD Lean Gas for power generation and industrial use by third parties.

b. To ensure this Fastrack is achieved P&ID will construct and incorporate two or more process streams with a total capacity of 400 MMSCuFD together with all utilities, maintenance and support facilities at the Site in accordance with the schedule of works forming Appendix B hereto.

c. The Government shall make available at the P&ID Site boundary, 400 MMSCuFD Wet Gas (free of water) in the manner set out in Appendix A having a minimum C3 (Propane) content of 3.5% mol and C4 (Butane) content of 1.8% mol from [fields] OMLs 123 and OML 67 or such other locations as the Government may decide from time to time to ensure the ongoing feedstock delivery volume and quality requirements for the duration of this Agreement as defined under Article 5 of this Agreement.

d. P&ID will process the Wet Gas to be supplied by the Government and shall provide to the Government or its nominees approximately 85% of the wet gas feedstock molecular volume in the form of Lean Gas at the Site boundary."

144. Appendix A to the GSPA was as follows:

"APPENDIX A

Delivery of Wet Gas to P&ID

Phase 1: During or before the last quarter of 2011 a continuous supply of 150 MMSCuFD of Wet Gas, having a minimum Propane content of 3.5 mol% and minimum Butane content of 1.8 mol% will be supplied to the Site for processing by P&ID.

Phase 2: On or before the third quarter of 2012 a further additional continuous supply of 250 MMSCuFD of Wet Gas, having a minimum Propane content of 3.5 mol% and minimum Butane content of 1.8 mol% will be supplied to the Site for processing by P&ID.

Delivery of Lean Gas to the Government

Phase 1: During the last quarter of 2011 following supply of the 150 MMSCuFD of Wet Gas to the Site, P&ID will process the gas and return to the Government, at the Site, a continuous supply of Lean Gas amounting to approximately 85% by volume of the Wet Gas provided. The Lean Gas will be compressed to 92 bar G.

Phase 2: On or before the third quarter of 2012 following supply of the additional 250 MMSCuFD of Wet Gas to the Site, P&ID will process the gas and return to the Government, at the site boundary, a continuous supply of Lean Gas amounting to approximately 85% by volume of the Wet Gas provided. The Lean Gas will be compressed to 92 bar G."

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Appendix B to the GSPA was to comprise a schedule of works. Also annexed to the GSPA was a table of field OML 123 Gas Composition (see the Annex to this judgment).

145. Article 5, dealing with the duration of the GSPA, was in these terms:

"5. DURATION OF THE AGREEMENT

This Agreement shall come into being on the Effective Date being the date of signing of the Agreement as defined in Article 1 herein and shall remain in force for a period of twenty (20) years with effect from the Start Date of the Agreement after which it shall automatically terminate without prior notice to the Parties except where extended by a mutual agreement of the Parties or until the Capital Cost of the Project is fully repaid whichever occurs latest subject to the Government at all times having the right to audit the Accounts of the P&ID.

146. Article 9 made provision for the Joint Operating Committee:

"9. JOINT OPERATING COMMITTEE

a. The Joint Operating Committee (JOC) established by the Parties under the previous Memorandum of Understanding dated 22nd July 2009 and comprising of two representatives from the Ministry of Petroleum Resources and two representatives from NNPC nominated by the Government and two representatives nominated by P&ID, shall meet at regular intervals during the Project implementation period to discuss in detail the implementation progress of the Project. Where deemed necessary by any JOC member of the Government or P&ID shall nominate such other expert support from other agencies as may be necessary to ensure that Project timelines are maintained.

b. The JOC shall carry out further activities as may be determined by the Parties.

c. Any cost that may accrue from the JOC activities shall be borne equally by the Parties."

147. Article 4 provided as follows under the heading "Funding":

"4. FUNDING

a. Save as otherwise provided in this Agreement, each Party shall bear the costs and expenses of its own personnel during the period of this Agreement. "

148. By Article 6 of the GSPA:

"6. RESPONSIBILITIES OF THE GOVERNMENT

a. The Government shall deliver to the Site boundary the agreed quantities and quality of gas as defined under Article 3c and in the manner set out in Appendix A of this Agreement.

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b. The Government shall ensure that all necessary pipelines and associated infrastructure are installed and all requisite arrangements with agencies and/or third party are in place to ensure the supply and delivery of Wet Gas in accordance with Article 3 so as to facilitate the timely implementation of gas processing by the GPFs as provided for in this Agreement.

c. The Government agrees to assist P&ID, and where necessary intercede with the relevant Government agencies, to obtain all requisite permits, licenses and approvals required from the relevant Government agencies or others for the Fastrack implementation of this project.

d. If the Government or any of its agencies changes or amends any statute, rule, regulation, instrument or standards, and such change or amendment adversely affects the rights of P&ID under this Agreement, the Parties shall amend the terms of this Agreement in a manner that will restore the rights of P&ID. The Government shall grant to P&ID all such waivers and exemptions necessary to ensure that the rights of P&ID are not adversely affected by any change or amendment to statute, rule, regulation, instrument or standards."

149. By Article 7:

"7. RESPONSIBILITIES OF P&ID

a. P&ID shall use best endeavours to ensure the fastrack implementation of this Project to construct and incorporate two or more process streams with a total capacity of 400 MMSCuFD together with all utilities maintenance and support facilities at the Site. Thereafter P&ID shall maintain and operate the GPFs on a professional basis to ensure a regular supply of Lean Gas (approximately 340 MMSCuFD) for power generation;

b. P&ID shall, during the Project implementation period, submit to the JOC as set out in Article 9 updated work programs or such other documentation as may be necessary to enhance the development of the Project;

c. P&ID shall do all that is necessary to obtain relevant approvals required for the success of the Project."

150. By Article 8:

"8. COMMERCIAL TERMS

a. The Government shall deliver to the Site boundary, 400 MMSCuFD of Wet Gas as set out in Article 3 c) and in Appendix A of this Agreement having a minimum C3 (Propane) content of 3.5% mol and C4 (Butane) of 1.8% mol at No Cost of P&ID.

b. P&ID will process the Wet Gas, recompress the residual Lean Gas, representing approximately 85% of the Wet Gas feed, and make it available, for power generation or other Industrial usage at the discretion of the Government, at the Site boundary at No Cost to the Government.

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c. Title to and ownership of the Wet Gas to be delivered by the Government to the Site shall remain vested in the Government and shall be delivered back to the Government at the Site boundary after processing in the form of Lean Gas but the NGLs removed from the Wet Gas during processing shall be retained by P&ID and shall be deemed the sole property of P&ID and the said NGLs may be sold by P&ID either domestically within Nigeria or exported in accordance with commercial criteria.

d. P&ID shall provide all funding necessary for the timely construction, implementation and efficient operation of the GPFs and the said GPFs will be the sole property of P&ID and may be sold or otherwise disposed of by P&ID subject always to the provisions of this Agreement PROVIDED that Government shall be given the right of first refusal.

e. As further consideration P&ID shall transfer to the Government or its nominee a total of ten percent (10%) of the Equity of P&ID in the following manner:

> i. P&ID shall transfer to the Government or it's nominee five percent (5%) the Equity of P&ID upon the commencement of the delivery of no less than 150 MMSCuFD of Wet Gas to the Site as set forth as Phase 1 in Appendix A.
>
> ii. P&ID shall transfer to the Government or its nominee a further five percent (5%) of the Equity of P&ID the said Equity to be transferred pro rata as the delivery of the remaining 250 MMSCuFD is successfully implemented as set forth in Phase 2 in Appendix A.
>
> iii. All of the Equity to be transferred under this Article 8 (f) [sic] shall consist of fully paid Ordinary Shares free of all liens and charges and no sums whatsoever shall be payable by the Government in respect of the Equity so transferred.

f. Following the initial transfer of five percent (5%) Equity to the Government or its nominees as provided for at Article 8 (e) above no new shares whether Ordinary, Preference or otherwise may be issued without the written agreement of the Government such agreement not to be unreasonably withheld and the Government shall be entitled to representation on the Board of P&ID in proportion to the Equity held by the Government at any given time.

g. The Parties are aware that the 24 inch Adanga Pipeline presently under construction from the Addax [Petroleum] operated [field] OML 123 directly to Calabar and due for completion in 2010 will have a throughput capacity of 600 MMSCuFD and can adequately provide the required first delivery of 150 MMSCuFD of Wet Gas to the Site and that an additional pipeline of up to 70km in length may be required to link up to the Adanga pipeline in order to facilitate the delivery of the remaining 250 MMSCuFD of Wet Gas to the Site from other sources to be chosen by the Government. If such a requirement is necessary, P&ID undertakes to build and install the said additional pipeline to provide for the

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> delivery of the remaining 250 MMSCuFD of Wet Gas to the Site, at no cost to the Government, and P&ID will retain the ownership and provide the maintenance for the pipeline.
>
> h. P&ID shall enjoy Pioneer Status with no import duties, clearance charges or taxes payable within Nigeria in respect of all equipment and materials utilised in the construction and commissioning of the GPFs and with no taxes payable in respect of the operation of the GPFs for a period of five (5) years from the commencement of commercial operations at the GPFs.
>
> i. The Government will actively support the designation of the Project as a CDM Project and P&ID will take all necessary steps to achieve such designation. All earnings or revenues arising from the Project status as a CDM Project will accrue 50% (fifty percent) to P&ID and 50% (fifty percent) to the Government."

(By Article 1, "CDM Project":

> "means a clean development project as provided for in the Kyoto Convention and a CDM Project is duly authorised to engage in approved market based mechanisms in relation the Carbon Credits"

151. Article 20 of the GSPA was the clause setting out the arbitration agreement. This and the remaining provisions of the GSPA are set out in the Annex to this judgment.

152. More generally, in line with the observations that Arcadia has made, the GSPA better deserves the description of an outline than a fully developed contract for a 20 year, multi-billion US dollar project. Leaving aside Article 20 (dealing with applicable law and dispute resolution), it added very little detail to that found in the MOU. Where it did add the detail is remarkably lacking: see Article 8g for example.

153. But some things had changed from the MOU. I highlight two example. First, P&ID's responsibilities under the GSPA "to ensure the fastrack implementation of this Project" to construct and incorporate two or more process streams with a total capacity of 400 MMSCuFD together with all utilities, an absolute obligation under the MOU (see Article 7a of the MOU), had become a "best endeavours" obligation in the GSPA (see Article 7a of the GSPA). Second, Article 6d in the GSPA was not found in the MOU, and I have seen no sign in the contemporaneous documentation that any consideration was given to how acceptable this was for a sovereign state in the context of a 20 year contract.

154. But the core point is that the drafting of the GSPA exposed Nigeria to the very risk or argument that led to the Awards in such a vast sum, should it not deliver wet gas even where P&ID had not built any Gas Processing Facilities.

155. P&ID lays understandable emphasis on the point that the GSPA was not the only contract entered into under the Accelerated Gas Development Project. Each of the other contracts is different but with similarities. Neither party made comprehensive submissions at the trial on all differences and similarities. But an obligation on Nigeria to deliver a quantity of gas without cost (see Article 6(b) of the GSPA) is to be found in a number of them: with Petrolog, with Global, with Davubic, with a consortium led

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by Drake and with Octopol. The expert evidence further showed that this is relevant and important to the ability to finance. Within the contracts there are examples of recitals similar to those in the GSPA (themselves largely derived from the MOU as discussed above).

156. Nigeria accepts none of the other contracts were approved by or notified to the Bureau of Public Procurement or the Federal Executive Council. Nigeria's Infrastructure Concession Regulatory Commission was later to state to Nigeria's Force Intelligence Bureau that the GSPA was not submitted to the Commission for review and compliance certification, but Nigeria accepts that none of the other contracts were notified to the Bureau either. In its Statement of Case in the litigation that has followed before this Court (and which is dated 18 September 2020), Nigeria was to contend that the arbitration clause in the GSPA departed from the model arbitration clause that Nigerian government departments had been directed to use in their contracts. I regard these last points ultimately as marginal. They are as consistent with haste behind the GSPA and failed bureaucracy as with the corruption that Nigeria alleges, and there is much that leaves me unclear on how often these requirements were in practice complied with in Nigeria at the time.

157. As at 2014 it appears none of the other contracts had been "implemented."

Bribery

158. There are a number of points that I should bring out at this stage given the enormous part that allegations of bribery have played in this case.

159. First, in this judgment I shall say where I have found bribery or the practice of bribery, because some of the central allegations were put in those terms. But this is in the context of asking whether there is fraud and an award or conduct contrary to public policy, rather than with whether a claim in bribery (as a cause of action) would be made out under Nigerian Law or English Law.

160. I shall not reach a final conclusion about a claim in bribery concerned with the GSPA. This is because where the parties have agreed to arbitration that may not be for this Court to decide.

161. A different position can apply to the arbitration agreement in Article 20 of the GSPA. This is because of the doctrine of separability. That doctrine treats the arbitration agreement as a separate agreement from the GSPA. A claim in bribery concerned with the arbitration agreement may be a matter for this Court where the substantive jurisdiction of a tribunal is in issue. Where (as in the present case) a party seeks leave to enforce an award under section 66 of the Arbitration Act 1996, leave:

> "… shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award ..."

(see section 66(3), set out in full in the Annex to this judgment).

162. The question whether there would be a claim in bribery concerned with the GSPA may also be relevant to the question of "substantial injustice" under section 68, considered

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below. In that connection a question of the extent to which an alleged bribe or the offer of it influenced the person to whom it was given or offered would not arise if I were simply dealing with a claim in bribery under English Law (I find Nigerian Law to be no different). As Chitty LJ said in Shipway v Broadwood [1899] 1 QB 369 at 373:

> "I wish to state again emphatically that in such a case as this it is an immaterial inquiry to what extent the bribe or the offer of it influenced the person to whom it was given or offered. A contrary doctrine would be most dangerous, for it would be almost impossible to ascertain what had been the effect of the bribe…"

And see further Novoship (UK) Ltd v Mikhaylyuk at [2012] EWHC 3586 (Comm) at [104]-[111] (Christopher Clarke J, as he then was), and Republic of Mozambique (acting through its Attorney General) v Privinvest Shipbuilding SAL (Holding) and Others [2023] UKSC 32 at [86]-[87] (Lord Hodge, with whom Lord Lloyd-Jones, Lord Hamblen, Lord Leggatt and Lord Richards agreed).

163. I do however in this judgment state where I find the presence of dishonesty or corrupt motives, even though in a claim for bribery dishonesty or corrupt motives are irrebuttably presumed (Novoship at [106] citing Re A Debtor [1927] 2 Ch 367 at 376 per Scrutton LJ – "the court ought to presume fraud in such circumstances").

164. As definitions of bribery or the practice of bribery, I take three particular, and consistent, sources. First, the definition formulated by Leggatt J (as he then was) in Anangel Atlas Compania Naviera SA v Ishikawajima-Harima Heavy Industries [1990] 1 Lloyd's Rep 167 at 171: 'A commission or other inducement which is given by a third party to an agent as such, and which is secret from his principal.' Second, the definition formulated by Slade J in Industries and General Mortgage Co Ltd v Lewis [1949] 2 All ER 573 at 575:

> 'For the purposes of the civil law a bribe means the payment of a secret commission, which only means (i) that the person making the payment makes it to the agent of the other person with whom he is dealing; (ii) that he makes it to that person knowing that that person is acting as the agent of the other person with whom he is dealing; and (iii) that he fails to disclose to the other person with whom he is dealing that he has made that payment to the person whom he knows to be the other person's agent.'

Third, I take the following from the analysis by Christopher Clarke J in Novoship that followed his own reference to the two definitions above:

> 106. The essential character of a bribe is, thus, that it is a secret payment or inducement that gives rise to a realistic prospect of a conflict between the agent's personal interest and that of his principal. The bribe may have been offered by the payer or sought by the agent. A bribe encompasses not just a payment of money but the conferring of any advantage or benefit, and may be an actual benefit or merely the promise of a benefit held out by the payer or an expectation of one.
> …
> 108.The recipient of the bribe (or the person at whose order the bribe is paid) must be someone with a role in the decision-making process in relation to the transaction

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in question e.g. as agent, or otherwise someone who is in a position to influence or affect the decision taken by the principal."

165. Having dwelt in this section of the judgment specifically on the subject of bribery and the practice of bribery, I emphasise that section 68(2)(g) is in terms concerned with the question whether there is fraud and an award or conduct contrary to public policy. In any particular case there may be fraud or conduct contrary to public policy that does not strictly or technically amount to a bribe or the practice of bribery but nonetheless meets the requirements of the section.

Bribing Mrs Grace Taiga: the GSPA

166. It will be recalled that on 24 January 2008 P&ID wrote to NNPC to apply on behalf of Tita-Kuru for that project to be included in Nigeria's Gas Master Plan. The Investors Road Show for the Gas Master Plan was on 5 May 2008.

167. A week after the Investors Road Show, on or around 12 May 2008 Mrs Grace Taiga received EUR1,372.00 by Western Union transfer. On 28 October 2008 a payment of £3,500 was made to her, described as "Grace Taiga – PR". Her daughter Vera received US$5,856.87 on 30 October 2008 and US$6,995.91 on 1 December 2008, each from Marshpearl. On 19 January 2009 and 12 February 2009 Vera Taiga received the further sums of US$5,614.10, US$1,500 and US$751.72 from Marshpearl.

168. Then shortly before the GSPA was entered into, Mr Cahill signed a payment instruction dated 29 December 2009 to Bank of Cyprus on Marshpearl letterhead for a transfer of US$5,000 to Ms Vera Taiga. This was described as a "commission payment" on the payment instruction. It is logged in the name of "Grace Taiga" in the associated Excel spreadsheet emailed from Mr Smyth to Mr Cahill on 1 January 2010. A later email from Mr Smyth to Mr Cahill of 2 September 2019 had attached a pdf schedule "Taiga G – Sept 2019" showing a number of payments including from among others Marshpearl, Kristholm and Hobson Industries, against the name "Grace Taiga" with US$5,000 on 28 December 2009. Some of the payments were marked with the narrative "Eye Op." but not this one. The sum (slightly reduced, no doubt allowing for bank charges) is also shown as a payment to Ms Vera Taiga on the last page of a 319 page WhatsApp/SMS thread between Ms Aisha Taiga and Mr Cahill from 6 September 2019 to 29 January 2021.

169. Shortly after the GSPA was entered into, on 29 March 2010 Ms Vera Taiga was paid £5,000 by Hobson Industries. The payment instruction was again signed by Mr Cahill. The pdf schedule "Taiga G – Sept 2019" showed this payment against the name "Grace Taiga" and marked with the narrative "Gas Contract".

170. The timing of the payments is highly material, just before and just after the entry into the GSPA. The fact that, within the ICIL Group, they came from accounts of Marshpearl and Hobson Industries and not P&ID is neither here nor there; ICIL Group was not run rigorously between companies. In authorising the payments Mr Cahill was, I find, acting for P&ID to incentivise and reward Ms Taiga in connection with the entry of the GSPA. They were deliberately kept secret from Nigeria. I am quite satisfied that Nigeria is correct in its allegation that these payments in December 2009 and March 2010 were bribes paid on behalf of P&ID to Mrs Grace Taiga's benefit in connection

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with the entry into the GSPA. I reject as untrue the evidence of Mrs Grace Taiga and Mr Cahill, in particular, to the contrary.

171. By some standards the sums received were not large in absolute terms, but they were in context: US$5,000 was, on her account, an amount equal to the annual salary of Mrs Grace Taiga before allowance and entitlements. The payments I have described were not disclosed to Nigeria, her employer, by Mrs Grace Taiga, or by P&ID and ICIL Group, and this was deliberate.

172. The cross examination of Mrs Grace Taiga at the trial revealed she was more intelligent than she wished to show. It confirmed (as the contemporaneous documents already suggested) that she was more involved than she wished to be apparent. P&ID's position is that payments were made for non-corrupt reasons, and in particular to meet Mrs Grace Taiga's medical expenses. I accept that she had periods of illness and that part of her reason for wanting the payments was to enable her to meet costs of healthcare. I also accept that she wanted to help her daughter with accommodation. But keeping these and other payments secret from her employer, Nigeria, was deliberate and the reason for this was that she knew the payments were corrupt rather than because she believed they were a private matter that was irrelevant to her employment.

173. She appreciated that the reason she was receiving these payments (even if she would use them for medical expenses or to help her daughter) was in order that that she would favour P&ID (and the ICIL Group more generally) in their dealings with Nigeria, including at this point the Gas Master Plan, the Accelerated Gas Development Project and the GSPA. Ms Grace Taiga accepted in her oral evidence that, in paying her money, Mr Michael Quinn was seeking to ingratiate himself in the expectation that she would in return "view him favourably". She put herself in a position where her self interest and her duty to Nigeria to give disinterested advice conflicted.

174. P&ID describes Mrs Grace Taiga's role as minor, and towards the end of the GSPA drafting process. Mrs Grace Taiga herself emphasised the limits to the role and influence that her job gave her. But she was one of Nigeria's lawyers, and not junior. At Nigeria she had carriage of some of the drafting process. She was not "just an errand lawyer", as she falsely suggested in her evidence. I have dealt earlier in this judgment with her advice to Dr Lukman to execute the GSPA in her memorandum of 18 December 2009.

175. It bears emphasis that the problem that resulted was not so much the GSPA as its terms. The result was, as P&ID intended, that P&ID had a contract that was on terms favourable to them. Arcadia's reaction, voiced to P&ID at the time was telling: that a Gas Processing Contract would be more detailed "and I guess these documents will follow in due course". So too Mr Hitchcock's response that "Not necessary, everything is up to us". If there were limits to her drafting expertise, Mrs Taiga did not propose, as a faithful lawyer would to their client in that circumstance, that further legal resources be brought in to help ensure that the drafting suitably protected Nigeria.

176. It is common ground that bribery was extensive in Nigeria, and that some business could not in practice be transacted without it, but these points do not justify bribery. They reinforce the seriousness of a practice that "threatens the foundations" of a society (Attorney General for Hong Kong v Reid [1994] AC 324 at 330H (per Lord

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Templeman, giving the opinion of the Privy Council on an appeal from New Zealand)). And, where the question is one of dishonesty, the points do not reduce the standards of ordinary decent people.

177. I am satisfied that the payment in March 2010 was made, and kept secret from Nigeria, in recognition on the part of P&ID of Mrs Grace Taiga's assistance to P&ID in getting the GSPA with Nigeria in the terms achieved. It postdates the GSPA but I consider it was to help embed it. In relation to this payment and the December 2009 payment I find that P&ID, and Mr Michael Quinn and Mr Cahill individually, and Mrs Grace Taiga were dishonest and their motivation was corrupt, applying the standards of ordinary decent people. It is not necessary to show they appreciated that by those standards they were being dishonest, but in my view they did.

178. I add that I am also satisfied that the other payments mentioned above, from the earlier dates in 2008 and early 2009, were bribes on the part of P&ID to encourage Mrs Grace Taiga to assist P&ID should an agreement between Nigeria and P&ID become possible as a result of the Gas Master Plan and the Accelerated Gas Development Project. But for the purpose of this judgment I do not need to enter into further detail on this.

179. I do however wish to mention separately Nigeria's reference to other unexplained cash deposits into and out of Nigerian entities connected with P&ID around the time of a meeting with President Yar'Adua in 2008 and the award of the GSPA in early 2010, respectively. Nigeria inferred that these cash withdrawals were used to pay bribes to Nigerian officials. On this aspect I am not persuaded the evidence available to me at this trial, which lacks many details, is sufficient to support the inference sought.

180. Then on 1 September 2010, Mrs Grace Taiga retired from employment as a civil servant. Just before her retirement, on 19 and 20 August 2010 two cash deposits totalling US$10,400 were made into Mrs Grace Taiga's account. I do not find myself able to accept the truth of Mrs Grace Taiga's evidence that the cash deposits of US$20,800 she received in August 2010 were the proceeds of cars and property that she owned. These payments at the point of her retirement may have been for her part in getting the GSPA and to encourage her to remain quiet about what had happened, but without more evidence about their source than was available to me at this trial I do not find they were.

From signing the GSPA to the commencement of the Arbitration: the first 6 months (January 2010-July 2010)

181. There were significant changes within Nigeria's leadership in this period. Dr Lukman ceased to be Minister of Petroleum Resources on 17 March 2010. In Dr Lukman's place, Ms Diezani Alison-Madueke was appointed. President Umaru Yar'Adua of Nigeria died in May 2010. Mr Goodluck Jonathan became President, after a Vice Presidency from 2007 to 2010.

182. It is convenient, for the purpose of following through into later parts of this judgment, to deal in turn with land, with finance and with engineering.

Land

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183. Two days after the GSPA was signed, on 13 January 2010 Mr Hitchcock of P&ID emailed Mr Gerald Ada, a representative of the Government of Cross River State. Mr Hitchcock stated that he intended to travel to Calabar in late January 2010 to attend meetings to address various issues regarding the proposed site for the GSPA project.

184. Mr Nolan went too. On 1 February 2010 Mr Hitchcock sent a letter to the Governor of Calabar requesting the allocation of land for the GSPA project. Land was offered and on 16 February 2010 the Government of Cross River State wrote to P&ID, confirming that approval for land had been granted, subject to payment of N21,015,138 (approximately US$140,000).

185. The next day the Government of Cross River State wrote to P&ID confirming the grant of outline planning permission in Calabar, subject to P&ID providing various documents within 12 weeks. It was stated that:

> "[t]his interim approval is given based on the fact that the Ministry is yet to receive the necessary plans for the project".

186. On 28 March 2010 P&ID sent a letter addressed to the new Minister of Petroleum Resources confirming that P&ID had already commenced action on the GSPA. The letter said that the site for the Gas Processing Facilities in Calabar had been "allocated".

187. According to the Ministry of Lands and Urban Development - in a confirmation nine years later - the land was not in the event acquired because P&ID did not in the event pay the prescribed fee.

Finance

188. The day after the GSPA was signed, on 12 January 2010 Mr Cahill emailed Arcadia. He invited Arcadia to forward in writing an outline proposal which Arcadia had discussed with Mr Michael Quinn for financing the project at Calabar. On 19 February 2010 the engineering company EMAS sent a budget proposal to P&ID regarding the GSPA project. This was described as a "preliminary proposal which should be viewed primarily … for discussion only". On about 20 July 2010, P&ID and BNP Paribas held a meeting in Paris to discuss financing for the project.

189. Internally within P&ID, Mr Hitchcock had written to Mr Cahill on 18 January 2010 requesting funding of around US$1.5 million for the first month to carry out work on the GSPA project. But Mr Cahill's response was: "The funding for the project will have to come from Arcadia". On 3 February 2010 Mr Hitchcock made a further request for funds, stating that ground clearance works need to be carried out during the dry season "otherwise we will potentially lose a year".

190. P&ID's letter of 28 March 2010 to the new Minister of Petroleum Resources also asserted, falsely, that "All the project finances are in place to complete the project". On 14 May 2010 P&ID sent a letter to NNPC asserting that all necessary project finances were in place. On 20 June 2010 Mr Michael Quinn wrote to the Ministry of Petroleum Resources that very substantial progress had been achieved and that all financing arrangements for the project had been implemented. By reference to the project the subject of the GSPA, rather than Project Alpha, these assertions were not true.

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191. On 7 July 2010 Mr Cahill and Mr Hitchcock were in touch by email in advance of a meeting the next day to be held with the Ministry and NNPC. Mr Cahill said:

> "It is entirely possible that the issue of finance will not be raised as it is not generally seen as a significant issue for the P&ID project. In such circumstance obviously we would not mention or refer to the issue in any way".

Engineering

192. P&ID's letter of 28 March 2010 addressed to the Minister of Petroleum Resources asserts that:

> "The engineering is also in place to fast track the building of the [Gas Processing Facilities]".

P&ID's letter of 14 May 2010 to NNPC also asserted that 90% of the engineering designs were completed. Mr Michael Quinn's letter of 20 June 2010 to the Ministry of Petroleum Resources also asserted completion of the bulk of the detailed engineering. By reference to the project the subject of the GSPA, rather than Project Alpha these assertions were not true.

From signing the GSPA to the commencement of the Arbitration: the next two years (July 2010-July 2012)

193. In a letter of 20 June 2010 to the Ministry of Petroleum Resources, Mr Michael Quinn had referred to press reports that Addax Petroleum intended to allocate gas to another project. Mr Michael Quinn sent a further letter dated 21 July 2010 to the Ministry of Petroleum Resources about press reports that Nigeria was constructing another gas processing facility in Calabar. In his letter, Mr Michael Quinn repeated the assertions that the bulk of the detailed engineering had been completed. He said that in excess of US$40 million has been expended on the project. In this, he was still drawing on Project Alpha. But, as he knew, these reference points were false for the project at Calabar the subject of the GSPA.

194. Nigeria held a Ministerial Stakeholders' Meeting on the Accelerated Gas Development Project (and including the GSPA) on 10 August 2010. The meeting was chaired by the Permanent Secretary of the Ministry of Petroleum Resources. Others attending included the Ministry, NAPIMS, NNPC, P&ID and Addax. The meeting was minuted. A later note records that at this meeting:

> "… it was confirmed that Addax Petroleum was expected to supply the Wet Gas required under the [GSPA] from its operations of OML 123."

and that:

> "it was agreed at the said meeting that Addax should sign a Letter of Undertaking to make the Wet Gas available to P&ID …".

195. NAPIMS held a meeting with Addax on 2 December 2010. Addax informed NAPIMS that they could only supply 100 MMSCuFD from presently flared associated gas to P&ID from OML 123. They needed to use 50 MMSCuFD of associated gas for

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injection into the wells of OML 123 to maintain pressure. They were willing to supply an extra 50 MMSCuFD of non-associated gas if this was made viable for them by payment, tax and concessions. In 2011 P&ID shared an alternative proposed solution with Nigeria, involving their processing (with the assistance of an offshore facility) all currently flared associated gas from OML 123 (put at 180 MMSCuFD) and the use of lean gas to maintain pressure.

196. Internally within P&ID, on 28 October 2010 Mr Hitchcock emailed Mr Cahill. He asked a question, in these terms:

> "What is the likelihood of funds being available to re-start P&ID".

On 10 December 2010 there was a meeting at Mr Quinn's house in Ireland between Mr Michael Quinn, Mr Cahill and Mr Michael McElligott (a finance advisor retained by P&ID). Mr Niall Lawlor (another finance adviser retained by P&ID) and Mr David Cooke (a consultant and chemical engineer) also discussed the GSPA project.

197. Mr Lawlor was called as a witness by P&ID, by Mr Henry Hoskins. I found him a careful witness generally determined to tell it as he understood it. But Nigeria's closing is fair when it suggests that the answer to the simple question of whether or not P&ID had finance "in place" was plainly 'no', but Mr Lawlor could not bring himself to say it. On January 2011 P&ID proposed a meeting with Genesis Oil & Gas Consultants Ltd, a consultancy firm. P&ID engaged Mr Cooke on 1 March 2011 to work on the GSPA project. On 27 April 2011 Petrofac emailed P&ID regarding providing finance for the GSPA project.

198. On 30 January 2012 Mrs Grace Taiga's daughter Vera was paid US$5,000 by Kristholm. This sum went into her HSBC account in London. On the payment instruction, signed by Mr Cahill, there were the words "commission payment", the same words used for the December 2009 payment shortly before the GSPA was entered into. On 5 April 2012 Mr Cahill made payments of £400 and £100 to Mrs Grace Taiga via Western Union. A cash payment of NGN 150,000 (about US$900) was received by Mrs Grace Taiga on 3 July 2012, funded by ICIL. In my judgment it is clear that these payments were all in preparation by P&ID for the possibility of Arbitration, or some form of settlement with Nigeria. All were deliberately concealed from Nigeria.

199. A proposal involving non-associated gas was considered. On 10 February 2012 Mr Michael Quinn wrote to President Jonathan requesting assistance with ensuring the cooperation of Addax Petroleum and Exxon Mobil. By the same letter Mr Michael Quinn conveyed to President Jonathan that P&ID was willing to vary the GSPA. On 10 May 2012 P&ID sent another letter to the Ministry of Petroleum Resources indicating its willingness to vary the GSPA "as a matter of urgency", asserting that this was in light of Nigeria's "inability to comply with the provisions of [the GSPA]".

200. Mr Michael Quinn's witness statement states that in or about the final week of June 2012 Addax informed him by telephone that Addax had:

> "decided to withdraw their cooperation and wished to undertake the development of the non-associated gas themselves."

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On 27 June 2012 P&ID wrote to the Ministry asking it to agree to a new contract involving the processing of non-associated gas, rather than associated gas, absent which P&ID would "consider all of its contractual options". A little further light is thrown on this by a passage in a later letter of advice dated 27 October 2015 from Nigeria's solicitors in the Arbitration in which it is suggested that:

> "[P&ID] further made known to [Nigeria] that even the expected 100 MMSCuF Wet Gas could only be made available to it in year 2014 and as a result of this time frame, [P&ID] was offered non-associated gas by Addax as an alternative to the Wet Gas envisaged by the GSPA, an offer which according to [P&ID] it agreed to "in principle". The consequent failure of Addax Petroleum (a party not privy to the GSPA) to supply [P&ID] with non-associated gas ultimately led to the institution of the present arbitral proceedings."

The Arbitration

201. On 22 August 2012, P&ID commenced the Arbitration against Nigeria, relying on the arbitration clause in the GSPA.

202. The day after the arbitration commenced, on 23 August 2012 a draft authority letter permitting Mrs Grace Taiga to use a car and identifying her as "our legal adviser" was produced, to be signed by Mr Adam Quinn.

203. It is now apparent that through the course of the Arbitration, P&ID was provided with many of Nigeria's internal legal documents. The first occasion after the commencement of the Arbitration was 27 days after commencement, on 19 September 2012.

204. Sub-headed "Re: Notice of Arbitration" the document refers the intended reader to "your instructions". It expresses the author's "candid submission" that:

> "P&ID has not shown the occurrence of and difference or dispute as to the interpretation performance of the [GSPA], and consequently has not satisfied [Article 3(3) of the First Schedule to the Arbitration and Conciliation Act 2004, of Nigeria]".

The author's "considered opinion and advice" is given. The document concludes "Submitted, please for your consideration and further directives".

205. A version of the document reached Mr Murray who sent it to ICIL with a request that it be forwarded to Mr Michael Quinn, and adding "Also, confirm that it reads ok so that I can remove from here". The version omits from the original the date (11/09/12), a line in which the document is addressed to "Legal Adviser", and a line in which the document is signed under the name of "Asst. Legal Adviser IV". It is still plain enough from its contents that it concerns the provision of legal advice.

206. P&ID was represented in the arbitration initially by Harcus Sinclair LLP, a London based law firm., Mr Seamus Andrew had conduct. The representation of P&ID would move from Harcus Sinclair LLP to Mr Andrew's firm SC Andrew LLP in September 2014, as Mr Andrew became a partner there. On 11 December 2012 Mr Trevor Burke QC (now KC) was sent a file of documents to read into P&ID's claim. Mr Burke KC was a nephew of Mr Michael Quinn.

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207. Mr Andrew and Mr Burke KC, among others, have very significant personal interests in this matter. They may have a claim to what were described by Mr Howard KC as "life-changing sums of money", contingent upon success for P&ID in this matter. The figures are up to £850 million in the case of Mr Burke KC and up to £3 billion in the case of Mr Andrew. Each gave written and oral evidence at the trial. Mr Andrew tried his best to answer questions carefully and accurately. Mr Burke KC gave answers in a way that appeared business-like and direct at first, but became increasingly exercised as he was taken through more documents.

208. The then Attorney General, Mr Mohammed Adoke SAN selected Mr Olasupo Shasore SAN, to represent Nigeria as Leading Counsel. This selection was in preference to a recommendation of a Mr Isiyaku SAN that Mr Ibrahim Dikko, by then Legal Director at the Ministry of Petroleum Resources (the position that Mrs Grace Taiga had once held), had made to the Attorney General; a recommendation that had been endorsed by the Permanent Secretary. Also appointed were Twenty Marina Solicitors LLP, a Nigerian law firm with which Mr Shasore SAN was associated.

209. Nigeria says the internal legal documents with which P&ID was provided in the course of the arbitration were subject to the confidentiality between lawyer and client known as legal professional privilege. This is a privilege recognised in Nigeria and England & Wales. It is of importance to the rule of law (Three Rivers (No 6) [2004] UKHL 48 per Lord Scott at [34]) and "long established in the common law" … : R (Morgan Grenfell & Co Limited) v Special Commissioner of Income Tax [2002] UKHL 21; [2003] AC 563 at [7] per Lord Hoffmann; see also R (on the application of Jet2.com Ltd) v. Civil Aviation Authority at [39].

210. I have reviewed these internal documents and at least some were plainly subject to legal professional privilege: they were confidential to Nigeria and P&ID was not entitled to see them. The more relevant are identified in the course of this judgment. Another was the subject of a separate application in the course of the hearing before me, and privilege in it was not waived by Nigeria. That particular document is not ultimately material to the determination of any of the issues in the case and I do not refer to it further in this judgment.

211. I shall refer to these internal legal documents in the balance of this judgment as Nigeria's Internal Legal Documents. Some of them are said to have been forwarded by individuals named Mr Saheed Akanji, Mr Tokunbo James and Mr Mulero Racheal. Both Nigeria and P&ID say that individuals with these names or aliases are unknown to them. But the transmission of Nigeria's Internal Legal Documents to P&ID was plainly not the result of incompetence. The scale, nature, continuity and destination does not allow that conclusion on any balance of probabilities, even allowing for the seriousness of the conclusion that the transmission was deliberate.

212. Nigeria alleges:

> "P&ID has offered no sensible explanation for why these documents were leaked by [Nigeria's] lawyers and has presented this Court with a conspiracy of silence. The obvious and correct inference is that they were obtained through corruption of [Nigeria's] legal advisers carried out by P&ID and Mr Adebayo. … Mr Murray all

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> but admitted in his oral evidence that [they] were procured by corruption, and no P&ID witness proffered an otherwise honest explanation".

213. As with many features of this matter the position was more complex. I accept that on limited occasions Nigeria's Internal Legal Documents were individually made available by Nigeria to P&ID as a means of showing P&ID that Nigeria really was doing something or was serious in what it was doing. But on other occasions that was not the reason at all. No-one who saw the document in question for P&ID could have mistaken the latter type of document for the former type.

214. Mr Andrew, Mr Burke KC and Mr Cahill were among those who received Nigeria's Internal Legal Documents. As legal professionals Mr Andrew and Mr Burke KC appreciated that these at least included documents that were privileged. They did not know how the documents had come into P&ID's hands. Mr Burke KC gave oral evidence from the witness box that he had conducted an enquiry into where and how; this evidence did not appear in his written evidence and was false. I reject as untrue Mr Andrew's oral evidence that the documents were shared as part of settlement discussions.

215. Mr Andrew and Mr Burke KC knew that P&ID and they were not entitled to see these documents. Their decision not to put a stop to it, at least by informing Nigeria or immediately returning the documents they knew were received, was indefensible. The reason Mr Andrew and Mr Burke KC behaved in this way was because of the money they hoped to make. Mr Burke KC told me in his evidence that:

> "[t]he money is a complete irrelevance here … [r]eputation and career are far more important to me than this notional money".

But that is now, and was not then. Even Mr Cahill and Mr Murray appreciated that P&ID should not have the documents. But their attitude was that this was the sort of thing you took advantage of if it happened. Mr Murray accepted that the receipt and use of Nigeria's Internal Legal Documents was "less than honest".

216. Mr Andrew suggested in his evidence that he did not pay particular attention to Nigeria's Internal Legal Documents and did not read them all, or some of those he received, completely. That, I find, was not truthful evidence. Mr Burke KC suggested that he did not give much importance to Nigeria's Internal Legal Documents. That too, I find was not truthful evidence.

217. When I refer in this judgment to P&ID retaining Nigeria's Internal Legal Documents I mean its choice, rather than returning the documents immediately and unread, to read them and to take the benefit of the information they conveyed. P&ID's improper retention of Nigeria's Internal Legal Documents, received at various points during the Arbitration, enabled P&ID to track Nigeria's internal consideration of merits, strategy and settlement during the Arbitration. P&ID's improper retention of Nigeria's Internal Legal Documents also allowed it to monitor whether Nigeria had become aware of the fact that the Tribunal and Nigeria were being deceived.

The termination of the GSPA

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218. On 14 January 2013 P&ID wrote to the Minister of Petroleum Resources, Ms Alison-Madueke, stating that Nigeria was in repudiatory breach of the GSPA. On 20 March 2013 P&ID stated that it accepted Nigeria's repudiatory breach of the GSPA.

219. On the face of things, as a matter of contract law, the GSPA was at an end and P&ID had a claim in damages. In the same month a London-based consultancy, Genesis, produced a report for P&ID providing a "high level sense check on both technical and cost aspects" for a gas processing plant at Calabar, said to be at the "feasibility stage".

220. On 28 June 2013 P&ID served its Statement of Claim in the arbitration.

221. Nigeria's defence was due on 31 July 2013. On 16 July 2013, Mr Shasore SAN forwarded P&ID's Statement of Claim and supporting documents to the Attorney General, copying the Permanent Secretary and the Legal Adviser at the Ministry of Petroleum Resources. He asked the Attorney General to review and revert with comments, but no response was received. On 29 July 2013, Twenty Marina Solicitors sought information and documents to enable them to prepare a Defence.

222. Nigeria did not file its Defence by the required date of 31 July 2013. On 7 August 2013, Twenty Marina Solicitors requested a paragraph-by-paragraph response to the Statement of Case from the Ministry. On 14 August 2013 NNPC's counsel, Mr Augustine Alegeh SAN, provided an opinion on P&ID's claim. The next day NNPC sent a memo to NAPIMS requesting a detailed brief on the facts and all relevant documents. On 16 August 2013 an Assistant Legal Advisor at the Ministry informed Twenty Marina Solicitors that the Ministry was in consultation with NNPC to prepare a response to their request for information.

223. Mr Shasore SAN emailed the Tribunal stating that he was without instructions, would not be able to attend a telephone Case Management Conference scheduled for 21 August 2013, and required an extension of time for Nigeria's Defence. The Tribunal granted an extension to 4 October 2013.

224. On 16 September 2013 Twenty Marina Solicitors requested information to enable them to prepare a "strong and cogent" defence by the deadline. On 19 September 2013 at a meeting between Twenty Marina Solicitors and the Ministry a decision was taken to file a preliminary objection to the Tribunal's jurisdiction. On 2 October 2013 Mr Shasore SAN sent a draft Notice of Preliminary Objection to the Attorney General. On 3 October 2013, the day before the extended deadline for the Defence, Nigeria filed its Notice of Preliminary Objection disputing the Tribunal's jurisdiction. This was later summarised by the Tribunal in these terms:

> "On 3 October 2013 the Respondent served a Notice of Preliminary Objection in which it alleged that the GSPA was void under Nigerian law because the Ministry lacked legal capacity to contract and because the Claimant had failed to comply with section 54 of the Companies and Allied Matters Act Cap 20 LFN 2004. It also alleged that the arbitration agreement was itself void for lack of capacity and that the tribunal therefore lacked jurisdiction."

225. On 22 November 2013 Nigeria wrote to the Tribunal in the following terms:

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> "The Respondent agrees that the question on whether or not the Tribunal has jurisdiction to decide upon the validity of the arbitration clause, is bound to involve an investigation of whether the contract was in fact void, therefore the Tribunal may decide on this latter point as a preliminary issue (but only in the event that it decides that it has jurisdiction to do so).

226. On 7 January 2014 the Tribunal, by consent, made its Procedural Order No 3. This ordered that the arbitral proceedings continue and that the following questions be decided as preliminary issues:

> "(a) Whether the Tribunal has jurisdiction to rule upon its own jurisdiction to decide any of the matters in issue in the arbitration; (b) If the answer to question (a) is yes, whether it has jurisdiction to decide whether the contract is valid and binding upon the parties; If the answer to question (b) is yes, whether the contract is void for any of the reasons stated in the Notice of Preliminary Objection".

227. By its Procedural Order No.4 of 10 February 2014 the Tribunal gave directions for the preliminary issues hearing. Four days later, on 14 February 2014 P&ID served written submissions on the preliminary issues, an expert report on Nigerian Law by Justice Alfa Belgore (later described by the Tribunal as "a distinguished Nigerian jurist and former Chief Justice of his country") and a witness statement by Mr Michael Quinn.

P&ID's evidence in the Arbitration: the witness statement of Mr Michael Quinn

228. Although originally served in relation to the dispute over the Tribunal's jurisdiction, the witness statement of Mr Michael Quinn was in the event to comprise P&ID's factual evidence in the Arbitration as a whole. It was accompanied by a 284-page factual exhibit. By the liability stage of the Arbitration Mr Michael Quinn was dead and Mr Andrew would make the following submission to the Tribunal:

> "It is my submission that the position now, in this arbitration, is that the facts that are not challenged in Mr Quinn's witness statement are the factual basis of the arbitration".

229. Mr Andrew himself had prepared the witness statement, beginning that work on 6 January 2014. He asked P&ID for a list of which documents had come into P&ID's possession 'officially' and which 'unofficially' so that he could limit any references in the witness statement to the former. This reflected, at least in part, his recognition that P&ID had been receiving Nigeria's Internal Legal Documents.

230. In final form, as drafted by Mr Andrew and made by Mr Michael Quinn and provided to the Tribunal on behalf of P&ID, the witness statement stated that it was to "explain how the GSPA came about".

231. It continued:

> "42. We set about the necessary preparatory engineering work required to construct a gas stripping plant capable of processing 400 MMSCuFD of Wet Gas and a polymer grade propylene plant capable of producing 250,000 metric tonnes per annum of polymer grade propylene.

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43. The idea was that we would obtain Wet Gas and process it to remove the NGLs (principally propane and butane). The propane would be used as feedstock for the polymer grade polypropylene plant, and the remaining NGLs could be sold, either domestically or on international markets. The Lean Gas could be sold for domestic power generation.

44. The Project at this point was not location-specific although as explained below the Lagos area was initially regarded as an attractive location. This was not only because of the existence of a number of natural gas fields both on and off the coast but because of the existence of a ready domestic market in Lagos for the Lean Gas.

45. The Project would return a high percentage of the Wet Gas as Lean Gas – about 85% by volume. By contrast, the process of liquefaction of Lean Gas would leave much less of the Wet Gas as residue Lean Gas. The Project was designed to produce Lean Gas for the national grid within 2 years of Government approvals, whereas a typical liquefied natural gas solution would take much longer to produce Lean Gas.

46. As we worked on the Project, we developed the concept of taking advantage of the inherent value in the NGLs typically found in Wet Gas as the principal source of revenue. This came to coincide with an important policy principle for the Nigerian Government known as the "Liquids Based Pricing Approach". This is described in the Government's National Domestic Gas Supply and Pricing Policy as follows (page 10 of MQ1):

> "(C) GAS PRICING REFORM - LIQUIDS BASED PRICING APPROACH
> A widely known characteristic of Nigerian gas is its relative richness in liquids i.e. NGLs. NGLs continue to attract a high price in international markets (similar trend in crude oil pricing). As a result of the potential high revenue that comes from NGLs produced in conjunction with residue dry gas, it is possible for a gas supply project to accommodate a relatively lower price for the residue dry gas and still be a profitable supply project. Residue dry gas is used mostly in the domestic market. This gas pricing policy aims to exploit this intrinsic value of NGLs in deriving a relatively low gas price for the strategic domestic sector - Power. It is recognized that not all gas resources in the country are rich in NGLs, consequently, it is intended that this philosophy be applied selectively - especially in the short term as the Power sector is currently unable to pay higher price for gas (in view of the low end user power tariff that currently obtains in Nigeria). It is however the expectation that in the medium term, power tariff will be more commercial and a higher gas price will be achievable."

232. Nigeria references the following passages of Mr Michael Quinn's witness statement in particular; the dates in square brackets I have inserted:

> "47. During the course of the next two years [from 2006], we made good progress and reached a very advanced stage of the preparatory engineering work necessary to implement such a project on the ground. I would estimate that the total costs sunk into the preparatory work during that period were in excess of $40 million, including initial feasibility studies, the cost of licences for the technology required to operate the gas stripping plant and the propylene plant respectively, the

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production of detailed engineering drawings and our own internal project management costs.

48. By way of example, extensive work was commissioned from various specialist engineering companies such as CB&I Lummus Technology Group in New Jersey, KRAN Developments in Johannesburg and ABB Limited in the UK. The cost of the work of these 3 companies alone was about $29 million. In addition our own internal costs were significant. I would say that, from the commencement of our work on the Project in mid-2006, substantially the whole of our internal resource was devoted full-time to the Project.

49. By the end of the first 2 years of our work on the Project [i.e. 2008], we had put together a completed engineering package ready for actual permit applications, procurement and construction, which comprised about 100 volumes of documentation, together with a 3-D software model of the plant which was in such high detail that it would have enabled the training of the plant staff even before completion of construction. An electronic copy of a video from the 3-D software model is enclosed with MQ1. …"

233. It will be apparent that what is being described here is expenditure and work undertaken on Project Alpha and before the proposed project at Calabar was changed very substantially, including to the point of removing the propylene plant altogether.

234. Mr Michael Quinn also stated in his witness statement:

"102. The day after the signing of the GSPA, on 12 January 2010, I wrote to the Minister on behalf of P&ID to inform him that P&ID wished to commence work at once ...

103. I was keen to implement the GSPA as soon as possible ... I wished to minimise any delay which might be caused by the operators of the 2 concessions that had been identified as likely sources of Wet Gas for the project. P&ID required from the Government certain up to date information which would be critical to the construction of the gas processing facility which P&ID would be building in Calabar to strip the Wet Gas. For instance, the precise make-up of the Wet Gas (which was also relevant to the Government's contractual obligations to supply Wet Gas with a minimum propane and butane content) and the pressure at which it would be delivered into the gas pipeline which would transport it to Calabar ...

109. In the meantime [in February 2010], the site for the onshore plant at Calabar for the construction of the gas stripping plant and gas storage facilities had been selected by P&ID and secured from the Government of Cross River State. On 1 February 2010 Mr Hitchcock wrote to the Governor of Calabar requesting the formal allocation of the land upon which the plant would be constructed (pages 157 to 158 of MQ1). On 16 February 2010 approval was granted, by the Government of Cross River State, to P&ID, for the allocation of Parcels 1 & 2 of the Energy City (Industrial) at Adiabo in Odukpani Local Government Area, containing an area of about 50.662 hectares of land, for the industrial use of P&ID (pages 159 to 160 of MQ1).

110. On 14 May 2010, I wrote to NNPC to update it on the progress made by P&ID. I pointed out that all of the project finance was in place, 90% of the engineering

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> designs had been completed, a 50 hectare site had been allocated to P&ID by the Cross Rivers State Government, and that Addax Petroleum had confirmed to the DPR its readiness to supply to P&ID the Wet Gas that it was at that time flaring in [field] OML 123 in time for Phase 1 of the Project as set out in the GSPA. I asked the Group Managing Director of NNPC to authorise NAPIMS to oversee and conclude the necessary arrangements between P&ID and Addax [Petroleum], by which I meant the engineering logistics of delivery of the Wet Gas for Phase 1 from Addax [Petroleum], to enable work to proceed on the gas processing facility."

235. Nigeria alleges that Mr Michael Quinn's evidence to the Tribunal contained lies. It was not true, says Nigeria, that P&ID had been allocated a plot of land on which to build the GSPA Facilities, that P&ID had already obtained finance for the project, or that P&ID had already done the vast majority (90%) of the engineering design work, already expending US$40 million preparing to perform.

236. The lies were, Nigeria alleges, a continuation of lies by P&ID to Nigeria in correspondence before and after the GSPA had been signed, and in the recitals (particularly (h) and (i)) to the GSPA). P&ID had to continue to tell these lies, says Nigeria because, had it not done so, it would have been obvious that P&ID was never going to be able to perform a gas processing contract on the scale of the GSPA, with the required capital expenditure and on the expedited timeframe involved. Nigeria further says that without the lies it would have been obvious "no suitable gas sources for the contract existed", and that P&ID had been awarded the contract by paying bribes to officials. In response in its Defence dated 6 November 2020, P&ID denied that the evidence of Mr Michael Quinn was perjured and denied that any alleged perjury was material to the outcome of the arbitration.

Land

237. In its written opening Nigeria alleges that Mr Michael Quinn's evidence was perjured when he said that 'a 50 hectare site had been allocated to P&ID by the Cross Rivers State Government". Nigeria has to accept that (as it puts it) "in the most literal sense" the phrase was true. But it goes on to say that Mr Michael Quinn "conspicuously omitted" "that the allocation was conditional upon two steps being taken by P&ID". The two steps are said to have been payment of a fee and the submission of specified planning documents (including an Environmental Impact Analysis).

238. The phrase was followed by reference in Mr Michael Quinn's witness statement to two letters, copies of which were exhibited to the statement. The phrase was part of a summary of the second of those letters, dated 16 February 2010. The first of the two steps to which Nigeria refers - the requirement for payment of a fee - was there for Nigeria and the Tribunal to see in the exhibit (letter dated 16 February 2010 at page 159 of the exhibit). The letter made clear that upon payment of fees a Certificate of Occupancy will be issued.

239. As for the second step, the letter on which Nigeria relies on to suggest that allocation of the site was conditional on the submission of specified planning documents (a letter dated 17 February 2010, not part of the exhibit to Mr Michael Quinn's witness statement) on examination appears to grant outline planning permission and make that

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outline planning permission, rather than allocation of the site, conditional on the submission of the specified planning documents.

240. In these circumstances Nigeria's allegation of perjury about the "plot of land", or site, is unconvincing.

241. Nigeria looks to take the allegation further, saying that the fees were not paid (P&ID does not dispute this) and that the specified planning documents were not submitted, with the result that the allocation had lapsed by mid-May 2010. Its criticism is that Mr Michael Quinn did not mention this, "the critical information", because:

> "the question was … whether [P&ID] had followed through so as to put itself in a position to perform".

Yet the Tribunal did not take the evidence of Mr Michael Quinn on acquisition of the site as evidence of completed acquisition. What the Tribunal said, at paragraph 50 of its Final Award, was that:

> "the evidence shows a high degree of likelihood that if the Government had been willing to perform, P&ID would have acquired the site and built the plant".

242. Whilst it could certainly have been more open and transparent, I am not satisfied that Mr Michael Quinn's evidence was knowingly false as regards its treatment of land.

Finance

243. In his witness statement Mr Michael Quinn had given evidence to the Tribunal in these terms:

> "On 14 May 2020, I wrote to NNPC to update it on the progress made by P&ID. I pointed out that all the project finance was in place …".

There is of course an echo here of recital (h) of the GSPA which stated that P&ID "possesses the requisite finance … for the fast track development of the Project."

244. P&ID itself now accepts that it was not the case that "all of the project finance was in place". I am satisfied that Mr Michael Quinn (and P&ID) knew this and that his evidence to the contrary was false.

Engineering design (including expenditure of US$ 40 million)

245. Mr Michael Quinn's evidence to the Tribunal was that 90% of the engineering designs had been completed. P&ID itself now accepts that this was not the case. His witness statement further included an estimate that:

> "the total costs sunk into the preparatory work during that period were in excess of $40 million"

and he gave the example of:

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> "extensive work … commissioned from various specialist engineering companies such as CB&I Lummus Technology Group in New Jersey, KRAN Developments in Johannesburg and ABB Limited in the UK".

246. That evidence has not been shown to be untrue for 2006-8, but Mr Michael Quinn used it to substantiate his evidence that 90% of the engineering designs had been completed for the project contemplated by the GSPA. That was false and I am satisfied he (and P&ID) knew it.

Bribing Mrs Grace Taiga

247. There is a further material aspect of the evidence in Mr Michael Quinn's witness statement. There was no mention of the bribery of Mrs Grace Taiga at the time of the GSPA. Yet the witness statement stated, in terms, that it was to "explain how the GSPA came about".

248. One way that Nigeria puts its case is that an implied representation had been made that P&ID had entered into the GSPA in "wholly legitimate circumstances" and that this was false because "the contract was won by paying bribes". P&ID criticises a case put in this way on a number of grounds (often challenging the proposed implied language of "wholly legitimate circumstances"), describing it at one point as a form of reverse-engineering that did not "distinguish between what a document does not say and what it impliedly represents" and referring to Raiffeisen Zentralbank Osterreich AG v RBS [2011] 1 Lloyd's Rep 123 at [84]. However the present case is one of express representation; Nigeria does not need the argument about implied representation.

249. P&ID tries to answer the case in a number of ways. It says first that Mr Michael Quinn did not fraudulently misrepresent that no payments had been made. But Mr Michael Quinn told the Tribunal that he was explaining how the relevant contract came about. He knew that bribery of Mrs Grace Taiga was involved in bringing the GSPA about but his explanation deliberately excluded that fact. The statement was false, and I am satisfied that Mr Michael Quinn (and P&ID) knew it and were dishonest. In its written closing P&ID says that "all but one sentence of Mr Quinn's evidence was accurate". In my judgment one sentence is enough, when it said what it did. Mr Michael Quinn and P&ID knew the true position and that was why they chose to use the sentence because it would help conceal the true position.

250. Of course, as P&ID urges, regard to "the factual substance of what the parties were actually addressing when Mr Quinn's evidence was drafted" is relevant. P&ID puts this as "whether the Tribunal had jurisdiction to hear P&ID's claim". But the evidence P&ID put forward was clear, and it was redeployed in further stages of the Arbitration after the jurisdiction stage.

251. P&ID contends that it was under no duty to disclose the existence of any pre-GSPA payments. The question whether, absent the decision to offer the explanation in the witness statement, there was a duty to disclose may be open to debate. P&ID contends there was no duty for several reasons. First, the arbitration was adversarial. Second, it was governed by the rules appended to the Nigerian Arbitration and Conciliation Act which provide that a party may, but does not have to, annex to their statement of claim or defence the documents which they deem relevant or rely on (Article 18(3) and 19(2))

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and that at any time during arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence (Article 24(2)). Third, none of the Procedural Orders made by the Tribunal contained a duty to disclose relevant documents that was akin to the rules for disclosure in commercial litigation in England & Wales, and nor did the parties exchange Redfern Schedules (a form of disclosure schedule). Fourth, P&ID argues there is not a duty to advise an opponent of substantive defences.

252. Each of these points, whether good or bad, is met in the present case by the fact that P&ID chose to take on the task of disclosing how the GSPA came about. The same is true for a contention by P&ID that failure to disclose documents and records showing that bribes had been paid when they had not been ordered to be disclosed was not a fraud. P&ID refers to an observation in the valuable work by Professor Merkin KC and (as Consulting Editor) Louis Flannery KC, *Merkin on Arbitration Law* [20.33.22], in these terms, referring to L. Brown & Sons Ltd v Crosby Homes (North West) Ltd [2008] EWHC 817 (TCC) (Akenhead J):

> "… if the arbitrator has not ordered disclosure of the documents which are said to have been withheld, it is difficult to argue that the respondent has acted in a reprehensible fashion by not disclosing them".

Respectfully, the observation is in my opinion open to question, or at least qualification, because context will be so important in this area. The present case contains the overwhelming context that the party was saying it was "explain[ing] how the GSPA came about".

253. P&ID advances the argument that the present was a case of 'saying nothing' rather than 'impliedly representing something'. The argument was (a) that Mr Quinn said nothing in his evidence about pre-GSPA payments, (b) this was because there was no issue in the arbitration as to whether P&ID (or anyone associated with it) made pre-GSPA payments to Nigerian officials, or whether the GSPA had been procured by corruption, and so (c) there is no reason why Mr Quinn would have said anything about any such payments in his evidence. The argument is met at least by the point that the representation was express, and did not say nothing. I do not need to address Nigeria's additional answer that continued silence during the arbitration was a breach of positive obligations said to be imposed by Nigerian law requiring the existence of the bribes to be disclosed "by both the bribers and bribees": see section 23 of the Corrupt Practices and Other Related Offences Act 2010.

254. I have no doubt at all that Mr Michael Quinn and P&ID intended the witness statement to be understood in the way I have indicated. Their conduct was dishonest by the standards of ordinary decent people. It is not necessary to show they appreciated that by those standards they were being dishonest, but in my view they did.

To the Award on Liability (2014 to 2015)

255. On 3 March 2014 Nigeria served a Reply on the preliminary issues in the Arbitration that were addressed to Nigeria's challenge to the jurisdiction of the Tribunal. Mr Shasore SAN wrote to a Professor Itse Sagay SAN on 25 March 2014 to ask if he could provide an expert report on Nigerian Law in response to the expert report that Justice

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Belgore had written. Professor Sagay SAN agreed to do so and documents were sent to him on 2 April 2014.

256. The next day, in a letter of 3 April 2004 Professor Sagay SAN wrote to Mr Shasore SAN identifying his fee for an expert report. He said that he had "gone through all of" the documents that had been sent. He expressed the view that the Ministry of Petroleum Resources "appear[ed] to be in a very difficult legal position" that Justice Belgore's opinion was "quite formidable", and that "[i]t will therefore take a tremendous level of research and intellectual work to counter his arguments and the claimant's case." By 8 April 2014, P&ID had been provided with a photographed copy of the letter of 3 April 2014 in which Professor Sagay had made these remarks. The copy of the letter was then sent by Mr Adam Quinn to Mr Smyth, by Mr Cahill to Mr Andrew, and by Mr Smyth to Mr Burke KC. In this way P&ID retained another of Nigeria's Internal Legal Documents.

257. On 17 April 2014, a fortnight later, Twenty Marina Solicitors sought an extension of time for serving expert evidence. Nigeria was granted an extension to 25 April 2014 by the Tribunal but did not serve any expert evidence by the extended deadline. Then on 7 May 2014 Twenty Marina Solicitors informed the Tribunal and P&ID that they were unable to serve a written argument and might not be able to attend the jurisdiction hearing. This was said to be because the Ministry of Petroleum Resources had not provided instructions for the engagement of an expert.

258. For its part, on 9 May 2014 P&ID lodged its written argument on the jurisdiction challenge. The same day, Twenty Marina Solicitors informed the Tribunal that due to lack of instructions from their client, they were not able to attend the jurisdiction hearing. Lord Hoffmann directed by email on 11 May 2014 that, in the absence of submissions or expert evidence from Nigeria, the preliminary jurisdiction issues would be determined on the papers.

259. Behind the scenes, Nigeria's position had been beset by issues over legal fees and expenses and their payment.

260. On 7 August 2013 Mr Danladi Kifasi, Permanent Secretary at the Ministry of Petroleum Resources, had recommended to the Minister, Ms Alison-Madueke, that at least part of Mr Shasore SAN's fees should be paid to ensure that the Arbitration was properly defended. On 29 August 2013 the Minister wrote to the Attorney General, Mr Adoke SAN, proposing that Mr Alegeh SAN be appointed in place of Mr Shasore SAN, giving these reasons:

> "in view of the fact that NNPC (though not a party to the Arbitral Proceedings) is seised with the facts and obligations under the said Agreement, coupled with the funding constraints the Ministry is faced with, the Ministry would prefer that its legal defence be handled by Messrs. Alegeh & Co (SAN) and their legal fees paid by NNPC. Messrs. Alegeh & Co (SAN) had previously handled the defence of the Ministry and NNPC on similar matters and he is well seized of the subject."

261. Amidst these reasons the principal one for the Minister was to avoid responsibility for fees resting with the Ministry. However the Attorney General's response on 13 September 2013 was to issue an instruction that Mr Alegeh SAN should act as co-

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counsel with Mr Shasore SAN. Mr Alegeh SAN was duly welcomed to the case by Lord Hoffmann on 22 November 2013. But four days before, on 18 November 2013 NNPC informed Ms Adelore, Director of Legal Services that:

> "due to paucity of funds and in view of the fact that NNPC is not a party to this dispute, NNPC will not be able to pay for Counsel's engagement [in the arbitration]".

262. On 21February 2014 Ms Hafsat Belgore (Assistant Legal Adviser at the Ministry of Petroleum Resources) informed her senior Ms Adelore that Mr Shasore SAN had requested part-payment of his fees. Ms Belgore suggested that the Attorney General be asked to assist in sourcing the funds because the Ministry might not be in a position to pay. On 16 April 2014 Mr Shasore SAN wrote to the Minister asking her to procure payment of legal fees and arbitration costs, including the fees proposed by Professor Sagay. Twenty Marina Solicitors informed the Ministry in a following letter on 23 April 2014 that it was "now imperative that urgent steps be taken regarding provision of funds towards the defence".

263. In early May Mr Shasore SAN contacted Mr Ikechukwu Oguine, General Counsel, Coordinator of Legal Services and Secretary to the NNPC, regarding payment of the Ministry's legal and arbitration costs. Mr Shasore SAN wrote to NNPC asking for NNPC's intervention "in order for claims to be diligently defended and avoid the immense exposure of [Nigeria]". Mr Oguine sought advice from Mr Ikponmwosa Omigie, an official of long service in NNPC and sometime Manager in the Commercial Law Department, but was told that the Group Managing Director of NNPC had made it clear that the Ministry had a budget for such matters and that NNPC would not pay.

264. On 16 May 2014 there was a meeting between Ms Adelore, Director of Legal Services and the Attorney General. The Attorney General said that the Ministry of Justice would not pay the costs of the Arbitration. Ms Adelore wrote to the Attorney General on 26 May 2014 warning that:

> "[t]he lack of proper defence could lead to the award of the huge claim against the Ministry by the Tribunal".

265. Mr Kifasi (the Permanent Secretary at the Ministry of Petroleum Resources) was compelled to write to the Ministry of Finance requesting funding for the arbitration. He explained that the Ministry of Petroleum Resources could not pay the costs "due to paucity of funds". On 26 June 2014, P&ID received a copy of a draft of this letter. A copy was sent to Mr Michael Quinn's wife, Mrs Anita Quinn. Another of Nigeria's Internal Legal Documents was retained by P&ID.

266. On 3 July 2014 the Tribunal handed down a part final award on jurisdiction ("the Award on Jurisdiction"). The Tribunal found that it did have jurisdiction, and that the GSPA was not void for any of the reasons stated in the Notice of Objection. The Tribunal gave this 4 paragraph "Summary of the Dispute":

> "3. On 11 January 2010 Claimant and Respondent ("the parties") entered into a written Gas Supply and Processing Agreement ("GSPA") whereby the Government agreed that for a term of 20 years it would make to available to P&ID

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> 400 MMScuFD of Wet Gas and P&ID agreed to process the gas and return approximately 85% by volume to the Government in the form of Lean Gas.
>
> 4. For the purpose of enabling the Wet Gas to be processed, P&ID agreed to construct two or more process streams with ancillary facilities.
>
> 5. The supply of Wet Gas by the Government was to take place in two phases. In Phase 1, the Government was to supply 150 MMScuFD "during or before the last quarter of 2011". In Phase 2, the remaining 250 MMScuFD were to be supplied "on or before the third quarter of 2012".
>
> 6. The Claimant alleges that the Government, in breach of its obligations, did not provide any Wet Gas by the dates stipulated or at all. On 20 March 2013, no Wet Gas having been delivered, P&ID wrote to the Ministry alleging that it had repudiated the GSPA and accepting the repudiation. It claims about US$ 6 billion damages for lost profits."

It is relevant and interesting to see the way in which the Tribunal was beginning to frame or see the dispute. It had received very little from Nigeria.

267. 14 days after the Tribunal's Award on Jurisdiction, on 17 July 2014 Mr Shasore SAN wrote a letter of advice to the Attorney General, and Minister of Justice, Mr Adoke SAN. On 11 August 2014, the Attorney General wrote to President Jonathan of Nigeria expressing his agreement with Mr Shasore SAN's advice and urging a settlement. Mr Shasore SAN's letter of advice to the Attorney General was to become the next of Nigeria's Internal Legal Documents, plainly covered by legal professional privilege, to be retained by P&ID. On 19 July 2014 (and again on 5 September, but without the letterhead) Mr Smyth was provided with a copy of this letter of advice. Mr Adetunji Adebayo provided a copy to Mr Cahill on 23 July 2014.

268. The letter of advice was in these terms:

> "… by virtue of the [GSPA] [P&ID] was to construct and operate a gas processing facility in Calabar for the purpose(s) of refining Associated Gas (or "Wet Gas") in order that the dissociated contents from the Associated Gas i.e. Methan[e]/Ethane Gas (the "Lean Gas" or "Non Associated Gas") could be used for the very critical power generation to supplement the National Grid. [The Ministry of Petroleum Resources] was to supply an agreed volume of Wet Gas from identified OML's: OML 123 (operated by Addax Petroleum); and OML 67 (operated by Exxon Mobil) via a Government pipeline to [P&ID's] proposed production facility in Calabar. P&ID in return was to construct and operate the production facility as well as remove the Natural Gas Liquids which comprises of Propane, Butane and Condensates from the Associated Gas and utilize it for its own benefit and subsequently return the remainder (Lean Gas) to [the Ministry] and [Nigeria], for use in power generation for the benefit of the entire nation. [The GSPA] was to run for twenty (20) years.
>
> Ideally [the Ministry] should have provided the Wet Gas as promised, or in the event that the Gas was not available, (this non-availability was communicated to [P&ID] in a series of meetings between the Parties) its Defence could have been

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> that of frustration or in the alternative, [the Ministry of Petroleum Resources] should have communicated to [P&ID] an event of Force Majeure that could have terminated [the GSPA].
>
> However, there is no such evidence of any such exonerating event. Indeed there is record that the promised quality of gas was not available from the identified an promised OML 125 and OML 67. Furthermore there, is no evidence available to counsel that any investment decision necessary for the implementation of [the GSPA] had been made by the Federal Government.
>
> In view of the foregoing [P&ID] commenced arbitration … claiming damages in the sum of U.S.$ 5,960226,233 ... as damages for loss of profits suffered in consequence of [the Ministry's] alleged breach of contract. [P&ID] also claims interest on sums awarded at such rate, to be determined by the tribunal.
>
> The undersigned was appointed as lead counsel … In a series of correspondence to [the Ministry of Petroleum Resources], we requested for information and documentation to enable us prepare a Defence to this matter. We remain poised to take up the defence if available.
>
> …
>
> The consequence of [the Award on Jurisdiction] is that the matter will now be heard on the merits. However there appears to be a lack of exonerating facts or any documentary evidence with which to defend the Claim. We refer you to our letter dated 12th May 2014 and our several correspondence with [the Ministry of Petroleum Resources] seeking data documents and or information with which to defend.
>
> In view of the financial exposure to the Federal Government, which stands at US$5,962,262.233 ... the absence of a Defence to defend [P&ID's] Claim could lead to a further unfavourable award against [Nigeria]
>
> … a tribunal may award a range of damages subject to the terms of the substantive contract, the arbitration agreement or the applicable law, which in this case is the Arbitration and Conciliation Act … 2004 [of Nigeria]. Although the Act does not specify the measure of reliefs or damages which an arbitrator can award, in principle an arbitrator may award a range of remedies such as damages in the claimed sum.
>
> Your kind and urgent intervention, including specifically a possible settlement of the claim for a compromised and significantly lower amount out of arbitration proceeding is required, in order to prevent avoidable embarrassment to the Federal Government of Nigeria."

269. Ms Adelore, Director of Legal Services, also advised the Attorney General, by letter dated 15 August 2014, that "the probability of P&ID getting an award is high" and that "the possible use of frustration/force majeure as a defence is doubtful". She too urged settlement. On 16 August 2014 P&ID was provided with photographs of the advice of Ms Adelore. Mr Smyth sent a copy to Mr Michael Quinn's wife. Another of Nigeria's

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Internal Legal Documents, plainly subject to legal professional privilege, was retained by P&ID.

270. Both Mr Shasore SAN and Ms Adelore in their letters of advice referred, without enthusiasm, to the possibilities of Nigeria's taking points of frustration and force majeure in relation to its obligation to supply Wet Gas. Neither referred to the question of P&ID's performing its obligation to construct the GPFs required. Neither referred to the definition of the Site ("the land in Calabar on which the GPFs are located"), at the boundary of which the Wet Gas was to be supplied.

271. The Permanent Secretary at the Ministry of Petroleum Resources, Mr Kifasi, wrote to NNPC, explaining the need to "put up a strong defence", and again seeking its assistance in paying the legal fees. An advice of 28 August 2014 for the Minister, to be signed by General Counsel, Mr Oguine, proposed that the Ministry "engage a renowned, internationally recognised expert, with a lot of credibility" to contest the quantum of P&ID's claim. At a meeting on 30 August 2014 Mr Oguine supported attempting settlement but with the Ministry filing a defence in the meantime. On 1 September 2014 Mr Joseph Dawha, then Group Managing Director of the NNPC, wrote to the Ministry recommending that the Ministry instruct its counsel in parallel to file a defence whilst exploring the option of amicable settlement with P&ID, stating that the failure to file a defence would put Nigeria at a "severe disadvantage" in any settlement negotiations.

272. At this point Nigeria's Statement of Defence was due by 19 September 2014, after the Tribunal's Procedural Order No.5 of 21 July 2014. Signing as "Coordinator, Legal Services", on 2 September 2014 Mr Oguine wrote to Mr Shasore SAN with instructions. He said this:

> "Also, we have been requested by the Ministry to provide comments on your recommendation that they seek amicable settlement of the case with [P&ID]. As we discussed at our meeting of 30th August 2014 we support the recommendation, but believe that while seeking to negotiate a settlement the Ministry should file a defence to the claim in order to maintain some leverage.
>
> Defence of the Claim
>
> As we discussed in Lagos, we believe the following defences should be made to the claim:
>
> (1) Even though [the Ministry of Petroleum Resources] failed to meet its obligation to provide gas to [P&ID], contrary to the agreements between [the Ministry] and [P&ID], this failure was due to the actions of third parties such as Addax Petroleum. [The Ministry] and NNPC, in fact, hosted several meetings between [P&ID] and Addax Petroleum to facilitate gas supply to [P&ID] but were thwarted by Addax Petroleum. This is confirmed by [P&ID]'s own pleadings.
>
> (2) A related defence would be that [the Ministry's] failure to supply gas was due to circumstances beyond its control, and is therefore excused by the *force majeure* provisions in the agreements between [the Ministry] and [P&ID]. In support of this defence, we will obtain information from Addax Petroleum and our affiliate

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> NAPIMS on the reasons why the Adanga Pipeline, specifically referred to in paragraph 90 of [P&ID's] Statement of Case has not been completed. We suspect the reasons that the reasons for delay were likely buttress a plea of *force majeure*.
>
> (3) A further defence would be that even if the Arbitral Tribunal finds that [the Ministry] was in breach of its obligations under the said agreements, the quantum of damages sought by [P&ID] i.e. $5.9 bn, is excessive and outrageous. From the Statement of Case, [P&ID] have arrived at this figure by estimating the profits they would have earned from the project over 20 years. As you know, this is not the correct measure of damages as [P&ID] are required under the law to mitigate their loss, e.g. by investing in other projects with the funds they claim to have set aside for the project, and cannot validly make a claim for 20 years of profits. To strengthen this defence, we intend to engage a renowned, internationally recognised expert, with a lot of credibility, … to provide an expert witness. The expert witness would review the basis for [P&ID's] claim, provide an alternative and more realistic measure of loss that is consistent with [P&ID's] obligation to mitigate their loss and testify for [the Ministry] at the Arbitral Tribunal if it becomes necessary.
>
> Kindly obtain as much additional time as you can from the Arbitral Tribunal to enable us provide the information requested above. …"

On 5 September 2014 P&ID was provided with a copy of this letter of instruction. A further copy went to Mr Michael Quinn's wife. The letter of instruction became the next of Nigeria's Internal Legal Documents, plainly covered by legal professional privilege, to be retained by P&ID.

273. In the event no Defence was filed by Nigeria by the deadline of 19 September 2014. Mr Shasore SAN had circulated a draft Defence on 10 September 2014, but on 17 September 2014 Ms Belgore, as Assistant Legal Adviser at the Ministry of Petroleum Resources, instructed Mr Shasore SAN not to file any Defence in light of the government's direction that settlement negotiations be initiated, and in order to cut costs.

274. On 22 September and 13 October 2014 Ms Adelore, as Director of Legal Services, wrote to Dr Jamila Shu'ara, sometime Permanent Secretary at the Ministry, proposing that Nigeria appoint a robust negotiating team. Her proposal was that this should include herself, Mr Oguine (General Counsel of NNPC), Mr Shasore SAN, and the Solicitor General or the Minister, Ms Alison-Madueke.

275. Mr Shasore SAN wrote again to the Attorney General, Mr Adoke SAN, on 24 October 2014 urging him to initiate settlement discussions with P&ID. The Attorney General forwarded the letter to President Jonathan, advising him to direct the Ministry to commence negotiations. Mr Ovie Ukiri, one of Mr Shasore SAN's partners at Twenty Marina Solicitors, also sent a copy of the letter to Mr Adebayo on 26 October 2014, who forwarded a copy to Mr Cahill. A copy was sent to Mr Burke KC and Mr Andrew on 30 October 2014. It was the next of Nigeria's Internal Legal Documents to be retained by P&ID.

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276. P&ID calculated its next steps and decided to apply pressure. On 31 October 2014, SC Andrew, now instructed in place of Harcus Sinclair but with Mr Andrew continuing having conduct, informed the Ministry and the Tribunal that, in the absence of engagement by the Ministry with the arbitration, P&ID would invite the Tribunal to proceed immediately to a final hearing. On 10 November 2014 P&ID applied to the Tribunal for a peremptory order in light of the Ministry's continuing failure to serve a Defence.

277. As it happened, just three days before, Mr Shasore SAN had received payment from Nigeria of a first instalment of his and Twenty Marina Solicitors' fees for the arbitration. The instalment was in the sum of US$ 1,221,965.00. On 28 November 2014, Mr Shasore SAN made a payment of US$ 150,000 to his co-counsel, Mr Alegeh SAN. From 13 November 2014 Mr Alegeh SAN ceased to appear on the arbitration email chain with the Tribunal and on another email chain concerning settlement.

278. Mr Shasore SAN forwarded P&ID's application for a peremptory order to the Attorney General and sought his urgent intervention. The Attorney General of Petroleum Resources wrote to the Minister on 11 November 2014 advising her to enter into settlement negotiations, and recalling that Mr Shasore SAN:

> "had appraised this case and was of the reasoned opinion that the Ministry of Petroleum Resources does not have a good defence to the action".

279. On 12 November 2014 Ms Adelore, as Director of Legal Services, instructed Mr Shasore SAN to pursue a settlement with P&ID. Mr Shasore SAN wrote to the Tribunal, on Ms Adelore's instruction, asking it to "suspend" the arbitration while Nigeria pursued a settlement. Ms Adelore, Mr Oguine and Mr Shasore SAN met to discuss a forthcoming settlement meeting. On 20 and 21 November 2014 Mr Shasore SAN, Ms Adelore and Mr Oguine travelled to London to attend a settlement meeting with P&ID. This was attended by Mr Cahill, Mr Andrew and Mr Adebayo on behalf of P&ID.

280. P&ID made a settlement offer of US$1.5 billion. The parties agreed on 28 November 2014 an extension of 14 days for the Tribunal to consider P&ID's application for a peremptory order. The same day, Mr Shasore SAN, Ms Adelore and Mr Oguine met to discuss the settlement offer from P&ID.

281. Their contemporaneous description, which I accept, of what had happened was that "after considerable debate" and "in view of the valid arguments made by the [Ministry] team", P&ID had reduced its offer from US$3.5 to 1.5 billion. A report of the meeting between Nigeria and P&ID was drafted by Nigeria under the names of Ms Adelore and Mr Oguine. The report included an account of a post negotiation meeting of the Nigeria team on 28 November 2014, and a recommendation of settlement at US$1.1 billion.

282. By 28 November 2014 P&ID had obtained a copy of the report, including the recommendation. On 29 November 2014, Mr Adebayo sent a copy to Mr Cahill and Mr Andrew. In this way another of Nigeria's Internal Legal Documents was retained by P&ID. It allowed P&ID to see the following internal treatment by Nigeria's legal team, including an appraisal of the offer of US$1.5 billion that P&ID had made and the recommendation of settlement at US$1.1 billion by Nigeria:

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> "Post-Negotiation Meeting
>
> The [Ministry of Petroleum Resources] Team comprising of Mrs … Adelore – Director Legal, [Ministry of Petroleum Resources]/ representative of [the Attorney General], Mr Ike Oguie – Secretary to the Corporation, NNPC and Mr … Shasore, SAN – Lead External Counsel to [the Ministry of Petroleum Resources] met on Friday 28th November, 2014 to deliberate and consider the offer of U.S.$1,500,000,000 … as full and final settlement. The P&ID has conveyed same officially along with Draft Deed of Settlement which both parties upon approval shall submit to the Arbitral Tribunal. …
>
> Recommendation
>
> 26. In our view, the proposal of $1.5 billion made by P&ID is within the range which that could have been awarded by the Arbitral Tribunal if [the Ministry of Petroleum Resources] had contested at the least the quantum of damages claimed by P&ID. To that extent, it is a reasonable offer.
>
> 27. However the team believes that even though P&ID stated that the proposal is their final offer, there is room to reduce it further. An amicable settlement would increase P&ID's chances of the amount of settlement being paid within a reasonable time as opposed to there having to try to enforce a judgement against government. There are many potential impediments to such enforcement so P and ID is in a much better position if both sides reach an amicable settlement.
>
> 28. In our view the advantage of an amicable settlement over trying to enforce a contentious judgement, with the possibility of [the Ministry of Petroleum Resources] seeking to set aside the arbitral award, is a good reason to seek a further reduction from P&ID.
>
> 29. The team therefore recommends that [the Ministry] seek a further reduction of P&ID's final offer from $1.5 billion to $1.1 billion allowing for taxes, salaries and wages for five years in-action [sic]."

283. Settlement at that figure was recommended internally to the Ministry of Petroleum Resources by Ms Adelore, and by Mr Oguine to the NNPC. On 11 December 2014, on the Ministry's instructions, Mr Shasore SAN requested a further extension of the negotiation period to 9 January 2015, as the legal team had "yet to receive clear and approved instructions". P&ID agreed, subject to conditions. On 18 December 2014 Mrs Grace Taiga sent a WhatsApp message to Mr Cahill stating:

> "Papa released d good news of the commencement of settlement sometime ago and was hoping to spend d Christmas hols in London!"

284. There was no settlement.

285. On 27 February 2015 Mr Shasore SAN served a Defence on behalf of Nigeria. P&ID's Reply followed on 6 March 2015.

286. Mr Shasore SAN wrote to the Attorney General, the Ministry and NNPC on 10 March 2015 with this advice:

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> "Notwithstanding our line of defence, the Federal Government is still liable for failure to supply the requisite gas owing to the fact that the ownership of all crude oil, natural gas and their products and derivatives are vested in [Nigeria] through the NNPC. In addition, gas was never appropriated from OML 67, OML 123 or from any other source as agreed to by [Nigeria] in the GSPA."

He requested information and responses in relation to the Reply and documents which might support Nigeria's defence. On 7 April 2015, P&ID received a copy of the letter of advice, another of Nigeria's Internal Legal Documents retained by P&ID. Mr Shonibare, Mr Adebayo's employee, forwarded a copy to Mr Cahill.

287. By its Procedural Order No.7, the Tribunal required Nigeria to serve any further documents and other evidence in relation to liability by 17 April 2015. On 14 April 2015 Mr Shasore SAN wrote to the Attorney General requesting his "urgent intervention in order to ensure that all documentation and evidence required in support of Ministry's Statement of Defence is provided to us" by the deadline.

288. The day before the deadline set by the Tribunal, on 16 April 2015, Mr Oguine wrote to Mr Shasore SAN and Ms Adelore, Director of Legal Services at the Ministry of Petroleum Resources, setting out proposals for the conduct of the Arbitration, including paying the outstanding costs, seeking to locate an appropriate witness to give evidence in relation to liability, and instructing an expert to contest P&ID's case on quantum. The next day Twenty Marina Solicitors forwarded Mr Oguine's email of 16 April 2015 to the Attorney General, saying the Ministry was in "grave need of evidence, documents and witnesses" and seeking "instructions on this very urgent matter".

289. Twenty Marina Solicitors sought a three month extension of time from the Tribunal for Nigeria's evidence, to 17 July 2015, citing the difficulty of tracing witnesses and the change of government. The Tribunal responded 5 days later with Procedural Order No.8, extending the deadline for Nigeria to serve its evidence to 1 May 2015 only, and inviting the parties to list a procedural conference to discuss "bifurcation and any other matters the parties wish to raise".

290. On 23 April 2015 the Solicitor General, Mr Abdullahi Yola, requested that the Ministry provide appropriate responses and furnish documentation in good time to enable counsel to prepare Nigeria's defence. By an annotation to the letter, the Minister of Petroleum Resources directed that all necessary and relevant documents be provided to Mr Shasore SAN by 27 April 2015, and also referring to a directive of 1 April 2015 from her that a negotiated settlement should be pursued while preserving the legal defence. On 27 April 2015, the letter of 23 April 2015 from the Solicitor General to the Minister, as annotated by the Minister, was provided to P&ID. Mr Adebayo forwarded it to Mr Cahill. In this way P&ID retained another of Nigeria's Internal Legal Documents.

291. On 22 April 2015, Ms Adelore wrote to Mr Shasore SAN and Mr Oguine, identifying 8 potential factual witnesses, including Mr Tijani, and asking NNPC to recommend a "world-class and credible expert". On 24April 2015, Mr Oguine forwarded to Dr Ige of NNPC the message from Ms Adelore to ask which of the potential witnesses were still "within the system". Dr Ige said that he was the only one left and said that he recalled preparing a note in the past. Also on 29 April 2015 Mr Shasore SAN sent Mr Oguine a

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draft witness statement and asked him to identify a NNPC official who would be able to provide similar evidence. On 4 May 2015 Nigeria served the witness statement of Mr Oguine. Mr Oguine would leave office as General Counsel of NNPC later that month.

292. Meanwhile Mr Shasore SAN invited Mr Andrew on 28 April 2015 to a settlement meeting in Abuja. Mr Andrew said that he would be unable to attend the meeting, but that Mr Adebayo would attend in his place, and that Mr Adebayo had "full authority" to negotiate a settlement on behalf of P&ID at such meeting. The settlement meeting was held the next day at Ms Adelore's office in the Ministry. It was attended by Mr Adebayo and a Mr Alexander Atta for P&ID, and by Ms Adelore, Mr Oguine and two representatives of Mr Shasore SAN for Nigeria. P&ID offered to settle at US$850 million.

293. After the meeting, on 30 April 2015 Ms Adelore recommended to the Ministry that an offer of US$ 850 million by P&ID be accepted based on Nigeria's "weak" defence. A letter dated 6 May 2015 from her to Mr Shasore SAN said:

> "2. … I have been directed to request you to immediately propose to P&ID, a further mediated review of a figure below $500 million and in line with our discussion you may wish to propose $400 million.
>
> 3. In addition, P&ID is to also provide a realistic payment schedule in view of the fact that this Administration is winding down and the incoming Government will require ample time to consider the matter."

The letter was plainly subject to legal professional privilege. The same day a copy of the letter was received by P&ID. Mr Adebayo's employee, Mr Shonibare, sent copies to Mr Cahill and Mr Andrew. Mr Smyth also sent a copy. P&ID retained another of Nigeria's Internal Legal Documents.

294. An offer to settle at US $400 million was made by Nigeria and rejected by P&ID. Ms Adelore so advised on 7 May 2015. She referred the Permanent Secretary at the Ministry to the witness statement that had been prepared in the Arbitration, saying that it was:

> " …to the effect that the Ministry entered into the [GSPA] with [P&ID] on the mistaken belief that gas was available".

She added:

> "This line of defence, as feeble as it will appear, was adopted in the absence of a better line of defence".

The same day photographs of Ms Adelore's advice were received by P&ID, and retained as another of Nigeria's Internal Legal Documents.

295. The Permanent Secretary added a note on 7 May 2015 for the Minister of Petroleum Resources. This included this warning:

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> "Without prejudice to legal arguments, one of my concerns on this matter is that Process & Industrial Developments (P&ID) Ltd is just one of the companies with such liabilities; former Minister Lukman signed Agreement with two Investors while the current Minister has signed with six Investors. In Nigeria, an extremely good initiative has been undermined by un-intended circumstances - making wet gas available for power generation has become a sore vexed matter as production is constantly compromised and thwarted by vandalization. Despite the huge resources at Egbin, Afam, etc Power Plants; domestic power generation is at the mercy of uninterrupted supply of gas which cannot be guaranteed."

296. The Tribunal held a Case Management Conference by telephone on 6 May 2015. It ordered by consent in its Procedural Order No.9 that Nigeria must within 48 hours serve a:

> "statement of any primary facts alleged in the evidence of Mr Michael Quinn which are challenged and of any other facts alleged to be relevant to the question of liability".

297. By now Mr Michael Quinn was dead, although Mr Shasore SAN and the Tribunal did not know that (it was first revealed at the hearing on liability in July 2015). In response to Procedural Order No. 9, on 12 May 2015 Mr Shasore SAN served a short statement on behalf of Nigeria identifying six issues that Nigeria intended to challenge.

298. The short statement read:

> "[Nigeria] does not admit and challenges the following factual assertions:
>
> 1. [P&ID] became aware in 2008 that the Nigerian Government had initiated the building of a pipeline from [field] OML 123 to Calabar (the Adanga Pipeline) (paragraph 50-57 of the Witness Statement of Michael Quinn (MQ).
>
> 2. The Lagos area was initially regarded by [P&ID] as an attractive location for the project and [P&ID] had envisaged that it might build the Gas Processing Facilities in the Lagos area (paragraph 44-50 of MQ's Witness Statement).
>
> 3. The GSPA was entered into for the purpose of taking Wet Gas free of charge from [Nigeria]/the delivery of Wet Gas by [Nigeria] to [P&ID] (paragraph 65, 67 & 101 of MQ's Witness Statement).
>
> 4. The [Nigeria] Government had access to unlimited supplies of Natural gas in the vicinity of Calabar (paragraph 103 of MQ's Witness Statement). See paragraph 3 of Ikechunwkwu [sic] Oguine's Witness Statement.
>
> 5. Phase 1 was planned to take two years to implement after the grant of necessary approvals by the [Nigeria] Government (paragraphs 66 of MQ's Witness Statement).
>
> 6. [Nigeria] was obliged to deliver the wet gas free of charge to [P&ID's] project site (alleged in paragraph 65, 66 & 67 of MQ's Witness Statement.
>
> [Nigeria] reserves all rights."

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It would become apparent at the hearing on liability before the Tribunal that notwithstanding this document, Mr Shasore SAN intended to cross examine Mr Michael Quinn far more widely across his witness statement. However by that date Mr Michael Quinn was dead.

299. On 18 May 2015, the Minister of Petroleum Resources, Ms Alison-Madueke, wrote to President Jonathan seeking his approval of settlement at a figure of US$ 850 million, the figure that P&ID had proposed in late April. The President, who would leave office imminently, to be succeeded by Mr Muhammadu Buhari, made a manuscript annotation in these terms:

> "I cannot approve at this time. Pls […] for the incoming govt to consider".

300. On 26 May 2015, "Saheed Akanji" provided a copy to Mr Cahill of the 18 May 2015 letter that the Minister had written to the President. A copy was also sent to Mr Adam Quinn. P&ID retained another of Nigeria's Internal Legal Documents.

301. An individual at the Ministry suggested that Mr Shasore SAN seek an adjournment to enable the new government to be briefed. Mr Shasore SAN advised that there was little prospect of obtaining an adjournment given the prior:

> "repeated requests for adjournments on account of the paucity of information from the ministry and our inability to obtain responses to various requests for documents and facts".

He further stated that:

> "Notwithstanding the foregoing, we have put forward the best defence in the circumstances".

302. On 25 May 2015 P&ID lodged with the Tribunal its written argument on liability, in the name of Mr Andrew. This contended, based on six facts identified by Mr Shasore SAN, that no relevant facts were in dispute. Mr Andrew wrote:

> "The circumstances in which [P&ID] came into contact with Government of Nigeria are set out in the Witness Statement of Mr Michael Quinn …",

referring to paragraphs 53-101. He also wrote that P&ID:

> "relie[d] on the fact that, as late as mid-2012, the precise nature and location of the Gas Processing Facilities which [P&ID] would have to construct had not been finally determined."

303. On 28 May 2015 Nigeria lodged its written argument in response on liability. P&ID lodged a reply written argument on liability on 31 May 2015.

304. The oral hearing on liability took place before the Tribunal on 1 June 2015. The hearing lasted half a day. Mr Andrew appeared for P&ID and Mr Shasore SAN appeared for Nigeria. He had got off the plane from Nigeria only that morning.

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305. Of course, P&ID's position was that it had claimed repudiatory breach by Nigeria for the fact that Nigeria had not complied with its obligations under Article 6 of the GSPA. But the argument for Nigeria saw no reference to the question whether Nigeria could as readily have claimed repudiatory breach by P&ID for the fact that P&ID had not complied with its obligations under Article 7 of the GSPA, read with 3a and 3b. The hearing saw no discussion of the question whether the law of contract today would treat this situation in a different way to simply asking itself who asserted first that they accepted the other's failure as repudiatory. Of course Nigeria's side of that argument would face many challenges, but if ever there was a case where the economic consequences called for the most searching analysis this was it.

306. On 12 June 2015 Nigeria served a post-hearing written submission in response to P&ID's reply written argument. This included a focus on a contention from Nigeria that P&ID should have dealt with the Ministry of Energy throughout and not the Ministry of Petroleum Resources. Nigeria also asserted, contrary to the fact, that its statement of disputed facts had challenged "essentially all facts alluded to by Michael Quinn in his witness statement". It noted that the schedule of works intended to form "schedule B" (in fact, Exhibit B) to the GSPA had not been omitted from the documents that Mr Michael Quinn had exhibited to his witness statement.

307. The Tribunal issued the Award on Liability on 17 July 2015. I think it is desirable and necessary to use the Tribunal's words where I can below. The same will apply when I reach the Final Award, and especially with the oral argument before the Tribunal at the hearing leading to that Final Award.

308. The liability stage of the Arbitration and the Award on Liability was to be summarised in this way by the Tribunal itself in its later Final Award:

> "E. THE FINDINGS ON LIABILITY
>
> 29. Before considering the quantification of the Government's liability, it is necessary to be clear about the findings made by the Tribunal in its second Partial Final Award [the Award on Liability]. The evidence for P&ID at that stage consisted of a statement by Mr Michael Quinn dated 10 February 2014, the then chairman of P&ID, who died before the hearing on 1 June 2015. He gave account of what had happened after the signature of the GSPA:
>
> [The Tribunal then set out substantially the whole of paragraphs 102, 103, 109 and 110 of Mr Michael Quinn's witness statement: these have been set out earlier in this judgment, at [234]].
>
> 30. The Government did not thereafter do anything to comply with its obligation under Article 6 b) of the GSPA to –
>
> "ensure that all necessary pipelines and associated infrastructures are installed and all requisite arrangements with agencies and/or third party are in place to ensure that supply and delivery of Wet Gas in accordance with Article 3 so as to facilitate the timely implementation of gas processing by the GPFs as provided for in this Agreement."

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31. The Government's obligation under Article 3c. was to make available 400 MMSCuFD Wet Gas at the P&ID Calabar site boundary. By Appendix A it undertook to deliver a continuous supply of 150 MMSCuFD by the last quarter of 2011 and the remaining 250 MMSCuFD by the third quarter of 2012.

32. There followed discussions about the implementation of the Government's obligations but nothing came of them. The Government has never performed any of its obligations under Article 6 b). A compromise solution involving a possible variation of the GSPA was discussed but these negotiations were broken off in August 2012. P&ID served a Request for Arbitration but did not at that stage terminate the P&ID. On 20 March 2013 P&ID wrote to the Government saying that it treated the Government's continued failure to perform its obligations as a repudiation of the GSPA and accepted it as such.

33. By Procedural Order No 9 dated 6 May 2015 the Tribunal directed that the proceedings should be bifurcated and that there should first be a hearing on the question of liability and thereafter, if P&ID were successful, a hearing on damages. It directed the Government to serve "a statement of any primary facts alleged in the evidence of Mr Michael Quinn which are challenged and any other facts alleged to be relevant to the question of liability."

34. On 12 May 2015 the Government served a statement of the facts in Mr Quinn's statement which it challenged. None of them were the facts recited in paragraph 29 above [i.e. those at paragraphs 102, 103, 109 and 110 of Mr Michael Quinn's witness statement]. P&ID elected not to put in any further evidence and not to rely upon any of the challenged matters so far as they were denials of facts.

35. In its Part Final Award dated 17 July 2015 [the Award on Liability] the Tribunal dealt with a number of defences raised on the part of the Government which are not now relevant. However, a good deal of attention was given in submissions to the fact that P&ID had not actually acquired ownership of the designated site or built any of the gas processing facilities. The written submissions of Mr Olapo Shasore, then counsel for the Government, submitted that the failure of P&ID to acquire the site and build the GPFs was a "fundamental breach" and that no gas could be delivered until this had been done.

36. The Tribunal's finding on this point was that the Government's obligations under Article 6 b) were not conditional upon P&ID having constructed the GPFs:

"It would have been commercially absurd for P&ID to go to the expense of building GPFs when the Government had done nothing to make arrangements for the supply of the Wet Gas."

37. Mr Shasore also advanced a modified version of this argument, saying that P&ID should at least have acquired a site so as to enable the Government to identify the "site boundary" to which the Wet Gas should be delivered. The Tribunal said that this took the matter no further than the first version of the argument:

"Of course the Government could not actually deliver gas until there was a Site and, as we have said, until there was a plant to receive it. But that does not excuse the Government's failure to comply with 6 b). There is no suggestion that its failure to comply with these obligations was caused by uncertainty as to where the Site

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> was going to be. It was assumed by everyone that it would be on the land allocated in Calabar."
>
> 38. After dismissing the other defences, the Tribunal found that the Government had repudiated its obligations under the GSPA and that P&ID had been entitled to accept the repudiation and claim damages for breach.
>
> F. REPUDIATION AND ITS CONSEQUENCES
>
> 39. The effect of the acceptance by one party of the other party's repudiation is that the primary obligations of both parties (on the one hand, to supply gas, on the other, to process it) are discharged and come to an end. But the contract "remains alive for the awarding of damages either for previous breaches or for the breach which constitutes the repudiation." Thus any obligations which P&ID had to buy the site, build the GPFs, etc. came to an end when the repudiation was accepted. There is no claim that either party committed any breach before the Government's repudiation. The present question therefore is only the damage suffered by P&ID by reason of the Government's refusal to perform the contract."

309. In the Award on Liability itself the Tribunal found these facts in the section of its Award entitled "Events subsequent to the GSPA" (with footnote references to paragraphs 121, 123, 126, 130 and 149 of Mr Michael Quinn's witness statement)

> "38. The following account of events which followed the signature of the GSPA is again taken from the uncontested parts of the affidavit [sic] of Michael Quinn:
>
> (a) In March 2011 Mr Quinn was informed that Addax was unwilling to supply more than 100 MMSCuFD as it needed 50 MMSCuFD for reinjection to maintain pressure. Mr Quinn wrote to NNPC proposing variation by which P&ID would receive the 150 MMSCuFD of wet gas from the Addax field and return 50 MMSCuFD of *lean gas* to Addax for reinjection. It would thereby still be able to secure the NGLs from 150 MMSCuFD.
>
> (b) This proposal was not acceptable to NNPC, which suggested instead that P&ID should be supplied with gas from a non-associated gas field. As such gas would not yield NGLs, the proposal was that P&ID should instead be paid for the lean gas supplied to the Government.
>
> (c) P&ID was in principle willing to enter into such an arrangement but negotiations progressed slowly.
>
> (d) Addax (on whose OML the associated gas would be found) was at first willing to agree but in June 2012 withdrew its support.
>
> (e) On 27 July 2012 Mr Quinn wrote to the Government saying unless a formal amendment had been agreed and executed by 10 August 2012, the offer to amend the GSPA would be withdrawn. No formal amendment was executed.
>
> (f) On 22 August 2022 P&ID delivered the Request for Arbitration."

(It will be recalled that it was on 20 March 2013 that P&ID stated that it accepted Nigeria's repudiatory breach of the GSPA.)

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310. This discussion by the Tribunal is included in the Award on Liability:

> "(d) Did the Government not have to do anything till the GPFs had been built?
>
> 63. Mr Shasore submits that the Government had no obligation to deliver gas until there was a plant to receive it. That, no doubt, is true, but the Government's obligations were not confined to the delivery of gas. By Article 6b) it was also obliged to –
>
> > "ensure that all necessary pipelines and associated infrastructures are installed and all requisite arrangements with agencies and/or third party are in place to ensure the supply and delivery of Wet Gas in accordance with Article 3 so as to facilitate the timely implementation of gas processing by the GPFs as provided for in this Agreement."
>
> 64. There is nothing in the GSPA to suggest that these obligations were conditional upon the completion by P&ID of the construction of the GPFs. It would have been commercially absurd for P&ID to go to the expense of building GPFs when the Government had done nothing to make arrangements for the supply of the Wet Gas.
>
> 65. In his oral argument and written Final Submission, Mr Shasore put forward a modified version of this argument. Article 3(c) said that the Government was to deliver the gas at "the Site Boundary". The "Site" was defined as "the land at Calabar on which the GPFs are located". Mr Shasore says that the Government could not have complied with this obligation until P&ID had a site. It had, it is true, been allocated and offered a site but had not yet bought it. So there was no possibility of compliance with an obligation to deliver to the Site boundary until P&ID has a Site.
>
> 66. We think this argument takes the matter no further than the first version. Of course the Government could not actually deliver gas until there was a Site and, as we have said, until there was a plant to receive it. But that does not excuse the Government's failure to comply with 6 b). There is no suggestion that its failure to comply with those obligations was caused by uncertainty as to where the Site was going to be. It was assumed by everyone that it would be on the land allocated in Calabar."

311. Articles 2, 3a, 3b and 7a (the latter including a reference to "best endeavours", as noted at [153] above), and 8, referred to the obligation on P&ID to build the GPFs (see [143], [144], [149] and [150] above). As seen in the discussion by the Tribunal in the Award on Liability, the Tribunal found that:

> "It would have been commercially absurd for P&ID to go to the expense of building GPFs when the Government had done nothing to make arrangements for the supply of the Wet Gas."

The Tribunal had accepted ("That, no doubt, is true") the argument by Mr Shasore SAN for Nigeria that "the Government had no obligation to deliver gas until there was a plant to receive it". But it used its finding about what "would have been commercially absurd" to support its conclusion that:

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> "There is nothing in the GSPA to suggest that these obligations [a reference to Nigeria's obligations under Article 6b), not, I think, Article 6a)] were conditional upon the completion by P&ID of the construction of the GPFs".

For the terms of Article 6a) and 6b), please see [148] above.

312. I admit that I do not find it easy to follow, even in the classic setting of one party having accepted as repudiatory the conduct of another, how the Tribunal identified the sequencing of obligations with the apparent confidence it did. (I should mention that elsewhere in the short argument before the Tribunal there was limited and unfruitful reference to the role of the Joint Operation Committee).

313. But it is not for me as a Judge of the Court where the parties have chosen arbitration to resolve their dispute, to decide the merits of the dispute. That task and responsibility has been given by them to the Tribunal. I am also acutely aware of the distinction and experience of the Tribunal in this case. But I do have to look at what was argued and what was not argued, because this is said to have been affected by corruption including of Nigeria's lawyers.

314. It is very clear that the Tribunal had met with many, and many inexcusable, delays and failures properly to engage, all on the part of Nigeria. Of course it is understandable that the Tribunal should manage the Arbitration firmly in response. But looking at things as they were, by the point of the Award on Liability in my judgment these questions stand out:

(1) Why was the GSPA so brief? On the face of things, this attracted no discussion from the Tribunal. Of course commercial parties are entitled to contract in the detail they choose. But the skeletal terms of the GSPA are truly striking in the context of a multi-billion dollar long term project of national significance. Arcadia's reaction when it saw it was a "Project Scoping Document" rather than a Gas Processing Contract.

(2) If the Tribunal's conclusion on liability was correct, how did Nigeria come to agree a GSPA in such catastrophic terms? The Tribunal's finding was that the Government's obligations under Article 6 b) were not conditional upon P&ID having constructed the GPFs. How did Nigeria come to allow itself to agree obligations that were not conditional in that way, especially where, as the Tribunal itself said, reflecting a submission of Mr Shasore:

> "Of course the Government could not actually deliver gas until there was a Site and, as we have said, until there was a plant to receive it".

(3) On what it had been told, the Tribunal found itself expressing the view that:

> "[i]t would have been commercially absurd for P&ID to go to the expense of building GPFs when the Government had done nothing to make arrangements for the supply of the Wet Gas."

Why was Nigeria not arguing, or arguing more forcefully, that the reverse also required consideration as part of the process of interpretation of the GSPA? The point is further reference above. I am left wondering how the Tribunal would have

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answered the question (if it could be persuaded of its relevance) whether it was also commercially absurd for the Government to instal pipelines and associated infrastructure and make arrangements when P&ID had not built the GPFs?

(4) I fully appreciate that P&ID was the one to allege and accept repudiatory breach first. But I question whether there is no room for argument that the law of damages today (and then) requires more than a race between the parties with a contract of this importance framed with such brevity.

(5) Given the vast sums of public money at issue why was Nigeria struggling to meet deadlines and bring forward evidence, factual and expert?

315. What is now clear is that there was something very wrong, although not in all the respects alleged by Nigeria before me.

316. If the Tribunal had known of bribes around the time of the GSPA the entire picture would have had a different complexion. And so too if the Tribunal had known that Nigeria was not, during the Arbitration process itself, enjoying confidentiality of advice within the legal professional privilege to which it was entitled.

317. Further the Tribunal did not know that Mr Michael Quinn's evidence was knowingly false in representing that "all the project finance was in place" and that (for the GSPA rather than Project Alpha in 2008) "90% of the engineering designs had been completed".

The quantum stage of the Arbitration (2015-2017)

318. The quantum stage of the Arbitration lasted from 17 July 2015 to the Final Award on 31 January 2017.

319. On 15 and 30 June 2015 Ms Adelore advised the Permanent Secretary that it was crucial that the Ministry of Petroleum Resources engaged an expert on quantum and suggested that NNPC be asked to pay the costs. She wrote the following month to the Permanent Secretary outlining potential defences on quantum and proposing that, to avoid the costs of external experts (PwC was named), Nigeria should rely on its own internal experts. Ms Adelore forwarded her advice to the Solicitor General and the Ministry of Justice, seeking instructions on how to proceed.

320. The professional services firm PwC had provided an estimate to Nigeria for the cost of providing expert evidence on quantum. In August 2015 Mr Shasore SAN contacted other potential experts on quantum, Mr Farouk Gumel (formerly of PwC) and KPMG. KPMG provided an estimated cost. Mr Gumel advised that he did not have enough information to provide an estimated range of loss because "all the available information you have given me is one sided i.e. coming from the claimant and the arbitrator. I have not seen anything from the [Nigeria] side".

321. But at the heart of the problem over any form of expert evidence was the question of paying to obtain it. The position did not improve, despite the enormous stakes for Nigeria. NNPC informed Ms Adelore in August 2015 that, for its part, it was not willing to pay Twenty Marina Solicitors' remaining fees or the outstanding arbitration costs owing because it did not have the resources in its budget to do so. On 2 September 2015

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Ms Taiye Haruna, by then Permanent Secretary at the Ministry of Petroleum Resources, wrote to NNPC explaining that the Ministry could not meet the costs of the arbitration and asking NNPC to pay the outstanding fees and expenses.

322. Another unsuccessful settlement meeting took place in London. This was attended by Mr Andrew, Mr Burke KC, Mr Ashley Booker (a solicitor and consultant and colleague of Mr Andrew) and Mr Adebayo for P&ID. For Nigeria, Mr Shasore SAN and a Ms Safiat Kekere-Ekun attended. Ms Kekere-Ekun was a lawyer at Ajumogobia & Okeke, the law practice to which Mr Ajumogobia SAN returned in 2011 after his term as Minister of State for Petroleum Resources. I have described earlier in this judgment his involvement at the time of the entry into the GSPA.

323. With a Case Management Conference in the Arbitration scheduled for 28 September 2015, Mr Shasore SAN wrote to Ms Adelore, saying Twenty Marina Solicitors had not received any instructions and could not proceed. On the day itself Twenty Marina Solicitors wrote to the Tribunal seeking an adjournment of the Case Management Conference. The grounds included that no government was in place in Nigeria. The Case Management Conference proceeded in Nigeria's absence.

324. A month later, on 26 October 2015, Twenty Marina Solicitors wrote a lengthy letter of advice to Ms Adelore, copied to the Vice President of Nigeria and the Solicitor General. This advised that the Ministry should challenge the Award on Liability before the English courts, and appoint a top-tier firm of English solicitors for that purpose. With reference to section 68, the letter advised: "The tribunal also failed to consider [Nigeria's] submission that no land till date has been allocated to [P&ID] and the fact that Wet Gas or the pipeline for the supply of the Wet Gas cannot be installed or supplied to bare land, particularly when such land has not been allocated and when gas Processing facilities have not yet been constructed."

325. The letter of advice was obviously one of Nigeria's Internal Legal Document and privileged. Notwithstanding, on 10 November 2015, Mr Adebayo sent to Mr Cahill, copied to Mr Andrew, at least the first 9 pages of the letter of advice. A copy also reached Mr Burke KC, and (from Mr Adebayo) Mr Mohammed Dele Belgore SAN, another Nigerian lawyer by now instructed by P&ID in the arbitration, and Mr Adebayo's brother in law.

326. Mr Abubakar Malami SAN was appointed Attorney General of Nigeria, and Minister of Justice, on 11 November 2015.

327. On 4 December 2015, P&ID served expert evidence on quantum in the Arbitration. This was in the form of the first expert report of Berkeley Research Group. For Nigeria, on 30 November 2015, Ms Adelore had again written on the subject of expert evidence, this time to the Permanent Secretary. She had advised that Presidential approval be sought for the engagement of experts on quantum. Her advice did not resolve the matter. Twenty Marina Solicitors reminded her that Nigeria's evidence on quantum was due by 15 January 2016. They sought formal instructions to engage KPMG as experts.

328. Nigeria approached English solicitors, Stephenson Harwood LLP, for their opinion. English Leading Counsel, Mr Roderick Cordara QC (now KC) became involved. The combination of Stephenson Harwood and Mr Cordara KC was one of very considerable

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expertise and experience. A conference call between Stephenson Harwood, Mr Cordara QC and Mr Shasore SAN took place in December 2015.

329. Mr Cordara QC advised by email that the evidence needed was or included:

> "Straight accountancy re net present value of capital sum that they claim, and other figure work, interest rates, currency movements, etc etc.
>
> Oil/gas market evidence (downstream) which will go to loss of profit alleged, which flows into past and future income streams, markets (past and future), likely destination of cargoes, shipping costs, competitive sources of product etc., etc - hopefully to show that the venture was not going to make very much money. (That said, it may have been such a sweet heart deal that they would have made a profit anyway - but let's see).
>
> Oil/gas production evidence (upstream): capital and running costs of the plant, of 70k pipeline - and how MPR could have increased those (perhaps) by sourcing the gas from awkward and distant points.
>
> Their whole case is a loss of a chance case, and such cases can be pulled apart, if good experts are involved.
>
> As part of the process, we may well need fuller disclosure from claimant of their plans and costings."

330. On 17 December 2015 Mr Shasore SAN wrote to President Buhari informing him that the Ministry had not yet approved the instruction of KPMG and other experts. The Tribunal made, by consent, a Procedural Order No.11, requiring further written statements from each of P&ID and Nigeria setting out their case in relation to the amount of damages to which P&ID was entitled. Nigeria was also by 11 March 2016 to serve all documents and evidence upon which it intended to rely in relation to the amount of damages. The parties agreed that Nigerian law should be treated as a question of law and was not required to be proved as fact, although the parties were to be permitted to adduce written submissions of Nigerian law.

331. Mr Shasore SAN wrote to Dr Emmanuel Kachikwu, who had become Minister of State for Petroleum Resources, seeking approval for the instruction of Stephenson Harwood and KPMG. On 6 January 2016 Stephenson Harwood advised Mr Shasore SAN that the Ministry needed to be putting significant resources into the quantum stage so that it put up the strongest experts and defence possible. On 28 January 2016, Twenty Marina Solicitors wrote to Ms Adelore, copying Mr Malami SAN as Attorney General and Dr Kachikwu, advising that it was crucial to engage the services of industry experts and seeking instructions to do so without delay.

332. Ms Adelore also wrote to Mr Malami SAN to the same effect and suggested that NNPC be asked to pay the cost. She also asked the Permanent Secretary to seek Dr Kachikwu's approval for the engagement of experts to prepare reports on quantum. On 4 February 2016, Mr Shasore SAN wrote to Ms Adelore, copying Mr Malami SAN, and to Dr Kachikwu listing experts recommended by Stephenson Harwood.

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333. Meanwhile on 23 December 2015 Nigeria applied to the Commercial Court in England and to the High Court in Nigeria. In England, before the Commercial Court, its application was to set aside the Award on Liability under section 68(2)(d) and (f) of the Arbitration Act 1996. These provisions are set out in full in the Annex; they refer to "failure by the tribunal to deal with all the issues that were put to it" and "uncertainty or ambiguity as to the effect of the award".

334. The grounds may be summarised as follows. First, that there was an internal inconsistency on whether there was a breach of the obligation to deliver gas under Article 6(a) or only a breach of the obligation to ensure that all necessary pipelines and associated infrastructures were in place under Article 6(b). Second, that a defence of actual (factual) authority had not been dealt with or distinctly dealt with in addition to a defence of legal capacity. Third, that the question whether if there was a breach, it was repudiatory, was not considered or sufficiently considered or reasoned where there was a breach of Article 6(b) alone: here it was contended that where there was no obligation on Nigeria to deliver gas until P&ID had built the plant to receive it, the failure by Nigeria to build infrastructure did not deprive P&ID of its bargain unless and until it built the plant "which it never did".

335. It can be seen that the grounds at least approached the point whether there was an obligation upon Nigeria to deliver gas before P&ID has built GPFs. Nigeria was out of time for its challenge and sought an extension of time. On 10 February 2016 Phillips J (as he then was) as a Judge of the English Commercial Court dealt with the extension of time as a preliminary issue. He dismissed the application, ruling that the proposed challenge had "no merit".

336. Stephenson Harwood had also advised investing time and resources in investigating the background to P&ID, and what its financial resources were. On 1 February 2016 a letter of advice from Stephenson Harwood to Ms Adelore included this advice:

> "Investigation into P&IDs background and finances
>
> Given the offshore structure of P&ID, its apparently small size and lack of significant track record, I would strongly recommend the Ministry to appoint a credible investigations company to carry out investigations into P&IDs history, its financial capabilities and general track record. This may assist the Ministry in the damages stage either directly or indirectly. …"

On 10 February 2016, Mr Adebayo sent to Mr Cahill and Mr Andrew and Mr Belgore SAN photographs of the letter of advice from Stephenson Harwood, one of Nigeria's Internal Legal Documents.

337. On 12 February 2016 P&ID served its written case on quantum in the Arbitration in accordance with the agreed Procedural Order No 11. A few days later Mr Shasore SAN wrote to the Minister of State, Dr Kachikwu, and to Ms Adelore, reiterating Stephenson Harwood's advice on the work that needed to be done. On 4 March 2016 Twenty Marina Solicitors wrote to Dr Kachikwu reminding him that they were yet to receive instructions to engage an expert.

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338. It was at this point that the Economic and Financial Crimes Commission (EFCC), a Nigerian law enforcement agency that investigates financial crimes, opened an investigation into P&ID, in February 2016.

339. On 7 March 2016, Mr Shasore SAN applied to the Tribunal for an extension of time to file the Ministry's case on damages until June 2016, citing delays in obtaining government approval to instruct experts. The Tribunal granted an extension until 8 April 2016. Ms Adelore wrote to Mr Malami SAN, the Attorney General, the next day asking him to approve the engagement of KPMG.

340. Mr Shasore SAN asked Dr Kachikwu, Minister of State at the Ministry of Petroleum Resources, to authorise the instruction of BDO and Delta as experts and to seek funding from NNPC. Mr Shasore SAN emphasised to Dr Kachikwu on 17 March 2016 what he described as the need to:

> "ensure vigilant effective and supportive inter-ministerial co-ordination of this defence…as opposed to the present regime of multiple departments and allocation of responsibilities".

On 21 March 2016 the Minister of State wrote to Mr Malami SAN asking him to approve the engagement of experts and saying that the Ministry was willing to support the sourcing of the fees.

341. On 30 March 2016, Mr Shasore SAN wrote to the Minister of State with a reminder that the Ministry's evidence was due on 8 April 2016 and stating he had not received instructions. The day before the deadline, Twenty Marina Solicitors wrote to Dr Kachikwu with a further reminder that appropriate steps be taken to commission recommended experts. The day of the deadline for any evidence and documents from Nigeria, Mr Malami SAN replied to Dr Kachikwu's letter of 21 March 2016, with approval in principle for the engagement of an expert and the "sourcing" of the fees. On 13 April 2016 Dr Kachikwu asked Mr Malami SAN to take over the supervision and coordination of the matter.

342. The next day Twenty Marina Solicitors wrote to the Minister of State, Dr Kachikwu, informing him that P&ID had invited the Tribunal to issue an immediate award in its favour, and that in the absence of evidence on quantum or further instructions, Twenty Marina Solicitors would be constrained to withdraw from the case. Ms Adelore informed Dr Shu'ara, the Permanent Secretary, that the Ministry of Petroleum Resources could not instruct or pay experts because the Ministry's budget was still pending. She suggested that NNPC be approached to provide funding. Dr Shu'ara wrote to Dr Kachikwu, Minister of State, accordingly.

343. Meanwhile before the Nigerian High Court, Nigeria had applied for orders extending time to set aside the Award on Liability and setting aside or remitting for further consideration all or part of that Award. In its application, dated 24 February 2016, Nigeria submitted that Nigeria not London was the seat of the arbitration. On 5 April 2016, Nigeria made an ex parte or "without notice" application to the Nigerian High Court seeking an order restraining the parties from participating in the Arbitration pending the determination of Nigeria's application of 24 February 2016.

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344. On 20 April 2016 the Nigerian High Court made an order restraining the parties from participating in the Arbitration. But on 26 April 2016 the Tribunal made its Procedural Order No. 12, and this held that the seat of the Arbitration was London, not Nigeria. The Tribunal explained:

> "2. The question of the seat of arbitration was first raised by the Government in its originating motion in the High Court in Lagos on 24 February 2016. It was contested by P&ID and the parties made their submissions to the Tribunal in letters or e-mails dated 8 March 2016 and 11 March 2016 (P&ID) and 11 and 13 March 2016 (the Government). P&ID, before the injunction granted by the Nigerian court, requested that the Tribunal give a ruling on the matter. The Tribunal considers that it must therefore consider the question of the seat of arbitration for the purpose of deciding the future conduct of the arbitration. The Tribunal has the power to determine its own jurisdiction (section 12 of the Nigerian Arbitration Act) and its opinion on the disputed question may also be of assistance to the Nigerian court."

345. On 29 April 2016 Dr Kachikwu, as Minister of State for Petroleum Resources, wrote to President Buhari asking him to approve the Ministry of Justice taking over the case. On 5 May 2016 Nigeria issued an application in the Nigerian High Court to have the Tribunal's Procedural Order No.12 set aside. On 24 May 2016 the Nigerian High Court made orders extending time for Nigeria to apply to set aside the Award on Liability and setting aside and/or remitting for consideration all or part of that Award. Mr Shasore SAN acted throughout for Nigeria. After a further suggestion from Dr Kachikwu, on 15 June 2016 there was a meeting between representatives of the Ministry of Justice, Ministry of Petroleum Resources, NNPC and other ministries. It was decided that Nigeria should seek a retrospective extension of time from the Tribunal to file a defence on quantum in the Arbitration. In June 2016 Mr Malami SAN, as Attorney General of Nigeria, wrote to Lord Hoffmann as the Chairman of the Tribunal explaining that his office had "taken over the handling" of the Arbitration.

346. Ms. Maimuna Shiru, sometime Assistant Director of Civil Litigation, advised Mr Malami SAN to engage KPMG quickly as experts and to consider instructing alternative counsel as "it will be cheaper". She further advised that Mr Shasore SAN had sent a letter on 8 June 2016 stating that he had always liaised with the Ministry of Petroleum Resources and found it unacceptable that he now be asked to liaise with the Ministry of Justice. By the end of June he was disinstructed by Nigeria as its Leading Counsel.

347. On 24 June 2016 the Tribunal issued Procedural Order No.13, providing for a hearing on quantum on 20-22 July and directing Nigeria to serve any evidence on quantum by 8 July. The Tribunal made clear any further delay was not acceptable. On 5 July 2016 PwC advised Nigeria that producing an expert report by the then deadline of 22 July 2016 would be very difficult. On 13 July 2016 the Attorney General wrote to the Tribunal formally appointing Chief Bolaji Ayorinde SAN as Nigeria's counsel.

348. Meanwhile on 16 June 2016, the EFCC submitted a report. It was entitled:

> "Investigation File Extracts: Interim Investigation of capacity of [P&ID] in respect of contract with the Ministry of Petroleum Resources for the conversion of wet gas to lead gas for electricity supply".

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The report stated:

> "3.8 That the process of the award of the contract was significantly hinged on the report of the technical committee of the Ministry of Petroleum resources, who after detailed analysis of P&ID and 8 other companies, certified their competence and capacity for the underlying contract and the Definitive Agreement.
>
> 3.9 That the process of award had the certification and recommendation of the legal unit of the Ministry and that the agreement was signed by the Legal Adviser, Grace Taiga, as a witness to the MoU and the Definitive Agreement."

349. It added at 3.11 that "Focus should be on the underlying transaction if anything", before concluding in these terms:

> "Conclusion and Recommendations of Interim Investigations:
>
> (1)P&ID identified OML 123 and OML 67 operated by Addax and Exxon Mobile under production sharing contracts signed with NNPC as capable of producing the required volume of gas for the project. However, NNPC, Addax and Exxon Mobile were not parties to the Definitive Agreement.
>
> (2)P&ID is not entirely blameless in this matter as there are key gaps noticed in the transaction for which it may be necessary to go beyond their capacity.
>
> (3)It is definite that the award of the contract by the Ministry of Petroleum was a function of the recommendation of the technical committee of the Ministry. While the committee had experts, which should know better, the findings of gaps in the reasons for default by parties might require a further investigation.
>
> (4)The Arbitral panel that adjudicated the matter relied on documents and at face value, it acted in accordance with the law. To investigate the panel might not be expedient for the difficulties of jurisdiction and would prejudice a judicial process.
>
> (5)The team would need to and recommends a further detailed investigation of the circumstances surrounding the award of the contract and the key parties to the transaction."

350. After further exchanges with the Tribunal and P&ID over extensions of time, Nigeria served an interim expert report by 21 July 2016 and a final report by 12 August 2016. The first was 9 pages long (excluding profiles of the authors). The second was 26 pages long (excluding profiles and a glossary). The expert used was Upstream Commercial Advisory, a local Nigerian firm. On 19 August 2016 P&ID served its reply expert report of Berkeley Research Group, adding 35 pages to the 85 pages of its original report (excluding appendices).

351. Written submissions on quantum were produced by Mr Andrew for P&ID dated 22 August 2016, by Chief Ayorinde SAN for Nigeria dated 24 August 2016, and by Mr Andrew in reply for P&ID dated 26 August 2016. Mr Andrew's written submissions to the Tribunal confirmed that the evidential basis of P&ID's claimed losses consisted of

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the witness statement of Mr Michael Quinn and the expert reports by Berkeley Research Group.

352. The hearing on quantum commenced on 30 August 2016, and lasted two days. Expert evidence was called.

353. Chief Ayorinde SAN's oral argument was short. As foreshadowed above, I consider it important and desirable that it is seen substantially in full, together with the exchanges with the Tribunal. It began as follows:

> "CHIEF AYORINDE: My Lord, if I may start from where my learned friend Mr Andrew stopped and which elicited quite a substantial conversation with the members of the parrel, my Lord, the position of the respondent is that there is no evidence at all of a final investment decision.
>
> …
>
> THE CHAIRMAN: What do you mean by "a final investment decision"?
>
> CHIEF AYORINDE: My Lord, that something would have been done outside the signing of the agreement to show that the claimant expects to make profit, expects to –
>
> THE CHAIRMAN: What do you have in mind?
>
> CHIEF AYORINDE: For example, my Lord, there was quite some conversation about building a plant. Your Lordship did contribute by saying, "Oh, they have taken away the cost of building the plant and it may not be necessary to have a white elephant project sitting down somewhere where there is no gas to come in".
>
> THE CHAIRMAN: Yes.
>
> CHIEF AYORINDE: My Lord, I think it goes beyond that. There is simply no evidence of acquisition of the land.
>
> THE CHAIRMAN: No.
>
> CHIEF AYORINDE: Not at all. In fact, what your Lordship has before your Lordship is evidence that the government, another agency of government, actually offered land.
>
> THE CHAIRMAN: Correct.
>
> CHIEF AYORINDE: That is to be found at page 159 of volume 2.
>
> THE CHAIRMAN: I remember. A site was found –
>
> CHIEF AYORINDE: Yes, a site was found.
>
> THE CHAIRMAN: - and they designated it, but they didn't acquire the land.

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> CHIEF AYORINDE: Yes, my Lord. The claimant was asked to come and pay 21 million naira to acquire the land. That 21 million naira was never paid, and we now have a claim for 6 billion. My Lord, apart from the land - so the plant is even far away. No evidence of engineering drawings in preparation for building a plant.
>
> THE CHAIRMAN: No.
>
> CHIEF AYORINDE: My Lord, there is no evidence of offtake agreements for the products that you will have from the plant. They are not showing to this panel some company in Bolivia, in Brazil, in England, willing to take their products. So, the only thing they have – ”

354. Lord Hoffmann interrupted:

> “THE CHAIRMAN: Let's consider the case on the assumption that, on the day after the contract was signed, you wrote them a letter saying, "We repudiate this contract" and at that stage they hadn't done anything, nothing. What would be the position then?
>
> CHIEF AYOR1NDE: My Lord, the position is no different from the position that occurred on the day the claimant considered the contract as repudiated, because even as at that date, my Lord, nothing had been done, and our position would be the same.
>
> THE CHAIRMAN: That's what I mean.
>
> CHIEF AYORINDE: Thank you. my Lord. My Lord, the GSPA provides for a joint operating committee between the parties. There is no evidence of decisions taken. The committee never took off.
>
> THE CHAIRMAN: No.”

355. Chief Ayorinde continued to illustrate that P&ID had done nothing. He ended:

> CHIEF AYORINDE: … My Lord, the best in expenses that the claimants can make claim to may be pre-contractual. where they were proposing to go into this programme like other companies. As of the time they signed the GSPA, they were not entitled -if they had never signed the agreement, they would not be entitled to anything.”

356. Lord Hoffmann asked:

> “THE CHAIRMAN: As a matter of law, Mr Ayorinde, is there any authority for saying that if one party is willing to perform the contract but hasn't actually done anything, and the other party repudiates the contract, it is a condition of the other [sic] party to obtain any damages, any compensation, that he should have spent some money or done anything? Is there any authority for saying that that is a condition?

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> CHIEF AYORINDE: My Lord, between the parties, the locus classicus is Hadley v Baxendale, between the parties, that is the authority that all other cases are premised upon.
>
> THE CHAIRMAN: I don't think that case actually answers the question put to you."

357. CHIEF AYORINDE continued without dealing with the question, taking up a different point:

> "CHIEF AYORINDE: My Lord. I would say that being entitled to damages, the damages will be assessed. That is why this hearing is taking place. Assessment of damages, my Lord, may be, at the extreme, everything they claim or, at the lower end, nominal damages, which your Lordships can decide upon, looking at all the evidence. So I do answer your Lordship in the affirmative, that if there is a breach, there is an entitlement to damages. But it is the quantum that we are talking about here. That is what your Lordship will decide. The quantum of damages, my Lord, following the jurisprudence in Hadley v Baxendale, my Lord, it even goes as far as saying that the respondent or the defendant can even deliberately be in breach. The government can look at the programme and say, "Oh, at this point, our partners have not done anything to be entitled to billions of dollars. Our partners, at this point, can only be entitled to nominal damages", and take a calculated decision to say. "Okay, we are putting a stop to this, but we are willing to pay you nominal damages if you make that kind of claim" So l do agree with your Lordship that –

358. Chief Ojo intervened:

> CHIEF OJO: You agree. If you feel that way. why didn't you make them an offer for the nominal damages before now?
>
> CHIEF AYORINDE: My Lord, there was no claim for that. The claim before your Lordship is for billions of dollars.
>
> CHIEF OJO: What I'm saying is, before this stage, if you feel the way from this submission that you just made. Why didn't you do that much earlier? Maybe we wouldn't have been here now.
>
> CHIEF AYORINDE: Maybe we wouldn't have been here. I do agree with your Lordship. However, my Lord, the point I'm making is that the claim is not for nominal damages. If their claim was for nominal damages, we wouldn't be here.
>
> THE CHAIRMAN: "Nominal damages" means a shilling or a pound or something like that. That is not what we are talking about."

359. Lord Hoffmann asked whether Paragraph 18.1 of P&ID's written submissions "correctly set out the law?". The paragraph read: "the Claimant is entitled to be placed, so far as money can do it, in the same position as he would have been in had the contract been performed." This sequence followed:

> "CHIEF AYORINDE: Yes, my Lord. Paragraph 18(1) states the law under the ambit of the locus classicus, the Hadley v Baxendale case. However, my Lord, that

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case also says that it is what is in the contemplation of the parties. Therefore, my Lord, at the time of the breach — in Hadley v Baxendale my Lord, and your Lordship has that in your Lordship's bosom, the facts and what happened in that case —

THE CHAIRMAN: It must have been in the contemplation of the parties that if you didn't give them any gas, they wouldn't be able to make any NGLs.

CHIEF AYORINDE: Yes, my Lord. My Lord, at that point if we didn't give them any gas, they had nothing to receive the gas in order to make the profit in the billions.

THE CHAIRMAN: That's correct.

CHIEF AYORINDE: That's correct, my Lord. I'm with your Lordship. In the liability hearing, your Lordships were right, very right, to say, "Oh, you are in breach", fine. But with regards to quantum of damages hearing, your Lordship must now consider, as at the time of that breach for which we are liable, were they in contemplation, were they ready with - had they done things to be able to make the kind of profit and claim the damages they are now claiming? My Lord, the answer is no, from our side.

THE CHAIRMAN: Yes."

360. A point was then made by Chief Ayorinde on the pleadings, which proved misconceived. He continued:

"CHIEF AYORINDE: My Lord, the claimant's submissions this morning have been largely based on a review of the experts' reports from both sides. Respectfully, I take a different view, and that is to say that the claimant has woefully failed to clear the first and important hurdle, that it was in the position to make a profit as at the time of the breach. The review of the experts' reports, my Lord, is based on the assumption that the event had happened to entitle the claimant to have damages naturally flowing from the event of the breach, which is after the signing of the GSPA. The question is, has anything happened after that to entitle the claimant to expect such huge amounts in profit? My Lord, at this point, going back to the GSPA, and this is without prejudice to - we cannot even refer to the liability hearing, that is done. The claimant was not even in the position to make any revenue, not to talk of profit, and that was part of my earlier submission with regards to the first step, acquisition of land, not to mention the building of the plant and other things. My learned friend referred to the warranty in the agreement as to obligations of the government and all that. My Lord –

THE CHAIRMAN: Can you tell us, what would have prevented them from acquiring the land and building the plant?

CHIEF AYORINDE: Absolutely nothing, my Lord. In fact –

THE CHAIRMAN: That's what they say.

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CHIEF AYORINDE: They were offered the land. The only evidence before your Lordship –

THE CHAIRMAN: You said there is no evidence that they were in a position to make the profits.

CHIEF AYORINDE: Yes, my Lord.

THE CHAIRMAN: What would have prevented them from making the profits?

CHIEF AYORINDE: My Lord, if they had come before your Lordship and showed your Lordship evidence of acquisition of the land, then they are on the way, they are free to go.—

THE CHAIRMAN: Yes. I see.

CHIEF AYORINDE: That's the point, my Lord.

THE CHAIRMAN: This is the same as your first point, then?

CHIEF AYORINDE: Yes, my Lord. I have referred to the effort by the government to give them the land, an effort which they rejected or which they did not countenance. That is the only evidence before your Lordship.

…

CHIEF AYORINDE: … Article 22, my Lord. My Lord, it says: "Each party represents and warrants that it has the right and authority to enter into this agreement and to perform and observe all of its obligations under this agreement." "Each party". My Lord, your Lordship has found on liability. On quantum of damages, your Lordship, with respect, ought to ask the claimant, "Your responsibilities under this agreement, which one did you meet?"

THE CHAIRMAN: Yes.

CHIEF AYORINDE: Yes, my Lord. It is an important question, because -;

THE CHAIRMAN: Which one do you say they didn't meet?

CHIEF AYORINDE: Everything. They did not acquire land, my Lord. They did not build any plant. They did not prepare to go. Short of signing the agreement –

THE CHAIRMAN: Why was that a breach of contract?

CHIEF AYORINDE: My Lord, at the time of the breach, the respondent had done nothing.

THE CHAIRMAN: Yes.

CHIEF AYORINDE: They were under an obligation to have done a lot of things in order to give effect to this agreement. My Lord, I am not talking about liability now. We are talking about assessing what profit they would have made as at the

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point of the breach. They had nothing to point at that will expect them to have an income for 20 years.

THE CHAIRMAN: Really. Chief Ayorinde, this is a point you have already made at least two or three times.

CHIEF AYORINDE: Yes, my Lord, I come back to it because it is very strong. All the other points I am making. My Lord, always lead back at that point.

THE CHAIRMAN: Right.

CHIEF OJO: You want to tell us you don't want to sow, you want to reap.

CHIEF AYORINDE: You cannot reap where you do not sow. That is a very Nigerian saying. Not even in preparation to reap. My Lord, Sir Anthony did ask the pertinent question with regards to, how would it look at the end of the day when all we have done is to sign a document, and we can't- I mean you have this big award. I mean, my Lord has several decades of experience. I don't know where this would happen.

THE CHAIRMAN: There is a passage in I think it is Shakespeare's Henry VI where one of the rebels says, "Isn't it terrible that people should be able to get into such trouble just by signing a document? Let's kill all the lawyers".”

361. There was, a little further on and while dealing with other matters, one further brief reference to the area from Chief Ayorinde:

“CHIEF AYORINDE: My Lord, if I may refer your Lordship to - I think Sir Anthony also asked the question about tax. My Lord, the issue of tax is regulated by law. Tax is not by agreement. If the government says you pay tax, you pay tax. There is no evidence before your Lordships that the claimant applied for pioneer status in order to be entitled to tax-free years. There is absolutely no evidence. I do not want to be accused of going back to that point, which is they did nothing. They did not even apply for tax status.”

362. Chief Ayorinde made short points about relying on an IEA report for projections of the future price of gas, on tax and tax waiver, on reliance on feasibility studies. After a short adjournment, he concluded his oral argument for Nigeria as follows:

“CHIEF AYORINDE: My Lord, at this point, I wish to just round up my submissions, except if your Lordship wishes to direct any questions of me. My Lord, I just wish to round up and to say that your distinguished panel should decide whether it is reasonable, whether it is just or equitable, for the claimant - having considered all the evidence before this panel, whether the claimant should be entitled to such a colossal sum of money.

Yes, I concede that it is a commercial transaction, but, again, we cannot take out the fact that the government is involved, and that money will have to be paid from taxpayers' money. So at this point, for doing next to nothing, if I may say that, can the claimant be entitled to $6 billion? From my position here, it would be extremely unfair. Thank you.”

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363. Asked then by Lord Hoffmann about expert evidence from Upstream that had proposed a calculation over 3 years rather than 20, Chief Ayorinde said:

> "CHIEF AYORINDE: Your Lordship will see that our position has mainly been to rely on law when it concerns damages, and we have not made heavy weather of the reports, because we believe that the reports come after there has been a decision that the claimant is entitled to damages other than nominal damages.
>
> My Lord, your question brings me to -if I may I refer your Lordship to the author Chitty On Contracts. The 29th edition is the quote I have here, volume 1 at page 1402, paragraphs 24 to 52.
>
> …
>
> It says clearly that, upon discharge, the primary obligation of the party in default is to perform any of the promises made by him, and the remaining unperformed come to an end as this right or obligation to perform them stops to exist. My Lord, the next step is the secondary obligation to pay the other party.
>
> THE CHAIRMAN: That's right.
>
> CHIEF AYORINDE: It only pays the other party a sum of money to compensate him for the loss he has sustained as a result of the failure to perform. My Lord, in answer to your Lordship's question, from the signing of the contract until the repudiation is accepted by the injured party, your Lordship will determine, using quantum meruit, what the injured party is due to be paid.
>
> At that point, the injured party upon acceptance also is not under any obligation to incur any further losses, 'That is where the law of [mitigation] kicks in. Therefore, my Lord, I answer your Lordship in that, yes maybe between the execution and the repudiation there is a period of about three years and it is limited to that, not 20 years. Maybe that is where 17 years goes away."

364. The reference to mitigation prompted this final exchange:

> "THE CHAIRMAN: I have to admit, I have some difficulty in following that. You made reference to mitigation. What do you say they should have done about mitigation?
>
> CHIEF AYORINDE: Yes, my Lord. They have a problem in mitigation because they haven't done anything.
>
> THE CHAIRMAN: What do you say they ought to have done?
>
> CHIEF AYORINDE: My Lord, if they had acquired land and suddenly they see that the other contracting party is not going to go ahead —
>
> THE CHAIRMAN: How would that have mitigated their loss?
>
> CHIEF AYORINDE: They could have sold the land. They could have said, "This is not going on any further. We are not just going to wait here".

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> THE CHAIRMAN: That would have been a zero sum transaction. If they had bought the land and sold it.
>
> CHIEF AYORINDE: My Lord, if they had bought the land and three years down the line they see that nothing is going to happen, at that point they have an obligation not just to keep the land within there and say, "Oh, one day, after 20 years, we are going to get paid".
>
> THE CHAIRMAN: Okay. Thank you."

365. On 31 January 2017 the Tribunal issued its Final Award in the Arbitration. Lord Hoffmann and Sir Anthony Evans formed the majority, while Chie Bayo Ojo dissented. As foreshadowed I will set out much of the reasoning of the majority (Lord Hoffmann and Sir Anthony Evans) directly rather than by paraphrase or summary. There are some sections that can be abbreviated.

366. The majority said the question was "whether P&ID would have performed [its] obligations, not whether [it] had already done so before the repudiation." It observed that "the fact that P&ID had not ["acquired the site or built the gas facility"] before the repudiation is a constant theme of the Government submissions", listing in a footnote each of the 27 paragraphs in Nigeria's written submissions where the point was made.

367. The majority accepted that:

> "… if the evidence had showed that for some reason, even if the Government was ready and willing to perform the contract, P&ID would never have been able to acquire the site or build the plant, then it would not be able to recover more than nominal damages."

It recognised that:

> "In some cases the fact that a party had not done anything by way of performance of the contract for three years, as in the present case, might be evidence that it was unable or did not intend to do so."

368. But it said that was "not the case here". There was, said the majority, "an obvious reason why P&ID had not started upon performance", and that was that (as it had stated in the Award on Liability):

> "It would have been commercially absurd for P&ID to go to the expense of building GPFs when the Government had done nothing to make arrangements for the supply of the Wet Gas."

369. The majority found that:

> "In fact, the evidence shows a high degree of likelihood that if the Government had been willing to perform, P&ID would have acquired the site and built the plant".

The majority found that P&ID was fully prepared to acquire the land and start constructing the plant. Here the Tribunal relied on what Mr Quinn had said in his witness statement at [42], [47], [48] [49], [102] and [110]. The majority pointed out that

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Nigeria did not dispute any of the matters mentioned from these paragraphs. And that Upstream, the Government's expert witnesses, "do not appear to have been shown Mr Quinn's evidence." The majority concluded that "P&ID thus showed every sign of being willing, indeed anxious, to implement the project".

370. The majority also found that "there is no dispute over its ability to have done so" and that "… there is nothing to suggest that with the co-operation which the Government had promised in the GSPA, it would not have been able to acquire the site and construct the plant." The majority said:

> "the prospective profits were such as to create a substantial financial incentive to go ahead. Mr Quinn estimated that the project would produce a profit of $5 to $6 billion for P&ID over a 20 year period."

371. Consequently, found the majority, "the Tribunal finds on a balance of probability that P&ID would have performed its obligations under the GSPA and therefore did suffer loss. …". It turned to quantification.

372. The majority described "the calculation" in these terms:

> "If the contract had been performed, P&ID would have received for 20 years an income from the sale of natural gas liquids extracted from the wet gas supplied by the Government. As against that income, it would have had to finance the necessary capital expenditure to acquire the site and construct the gas processing facilities ("CAPEX") and incur revenue expenditure in operating the plant ("OPEX"). The loss is therefore the value of the stream of net profit which P&ID would have made if the Government had performed the contract according to its terms. As the damages have to be assessed once and for all, it is necessary to estimate the value of that stream of profit at the time of the breach, making an appropriate discount for the fact that P&ID will be awarded immediate payment in place of sums which would actually have been received over a 20 year period. The Tribunal will in due course consider whether the valuation at the date of breach may take into account what is known to have happened since that date."

373. The chief objection of Upstream, said the majority, was that Mr Wolf, the expert called by P&ID, had "inadequate material upon which to arrive at his estimate". The majority noted that this "was based up on a misapprehension that P&ID had done nothing but make a Class 5 estimate before entering into the contract and that Mr Wolf had no other material upon which to make his own estimate." The majority observed that the Upstream report contained "no comment upon Mr Wolf's contingency calculation" and "no comment upon the equipment which Mr Wolf considered would be needed or any specifics of his estimate". "Nor was anything of the kind put to him in cross-examination" noted the majority, adding that "Counsel for the Government appeared to be satisfied with [Mr Wolf's] admission that he had found the P&ID materials "extremely helpful"".

374. The majority said that: "In his closing submissions, Chief Ayorinde said that, as a matter of Nigerian law, a "feasibility study" should not be the basis for an award of damages and that Mr Wolf, in his reliance upon the pre-contractual work of P&ID, was presenting the Tribunal with a "feasibility study"". Although Mr Wolf also relied upon

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other material and exercised his own judgment, his use of the P&ID papers "removes from the purity of his report", according to Chief Ayorinde SAN. The majority however expressed itself satisfied that Mr Wolf carefully examined all the available materials and exercised his own judgment.

> "There are no grounds upon which to reject his estimate of [CAPEX of] $579,990,000 or the adequacy of the $65,890,000 contingency which he included within it."

375. Turning to OPEX, the majority said that P&ID had made its own calculations of the OPEX for the project under six heads and arrived at a figure of US$59,881,600. Mr Wolf said, noted the majority, that he had reviewed these costs and considered that they were reasonably accurate. Mr Wolf, said the majority, "was not cross-examined on this part of his evidence" and the Upstream Report "made no comments upon any of the six individual heads of expenditure". One difficulty which the Tribunal had with Nigeria's submissions was that "none of it was put to Mr Wolf".

376. The final Upstream report had, observed the majority, spoken only of "uplift of +25% to capture Niger Delta security arrangements (i.e. hardening of the facility site with relevant Government Security Agency personnel) as well as factor-in Nigerian Content Development (NCD) compliance". But the majority said that the Tribunal "received no evidence about the circumstances in which it is obligatory or prudent to employ "Government Security Agency personnel", or the incidence of insurgent activity against gas installations in the area." These are matters, the majority said "which must be known to the Government and on which evidence was available. But none of it was put before the Tribunal or put to Mr Wolf in cross-examination." The majority continued:

> "Mr Dare, in oral evidence after Mr Wolf had concluded his testimony, produced a number of points which had not previously mentioned in the Upstream report or otherwise: performance would be "sub-optimal" on account of having to employ Nigerian personnel, precautions would be needed to protect the condensate before export, stolen condensate could cause pollution and the government "will come after you". The claimants had no opportunity to comment on any of these matters."

377. On income the majority said:

> "An estimation of future income requires a calculation of (a) the yield of NGLs which the plant would have recovered from the incoming gas and (b) the prices at which they could have been sold. The resulting figure must then be discounted to allow for the award being for an immediate lump sum rather than income spread over 20 years."

378. On (a) the expert witness for P&ID was Mr Anthony Melling of BRG, who had "general experience in the gas industry and specializes in natural gas, LNG and associated liquids". The majority walked through his methodology. They said that "The only one of Mr Melling's assumptions which the Government contested was the 93% operational time." The Upstream report said 50%. The reason given in the report was "unabated militancy in the Niger Delta…on account of the firm nexus between AG production and oil production performance (militancy activities are primarily targeted at disrupting oil export.)"

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379. The majority observed that:

> "Even assuming that the GSPA was about exporting oil, a 50% reduction in operating time would have been a remarkable figure. The Upstream report offers no actual evidence of (1) the incidence of militant attacks in the Calabar region and its effect on oil production (2) if the attacks were against oil pipelines, how this would affect the production of associated gas at the wells (3) whether there had been any interference with gas pipelines"

380. P&ID's expert produced various references in support of the 93% figure, and confirmed his belief that his uptime assumption of 93% was realistic. The majority noted that "there was no attempt in cross-examination to discuss or challenge any of this information". It concluded that it was "highly implausible to assume that a gas stripping plant, situated in an area away from the main focus of militant attacks, will be out of commission for 10 out of its 20 years of operation".

381. The majority added:

> "In any case, the Upstream calculation is based upon a misapprehension, evident throughout the report and the submissions on behalf of the Government, about the nature of the calculation which the Tribunal has to make. It fails to appreciate that the calculation must be made on the assumption that the Government will perform its obligations under the contract. Except so far as the Government would be entitled to plead force majeure (as to which no argument was presented to the Tribunal) it must be assumed to have delivered the necessary quantities of Wet Gas to P&ID's site and taken the Lean Gas for its power stations. If militancy makes it difficult to obtain the gas from one field, it must find the gas somewhere else."

382. The majority chose between the experts. It found that "Mr Melling's assumption of 15 days of downtime for maintenance and other eventualities during the year is the one most likely to be correct."

383. Turning to the price of NGLs the majority said:

> "91. The price of NGLs is closely linked to the price of oil which is, like that of most commodities, cyclical - sometimes dramatically so. It is not easy to predict the future movement of prices. But such predictions have to be made, because investment decisions depend upon them. Likewise, they have to be made by the Tribunal to determine the loss which has been caused to P&ID by the repudiation of the contract."

384. The majority took the view that the correct approach was to take into account all the information available at the hearing, including on future expectations, and not just the information available at repudiation in 2013. It recorded that Mr Ede, the expert called by P&ID, made two assumptions about how P&ID would sell its NGLs and that these were not challenged:

> "First, he assumed that they would be sold f.o.b. Nigeria into the north west European market. So he took into account the cost of shipping the liquids to Europe. Secondly, he assumed that NGL prices would closely follow oil prices."

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385. The majority said that the experts differed, however, in their forecasts of oil prices. For the purpose of the later of two estimates he made, Mr Ede adopted what was termed the "New Policies" scenario from a report published by the International Energy Agency ("IEA") in 2015. This assumed that all policies affecting the energy market which had been announced would in fact be implemented. The majority observed that:

> "He was not cross-examined on this estimate, save to secure the admission that forecasting oil prices 20 years ahead was difficult."

386. The majority recorded that:

> "However, when Mr Dare gave oral evidence, he said that there were several forecasts available on web sites which were different from the New Policies scenario. He did not however identify these or produce them to the Tribunal. The Tribunal did not have the benefit of Mr Ede's comments because none of this material (if such it was) had been put to him in cross-examination."

387. The majority identified:

> "the exercise which the Tribunal has to undertake. It is to make the best estimate which would be made today of the income stream which P&ID would have received from the sale of NGLs if the Government had performed its side of the bargain."

It then said that:

> "The only estimates of what might happen to oil prices that the Tribunal has actually seen are those in the IEA report relied upon by Mr Ede."

388. The majority referred to Mr Ede's description of the IEA–

> "an intergovernmental organization that provides reporting and analysis on international energy markets. Included in their work is analysis of future trends and developments in the oil and gas industries and as such they regularly publish forecasts of prices for these commodities. Companies operating in the oil and gas industries regularly make use of IEA forecasts when benchmarking price forecasts and analysis. I believe that this is...reasonable."

389. The majority concluded as follow:

> "101. Mr Ede is an economist who has for 15 years specialized in energy markets. His evidence is that IEA's New Policies scenario is the one most appropriate to be used in forecasting. None of this was challenged in cross-examination.
>
> 102. By contrast, Mr Dare has said only that there are other forecasters in the business who have arrived at different hut unspecified conclusions. No such forecasts were actually made available to the Tribunal, still less to Mr Ede.
>
> 103. The Tribunal considers that there is no material upon which it can come to a conclusion different from that of Mr Ede's second estimate, which gave effect to all the information presently available about the movement of oil prices.

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> Accordingly, it accepts the forecasts of prices (in real 2013$ terms) in the second BRG Report"

390. On taxation the majority stated:

> "105. The Upstream Report contains no explanation of why it (a) ignored the 5 years Pioneer Status granted by the GSPA and (b) reduced the standard rate of tax to 20%. In the circumstances the Tribunal will accept the BRG calculation, which in fact results in a lower award of damages than the Upstream calculation."

391. The majority then stated that the total net profit which P&ID would have received over 20 years must be discounted to reflect early payment. It concluded that a discount rate in the damages calculation should be a risk free rate representing only the time value of money, adopting a US Treasury bonds rate of interest advanced in the BRG report of 2.65%. It should not include a reduction to reflect the risk of Nigeria's default on its obligations under the GSPA.

392. On interest in the event of late payment of the damages awarded, the majority chose a rate of 7%. It explained this as follows:

> "… for the reasons given by the Government, 7% is the correct rate of interest to apply to the Government's obligation to pay damages which crystallised at the date of repudiation. It is not a risk free rate but reflects what P&ID would have had to pay to borrow the money or could have earned by investment in Nigeria."

393. The "reasons given by the Government" were those given by Nigeria in relation to discount rate. What Nigeria had said there was summarised as follow by the majority:

> "Of course in the valuation of a business, estimated future earnings may also be discounted to reflect the risk that they will not materialise. The Government submits that such a discount should also be applied to the estimate of future profits in this case, to reflect the risk of investing in Nigeria. For this purpose, as well as the time value of money, Upstream proposes a discount rate of 7%."

394. As noted, the majority's conclusion was that 2.65% was the correct discount rate. The majority continued:

> "On the other hand, for the reasons given by the Government, 7% is the correct rate of interest to apply to the Government's obligation to pay damages which crystallised at the date of repudiation. It is not a risk free rate but reflects what P&ID would have had to pay to borrow the money or could have earned by investment in Nigeria."

395. On mitigation, the majority said:

> "109. The Government submits that only three years loss of income should be taken into account because by that time P&ID should have found some other profitable investment and thereby mitigated its loss. There is no suggestion of what this other investment would have been. Nor is there any explanation of why, if found, this would have mitigated the loss caused by repudiation of the GSPA. Even if P&ID could have found some other unspecified investment opportunity, there is no reason

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> why this should be treated as mitigation of its loss. An employee who is dismissed can mitigate his loss by finding another full time job. But there is no reason why P&ID should not have pursued more than one investment opportunity. The burden of proving that loss could have been mitigated is upon the party who has broken its contract: see *Roper v Johnson* {1873) LR 8 CP 167; *Geest plc v. Lansiquot* [2002] 1 WLR 3111 (Privy Council). The Government has not suggested, let alone proved, what the Claimant might have done to earn the equivalent profit. This is not surprising because the law does not require the innocent party to take risks in an endeavour to save the party in breach from having to pay damages: *Banco de Portugal v Waterlow & Sons Ltd* [1932] AC 452 at 506 (Lord Macmillan). For all these reasons, the Tribunal considers that in this context the argument as to mitigation is misplaced."

396. The conclusion of the majority was:

> 110. The effect of the Tribunal's decisions on what P&ID's expenditure and income would have been if the GSPA had been duly performed is that the net present value of the profits which would have been earned is $6,597,000,000. This is the measure of damages. It is a very large sum because (a) it is the present value of income which would have been earned over a long period and (b) the GSPA would have been very profitable for P&ID and (although the Tribunal has not had to make any findings on the point) probably for the Government as well."

397. As before, it is not for me as a Judge of the Court, to decide the merits of the dispute, where that task has been given to the distinguished and experienced Tribunal. But again in the present case when I look at what was argued and what was not argued I struggle to accept what happened in a dispute of this importance and magnitude. This is even allowing for the fact that the Tribunal was entitled to rely on the parties' professional legal representatives to take the points that their clients wished to take, and even accepting that the conduct and effort of Nigeria's government, administration and lawyers at this quantum stage of the Arbitration was deserving of severe criticism.

398. Again, it is very clear that the Tribunal (and P&ID) had met with many, and many inexcusable, delays from Nigeria. Of course it is understandable that the Tribunal should manage the Arbitration firmly in response. But at the quantum stage these points among others illustrate how unsatisfactory things were:

(1) Nigeria's expert witnesses, Upstream, did not, in the view of the Tribunal, appear to have been shown Mr Michael Quinn's evidence: see [369] above. Further it was the fact, known to the Tribunal and of course the fault of Nigeria, that Upstream had had very little time to prepare written reports in a case of this enormous possible damages award. But part of their function as independent experts was to assist the Tribunal and time must have compromised their ability to provide that assistance: see [373], [375], [376], [379], [381], [386], [387], [389] and [395] above.

(2) It was, respectfully, clear that Nigeria's Leading Counsel, Chief Ayorinde SAN did not understand what the Tribunal was putting to him; this is not through any lack of clarity on the part of the Tribunal: see [354], [356], [359], [360] and [363]-[364] above. Leading the case for Nigeria, time and again matters were

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not put by him to P&ID's experts, with major consequences on key issues as the majority decision shows: see [373], [375], [376], [380], [384], [385] and [386] above. The air of unreality is compounded by a "statement of fees" appearing to bear the signature of Chief Ayorinde SAN and billing Naira 200 million for "Quantum of damages hearing" and US $197.5 million for "negotiation of arbitral award".

(3) There does not seem to have been argument, and consideration of argument, whether over 20 years profitability might deteriorate for reasons not concerned with Nigeria's compliance with its obligations, for example a hardening adverse position for gas in the context of a developing global response to climate change. Or (save perhaps at [395] above, which again contains points of law and fact that Nigeria did not test; note also [372] above) of the possibility that P&ID might at least in time have devoted profitably elsewhere the time and energies it would otherwise have had to devote here. These might test conventional legal opinion, and be unsuccessful, but they were not attempted where so much turned on it for both parties. The common law in relation to prospective loss after repudiation continues to be found or developed: see by way of relatively recent example Flame SA v Glory Wealth Shipping PTE [2013] 2 Lloyd's Rep 653; [2013] EWHC 3153 (Comm) (Teare J). Reference was made to an article by Professor Edwin Peel discussing that decision (see LQR 2015, 131 (Jan) 29-34) but it would be interesting to see what Professor Peel (and Sir Nigel Teare) made of a case with the facts and circumstances of the present one.

(4) Interest (see [392]-[394] above) was a point of very real importance. Nigeria found its own (unsuccessful) argument on discount rate rebounding on it, rather than a closer analysis being pressed for. Billions of dollars would turn on this. There was no attempt to test the conventional idea of "what P&ID would have had to pay to borrow the money or could have earned by investment in Nigeria" when dealing with sums so vast that in no real circumstance would P&ID be borrowing them or would have invested them in Nigeria.

(5) In the background was the fact that P&ID's estimate of its loss of profit at the commencement of the Arbitration was US$1.992 billion. The figure was three times higher by the time of the Awards. Of course these uplifts can happen, and the case is decided on the evidence, but the point adds to concern. Further, and although the Tribunal was not to know, no-one within the parties believed in a figure anywhere near US$6 billion as they discussed settlement: the drop to US$850 million was particularly rapid: see [281]-[292] above.

399. I do not know whether those of these points that were known to the Tribunal troubled the Tribunal. I respectfully anticipate they would have. I appreciate that views on what a Tribunal should do in this situation will differ. Respectfully, I do not consider the Tribunal did all that it could to find out more about the points, by questions of Nigeria's legal representatives.

400. But in any event among the things the Tribunal did not know and could not be expected to know was that the receipt and retention by P&ID of Nigeria's Internal Legal Documents continued.

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Bribing Mrs Grace Taiga: the Arbitration

401. But so also, and again deliberately concealed from the Tribunal and Nigeria, the payments to Mrs Grace Taiga and members of her family continued through the Arbitration at the instigation of P&ID.

402. On 6 July 2015, as P&ID awaited the Award on Liability from the Tribunal, Mrs Grace Taiga sent a WhatsApp message to Mr Cahill stating "I keep remembering Papa telling me Grace u will be so wealthy u will travel all over d world as much as you wish! Hmmm!". Just before the Award on Liability, on 14 July 2015 a deposit was received into Mrs Grace Taiga's account of NGN 100,000 (approx. US$400) under the reference "Adebayo" (line 1565).

403. On 14 August 2015 a cash deposit was received into Mrs Grace Taiga's account of NGN 20,000 (approx. US$100) under the reference "Adetunji Adebayo". Mr Cahill arranged a payment of US$1,000 on 14 September 2015 by Eastwise into Mrs Grace Taiga's account: the SWIFT payment instruction refers to "expenses". On 30 September 2015 a deposit of NGN 100,000 (approx. US$400) was made into Mrs Grace Taiga's account under the reference "Adebayo Adetunji" (line 1622). Mr Cahill arranged a payment of US$3,000 to Ms Vera Taiga on 14 June 2016 following a request from Mrs Grace Taiga referring to her daughter's health.

404. The continued payments directed through Arbitration period were, in my judgment, to help to suppress from the Tribunal the truth that Mrs Grace Taiga had been bribed when the GSPA was entered into. They were "to keep her 'on-side', and to buy her silence about the earlier bribery" and to suppress "the fact that the contract had been passed through with no [proper] scrutiny"; "to keep their secrets" as Mr Howard KC put it. I reject P&ID's case that it did not make any payments during the Arbitration with the intention of "suppressing" anything, and that the payments were for legitimate reasons.

405. I find that P&ID, and Mr Cahill and Mrs Grace Taiga individually, were dishonest and their motivation was corrupt.

After the Final Award

406. Payments to or to those connected to Mrs Grace Taiga have continued after the Award and include the following. On 18 December 2017 Mr Cahill and Mr Smyth arranged a payment of US$10,000 by Swift from ICIL Ireland into her account. On 27 June 2018 another payment of US$10,000 was made in the same way, followed in March 2019 by two payments of EUR 500. All were deliberately concealed from Nigeria.

407. Another without prejudice settlement discussion meeting took place between the parties on 15 and 16 May 2017. The effort was unsuccessful and after that P&ID made clear that they intended to proceed to enforce the Final Award. On 27 October 2017 Mr Cahill, Lismore and Process Holdings Limited (a wholly owned subsidiary of the General Partner of VR Global Partners LP) entered into an agreement the effect of which was to exchange 25% of the shares and 51% of the voting shares in P&ID in return for an immediate payment of US$22.5 million and an additional US$22.5 million to fund enforcement of the Final Award.

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408. On 16 March 2018 P&ID issued its application for an Order from the English Commercial Court to enforce the Final Award. P&ID also filed a petition for permission to enforce in the USA. Nigeria took the position that the seat of the arbitration was Nigeria, where the Nigerian High Court had set aside the Award on Liability, and that the size of the Final Award was excessive and contrary to public policy.

409. On 26 June 2018 President Buhari of Nigeria directed Mr Malami SAN to reopen settlement negotiations with P&ID. On 12 and 13 July 2018 a further settlement negotiation was attended by Nigeria and P&ID's counsel but failed. President Buhari also directed Mr Malami SAN to conduct an investigation into P&ID, the circumstances surrounding the GSPA and subsequent events. By this point Mr Malami had himself been involved since late 2015, and for most of the quantum stage of the arbitration. On 28 June 2018, Mr Malami SAN, directed the EFCC to commence a "thorough investigation" of the GSPA.

410. On 12 October 2018 Nigeria applied to the English Commercial Court for relief from sanctions on filing an Acknowledgment of Service to contest the Nigeria's enforcement application under Section 66 of the Arbitration Act 1996. On 21 December 2018, Bryan J granted Nigeria's application for relief from sanctions and gave directions for hearing the enforcement application.

411. In a Judgment dated 16 August 2019 Butcher J found that the seat of the arbitration was England. On 26 September 2019, following a contested hearing, Butcher J made an order on the enforcement application allowing P&ID to enforce the Final Award, but granting Nigeria permission to appeal on certain grounds. He ordered a stay of enforcement until the determination of the appeal (subject to conditions, which were met).

412. On 3 September 2019, Mrs Grace Taiga attended an interview at the EFCC headquarters, where she was detained in custody. Mr Nolan was also questioned. On 4 September 2019 the Ministry of Lands and Urban Development confirmed that P&ID was offered land, but never acquired it because they had not paid the prescribed fee. The Infrastructure Concession Regulatory Commission confirmed to the Force Intelligence Bureau (FIB) that the GSPA was not submitted to the Commission for review and compliance certification. On 5 September 2019, Mr Kuchazi was detained by the EFCC and questioned over his role in the signing of the GSPA. Between 4 and 13 September 2019 Mr Tijani gave various statements to the EFCC. On 14 September 2019 Mr Adebayo was interviewed by the EFCC and provided a statement.

413. On 17 and 19 September 2019 Mrs Grace Taiga, Mr Kuchazi, Mr Cahill and P&ID were charged with a number of offences under Nigerian law, including corrupt practices and intent to defraud. On the same day 19 September 2019 P&ID was convicted by the Nigerian High Court of various offences relating to tax evasion, money laundering and trading without necessary licences.

414. On 20 September 2019 Mrs Grace Taiga was arraigned. She pleaded not guilty to the charges brought against her and was remanded to prison. On 16 October 2019, an Accountant at ICIL Nigeria and Imperial JV Limited was interviewed by EFCC. On 21 October 2019 Mr Nolan pleaded not guilty to 16 charges related to allegations of money laundering. On 6 November 2019 a criminal trial against Mrs Grace Taiga commenced

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and adjourned. On 20 November 2019 Mr Nolan and Mr Adam Quinn were re-arraigned with 16 charges for a number of offences under Nigerian law, including money laundering. On 5 December 2019 Mr Tijani wrote to the EFCC (copying Mr Malami SAN), referred to P&ID's application to enforce the Awards, and promised to:

> "support and assist in the investigation and unravelling of the identity/origin of funds as the need might arise in the course of investigation by the EFCC",

on condition that he would not be prosecuted. On 18 December 2019 the Federal High Court in Abuja granted an application by the EFCC to extradite Mr Adam Quinn on 25 counts, including money laundering.

415. Meanwhile on 5 December 2019 Nigeria issued its application for an order from the English Commercial Court to set aside the Awards (and the Award on Jurisdiction) under sections 67 and 68 of the Arbitration Act 1996 on the grounds that they were procured by fraud and/or other conduct that is contrary to public policy, and that the Tribunal lacked jurisdiction.

416. Section 70(3) of the 1996 Act provides for a 28 day time limit from the date of award (or notification of the outcome of any arbitral process of appeal or review) for challenges under section 67 and 68, and so an extension of time was sought by Nigeria. An application was issued to adduce new evidence and rely on fresh grounds. Relief from sanctions was sought for this application. On 24 January 2020 Butcher J ordered that Nigeria's applications for an extension of time for its application to set aside the Awards (and the Award on Jurisdiction) and for relief from sanctions be heard first. On 29 January 2020 Flaux LJ ordered that the appeal from Butcher J's decision on the application to enforce the Awards be stayed pending the determination of Nigeria's applications for the extension of time and relief from sanctions.

417. In the USA, on 26 March 2020 Nigeria applied to the US District Court for the Southern District of New York under §1782 of Title 28 of the United States Code to obtain discovery of bank accounts at ten different banks. Discovery orders were made on 7 May 2020. Documents disclosed pursuant to these orders showed the payments from Marshpearl and Kristholm to Mrs Grace Taiga's daughter Vera of US$4,969.50 on 30 December 2009 and US$5,000 on 31 January 2012.

418. The hearing, before Sir Ross Cranston, of the applications for an extension of time and relief from sanctions took place over 13 and 14 July 2020. In a reserved judgment of 4 September 2020 Sir Ross granted Nigeria an extension of time to pursue the application to set aside, and relief from sanctions to rely on new evidence to resist the application to enforce. He found that there was a strong prima facie case that the Awards were procured by fraud.

419. Nigeria notes that for those applications there was no mention of Nigeria's Internal Legal Documents. These did not come to light until, a year after hearing before Sir Ross and his judgment, when P&ID informed Nigeria by way of a letter dated 29 October 2021 from Mr Stephen Hayes of Kobre & Kim who were P&ID's then solicitors in these proceedings. Mr Hayes disclosed that his firm had identified documents over which Nigeria might seek to assert privilege, or which might otherwise be confidential. He was referring to Nigeria's Internal Legal Documents. He advised that a continuing

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information barrier had been put in place between himself and the Kobre & Kim case team.

420. Following the judgment of Sir Ross, a number of further orders for disclosure of documents have been made internationally on Nigeria's application. On 8 January 2021 Nigeria applied again to the New York Court to obtain discovery of documents held by VR concerning its acquisition of P&ID and the enforcement of the Awards. On 24 June 2021 Orders were made in the Cayman Islands for disclosure of documents by various third parties including Arcadia Group Limited. On 22 October 2021 the District Court of Nicosia made an order for disclosure of documents against the Bank of Cyprus, and on 13 January 2022 an Order was made in the British Virgin Islands for disclosure against, among others, Nerine Trust Co (BVI) Ltd and Trident Trust Co (BVI) Ltd (the registered agents of P&ID).

421. Between December 2021 and October 2022 Nigeria filed applications with the Commercial Court here in London for further disclosure and related orders, and a notice to prove documents. Various orders were made by a number of judges of the Court. Of particular note was an order dated 15 July 2022 made by Jacobs J that P&ID and others provide disclosure of certain WhatsApp/SMS threads. The attempts to obtain documents that would throw relevant light on the case was not all one way: on 30 September 2022 P&ID itself issued an application seeking disclosure related relief against Nigeria pursuant to CPR PD51U.

The alleged "middlemen": Mr Kuchazi and Mr Adebayo

422. Mr Kuchazi was called as a witness by P&ID. Mr Adebayo was not.

Mr Kuchazi

423. Mr Kuchazi was associated with Dr Lukman but he was retained by P&ID not Nigeria. He witnessed Mr Michael Quinn's signature to the GSPA, and attended meetings of the JOC on behalf of P&ID. On business cards he was described as P&ID's "commercial director".

424. Payments were made to him by the ICIL Group but those do not take things very far given that he was retained by P&ID not Nigeria. There is sufficient evidence to persuade me that he had some access to some of Nigeria's Internal Legal Documents

425. Not long after the GSPA was signed, on 19 March 2010 Mr Michael Quinn sent a letter from P&ID to Kore Holdings Limited, a company owned by Mr Kuchazi, confirming that Kore Holdings were entitled to 3% of the net post-tax profits payable annually and pro-rata as the profits were received under the GSPA. Nothing I heard at trial, including from him, satisfied me on the question of what Mr Kuchazi had done to earn that level of reward. Nigeria alleged that he "exercised his influence" over officials to procure the conclusion of the GSPA, but I have little to show improper influence.

Mr Adebayo

426. By early 2012 Mr Adebayo had also been appointed by P&ID to assist them, including in negotiations with Nigeria. Mr Adebayo owned GFD Energy, which (as noted above) had entered into its own GSPA with the Ministry of Petroleum Resources on 26 May

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2011. Payments were made to him by the ICIL Group but, as with Mr Kuchazi, those do not take things very far given that he was retained by P&ID not Nigeria.

427. Nigeria alleged he had "a war chest" "blatantly to be used to spend on bribes promised in chasing a settlement", and that he "paid and promised bribes to officials and lawyers acting for Nigeria". But on the material before me this was not proved to my satisfaction. On 2 July 2014 P&ID entered a "Settlement Brokerage Agreement" appointing Mr Adebayo as a representative in settlement negotiations. The potential rewards were enormous, entitling him to a share of any settlement proceeds up to a maximum of 50% of any agreed settlement sum greater than US$1 billion. This seems to have been replaced by an "internal Advisory Agreement" in August 2016 entitling Mr Adebayo to up to 20% of settlement proceeds. Under a Deed of Variation to a Share Sale Agreement dated 2017 Castleknock Holdings Limited, a company beneficially owned by Mr Cahill, Mr Andrew and Mr Burke KC, promised to pay 10% of the distributions received by Lismore Capital Limited in its capacity as legal owner of shares in P&ID, net of applicable costs and commitments, to Mr Adebayo.

428. Nigeria invites the Court to draw the inference that, on behalf of P&ID, Mr Adebayo corrupted members of Nigeria's legal team, including Mr Shasore SAN, Ms Adelore and Ms Belgore at the Ministry of Petroleum Resources, and Mr Oguine at NNPC, as well as other officials during and after the Arbitration, and obtained Nigeria's Internal Legal Documents from some or all of the corrupted lawyers. I accept this area is far from free of suspicion by reference to the evidence I do have, which include receipts by Ms Belgore. However there are many unanswered questions and alternative possibilities. I have concluded that the invited inference is unsuitably broad, and I respectfully decline to draw it.

Mr Adam Quinn and Mr Smyth

429. Mr Adam Quinn and Mr Smyth were not called by P&ID.

Mr Adam Quinn

430. Mr Adam Quinn acted for the ICIL Group including P&ID. Mr Andrew confirmed he stood to make in the order of US$2-3 billion if P&ID succeeds in this case. He was involved with P&ID's access to the Nigeria's Internal Legal Documents.

431. Nigeria asks me to draw these "main inferences" from his absence at the trial: (a) Mrs Grace Taiga received bribes from ICIL Group companies, including from P&ID; (b) there is no legitimate explanation for the receipt of Nigeria's Internal Legal Documents, which came from members of Nigeria's legal team corrupted by those acting for P&ID, (c) Mr Adam Quinn would have knowledge of the lawyers who had been corrupted, (d) Mr Adam Quinn has no innocent explanation for his involvement in paying 'Dublin expenses', including in concert with Mr Adebayo. It is not necessary to rely on inferences for (a) and (b), and reliance on inferences is unsuitable for (d) where there are many items bearing that description. I am not persuaded that there is sufficient material to justify the inference at (c).

Mr Smyth

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432. My Smyth worked closely alongside Mr Cahill, including over documents and payments. He produced a schedule of payments to Mrs Grace Taiga in September 2019 which labelled one payment as "PR" and another as "Gas Contract". Mr Cahill suggested that this was a mistake and that Mr Smyth was unfamiliar with the purpose of the payments. I was not able to accept the truth of Mr Cahill's evidence on this point, and the fact that Mr Smyth was not there to explain the position meant that Mr Cahill did not have the possibility of supporting evidence from him.

433. Nigeria says that:

> "[t]he proper inference is that Mr Smyth, if truthful, would have confirmed that bribery and illegality was the *modus operandi* of those behind P&ID, including that bribes were paid to Mrs Grace Taiga in connection with the entry of the GSPA".

It is not necessary to draw this inference from Mr Smyth's absence as a witness in order to establish that bribes were paid to Ms Grace Taiga. I do not consider his absence justifies the broader inference claimed, that bribery and illegality was the *modus operandi* of those behind P&ID.

Mr Bernard McNaughton

434. Also not called as a witness was a Mr Bernard McNaughton, a former employee of ICIL Group companies. In the event there has been sufficient evidence without his, but the apparent circumstances in which he is not giving evidence should be recorded.

435. On 29 September 2014 Mr McNaughton wrote to press Mr Cahill over payments on his employment with ICIL Group coming to an end. He alleged that there had been various illegal activities during his time working for ICIL Group companies and that he held materials to show this. On 20 January 2020 Mr McNaughton wrote to VR on the same subject and alleged that he held documents showing the same. He wrote again on 22 January 2020 stating that he wished to:

> "[point] out the type of people VR are now assisting and my intentions to turn over all of the information I have to EFCC Nigeria".

436. The next day Mr McNaughton wrote to a Mr David Hallett, an employee of ICIL Group, stating his intention to send a file of documents to the EFCC over the weekend.

437. On 27 March 2020 Mr McNaughton asked Mr Cahill to outline proposals regarding payment to him, saying:

> "On my part I will make a legal undertaking not to disseminate any information on ICIL work practise or activities by [sic] any individual working for ICIL".

438. On 15 May 2020 Mr McNaughton wrote to Mr Cahill stating that Mr Godwin Odama, a former employee of Babcock Electrical Projects Limited (an ICIL Group company) had been in recent contact with Mr Nolan's Nigerian lawyer and "The Lawyer advised Godwin to destroy all records". On 4 June 2020 Mr McNaughton sent an email to Mr Cahill making further allegations of corruption and illegal activity.

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439. An agreement was reached between ICIL and Mr McNaughton (dated 10 April 2020 but signed by Mr McNaughton on 8 July 2020) providing for ICIL to pay Mr McNaughton between £97,000 and £157,000 out of the proceeds of the Final Award should P&ID succeed. On 13 October 2020 Mr Cahill made a payment of £10,000 to Mr McNaughton.

Nigeria's allegations against its lawyers

Mr Shasore SAN

440. Did P&ID corrupt Mr Shasore SAN, Leading Counsel for Nigeria in the Arbitration until part way into its quantum stage, with a view to achieving a negotiated outcome or an arbitration award which it could then seek to enforce? Were the arbitration proceedings themselves affected by corruption by P&ID of Mr Shasore SAN?

441. Nigeria contends that Mr Michael Quinn gave false evidence in the Arbitration and that P&ID colluded with Mr Shasore SAN, as Nigeria's advocate in the Arbitration, to ensure that he did not challenge that false evidence and he was involved in preventing or hindering Nigeria from putting up a proper defence. Reference is made to his not seeking documents and to delays.

442. Neither party called Mr Shasore SAN as a witness at the hearing before me. As far as I am aware, he has not sought independently to provide an account to the Court. However Mr Shasore SAN has not, in my judgment, been shown to be corrupt. His actions are inconsistent with Nigeria's theory that he was. Four examples suffice.

443. First, his advice to Nigeria to investigate, and allow expert evidence to be obtained, and to proceed in a timely fashion, was sound and constant. Second, he assisted Nigeria to succeed in its applications to the Nigerian Court. Third, his participation in the various settlement discussions helped reduce the figures. Fourth, a review of the transcript of the hearing on liability shows repeated robust challenges by him of P&ID, and indeed of the Tribunal; and it is impossible to read pages 55-59 and 68-71 of that transcript as other than properly attempting through argument to secure an outcome in favour of Nigeria. On the other hand, the account given in this judgment shows that responsibility for failures to obtain evidence and to avoid delay lay rather with many ministers and officials, whom Mr Shasore SAN and others (including Stephenson Harwood and Mr Cordara QC at one stage) pressed repeatedly.

444. In a "statement of facts and documents concerning bribery", prepared by Nigeria, it is alleged that a payment of US$300,000 by Mr Shasore SAN to Mr Ukiri was a corrupt payment to Mr Ukiri in return for which Mr Ukiri (who did not do any work on the P&ID case) "acted as one of Mr Shasore's conduits in leaking [Nigeria's Internal Legal Documents]", and in particular by the email of 28 October 2014 in which Mr Ukiri sent to Mr Adebayo such a document. There is not the evidence before me at this trial to substantiate this. Mr Shasore had just been paid more than US$1 million by Nigeria for his legal work. The payment was to his partner in a legal practice. Nothing links Mr Ukiri's email with the payment, or shows why Mr Shasore SAN should go about things in this way if (which I do not accept has been established at this trial) he was behind P&ID receiving copies of Nigeria's Internal Legal Documents.

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445. I add that in my view, Nigeria (and specifically Mr Malami SAN, the Attorney General) did not in truth believe Mr Shasore SAN was corrupt. On 21 November 2017 Mr Shasore SAN was engaged by Nigeria to represent the Ministry of Power in a $2.4bn arbitration claim by Sunrise Power and Transmission Co. His appointment was approved by Mr Malami SAN on 6 March 2018 and formally confirmed by Mr Malami SAN on 18 March 2018. On 1 September 2021 Mr Malami SAN approved the engagement of Mr Shasore SAN's firm to act for Nigeria in a second arbitration brought by Sunrise, resulting from Nigeria's failure to comply with the settlement agreement. The agreed fee was up to US$1.15m. Mr Malami SAN has not explained to this Court how these events are consistent with a belief on his and Nigeria's part that Mr Shasore SAN had been corrupt, in his professional work for Nigeria in the Arbitration against P&ID.

Mr Dikko, Ms Belgore, Ms Adelore and Mr Oguine

446. Nigeria says "it is clear, and this Court should find, that the corrupted lawyers also included Mr Dikko, Ms Adelore, Ms Belgore and Mr Oguine".

447. Here as elsewhere its argument gives no quarter. It writes in closing:

> "In a particularly extraordinary episode in late 2014 and early 2015, Mr Adebayo persuaded Ms Adelore, Mr Oguine and Mr Shasore to lobby their superiors relentlessly for a settlement of US$1.1 billion. This figure was concocted without any serious attempt to value P&ID's claim. Both Mr Cahill and Mr Andrew said in cross-examination that it was inconceivable that a settlement at that level could have been achieved, certainly before any finding on liability, yet Mr Adebayo almost managed it, with Ms Adelore, Mr Shasore and Mr Oguine recommending (in privileged advice improperly shared immediately in draft with P&ID on 28 November 2014) that [Nigeria] pay that sum. They were stymied only by the President refusing to sign-off on the proposed settlement in late May 2015. It is no coincidence that huge amounts of cash were withdrawn by Mr Adebayo, and deposited by Ms Adelore and Mr Shasore, over the same period."

448. Within Nigeria, to press hard for settlement at that point was quite understandable as a realistic approach and deserves no suspicion. I do not give weight to Mr Cahill and Mr Andrew's assessment, which was from the perspective of P&ID. The sequence of events set out above shows that US$1.1 billion had a coherent place in the negotiating sequence, in which P&ID had proposed a far higher figure of US$1.5 billion. The President refused to sign off a settlement in May (by then of US$850 million not US$1.1 billion) because his administration was about to end.

449. On 4 December 2019 Mr Shasore SAN stated in an EFCC interview that he made personal gifts of US$100,000 each to Ms Adelore (former Director of Legal Services) and Mr Oguine. On 13 September 2019 Mr Oguine gave a statement in which he said that he received US$100,000 from Mr Shasore SAN. This was said to be by way of a loan although no part of it had been repaid. On 6 and 7 May 2020 Ms Adelore stated in an EFCC interview that she received an unsolicited payment of US$100,000 from Mr Shasore SAN.

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450. Whatever else may have been the reason for these payments, there was insufficient evidence at this trial that they were bribes by P&ID. The evidence shows nothing in the conduct by Ms Adelore and Mr Oguine of Nigeria's case that casts doubt on the level or honesty of their efforts whilst Director of Legal Services to the Ministry and General Counsel to NNPC.

451. There is evidence of Ms Adelore's bank accounts accumulating sums over the 13 year period 2008-2020 of a scale that bore no relation to her likely salary in 2013-2017. This included large amounts of cash deposited in 2014 and 2015. These are matters of concern in the circumstances, but I am cautious in my approach to them as I do not know enough about them.

452. Nigeria points to evidence of direct payments by Mr Michael Quinn to Mr Dikko in 2012, including to cover what Mr Dikko said was the cost of attendance at a legal conference in Dublin. As with Ms Adelore, there is evidence of unexplained wealth: of Mr Dikko's bank accounts accumulating sums over the 12 year period 2008-2020 of a scale that bore no relation to his likely salary in 2011-2013. Again these are matters of concern in the circumstances, but I am cautious in my approach to them as I do not know enough about them.

Nigeria's Internal Legal Documents

453. None of this affects the significance of what happened over Nigeria's Internal Legal Documents. These reached P&ID and P&ID retained them. As I have mentioned, some suggestion was made that some (only) would be made available to P&ID to reinforce the message that Nigeria was serious in its engagement in the Arbitration. The majority are not in that category and there is no evidence to satisfy me that their release to and retention by P&ID was authorised. The fact that it is not reliably known who procured them from Nigeria's government offices or those of Twenty Marina is not essential for the purposes of my decision.

Nigeria's allegations against others

Mr Tijani

454. On 8 January 2020 Mr Malami SAN as Attorney General accepted a plea bargain by Mr Tijani, but required Mr Tijani to give "credible information/documents that will assist in the investigation and prosecution of P&ID and its associated companies or persons" or face having the plea bargain revoked.

455. On 12 January 2020, during a twelfth interview with the EFCC, Mr Tijani alleged for the first time that the directors of P&ID bribed him with US$50,000 in a "black bag" in April 2009. In a witness statement that was before Sir Ross Cranston in these proceedings, Mr Tijani set out a recollection that in early April 2009 that he attended a dinner with Mr Michael Quinn and Mr Hitchcock at the "Chopsticks" restaurant in Abuja and was given a US$50,000 cash 'gift' by Mr Hitchcock, placed in a black bag in his car. He recalled he was later told by Mr Hitchcock that P&ID would take care of him further at a later date and that they had made gifts to some other officials at the Ministry. There was also an allegation that he overlooked shortcomings in P&ID's bid.

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456. Mr Tijani's account of the "black bag" gift is disputed by P&ID. I am not prepared to rely on it. I am concerned it cannot be tested satisfactorily, although Mr Howard KC did his formidable best to do so through other witnesses. The allegation was first made ten years later, on 12 January 2020. Mr Tijani was interviewed by the EFCC about it. He then made a witness statement in these proceedings on 5 June 2020 in which he said the "gift" in the black bag was made, but I am reluctant simply to accept this, without more. The timing is not straightforward to understand: P&ID was reasonably positioned in April 2009 without the need for this particular payment then. In his witness statement Mr Tijani offered, unconvincingly, the explanation that he "consider[ed] that Mr Quinn and Mr Hitchcock just wanted to be friends with me". There is no real background detail to this particular alleged payment. The method of payment differs from what is known about bribes or alleged bribes to others, including where alleged to have been in cash.

457. Then there was what was known as the Bonga Audit, an episode that in my view is not fully revealed on the available evidence, but is in some respects explicable in terms of reward for later and separate services rendered. Mr Tijani addresses it in his witness statement, and following interview by the EFCC, but I am again cautious about that witness statement. It is not disputed that there was an investigation into delays and overspends on an offshore production unit and that these were to be examined by engineers. On 4 March 2013, Mr Michael Quinn contacted Mr Tijani (by then retired from the Ministry) to discuss this, and there was an email from Mr Hitchcock. Mr Tijani forwarded the email to two business associates, explaining that it had been received from "one of the guys that I assisted over the years when I was technical adviser to the Petroleum Minister". On 1 June 2013 a contract to supply engineers was executed by Lurgi Consult (an ICIL group company, directed by Mr Adam Quinn and Mr Nolan) with Conserve Oil. The owner of Conserve Oil was a childhood friend of Mr Tijani. Mr Tijani's wife became a director of Conserve Oil in June 2015 and Mr Tijani was appointed a signatory to the company's bank account around March 2016.

458. There are other episodes alleged but these do not take me much further, individually or cumulatively. Mr Tijani later sent on 17 December 2009 to Mr Hitchcock an email attaching the CVs of two associates and stating "I will appreciate your assistance for employment of any of the two ladies". On 12 August 2013, the retired Mr Tijani offered his assistance to Mr Cahill and Michael Quinn in their attempts to enforce a 2004 arbitration award against NNPC and in favour of IPCO (Nigeria) Limited. In 2014 and 2015 Lurgi Consult made large contributions to the costs of the weddings of Mr Tijani's son and daughter. This may not have been appropriate, but it was in 2014 and I am not satisfied it was related to the GSPA.

Dr Lukman, Dr Ibrahim, Mr Mjiddah and Ms Aderemi

459. Allegations by Nigeria that Dr Lukman and Dr Ibrahim were corrupt were not pursued in any depth by Nigeria at the hearing before me. The same is true in relation to Mr Njiddah, a senior special advisor to President Goodluck Jonathan. Its allegations of corruption against Ms Aderemi, secretary to Ms Grace Taiga, Mr Dikko and Ms Adelore in succession, do not take Nigeria's case further to a material extent.

Mr Malami SAN, and witness evidence for Nigeria

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460. In a case of this scale and importance it was unusual that a party should not call any witnesses for cross examination, but that is the course that Nigeria took. In its written closing P&ID argued:

> "… The absence of witnesses means that there is no material to support essential aspects of [Nigeria's] case, or contradict essential aspects of P&ID's evidence as shown [in P&ID's closing]. In those circumstances, all three of [Nigeria]'s surviving fraud claims … necessarily fail on the facts." (original emphasis).

I have not been able to accept this broad argument, but it has properly drawn attention to the importance of close examination of the evidence in each aspect of the case.

461. Nigeria's position is that the main witnesses who might otherwise have been expected to give first-hand evidence for Nigeria, in particular about the award of the GSPA, have been corrupted by P&ID. That position is not a complete answer in my view. For example P&ID referred to Mr Ajumogobia SAN, the Minister of State for Petroleum Resources at the time of the GSPA. There appears to be a question between the parties whether he may have seen an advanced draft of the GSPA. It would have been helpful to have had evidence from someone in a position of seniority, and not the subject of allegations from Nigeria, but there is no basis for an adverse inference in my view.

462. But then there is Mr Malami SAN. Mr Malami SAN was appointed Attorney General and Minister of Justice of Nigeria on 11 November 2015. He has been involved since. Nigeria did not tender Mr Malami SAN as a witness for cross examination. P&ID contend that the decision by Nigeria not to call any witness who could be cross examined was "motivated by a wish to ensure that its officials … should not be exposed to questioning which would show them in a negative light."

463. That may be correct here, but again what matters is evidence. Nigeria's position is that Mr Malami SAN was only involved from the quantum stage of the arbitration and could therefore only give first-hand evidence from that point onwards. Mr Malami SAN could not have given any relevant evidence, says Nigeria. P&ID's closing contends that had Mr Malami SAN or any other representatives of Nigeria been prepared to attend Court to support the serious allegations they saw fit to make, P&ID would have been able to question them about a range of relevant matters including 14 that it lists.

464. Three of the matters go to key areas in the case:

> "[1.] The circumstances in which the GSPA came to be signed, including what the responsibilities of Mrs Grace Taiga and Mr Tijani were, and whether the process that was followed was any different from the process for concluding any other Nigerian contract, and in particular any of the other [Accelerated Gas Development Project] contracts which were concluded at around the same time."
>
> "[2.] [Nigeria]'s … inept handling of the arbitration, and in particular the reasons why it failed to mount the arguments which it now says would have won it the case, despite the urging of its internal and external advisers.
>
> "[5.] [Nigeria]'s failure, over a period of several years, to carry out any investigation into the bribery allegations they eventually advanced in December 2019; and in particular Mr Malami's complete failure to act on the EFCC's

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> advice in 2016 to carry out a "detailed investigation into the circumstances surrounding the award of the contract" to P&ID."

465. These are areas of the case that I deal with in this judgment on the evidence that I have. They leave Nigeria without a positive case on whether the process followed for concluding the GSPA was different, and why Nigeria did not mount arguments in the arbitration, and over its failure to follow advice and carry out an investigation earlier. However I do have evidence on what the process was and what arguments were mounted in the arbitration and when it did investigate.

466. P&ID refers (at matters [3], [4], [12] and [6]) to alleged conduct of Mr Malami SAN in lying "to the Vice-President, in the aftermath of the Quantum Award, in an attempt to absolve himself from blame", attempting "to cover up his own incompetence, following the judgment of Butcher J" and telling lies "to the BVI Court on [Nigeria]'s Norwich Pharmacal application in 2021", and of Nigeria in making "scurrilous allegations" against a judge.

467. These matters are collateral to the issues I have to decide, but it is the fact, available to P&ID and reflecting adversely on Nigeria and Mr Malami SAN, that Mr Malami SAN has not been prepared to address them from the witness box.

468. Three matters go to Nigeria's alleged treatment of witnesses:

> "[7.] The shameful persecution of three of P&ID's witnesses – all highly vulnerable individuals – in an attempt to generate false evidence to support [Nigeria]'s case (referred to at trial only in passing and facetiously: "poor Grace has been bashed up").
>
> "[8.] [Nigeria]'s especially depraved treatment of Mr Kuchazi, in denying him access to cancer treatment and forcing him to stand trial, even though [Nigeria]'s own counsel submitted within minutes of his cross-examination starting that he was "obviously unwell" and incapable of understanding the process. [although later the suggestion by Nigeria was that Mr Kuchazi was only pretending not to understand the questions put to him]. The offences with which he is charged are ridiculously technical, do not involve any allegations of bribery or corruption or anything relating to P&ID, and are obviously trumped-up …" (original emphasis).
>
> "[13.] The steps taken by [Nigeria] (no doubt also on Mr Malami's initiative) to cause criminal proceedings to be instituted against Mr Cahill in Ireland, in order to harass and intimidate him."

469. These are all matters I am able to, and do, weigh, and weigh in the knowledge that Nigeria has not sought to address them from the witness box. Separately, I take the opportunity to add here that news of the death of Mrs Grace Taiga since the hearing before me makes some of the rhetoric feel wrong.

470. Three matters go to Nigeria's alleged conduct in relation to the hearing before Sir Ross:

> "[9.] Mr Malami's decision to put forward a false and dishonest case in his evidence before Sir Ross Cranston about the alleged corruption of Mr Shasore SAN, which has only been abandoned sub silentio in the course of this trial."

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> "[10.] Mr Malami's decision to put forward a false case (surely also dishonest, and also now quietly abandoned) to the effect that the GSPA was a sham, when the Ministry plainly knew that to be untrue."
>
> "[11.] [Nigeria]'s fabrication of obviously false evidence for the hearing before Sir Ross Cranston, in the form of Mr Tijani's witness statement, in an attempt to make its bribery case coherent, and the circumstances in which that false evidence came to be fabricated.

471. The final matter raised by P&ID as a matter on which Nigeria would have been able to question Mr Malami SAN or other witness had any witness been tendered for cross examination by Nigeria, was put in these terms:

> "[14.] [Nigeria]'s deliberate suppression of documents which exposed its case as false and dishonest, and its broader failure to collect and disclose relevant documents, including any electronic documents from huge swathes of [Ministry] officials."

472. On this matter, I have the documents I have. These result from the disclosure processes required by the Court and the channels available to the parties to request orders for more, here and overseas. I am able to, and do, weigh the point that there are further documents that I have not seen.

"Challenging the award: serious irregularity": section 68 of the Arbitration Act 1996

The jurisdiction

473. The full terms of section 68 of the Arbitration Act 1996 are set out in the Annex to this judgment. They include the following:

> "Challenging the award: serious irregularity.
>
> (1) A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award. A party may lose the right to object (see section 73) and the right to apply is subject to the restrictions in section 70(2) and (3).
>
> (2) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant—
>
> … (g) the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy."

474. The section is concerned with serious irregularity "affecting the tribunal, the [arbitral] proceedings or the award". Subsection (2) lists nine "kinds" of irregularity. In the present case our focus is on kind (g). That is concerned with "the award" and "the way in which it was procured". For irregularity kind (g), it is the award that must be "obtained by fraud"; it is the award or the way in which the award is procured that must

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be "contrary to public policy". The focus is not on the claim on which the award is based or the cause of action on which the claim is based. Lord Wolfson KC submitted:

> "The s. 68 jurisdiction is structured and circumscribed and, for sound reasons of policy, requires a close focus on the parties' conduct in the arbitration and the process by which the award was obtained."

I respectfully agree.

475. The section is founded on the principles set out in section 1 of the Act (set out in full in the Annex to this judgment) and is to be construed accordingly. Those principles are:

> "(a) the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;
>
> (b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;
>
> (c) in matters governed by this Part the court should not intervene except as provided by [Part I of the Arbitration Act 1996]".

476. The objection under consideration in section 68(2)(g), that of "the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy", is of fundamental character to the arbitration process because it goes to the integrity of that process. No policy of arbitration law calls for section 68(2)(g) to be given other than its plain meaning. An award obtained by fraud or contrary to public policy (or procured in a way that was contrary to public policy) and which has caused or will cause substantial injustice is not what the parties agreed to when they agreed on arbitration. To support it in the name of supporting arbitration as a process achieves the opposite. Unless the right to object is lost for reasons of finality (the business of section 73, below), and subject to the procedural restrictions in section 70(2) and (3), there is no sanctuary. This architecture meets the requirements of justice.

477. It is recognised that a high threshold is applicable to section 68: Lesotho Highlands Development Authority v. Impregilo [2006] 1 AC 221 at 235H per Lord Steyn. In Chantiers de l'Atlantique SA v Gaztransport & Technigas SAS [2011] EWHC 3383 Flaux J (as he then was) said: "Fraud (that is dishonest, reprehensible or unconscionable conduct) must be distinctly pleaded and proved, to the heightened burden of proof as discussed in Hornal v Neuberger Products Ltd [1954] 1 QB 247 and Re H (Minors) [1996] AC 563. This was emphasised by Rix LJ in The Kriti Palm, at paragraphs 256-259 …"

478. As to public policy, in Cuflet Chartering v. Carousel Shipping Co Ltd [2001] 1 Lloyd's Re 707 Moore-Bick J (as he then was) said:

> "Considerations of public policy can never be exhaustively defined, but they should be approached with extreme caution … It has to be shown that there is some illegality or that the enforcement of the award would be clearly injurious to the public good or, possibly, that enforcement would be wholly offensive to the ordinary reasonable and fully informed member of the public on whose behalf the powers of the state are exercised."

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479. The legal principles to be applied by the court in a case under section 68(2)(g) of the Arbitration Act 1996 are not seriously in issue between the parties.

Bribery and the GSPA

480. The doctrine of separability separates the question of jurisdiction under the arbitration clause in the GSPA from the GSPA itself. Leaving to one side the ways in which any challenge to the jurisdiction of the Tribunal is resolved, the parties agreed that the Tribunal, and not this Court, should decide their dispute over the GSPA. The question whether the GSPA was procured by bribery, and the consequences for the GSPA, was for the Tribunal.

481. Passages from five decisions within the last 9 years are cited by P&ID, commencing with Honeywell v Meydan Group LLC [2014] EWHC 1344 (TCC) per Ramsey J at [185]. In Honeywell, Ramsey J said

> "… whilst bribery is clearly contrary to English public policy … as a matter of English public policy contracts which have been procured by bribes are not unenforceable".

(As Phillips J (as he then was) made clear in Sinocore v RBRG Trading (UK) Ltd [2017] 1 CLC 601 at [36] the point here was that "contracts which have been procured by bribes are not unenforceable but voidable".)

482. Mr Howard KC for Nigeria accepts "as a correct statement of English law of contract" what Ramsey J said, but contends that "it is not, and does not purport to be, a blanket rule about the circumstances in which an award may be set aside for bribery." None of the passages in the five decisions deals in terms with the situation where there is not simply bribery to procure the contract, but there is also further conduct that obtains the award or results in the award or the way in which the award was procured being contrary to public policy.

483. Lord Wolfson KC for P&ID is correct to criticise Mr Howard KC's suggestion in oral opening that section 68(2)(g) "requires you to [ask], whether … enforcement of the awards would offend English public policy". Section 68(2)(g) is not addressing enforcement of an Award. Nigeria says of enforcement that:

> "… there is no blanket rule that it will never be contrary to English public policy to enforce an award arising out of a contract procured by bribes. … The question of whether enforcement of a particular award would offend public policy is, by its nature, one which will depend on the facts of each case."

Nigeria's point that the answer to the question "will depend on the facts of each case" where the subject is enforcement helps one understand that the contention that "there is no blanket rule" does not reframe the question (whether under section 68(2)(g) or section 103) as a question about the contract rather than a question about the Award.

484. Nigeria also contends that under Nigerian law it would have been entitled to avoid the GSPA, or at least terminate it going forwards (and therefore deprive P&ID of its right to performance for the 20-year term) because it had been procured by bribes. Further, the revelation of the bribery would also have shown that the GSPA had been procured

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through lies told by P&ID about to its ability and willingness to perform the contract and that the contract was instead passed through without any due diligence. These points too are directed to the contract not the Award.

485. But Nigeria presses the argument that there was "a real and direct link" between on the one hand bribery and (alleged) misrepresentation to procure the GSPA and on the other hand "the outcome of the Awards" and that that is enough. Thus, it argues:

> "The bribes paid by P&ID around the time of the GSPA induced Nigeria's officials to award a contract on terms which purported to place the risk of failing to supply (non-existent) gas on the government (a "government lock-in basis") … on the premise of lies about (i) P&ID's readiness and ability to perform and (ii) the fact that suitable sources of gas had already been identified by P&ID".

486. I cannot, with respect, accept the approach. In almost any case where an award is based on a contract procured by bribery and misrepresentation there will be a "real and direct link"; the approach would involve the Court reaching a conclusion about the contract rather than the award.

487. P&ID's response brings out the further difficulties in Nigeria's just mentioned approach:

> "Bribes that P&ID allegedly paid to procure the GSPA are a very long way from the Awards: a huge number of contingencies had to be satisfied, including Nigeria's failure to perform, P&ID's acceptance of that repudiatory breach, and then the entirety of the arbitral process leading to P&ID successfully obtaining the Awards. To find that pre-GSPA payments from (say) 2009 were the reason why P&ID obtained the Final Award dated 2017 is to give no real meaning to the causal link in the phrase "obtained by fraud"".

An overall fraudulent enterprise?

488. However in my judgment well within section 68(2)(g) would be a case where there is an overall fraudulent enterprise or plan from the start to procure an award. Here the contract is a first or early step in carrying out that overall fraudulent enterprise or plan, but the result is the award.

489. At the point of entering into the GSPA did "P&ID intend[] fraudulently to extract large sums of money from Nigeria by means of an arbitration or a corrupt settlement"? Was (at least what appeared to be) the commercial contract (the GSPA), from the start, simply a device as part of a fraudulent scheme to procure an arbitration award (or settlement) in favour of P&ID?

490. Here, I am satisfied P&ID did intend to perform the GSPA when it entered into it, and that there were means by which it could have done so. Nigeria has characterised the GSPA as a sham and contended that P&ID as a BVI-registered company with no obvious assets, no relevant experience and few employees, had no genuine intention of performing the GSPA, and would never have been able to do so. However P&ID did not have to contemplate performing the GSPA itself with its assets, experience and employees. This is not, as it represented, because it could simply use the work on

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Project Alpha to perform the GSPA. It is rather because ICIL Group had shown in the past that they could contract in.

491. Whilst P&ID was prepared to bribe in the course of its business, I do not accept it was of the sophistication to conceive at the contract stage a plan to extract large sums of money from Nigeria by means of an arbitration or a corrupt settlement. Consistently, P&ID did not use the GSPA to move directly to arbitration at the first available opportunity. I have found it did not (as alleged by Nigeria) corrupt Mr Shasore SAN. And it appointed, in Sir Anthony Evans, an arbitrator of unquestioned experience, expertise and independence.

492. It is in these circumstances that I have reached the conclusion that the present is not a case in which, when the parties entered into the GSPA, P&ID's intention was not to perform it but simply to use it as a device to get an award or settlement. However that is not the end of Nigeria's section 68(2)(g) challenge.

Knowingly false evidence, continued bribery and retention of Nigeria's Internal Legal Documents

493. There remain three things that bring the case within section 68(2)(g), in my judgment, as an "irregularity" (to use the language of the section). Each amounted to fraud by which the Awards were obtained, and by reason of them the Awards or the way in which the Awards were procured was contrary to public policy.

494. The first is P&ID's providing to the Tribunal and relying on evidence before the Tribunal that was material but was evidence that P&ID knew to be false. Specifically, this was the evidence of Mr Michael Quinn in his witness statement of 14 February 2014 that he was "explain[ing] how the GSPA came about" when he did not do that because he did not mention that Mrs Grace Taiga had been paid a US$5,000 bribe at the end of December 2009 and a £5,000 bribe on 29 March 2010: see [168]-177], [247]-[254] and [417] above).

495. The second is P&ID's continued bribery or corrupt payment of Mrs Grace Taiga directed to the arbitration period in order to suppress from the Tribunal and Nigeria the fact that she had been bribed when the GSPA came about. This continued bribery or corrupt payment is fairly described by Nigeria as bribery "to keep her 'on-side', and to buy her silence about the earlier bribery". Specifically, these were bribes or corrupt payments on 14 July, 14 August and 30 September 2015 totalling NGN 220,000 (then equivalent to US$900), a bribe or corrupt payment on 14 September 2015 of US$1,000 and a bribe or corrupt payment on 14 June 2016 of US$3,000 (sent to Vera Taiga): see [401]-[405] above.

496. The third is P&ID's improper retention of Nigeria's Internal Legal Documents that it had received during the Arbitration. It retained these (rather than returned them unread) so as to monitor Nigeria's position and awareness as the Arbitration continued. This included monitoring whether Nigeria had become aware of the deception being practised by P&ID on the Tribunal and on Nigeria as a party before the Tribunal. Specifically, there was a flow of over 40 of Nigeria's Internal Legal Documents to P&ID during the period of the Arbitration from commencement on 22 August 2012 to Final Award on 31 January 2017. The detail of the contents of a number of them is

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discussed above. All are material, including for the fact that they showed to P&ID that Nigeria had no awareness that Mrs Grace Taiga had been bribed when the GSPA came about and that bribery or corrupt payments continued to buy her silence.

497. These three things do not represent the full extent of the fraud and conduct contrary to public policy on the part of P&ID that was shown at the trial. But it is these three things that are central to Nigeria's challenge under section 68. They do not, it will be noted, include separately Mr Quinn's evidence about finance and engineering, but that is because those areas face the difficulty (brought out by Lord Wolfson KC particularly in his argument under section 73, made at the trial) that Mr Quinn's evidence on them was, to some extent, already challenged or the subject of attempts at challenge in the Arbitration, including by Mr Shasore SAN at the hearing on liability. It was Nigeria's own case in the Arbitration, including at the hearing on quantum, that P&ID had done nothing under the GSPA.

498. Section 68 next requires the Court to consider whether the "irregularity" (to use the language of the section) has caused or will cause substantial injustice to Nigeria. If it has then it is a "serious" irregularity under the section.

"Serious" irregularity: "substantial injustice"

499. There can be no question that fraud and conduct contrary to public policy are serious in themselves. However when section 68 refers to seriousness its focus is on the consequences, and specifically the consequences for justice. It asks whether substantial injustice has been or will be caused to the party applying to the Court.

500. In RAV Bahamas v Therapy Beach Club [2021] UKPC 8; [2021] AC 907 the Privy Council considered section 90 of the Bahamas Arbitration Act 2009 ("the 2009 Act"), a section "modelled on and something that is materially identical to section 68 of the English Arbitration Act 1996". Lords Hamblen and Burrows said:

> "30. As was explained in the 1996 *Report on the Arbitration Bill* (which became the 1996 Act) of the Departmental Advisory Committee on Arbitration Law ("the DAC"), the test of serious irregularity was intended to limit intervention to "extreme" cases where it could be said that "the tribunal has gone so wrong in its conduct of the arbitration that justice calls out for it to be corrected". As set out at para 280 of the DAC Report:
>
> > "280. Irregularities stand on a different footing. Here we consider that it is appropriate, indeed essential, that these have to pass the test of causing 'substantial injustice' before the court can act. The court does not have a general supervisory jurisdiction over arbitrations. We have listed the specific cases where a challenge can be made under this Clause. The test of 'substantial injustice' is intended to be applied by way of support for the arbitral process, not by way of interference with that process. Thus it is only in those cases where it can be said that *what has happened is so far removed from what could reasonably be expected of the arbitral process that we would expect the court to take action*. The test is not what would have happened had the matter been litigated. To apply such a test would be to ignore the fact that the parties have agreed to arbitrate, not litigate. Having chosen arbitration,

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> the parties cannot validly complain of substantial injustice unless what has happened simply cannot on any view be defended as an acceptable consequence of that choice. In short, Clause 68 is really designed as *a long stop*, only available in *extreme cases where the tribunal has gone so wrong in its conduct of the arbitration that justice calls out for it to be corrected*." (Emphasis added)"

31. In accordance with this guidance the test of serious irregularity has been recognised as imposing a "high threshold" or "high hurdle" - see, for example, *Lesotho* at para 28 (Lord Steyn); *ABB AG v Hochtief Airport GmbH* [2006] EWHC 388 (Comm); [2006] 1 All ER (Comm) 529 at para 63 and the cases there cited (Tomlinson J).

32. The focus is on due process, not the correctness of the decision reached: see, for example, *Petroships Pte Ltd v Petec Trading and Investment Corpn (The Petro Ranger)* [2001] 2 Lloyd's Rep 348 at 351; *Abuja International Hotels Ltd v Meridien SAS* [2012] EWHC 87 (Comm); [2012] 1 Lloyd's Rep 461, at para 49; *Primera Maritime (Hellas) Ltd v Jiangsu Eastern Heavy Industry Co Ltd* [2013] EWHC 3066 (Comm); [2014] 1 All ER (Comm) 813 at para 6. As Lord Steyn stated in *Lesotho* at para 29, referring to section 68 of the 1996 Act which is equivalent to section 90 of the 2009 Act:

> "… nowhere in section 68 [90] is there any hint that a failure by the tribunal to arrive at the 'correct decision' could afford a ground for challenge."

33. Even if a case is shown to fall within one or more of the kinds of irregularities listed in section 90 this will only amount to a serious irregularity if the court considers that it "has caused or will cause substantial injustice". This means more than some injustice. As Colman J explained in *Bulfracht* at p 687:

> "… those who framed the bill contemplated that the courts' intervention would be engaged not merely in those cases where some injustice has been caused to the applicant by the incidence of the serious irregularity but where the substance and nature of the injustice goes well beyond what could reasonably be expected as an ordinary incident of arbitration."

34. There will be substantial injustice where it is established that, had the irregularity not occurred, the outcome of the arbitration might well have been different: see, for example, *Vee Networks Ltd v Econet Wireless International Ltd* [2004] EWHC 2909 (Comm); [2005] 1 All ER (Comm) 303 at para 90 (Colman J). It is not necessary to show that the outcome would "necessarily or even probably be different": *Cameroon Airlines v Transnet Ltd* [2004] EWHC 1829 (Comm); [2006] TCLR 1, at para 102 (Langley J). As stated by Akenhead J in *Raytheon* at para 33(i):

> "(i) For the purposes of meeting the 'substantial injustice' test, an applicant need not show that it would have succeeded on the issue with which the tribunal failed to deal or that the tribunal would have reached a conclusion favourable to him; it [is] necessary only for him to show that (i) his position

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> was 'reasonably arguable', and (ii) had the tribunal found in his favour, the tribunal might well have reached a different conclusion in its award …"

35. Some irregularities may be so serious that substantial justice is "inherently likely" or "likely in the very nature of things" to result. As Toulson J stated in *Ascot Commodities NV v Olam International Ltd* [2002] CLC 277 at pp 284F-285A:

> "Since the whole process of arbitration is intended as a way of determining points at issue, it is more likely to be a matter of serious irregularity if on a central matter a finding is made on a basis which does not reflect the case which the party complaining reasonably thought he was meeting, or a finding is ambiguous, or an important issue is not addressed, than if the complaints go simply to procedural matters.
>
> …
>
> It is *inherently likely* to be a source of serious injustice if irregularities occurred of the kind to which I have referred. Since the purpose of arbitration is to determine central issues between the parties, if there has been a flaw in that this has not been done, that is *likely in the very nature of things* to be a matter of serious injustice." (Emphasis added)

36. In such cases substantial injustice may be inferred from the nature of the irregularity and that inference may be so strong that "it almost goes without saying": see *Raytheon* at para 61. In that case the arbitrators had failed to deal with "key issues" which may well have impacted on an award of some £126m.

37. In general, there will, however, be no substantial injustice if it can be shown that the outcome of the arbitration would have been the same regardless of the irregularity - see, for example, *Raytheon* para 33 (last sub-paragraph)."

501. Although the Act contains "its own express criteria for applications under section 68(2)(g)" "the approach of the court in relation to domestic judgments must be a useful comparator when applications were made to set aside arbitration awards, particularly bearing in mind that the decision was reached by the Tribunal of the parties' choice": DDT Trucks of North America v DDT Holdings [2007] 2 Lloyd's Rep 213; [2007] EWHC 1542 (Comm) at [22]-[23] per Cooke J.

502. Under that approach an applicant must show that new evidence would have had an important influence on the result (Westacre Investments Inc v Jugoimport-SDPR Holding Co Ltd [1999] 2 Lloyd's Rep 65 at 76-77, Waller LJ.) Blair J elegantly captured the relationship between this aspect of the jurisdiction in relation to judgments and the statutory jurisdiction in relation to arbitration awards when he observed in Double K that:

> "The latter point (important influence on the result) takes effect within the statutory requirement that the irregularity has caused or will cause substantial injustice to the applicant (*Thyssen* at [65]).").

In Takhar v Gracefield Developments Ltd [2019] UKSC 13, [2020] AC 450 at [56]-[57], [67], 76] and [104], the Supreme Court approved and discussed the summary

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(identified by Newey J at first instance) of the principles governing applications to set aside judgments for fraud by Aikens LJ in Royal Bank of Scotland plc v Highland Financial Partners lp [2013] 1 CLC 596 at [106].

503. Reflecting the concern for a rigour in approach in this area, in Westacre Waller LJ continued (dissenting in the result), in the context of the particular type of irregularity that was before the Court, by saying that the jurisdiction required evidence:

> "so material that its production [at trial] would probably have affected the result and (when the fraud consists of perjury) is so strong that it would reasonably be expected to be decisive at the re-hearing and if unanswered must have that result."

504. But "result" should be understood broadly, as "what happened". There will be a range of situations, and to allow for that the matter can be put more broadly, as the Privy Council did in RAV Bahamas: ("There will be substantial injustice where it is established that, had the irregularity not occurred, the outcome of the arbitration might well have been different …"). This further respects the fact that section 68(2)(g) concerns not just the award being obtained by fraud or being contrary to public policy, but also "the way in which [the award] was procured being contrary to public policy".

505. Lord Wolfson KC argued that the applicant alleging that "substantial injustice" was caused must show that "but for the irregularity, "the tribunal might well have reached a different view and produced a significantly different outcome"", and (referring to Nigeria's written opening) that that was common ground. In my judgment, it is one of the ways in which the requirement for causation may be and has been put, but it is and has not been intended as a comprehensive description. Section 68(2)(g) says simply that it is "substantial injustice to the applicant" that has to be shown. And this is substantial injustice that the serious irregularity "has caused or will cause". I should add that I do not consider that the relevant paragraph in Nigeria's written opening does quite create common ground as suggested.

506. Lord Wolfson KC referred to the decision of Sir Ross Cranston in Africa Sourcing Camerous Ltd v LMBS [2023] EWHC 150. This concerned an allegation of serious irregularity in the form of apparent bias in relation to the chair of the tribunal. The challenge was under section 68(2)(a). Sir Ross said:

> "[There] is no support in [RAV] for the suggestion that in a section 68 application a finding of apparent bias in an arbitration tribunal will lead as a matter of course to a finding of substantial injustice. Rather, as we have seen, the effect of the Privy Council advice is that a case within section 68(2)(a) will not constitute a serious irregularity unless the court considers that it has caused substantial injustice, although the nature of the irregularity may be such that the inference of substantial injustice almost goes without saying. Moreover, there will be no substantial injustice if it can be shown that the outcome of the arbitration would have been the same regardless of the irregularity."

507. It is the last sentence that Lord Wolfson KC emphasises. But Sir Ross made clear he was dealing with the situation where the serious irregularity was apparent bias (and apparent bias not actual bias). If it can be shown that the outcome of the arbitration would have been the same regardless of apparent bias then it seems clear that there will

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be no substantial injustice. That is what Sir Ross was saying, and in my respectful view he was correct.

508. The citation of the case by Lord Wolfson KC also allows emphasis that whether it is in fact possible to show "that the outcome of the arbitration would have been the same" will be different depending on the circumstances of the case and the nature of the challenge. Perhaps there is much to be said for this aspect of these challenges to be left with the words of the section "serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant", keeping in mind the text of the DAC report to which the Privy Council referred.

509. In the present case the core is the bribery of Mrs Grace Taiga when the GSPA was being made. It is the fact of that bribery that Mr Michael Quinn falsely concealed by the words of his witness statement, and that the continued bribery or corrupt payments sought to suppress. It is that that P&ID was monitoring (among other things) by its retention of the Nigeria's Internal Legal Documents.

510. In its written closing P&ID argues that "… any perjury that took place did not cause any substantial injustice within the meaning of s. 68 as it did not bring about the Awards (or any of them)". I respectfully disagree. The Awards were the result of the Arbitration that happened. There is no question to my mind that the Arbitration would have been completely different, and in ways strongly favourable to Nigeria, had the fact of bribery of Mrs Grace Taiga when the GSPA was being made been before the Tribunal. It would have brought in the issue whether the GSPA was procured by fraud, and as a result voidable. Discovery of the concealment would have completely altered the Tribunal's approach to the rest of Mr Michael Quinn's evidence.

511. I have no hesitation in concluding that Nigeria suffered substantial injustice within the meaning of the section. And that is even before taking into account what P&ID did with Nigeria's Internal Legal Documents.

512. P&ID says here "again P&ID's obtaining of these did not cause any substantial injustice within section 68, because it had no effect whatsoever on the Awards, irrespective of how or from whom the documents were obtained"; they did not cause substantial injustice because they gave P&ID no relevant advantage in the arbitration. I must again respectfully reject the argument. The Court will be realistic here about what proof is possible in terms of showing the effect of a dishonest course of conduct. The nature and contents of the documents, and the scale, continuity and circumstances of P&ID's conduct were such that, in my judgment, Nigeria's right to confidential access to legal advice was utterly compromised throughout all or most of the Arbitration. It was effectively denied an important part of the process of arbitration. Here too I have no doubt that had the Tribunal known, its approach would have been very different.

513. In this connection reference was made to the decision of the Court of Appeal in Hamilton v Al Fayed [2001] EMLR 15. The Court of Appeal considered an appeal against a judgment at trial. It examined whether the purchase of stolen privileged documents had given "any significant procedural advantage" at the trial, finding that it had not; the documents had not been used "to obtain a tactical advantage in the

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litigation, let alone [had they] enabled him to obtain a favourable verdict when otherwise he might not have done so".

514. An application under section 68 is not of course an appeal, but for present purposes it is important to emphasise the difference between the circumstances of that case and this. On the appeal the court examined the effect of specific identified use of privileged documents at a trial. It was realistically possible to enquire into the question of tactical advantage and effect on verdict. Here the court on a section 68 application is faced with conduct throughout the course of an arbitration. There are limits to the feasibility and reliability of an attempt to capture the advantages enjoyed in the latter situation and how those may or will have affected the conduct of the arbitration and as a result the outcome of the arbitration.

515. Section 68 asks not only whether the award was obtained by fraud but whether the way in which the award was procured was contrary to public policy. The focus here is on the process by which an award was achieved. Approached with the extreme caution mentioned by Moore-Bick J in Cuflet Chartering (above), the language of the section in my judgment applies where (as here) Nigeria was comprehensively deprived of its right to legal professional privilege throughout the process.

516. I reach these views of the matter without reluctance. P&ID has the Awards only after and by practising the most severe abuses of the arbitral process. As a result Nigeria had a "right to object" under section 68(2)(g) of the Arbitration Act 1996. True, there were other causes of the Awards, including incompetence and neglect throughout the Arbitration on the part of Nigeria (acting through a number of individuals). But the presence of these causes does not detract from the effects of P&ID's abusive conduct. If this was a fight it was not a fair one, and could not lead to a just result.

517. If I go back to the passages of the DAC Report cited by Lords Hamblen and Burrows JJSC, the present is a stand-out example of a case where "justice calls out for" correction. It is readily seen that "what has happened is so far removed from what could reasonably be expected of the arbitral process that" it is to be expected that the court will take action, and to do so is "by way of support for the arbitral process, not by way of interference with that process." (a phrase also brought out by Cresswell J in The "Petro Ranger" [2001] EWHC 418 (Comm); [2001] 2 Lloyd's Rep 348 at 351.

"Loss of right to object": section 73 of the Arbitration Act 1996

Section 73

518. In trying to take a path through this judgment in a way that may be of assistance to different audiences, I reach this important point last. It was, properly, a significant part of the case that Lord Wolfson KC presented on behalf of P&ID.

519. By section 73 of the Arbitration Act 1996, so far as material:

> "(1) If a party to arbitral proceedings takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitration agreement or the tribunal or by any provision of this Part, any objection … (a) that the tribunal lacks substantive jurisdiction … or (d) that there has been any other irregularity affecting the tribunal or proceedings … he may not

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> raise that objection later, before the tribunal or the court, unless he shows, at the time he took part or continued to take part in the proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection."

520. Thus, for a party to the arbitral proceedings who "takes part, or continues to take part, in the proceedings" the objection is to be made "either forthwith or within such time as is allowed by the arbitration agreement or the tribunal or by any provision of this Part" of the Arbitration Act 1996. If it is not, then it may not be made later "before the tribunal or the court" unless the party "did not know and could not with reasonable diligence have discovered the grounds for the objection." "at the time he took part or continued to take part in the proceedings". The grounds of objection with which section 73 is concerned are those that occurred (even though not raised) up to the date of a final award: this is the point that is addressed at Merkin and Flannery on the Arbitration Act 1996, 6th edition, at [73.7].

521. There is a valuable explanation of section 73 in Rustal Trading v Gill & Duffus SA [2000] 1 Lloyd's Rep 14 by Moore-Bick J (as he then was). At 19-20 he said:

> "The effect of this section is that a party to an arbitration must act promptly if he considers that there are grounds on which he could challenge the effectiveness of the proceedings. If he fails to do so and continues to take part in the proceedings, he will be precluded from making a challenge at a later date. Moreover, it is clear from the language of sub-s. (1) itself that it is unnecessary for an applicant to have had actual knowledge of the grounds of objection in order for him to lose his right to challenge the award. If the respondent can show that the applicant took part or continued to take part in the proceedings without objection after the grounds of objection had arisen, the burden passes to the applicant to show that he did not know, and could not with reasonable diligence have discovered, those grounds at the time. It may often be necessary, therefore, to consider the applicant's conduct of the proceedings against the background of his developing state of knowledge."

522. A number of authorities have identified or confirmed that the fundamental principle, or policy, involved is that of "fairness, and justice, in the sense of openness and fair dealing between the parties": see Moore-Bick J in Rustal (above) at 19-20, Colman J in JSC Zestafoni v Ronly Holdings Ltd [2004] EWHC 245 (Comm); [2004] 2 Lloyd's Rep 335 at [64], Cooke J in Thyssen Canada Ltd v Mariana Maritime SA [2005] EWHC 219 (Comm); [2005] 1 Lloyd's Rep 640 at [18], Aikens J in Primetrade AG v Ythan Ltd [2005] EWHC 2399 (Comm); [2006] 1 Lloyd's Rep 457 at [59]-[61] and Carr J in C v D1 [2015] EWHC 2126 (Comm) at [150], Province of Balochistan v Tethyan Copper Company Pty Limited [2021] EWHC 1884 (Comm); [2021] 2 Lloyd's Rep 443 at [110] (Robin Knowles J, in a list of points improved by Butcher J in National Iranian Oil Company v (1) Crescent Petroleum Company International Limited (2) Crescent Gas Corporation Limited [2022] EWHC 2641 (Comm) at [36]).

Section 73 with section 68(2)(g)

523. Section 68 itself provides that a "party may lose the right to object (see section 73)". Section 73(1)(d) is concerned, in terms, with the "objection" that there has been an "irregularity affecting the tribunal or proceedings". Section 68 is concerned, in terms, with "serious irregularity affecting the tribunal, the proceedings or the award". As

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already noted, there will be an irregularity under section 68(2)(g) where "an award was obtained by fraud or the award or the way in which it was procured was contrary to public policy".

Takhar, in the UK Supreme Court

524. In Takhar v Gracefield Developments Ltd (above) the Supreme Court addressed setting aside, not an arbitration award, but a judgment of the Court on grounds of fraud. Nigeria argues that the effect of Takhar is that:

> "… as a matter of law, it is not open to a fraudster who has obtained a judgment by fraud, including through perjured evidence, to profit from it by contending that the innocent party has acted negligently in failing to uncover his fraud sooner".

Lord Wolfson KC for P&ID properly accepted that a reasonable diligence requirement "now doesn't apply when you are applying to set aside a judgment for fraud" at common law or equity.

525. Lord Kerr (with whose speech Lord Hodge, Lord Lloyd-Jones and Lord Kitchin agreed) said in Takhar at [54]-[55] :

> 54. "… In my view, it ought now to be recognised that where it can be shown that a judgment has been obtained by fraud, and where no allegation of fraud had been raised at the trial which led to that judgment, a requirement of reasonable diligence should not be imposed on the party seeking to set aside the judgment.
>
> 55. Two qualifications to that general conclusion should be made. Where fraud has been raised at the original trial and new evidence as to the existence of the fraud is prayed in aid to advance a case for setting aside the judgment, it seems to me that it can be argued that the court having to deal with that application should have a discretion as to whether to entertain the application. .... The second relates to the possibility that, in some circumstances, a deliberate decision may have been taken not to investigate the possibility of fraud in advance of the first trial, even if that had been suspected. If that could be established, again, I believe that a discretion whether to allow an application to set aside the judgment would be appropriate but, once more, I express no final view on the question."

526. Lord Hodge, Lord Lloyd-Jones and Lord Kitchin also agreed with the speech of Lord Sumption. Lord Sumption's opinion was, at [66]:

> "66. I would leave open the question whether the position as I have summarised it is any different where the fraud was raised in the earlier proceedings but unsuccessfully. My provisional view is that the position is the same, for the same reasons. If decisive new evidence is deployed to establish the fraud, an action to set aside the judgment will lie irrespective of whether it could reasonably have been deployed on the earlier occasion unless a deliberate decision was then taken not to investigate or rely on the material."

527. In the present case, Sir Ross Cranston addressed the question whether Takhar affected the position where an arbitration award rather than a judgment was involved. After

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summarising the arguments addressed to him, from Mr Howard KC for Nigeria and from Mr Ian Mill KC who then appeared for P&ID, Sir Ross expressed his view as follows:

> "183. If it had been necessary to decide the issue, it seems to me that Mr Howard has the best of the arguments. It is a fundamental principle of our law that, as Lord Bingham said in HIH Casualty and General Insurance Ltd v Chase Manhattan Bank [2003] UKHL 6, [2003] 2 Lloyd's Rep 61 - referring to what Rix LJ had said in the Court of Appeal - that fraud is a thing apart, it unravels all: [15]. There seems to be no reason why the finality of arbitration awards should be afforded greater importance than the finality of judgments in circumstances of fraud. The statutory bar in section 73 is limited to irregularities discoverable during the arbitration. Otherwise, the effect of section 81(1) of the [Arbitration] Act [1996] is to preserve the right to challenge the enforcement of an award on public policy grounds under the common law. As Mr Howard contended, there is no reason to interpret the Act so that Takhar is confined to common law public policy challenges and not to those under section 68(2)(g)."

In the passage from the speech of Lord Bingham, to which Sir Ross referred, Lord Bingham had continued:

> "It also reflects the practical basis of commercial intercourse. Once fraud is proved, "it vitiates judgments, contracts and all transactions whatsoever": *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702 at 712, per Denning LJ. …"

528. Nigeria argues that "the submission that the Judge accepted was that "Takhar applies equally to challenges to set-aside an arbitral award under section 68 of the 1996 Act" and that he was not limiting his comments to s.80(5). Nigeria argues:

> "… there is no principled basis to distinguish between the test for extending time under s.80(5), which is a test of reasonable diligence, and the test under s.73, which is also a test of reasonable diligence. Takhar applies to both."

529. Section 80(5) does not contain the express statutory reference to reasonable diligence that section 73 does. It is in these terms:

> "Where any provision of this Part requires an application or appeal to be made to the court within a specified time, the rules of court relating to the reckoning of periods, the extending or abridging of periods, and the consequences of not taking a step within the period prescribed by the rules, apply in relation to that requirement."

It is one thing to draw on Takhar in interpreting section 80(5); it is another to do so in interpreting section 73.

530. Sir Ross clearly appreciated this. He referred to "[t]he statutory bar in section 73" and that it was "limited to irregularities discoverable during the arbitration" (see also [152]). "Otherwise", he said the effect of section 81(1) of the Act is to preserve "the right to challenge the enforcement of an award on public policy grounds under the common law".

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531. Takhar states the common law, and equity. Sir Ross accepted the force of Mr Howard KC's contention that "there is no reason to interpret the Act so that Takhar is confined to common law public policy challenges and not to those under section 68(2)(g).". But that is not to say that "[t]he statutory bar in section 73" does not apply. Rather, it is to state that Takhar applies where it is sought to extend time for a challenge under section 68(2)(g), which was the issue before Sir Ross. Sections 68(1) and 73 both make plain that any challenge brought under section 68 can be barred under section 73. In my judgment Lord Wolfson KC is right to say, in summary, that for arbitration awards "reasonable diligence" is in the statute and Takhar does not change the statute. Statutory context of course continues to be provided by section 1, and the principles there set out.

Reasonable diligence

532. How does the requirement of "reasonable diligence" in section 73 apply in the particular circumstances of section 68(2)(g), that is, where the allegation is that an award was obtained by fraud or the award or the way in which it was procured was contrary to public policy?

533. The requirement under section 73 is "could not with reasonable diligence". The language is not "should not", as Lord Wolfson KC emphasised, in my view correctly. (I do not consider that Burton J in HJ Heinz v EFL [2010] 1 Lloyd's Rep 727 at [31]-[33] was suggesting otherwise, and I appreciate that some would point out that to say a person "could" have discovered something with reasonable diligence" means that they "should" have). When Nigeria says in its written opening: "In this respect, the test is not whether Nigeria's legal team could by any means have discovered P&ID's dishonesty, but whether it should have done so", the test does not involve the word "should" but the test also does not include the words "any means". The words "with reasonable diligence" are very important.

534. Takhar assists with the meaning and understanding of what the law does and does not expect of the victim as a reasonable person in the specific context of fraud. Mr Howard KC draws on this passage from Lord Sumption's opinion in Takhar at [63] (Lord Hodge, Lord Lloyd-Jones and Lord Kitchen agreed with Lord Sumption; but cf. on this point Lord Briggs at [88]**)**:

> "… proceedings of this kind are abusive only where the point at issue and the evidence deployed in support of it not only could have been raised in the earlier proceedings but should have been: see *Johnson v Gore-Wood & Co*, at p 31 (Lord Bingham of Cornhill) and *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd*, para 22 (Lord Sumption). As Lord Bingham observed in the former case, it is "wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive." The "should" in this formulation refers to something which the law would expect a reasonable person to do in his own interest and in that of the efficient conduct of litigation. However, the basis on which the law unmakes transactions, including judgments, which have been procured by fraud is that a reasonable person is entitled to assume honesty in those with whom he deals. He is not expected to conduct himself or his affairs on the footing that other persons are dishonest unless he knows that they are. That is why it is not a defence to an action in deceit to say that the victim of the deceit was foolish or negligent to allow himself to be taken

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> in: *Central Railway Company of Venezuela v Kisch* (1867) LR 2 HL 99, 120 (Lord Chelmsford); *Redgrave v Hurd* (1881) 20 Ch D 1, 13-17 (Jessell MR). It follows that unless on the earlier occasion the claimant deliberately decided not to investigate a suspected fraud or rely on a known one, it cannot be said that he "should" have raised it."

(Lord Hodge, Lord Lloyd-Jones and Lord Kitchen agreed with the speech of Lord Sumption; but cf. on this point Lord Briggs at [88].)

535. For Nigeria, Mr Howard KC argues that there is no reason in principle why a different approach should apply to arbitral awards. Where by "approach" is meant the explanation of what the law does and does not expect of the victim as a reasonable person, in the specific context of fraud, I agree.

536. At the same time Lord Wolfson KC, for P&ID, highlights this passage from OT Computers Ltd v Infineon Technologies AG [2021] EWCA Civ 501:

> "Although some of the cases have spoken in terms of reasonable diligence only being required once the claimant is on notice that there is something to investigate (the "trigger"), it is more accurate to say that the requirement of reasonable diligence applies throughout".

The passage addresses section 32(1)(a) of the Limitation Act 1980 but I accept that it informs the correct approach in the present context too.

537. For P&ID, Lord Wolfson KC further argues that where (as here) one of the questions is whether the claimant knew or could, with reasonable diligence, have discovered the material needed to bring a fraud claim, then whether the defendant disputes whether there was a fraud, does not answer the question. He references AB v Ministry of Defence [2013] 1 AC 78, per Lord Wilson, but note also Lord Hope and Lord Walker in Deutsche Morgan Grenfell [2007] 1 AC 558. In my view Lord Wolfson KC is correct, but it must be kept in mind that "the material needed" will have to be sufficient to enable fraud to be alleged or pleaded: The Law Society v Sephton & Co [2004] EWCA Civ 1627, [2005] QB 1013 at [110] per Neuberger LJ and Park v CNG per Andrews LJ.

This case: preliminary

538. I understood Nigeria to argue that section 73 did not arise on those parts of Nigeria's case that alleged corruption by P&ID of Nigeria's own lawyers and those parts that concerned Nigeria's Internal Legal Documents. The alleged corruption by P&ID of Nigeria's own lawyers is no longer relevant at this point but that is because I have found that allegation not to be made out on the evidence available to me at this trial. But otherwise I consider I should address section 73 wherever I have held that section 68(2)(g) gives Nigeria a "right to object" on the facts of this case as I have found them to be. This is because section 73 says that a party (here, Nigeria) "may not raise" an objection "unless he shows" that the requirements of section 73 are met.

539. Nigeria also takes a point about P&ID's pleading and particularisation of its contention under section 73. P&ID's Defence states that Nigeria "was on notice of matters on which it now seeks to rely at the time of the arbitration, or could have discovered them".

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Nigeria added the suggestions that this was "not a plea about bribery at all" and that P&ID relied on section 73 "only in respect of [Nigeria's] case on Mr Quinn's perjured evidence".

540. P&ID's Defence is brief, but in the circumstances of this case, I propose to treat it as sufficient. I keep in mind the way things were put by Moore-Bick J in Rustal:

> "If the respondent can show that the applicant took part or continued to take part in the proceedings without objection after the grounds of objection had arisen, the burden passes to the applicant to show that he did not know, and could not with reasonable diligence have discovered, those grounds at the time".

The fact remains that Nigeria invokes section 68 and section 73 requires Nigeria to:

> "show[] at the time [it] took part or continued to take part in the proceedings, [it] did not know and could not with reasonable diligence have discovered the grounds for the objection."

That is what I should examine. In doing so I keep in mind that Nigeria does not call a witness, available to be cross examined, as to its knowledge and as to any factual circumstances bearing on what reasonable diligence required.

541. Lord Wolfson KC argues that "any material … discovered [by Nigeria] after 5 December 2019 [the date when the section 68 challenge was issued] is necessarily irrelevant to section 73 because, … self-evidently, Nigeria didn't need that additional material in order to raise its objection". That would be correct for a ground of objection raised at that point (understanding "ground of objection" in the way summarised in Balochistan (above) at points (5) and (6) at [110] and at [264]), but not for a new ground of objection.

This case: substance

542. Nigeria says there are three "answers" to what it describes as P&ID's argument "that [Nigeria] should [sic] with reasonable diligence have uncovered Mr Quinn's perjury at the time of the arbitration, and is therefore barred by s. 73 of the 1996 Act".

543. The first answer given by Nigeria is that members of Nigeria's legal team were corrupted, at the jurisdiction and liability stage, with the damage caused then already done by the quantum stage when it had a new legal team (although it points out that the original legal team remained in place for much of the quantum stage). In this judgment, I have rejected Nigeria's case that Mr Shasore SAN and other members of Nigeria's legal team have been shown have been corrupted.

544. The second of the three answers given by Nigeria is that Takhar establishes that "it is not open to a party which has obtained [an arbitration] award by fraud to contend that the innocent party had acted unreasonably in failing to uncover the fraud". I have had to reject that argument (put as a jurisdictional limit, rather than as a conclusion on the facts of a case) in this judgment, by reference to the statute governing the position with regard to arbitration awards.

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545. The third answer given by Nigeria, in the formulation used in its written closing, is "that P&ID cannot maintain that [Nigeria] acted unreasonably in taking [Mr Michael Quinn's evidence] at face value as a truthful piece of evidence, and not uncovering the perjury, in circumstances where that is precisely what P&ID's own legal team claims to have done, as did P&ID's experts." Lord Wolfson KC's response is that Nigeria did not take Mr Quinn's evidence at face value as truthful.

546. Lord Wolfson KC summarised in his oral closing argument for P&ID that "… all the matters which Nigeria relied on to bring its allegations that Mr Quinn's evidence was perjured were not only reasonably discoverable, which would be enough, they were actually known and positively argued by Nigeria in the arbitration." But for all that might be said about Mr Michael's Quinn's knowingly false evidence as to finance, engineering and expenditure, Lord Wolfson KC's point does not hold for the bribery and its further concealment by Mr Quinn in his evidence.

547. Whatever may be said about whether the possibility of dishonest evidence should be in the mind of a party who asserts a case which is (as Lord Wolfson KC puts it in argument) "flatly inconsistent" with the evidence of an opposing party's witness, that situation is quite different to the situation where the opposing party's witness is further concealing bribery. It is the presence of the inconsistency that may start to prompt the discovery of fraud in the former case, but in the latter case there is no equivalent until something happens to cause the concealment to start to break down.

548. In opening argument, P&ID argued that on Mr Malami SAN's own evidence for Nigeria, what P&ID termed six "red flags" were known by Nigeria upon or immediately after his appointment as Attorney General on 11 November 2015, with the first three of these being known throughout the arbitration proceedings.

549. The reason P&ID draws the distinction between the first three and the second three "red flags" is because by 11 November 2015 the Award on Liability had been made. And as P&ID says, Nigeria would not have been able to keep to itself any discovery of fraud after the Award on Liability with the intention of using it only after the Final Award.

550. The "red flags" were developed and added to by P&ID in its closing. A purpose was to show that at least many of its points were derived from what Mr Malami SAN suggested was suspicious. It is not necessary to deal with every suggested point individually, and it is also important not Mr Malami SAN's suggestions as statements of what reasonable diligence required.

551. P&ID helpfully "gather[s] these points together" in a summary as follows in its written closing:

> "… in August 2012, [Nigeria] was (on its own case) faced with a potential exposure of several billion dollars, under a "deeply suspicious oil and gas contract, signed by the wrong Minister, during a period of "endemic corruption in Nigeria, and most particularly in the oil and gas sector", imposing an essentially unqualified obligation on [Nigeria] to supply gas to a BVI company which had no apparent assets, no industry experience, had carried out no work, had no engineering designs, had no finance, had no land, had misrepresented that sufficient gas for the

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> project would be available, and might reasonably have been suspected of having "friends in government" who would do its bidding."

552. In oral closing Lord Wolfson KC assembled the points, from 2012 and before getting to 2015, in this way:

> "… what this means is that never mind during the arbitration, in August 2012 on its own case, eight points we know were alive.
>
> First, Nigeria was being sued for $6 billion. Second, by a BVI company, something that we are told any Nigerian Minister or official would know was in breach of Nigerian law. Third, with no apparent assets, experience or finance. Fourth, under a deeply suspicious contract, to use Mr Malami's phrase. Five, signed by the wrong Minister. Six, at a time and in a sector when corruption was endemic. Seven, imposing an essentially unqualified obligation on Nigeria to supply gas. And eight, containing an "unorthodox", according to Mr Malami, arbitration clause which breached Nigerian public policy."

553. P&ID's point about the size and importance of the claim is fair. Lord Wolfson submits that the potential exposure is important when assessing what amounts to "reasonable diligence" and I agree. But the point goes to effort rather than to indication of what needs to be looked at.

554. The first "red flag" coupled two parts. The first part was the contention that the GSPA was "a contract which was, on its face, deeply suspicious". The second was the fact that the GSPA was entered into with a British Virgin Islands company "with no apparent assets, no obvious industry experience, and no other credentials to suggest that it would be suitable to operate such a sophisticated arrangement", and where government business was generally conducted through a local Nigerian company.

555. As to the first part, P&ID does highlight Article 6(a) and (b) of the GSPA in particular, although not alone. However P&ID has itself shown the similarity of the GSPA with other contracts under the Advanced Gas Development Project (and see [155] above). It is of note that, notwithstanding the points I have mentioned in this judgment, the GSPA did not strike the Tribunal as, on its face, "deeply suspicious". But I appreciate that part of P&ID's emphasis is that Mr Malami (who was appointed in November 2015 and thus in the period of the Arbitration) was saying it was suspicious to him.

556. As to the second part of the first "red flag", Nigeria had had plenty of experience of working with ICIL Group companies. The track record showed that ICIL Group would bring experience and expertise in when needed, and Nigerian entities, including P&ID (Nigeria), were there if required. There is not enough in the first "red flag" to suggest bribery.

557. The second suggested "red flag" was the widespread presence of corruption in Nigeria, described by Mr Malami SAN, including in the oil and gas industry and at the time the GSPA was entered into. This is not enough to suggest bribery in every individual case or in this case.

558. The third "red flag" was the failure to meet procurement procedures, or authorisation procedures. This is not a strong point in this case in the light of P&ID's emphasis on

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bureaucratic and procedural incompetence, and the position with other contracts under the Accelerated Gas Development Project. Mr Malami informed the English Court in December 2019 that certain authorisation procedures "were required by law with a view to, amongst other things, combatting corruption". Again that is not enough to suggest bribery in every case in which they were not complied with or in this case.

559. The reference in the summary by P&ID to "friends in government" was to words used by Mr Shasore SAN at the hearing on liability before the Tribunal. The transcript of the hearing before the Tribunal on liability shows that Mr Shasore SAN also said that "Mr Quinn, in particular, felt they could get what they wanted because their friends in government would make it happen." As is fairly accepted in P&ID's closing argument these words are capable of a number of meanings. I do not consider it is reasonable to spell the beginnings of an allegation of bribery out of them, and there is no evidence that anyone who heard them did.

560. The reference in the summary by P&ID to its having "carried out no work, had no engineering designs, had no finance, had no land, had misrepresented that sufficient gas for the project would be available" refers to different subjects examined in this judgment. It is, by reference to my findings in this judgment, not accurate on some of the subjects but part of P&ID's point is that Nigeria saw these things in this way. But even then, I do not accept that these subjects and Nigeria's view of them required it, as a matter of reasonable diligence, to investigate for bribery.

561. But as we move to the fourth to sixth red flags, the emphasis includes reference to what enquiry the first three flags, or some of their elements, prompted.

562. The fourth and fifth "red flags" were in February 2016, when Stephenson Harwood advised an investigation by "a credible investigations company" into "P&IDs history, its financial capabilities and general track record" and Mr Shasore SAN advised Dr Kachikwu and Mrs Adelore that FRN should be "investigating the manner in which P&ID came to be selected to perform the GSPA in order to determine if there are any illegality or public policy reasons why it should not be awarded damages". In fact there was the appointment of the EFCC in February 2016 to investigate, and this found a number of things but not bribes. Part of P&ID's argument, pressed by Mr Wolfson KC, is that given the points in its summary at [551] or assembled at [552] above (or the first three "red flags") this all could have happened in 2012 rather than 2016.

563. But even 2016 is within the period of the Arbitration, and thus relevant to section 73. The EFCC recommended in June 2016 ("red flag" six), after what it termed an "interim" investigation "a further detailed investigation into the circumstances surrounding the award of the contract and the key parties to the transaction". That development does not in itself take things further in relation to bribes. P&ID points out that writing in February 2016 about its investigation, the EFCC said it was investigating what it described as "a case of Conspiracy, Abuse of Office and Misappropriation of Public Funds", but at that point that was not (I consider, doing the best I can with incomplete materials) an accurate description of what it was looking at, or what Stephenson Harwood or Mr Shasore SAN had advised.

564. None of the points to which P&ID draws attention would have enabled an allegation of bribery to be raised or made in the present case, or of the dishonesty in Mr Quinn's

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witness statement in not referring to bribes. Nor, even if I take them together, do I consider that the points show that reasonable diligence required Nigeria to look for bribery in this case. There were many other things, specifically identified, to look into. Lord Wolfson KC in closing was strong in his criticism of Nigeria for not taking steps that were recommended, but what matters is whether reasonable diligence required Nigeria to look for bribery whilst dishonest evidence further concealed it.

565. P&ID contends that a reasonably diligent sovereign state would have put in issue during the Arbitration the question whether the GSPA had been preceded by payments to Nigerian officials and whether it had been procured by corruption. "That springboard", says P&ID, "would have required Mr [Michael] Quinn's statement explicitly to address that point, and given [Nigeria] grounds for disclosure of relevant documents". P&ID also contends that "a reasonably diligent sovereign state would have sought disclosure of documents relating to the GSPA".

566. But to put in issue during the Arbitration the question whether the GSPA had been preceded by payments to Nigerian officials and whether it had been procured by corruption, let alone seek an order in the Arbitration for disclosure directed to that issue, would have required Nigeria to be aware of grounds for doing that. It did not have that awareness and Mr Michael Quinn, Mr Cahill and P&ID were not going to reveal the truth. Indeed they were bribing or making corrupt payments to keep the truth concealed and (through retention of Nigeria's Internal Legal Documents) monitoring Nigeria's awareness of the truth.

567. P&ID suggests that if an order for disclosure had been made in the arbitration there is no reason to believe that the documents disclosed in the initial round of disclosure in the present challenge under section 68 would not have been disclosed. These showed some reference to some pre-GSPA payments. Respectfully, even if sufficient foundation for an order for disclosure could have been established in the arbitration, I do not accept that the documents suggested would have been disclosed. Throughout the Arbitration P&ID was maintaining the false position originally represented by Mr Michael Quinn on its behalf that what he had said in his witness statement explained how the GSPA came about.

568. P&ID adds still further steps that it says reasonable diligence would have involved. In doing so it again uses against Mr Malami SAN that which he pressed in favour of Nigeria in 2019. P&ID does so by saying that reasonable diligence required the further steps to be taken earlier. The further steps include obtaining the P&ID case file from the Ministry of Petroleum Resources, looking into due diligence and procurement procedures, budgetary provision and operating licence, asking other departments and oil and gas companies about Mr Quinn and P&ID and exploring the roles of Dr Lukman, Mr Ajumogobia, Mrs Grace Taiga and Mr Tijani. In the case of Mrs Grace Taiga this was because she witnessed the GSPA and public procurement procedures had not been followed.

569. But the reasonable diligence with which I am concerned is confined to reasonable diligence that would "have discovered the grounds for the objection", that is of the "award being obtained by fraud or the award or the way in which it was procured being contrary to public policy" because of bribery or corrupt payments, because of false evidence in connection with them, and because of what happened with Nigeria's

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Internal Legal Documents. Nothing in my judgment began that path until after the Arbitration, and indeed until Nigeria first began to acquire knowledge of the bribery of Mrs Grace Taiga and that P&ID had Nigeria's Internal Legal Documents.

570. Nigeria first began to acquire knowledge of the bribery of Mrs Grace Taiga when she was interviewed by and gave a statement to EFCC in September 2019. I do not accept that reasonable diligence required an interview capable of extending to bribery or corrupt payments at any earlier point. I am also unpersuaded that an interview with Ms Taiga before 2019 would have revealed then what was revealed by her statement in 2019. And even then her statement did not reveal the first bribe at the time of the GSPA; for that Nigeria had to go to the New York Court.

571. P&ID says that had Mr Malami directed the EFCC to obtain Mrs Grace Taiga's bank statements "they would have been produced in a matter of days, as happened when he eventually sought them in 2019". But the starting point is a basis that makes that step reasonable, and that was not, in my judgment, before 2019.

572. Nigeria first began to acquire knowledge that P&ID had Nigeria's Internal Legal Documents on 29 October 2021 when that was disclosed to it by Kobre & Kim. It knew nothing about what was going on in relation to those documents before then, and reasonable diligence required nothing from Nigeria in that connection.

573. Under section 73, Nigeria has shown me that, at the time it took part or continued to take part in the Arbitration, it did not know and could not with reasonable diligence have discovered the grounds for its objection under section 68(2)(g). Accordingly it did not lose its "right to object" under section 68(2)(g).

Conclusion

574. In the circumstances and for the reasons I have sought to describe and explain, Nigeria succeeds on its challenge under section 68. I have not accepted all of Nigeria's allegations. But the Awards were obtained by fraud and the Awards were and the way in which they were procured was contrary to public policy.

575. What happened in this case is very serious indeed, and it is important that section 68 has been available to maintain the rule of law.

576. Section 68 (3) provides:

> "(3) If there is shown to be serious irregularity affecting the tribunal, the proceedings or the award, the court may—
>
> (a) remit the award to the tribunal, in whole or in part, for reconsideration,
>
> (b) set the award aside in whole or in part, or
>
> (c) declare the award to be of no effect, in whole or in part.
>
> The court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration."

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577. I was asked by Lord Wolfson KC in closing that should my judgment conclude in favour of Nigeria, as it does, to leave over the question of the order the Court should make so that the parties have the opportunity to present argument once they have considered the judgment. I respect that request and will hear that argument as soon as that can be arranged.

Reflecting on the Agreement (the GSPA), the Arbitration and the Awards

578. The GSPA had said that its objective was:

> "to provide for the construction of Gas Processing Facilities by P&ID encompassing the provision of Wet Gas by the Government and the processing of the said Wet Gas by P&ID utilising two or more process streams with a total capacity of up to 400 MMSCuFD together with all utilities, support and maintenance facilities at the Site and the provision of Lean Gas by P&ID to the Government as set forth in this Agreement and its Appendices and to operate and maintain the facilities in an efficient manner."

579. Stripped of repetition the GSPA as a whole provided for little more detail. A "Schedule of Works" was said to be annexed at Appendix B. Even if a schedule was annexed, it could have added little because the main work that had been done was not for that particular site or that particular project.

580. In the Arbitration the Tribunal did what it did with what it had. The English Court too saw nothing of what truly lay underneath when it first, briefly, came across the Arbitration in 2016. But the fact is that the Arbitration was a shell that got nowhere near the truth.

581. Policy, worldwide, properly limits challenges to arbitration awards. In the present case a challenge has been available and, in my judgment, has prevailed. But I end the case acutely conscious of how readily the outcome could have been different, and of the enormous resources ultimately required from Nigeria as the successful party to make good its challenge. I highlight the possible consequences if Mr Andrew had drafted Mr Michael Quinn's witness statement a little more cautiously and if P&ID had not retained Nigeria's Internal Legal Documents during the Arbitration.

582. Regardless of my decision, I hope the facts and circumstances of this case may provoke debate and reflection among the arbitration community, and also among state users of arbitration, and among other courts with responsibility to supervise or oversee arbitration. The facts and circumstances of this case, which are remarkable but very real, provide an opportunity to consider whether the arbitration process, which is of outstanding importance and value in the world, needs further attention where the value involved is so large and where a state is involved.

583. The risk is that arbitration as a process becomes less reliable, less able to find difficult but important new legal ground, and more vulnerable to fraud. The present case shows that having (as here) a tribunal of the greatest experience and expertise is not enough. Without reflection, then a case such as the present could happen again, and not reach the court.

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584. With diffidence and respect, I draw attention to 4 points, which are to some degree interconnected.

(1) Drafting major commercial contracts involving a state

585. It was a complete imbalance in the contributions of the parties that enabled the GSPA to be in the form it was. Many reading this judgment will recognise that, although in the present case bribery and corruption were behind that imbalance, it happens in other cases without bribery and corruption but simply where experience, expertise or resources are grossly unequal. This underlines the importance of professional standards and ethics in the work of contract drafting, including in the approach to other parties to the proposed contract. It is why some contributions of pro bono work by leading law firms to support some states challenged for resources (this is not to say, one way or the other, that Nigeria is one of those) is so valuable, in the interests of their, often vulnerable, people. In the present case there were other contracts too, with different counterparties. Their terms and circumstances are not identical, but the overall risk could have been a multiple of the US$11 billion now involved in the present case.

(2) Disclosure or discovery of documents

586. It has been disclosure or discovery of documents that has enabled the truth to be reached in this case. I highlight the disclosure orders made by courts in this and other jurisdictions. The disclosure secured from P&ID and third parties through court processes has been remarkable and crucial. And but for disclosure orders the Sunrise episode would not have been revealed from Nigeria. In all the recent debates about where disclosure or discovery matters, this case stands a strong example for the answer that it does.

(3) Participation and representation in arbitrations over major disputes involving a state

587. Notwithstanding Nigeria's allegations, I have not found Nigeria's lawyers in the Arbitration to be corrupt. But the case has shown examples where legal representatives did not do their work to the standard needed, where experts failed to do their work, and where politicians and civil servants failed to ensure that Nigeria as a state participated properly in the Arbitration. The result was that the Tribunal did not have the assistance that it was entitled to expect, and which makes the arbitration process work. And Nigeria did not in the event properly consider, select and attempt admittedly difficult legal and factual arguments that the circumstances likely required. Even without the dishonest behaviour of P&ID, Nigeria was compromised.

588. But what is an arbitral tribunal to do? The Tribunal in the present case allowed time where it felt it could and applied pressure where it felt it should. Perhaps some encouragement to better engagement can be seen as well. Yet there was not a fair fight. And the Tribunal took a very traditional approach. But was the Tribunal stuck with what parties did or did not appear to bring forward? Could and should the Tribunal have been more direct and interventionist when it was so clear throughout the Arbitration that Nigeria's lawyers were not getting instructions, or when at the quantum hearing Nigeria's then Leading Counsel, Chief Ayorinde, was failing to put necessary points to experts to test their opinion and Nigeria's own experts (for whatever reason) had not done the work required? Should the Tribunal have taken the initiative to encourage

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exploration of new bounds of contract law and the law of damages that may today be required where major long term contracts are involved?

(4) Confidentiality in significant arbitrations involving a state

589. The privacy of arbitration meant that there was no public or press scrutiny of what was going on and what was not being done. When courts are concerned it is often said that the "open court principle" helps keep judges up to the mark. But it also allows scrutiny of the process as a whole, and what the lawyers and other professionals are doing, and (where a state is involved) what the state is doing to address a dispute on behalf of its people. An open process allows the chance for the public and press to call out what is not right.

590. To take another example, I have concluded that when the parties entered into the GSPA, P&ID's intention was to perform and not simply use the GSPA as a device to get an award or settlement. But the case shows the danger of the latter happening. The situation was serious enough to cause Nigeria to allege that Mr Shasore SAN's efforts were those of a Leading Counsel deliberately underperforming. I have found against the allegation in this case, but it was one responsibly made by Mr Howard KC and with his fully appreciating the professional responsibilities on him in making that allegation.

591. And Lord Wolfson KC will forgive my quoting his submission for his client in oral closing argument: "Section 68 is not there to give you a remedy if you instruct an honest lawyer who makes a mess of it or doesn't take an available point. That is just tough. You have made your arbitration bed and you lie on it". Blunt and correct. But, unless accompanied by public visibility or greater scrutiny by arbitrators, how suitable is the process in a case such as this where what is at stake is public money amounting to a material percentage of a state's GDP or budget? Is greater visibility in arbitrations involving a state or state owned entities part of the answer?

Endnote

592. This case has also, sadly, brought together a combination of examples of what some individuals will do for money. Driven by greed and prepared to use corruption; giving no thought to what their enrichment would mean in terms of harm for others. Others that in the present case include the people of Nigeria, already let down in so many ways over the history of this matter by a number of individuals in politics and administration whose duty it was to serve them and protect them.

593. I will be referring a copy of this judgment to the Bar Standards Board in the case of Mr Trevor Burke KC and to both the Solicitors Regulation Authority and the Bar Standards Board in the case of Mr Seamus Andrew. I trust that these two regulators of the legal profession in England & Wales will consider the professional consequences of the conduct of Mr Burke KC and Mr Andrew in relation to Nigeria's Internal Legal Documents. As a separate matter, although there was argument before me about the acceptability of the remuneration arrangements for Mr Burke KC, that would be a satellite point for the issues I have the responsibility to decide and is best left for the regulator for whom it will be a central point.

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594. Against the deeply unhappy matters to which I have referred in the last two paragraphs, I am pleased to record that the trial was fought and presented on both sides to the highest professional standards. The expertise and tenacity shown by Mishcon de Reya and Nigeria's team of Counsel (Mr Howard KC, Mr Riches KC, Mr Ford, Mr Pascoe and Mr Mellab) has made the difference in getting to the facts, although some allegations were not made out. But I wish to mention in particular Quinn Emanuel and P&ID's team of Counsel (Lord Wolfson KC, Mr Milner KC, Mr Hoskins and Mr Evans). Their professionalism in ensuring that all points were properly and responsibly taken for their client in a difficult case, whilst at the same time ensuring both at and in advance of the trial that their duties to the court (especially as regards their clients' disclosure of documents) were assiduously honoured, has my respect and profoundly deserves that of their client.

595. And so to the last point. Sir Ross Cranston has recently heard his last case in the High Court of England & Wales, although he remains fully involved in the legal system, here and overseas, in other significant roles. The facts and argument presented across the 8 week trial before me were in material respects different and of course far more developed from those put before Sir Ross at the interim hearing in July 2020. But that makes his decision and written judgment on that interim hearing the more impressive still for the acuity, independence, and courage involved. Without that decision and judgment an injustice would have remained, the population of an entire federation of states would have suffered from the economic consequences, and fundamental damage would have been left to the integrity of arbitration as a process.

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Annex

Contents:

(1) Remaining parts of the GSPA
(2) Full text of Arbitration Act 1986 ss. 1, 66-70, 73, 80, 81, 103

(1) Remaining parts of the GSPA

1.DEFINITIONS AND INTERPRETATIONS

i. "Affiliate" means with respect to a Party, any company or legal entity that Controls, or is controlled by, such Party or is controlled by a company or legal entity that also controls such Party. For purposes of this Agreement, "control" means the right, directly or indirectly, to exercise fifty percent (50%) or more of the voting rights in the election of directors, or if there are no such voting rights, ownership of fifty percent (50%) or more of the equity share capital or other ownership interests, and "controls" and "controlled" shall be construed accordingly.

…

iii. "CDM Project" means a clean development project as provided for in the Kyoto Convention and a CDM Project is duly authorised to engage in approved market based mechanisms in relation the Carbon Credits;

iv. "Effective Date" means the date of signing of this Agreement;

…

x. "Pioneer Status" means tax free status in Nigeria for P&ID and its assignees in relation to the Project encompassing the provision of equipment and materials for the project and as operators of the plant for the first 5 years of operations;

…

xii. "Project Team" means the management team appointed by P&ID to carry out the implementation of the Project and shall include the P&ID nominees to the Joint Operating Committee.

xiii. "Proprietary information" means all data and information generated pursuant to the work carried out by the parties including but not limited to reports, documents, drawings and graphs, and any patentable inventions made during and as a result of all work carried out by P&ID Project Management Team for this project, inclusive of any and all patents or patent applications with regard thereto;

…

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xv. "Start Date" means the earliest date on which the Government commences the regular supply and delivery of not less than 150 MMSCuFD of Wet Gas to the Site;

…

10. NIGERIAN CONTENT

a. The Nigerian content of project development, construction and operation shall be maximised to the extent reasonably possible without detracting from the fastrack implementation schedule.

11. FORCE MAJEURE

a. Any failure or delay on the part of either Party in the performance of its obligations or duties under this Agreement, shall be excused to the extent attributable to force majeure save for obligations to pay sums due and payable. A force majeure situation includes delays, defaults or inability to perform under this Agreement due to any event beyond the reasonable control of either Party. Such event may be, but is not limited to, any act, event, happening, or occurrence due to natural causes, acts or perils of navigation, fire, hostilities, war (declared or undeclared), blockage, labour disturbances, strikes, riots, insurrection, civil commotion, quarantine restrictions, epidemics, storms, floods, earthquakes, accidents, blowouts, lightning, and, acts of or orders of the Government. If activities under this Agreement are delayed, curtailed or prevented by force majeure, then the time for carrying out the obligation and duties thereby affected, and rights and obligations hereunder, shall be extended for a period equal to the period of such delay.

b. The Party who is unable to perform its obligations as a result of the force majeure event shall promptly notify the other party thereof not later than forty-eight (48) hours after becoming aware of the establishment of the force majeure event, stating the cause, and both Parties shall do all that is reasonably within their powers to remove such cause.

12. CONFIDENTIALITY

Each of the Parties, their employees, agents and representatives hereby undertake that they shall not, whether during the period of this Agreement or at any time after the expiration or termination thereof, disclose any information acquired by it, from or through the other Party (either directly or indirectly, oral or written) to any person, firm or company. Such information shall include all information, data, designs, drawings, computer programmes, recordings, writings, correspondences and any other technical commercial or operational information relating to the other Party's business and activities or any of its Affiliate companies ("Confidential Information").

The above provisions shall not extend to information which:

i. Prior to the time of disclosure or acquisition has become lawfully in the public domain or was obtained by the Party disclosing it without any confidentiality obligations, or was obtained from a third party who is lawfully entitled to be in possession of such information;

ii. Any Party shall disclose, where such disclosure is demanded by an order of a court of competent jurisdiction, or a tax authority, or a lawfully constituted commission of inquiry,

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provided that prior to making such disclosure, written notification of the demand received by such Party has been given to the other Party and thereafter the Party being compelled to make the disclosure can do so.

13. PROPRIETARY INFORMATION

i. All intellectual property and other proprietary rights in and to the Proprietary Information shall be the joint property of the Parties;

ii. The Parties and their Affiliates shall only be entitled to use the Proprietary Information in the evaluation, pursuit and development of the project and for no other purpose.

iii. The Parties agree that Proprietary information shall be confidential and that no Party or its Affiliates shall use, copy, sell, trade, publish or otherwise disclose the Proprietary information to anyone save as otherwise provided in this Agreement or with the written approval of the other Party. Notwithstanding the foregoing, a Party may disclose Proprietary information if and to the extent:

a. that such information is already in the public domain, other than as a result of a breach of the obligation with respect to Proprietary information and Confidential Information under this Agreement by any of the Parties;

b. required to be disclosed under applicable laws including rules of applicable stock exchange, tax authority, Governmental authorities or courts or competence panel of enquiry;

c. such disclosure is to be made to its Affiliates and the directors agents, officers and employees of the Party and their Affiliates; and

d. such disclosure to professional advisers and consultants of any Party and its Affiliates on a need to know basis."

14. INDEMNITY

Each Party shall be responsible for any claims made by or injury to its representative(s) and in respect of damage to such Party's property while such representative is providing services arising from the activities under this Agreement. In that regard, each Party agrees to indemnify, defend and hold harmless the other Party from and against any claims, or causes of action arising out of or in connection with such personal injury or damage to property.

15.CHANGES TO AGREEMENT

No amendments, modifications or changes to this Agreement shall be valid unless approved in writing by both parties.

16.ASSIGNMENT

Either Party may assign its rights and obligations to an Affiliate as defined in this Agreement or to a designated financial institution where such an assignment comprises an integral constituent element of the financing structure of the Project but assignment to a non-affiliate

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shall not be permitted without the written consent of the other party such consent not to be unreasonably withheld but in all cases of assignment the assignor shall not be released of any of its liabilities and responsibilities under this Agreement.

17.THIRD PARTIES

a. This Agreement is intended for the Parties hereto, and nothing contained in this Agreement shall be construed to create any duty to, standard of care with reference to, or rights in any person not a Party to this Agreement. This Agreement shall not confer any right to any third party claiming the right to entitlement or benefits under this Agreement.

b. No Partnership: None of the provisions of this Agreement shall be deemed to constitute a Partnership between the Parties, and no Party shall have the authority to bind or shall be deemed to be the agent of the other Parties in any way.

18.LANGUAGE

The language for the purposes of administering this Agreement shall be English.

19.WRITTEN PRESS RELEASES

The Parties shall consult, coordinate and agree on the release of any written press releases, announcements or responses to media enquiries concerning this Agreement in advance of any such announcement. If a Party or its Affiliate wishes to issue or make a press release, it shall not do so unless prior to its release, such Party furnishes to the other Party a copy of such press release for its review and written approval (which approval shall not be unreasonably withheld).

The Party shall provide a copy of such press release and related background information to the other Party within a minimum of seven (7) days, if practical, but in any event not less thank seventy-two (72) hours, prior to its planned release.

20. APPLICABLE LAW and DISPUTE RESOLUTION

The Agreement shall be governed by, and construed in accordance with the laws of the Federal Republic of Nigeria.

The Parties agree that if any difference or dispute arises between them concerning the interpretation or performance of this Agreement and if they fail to settle such difference or dispute amicably, then a Party may serve on the other a notice of arbitration under the rules of the Nigerian Arbitration and Conciliation Act (Cap A18 LFN 2004) which, except as otherwise provided herein, shall apply to any dispute between such Parties under this Agreement. Within thirty (30) days of the notice of arbitration being issued by the initiating Party, the Parties shall each appoint an arbitrator and the arbitrators thus appointed by the Parties shall within fifteen (15) days from the date the last arbitrator was appointed, appoint a third arbitrator to complete the tribunal. In the event that the arbitrators do not agree on the appointment of such third arbitrator within the aforementioned fifteen (15) days, or any extension of such deadline that the Parties may mutually agree, such an arbitrator shall be appointed by the President of the Court of Arbitration of the International Chamber of Commerce ("ICC") in accordance with the releant ICC rules on the application of either Part (notice of the intention to apply having

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been duly issued to the other) and, when appointed, the third arbitrator shall convene meetings of the arbitration panel, act as chairman thereof and decide the differences or dispute should the arbitrators fail to reach a unanimous decision. No arbitrator shall be appointed by either of the Parties or their respective Affiliates within five (5) years prior to the notice of arbitration.

When an arbitrator refuses or neglects to act, or is incapable of acting or dies, a new arbitrator shall be appointed in his place and the above provisions of appointing arbitrators shall, mutatis mutandis, govern the appointment of such arbitrator.

The arbitration award shall be final and binding upon the Parties. The award shall be delivered within two months after the appointment of the third arbitrator or within such extended period as may be agreed by the Parties. The costs of the arbitration shall be borne equally by the Parties. Each Party shall, however, bear its own lawyers' fees.

The venue of the arbitration shall be London, England or otherwise as agreed by the Parties. The arbitration proceedings and record shall be in the English language.

The Parties shall agree to appropriate arbitration terms to exclusively resolve any disputes arising between them from this Agreement."

21. ENTIRE UNDERSTANDING

This Agreement including Appendix A and Appendix B comprises the full and complete understanding of the Parties hereto with respect to all the matters addressed in this Agreement and the said Appendix A and Appendix B form an integral part of this Agreement.

22. WARRANTIES

Each Party represents and warrants that it has the right and authority to enter into this Agreement and to perform and observe all of its obligations under this Agreement and that the execution, delivery and performance of this Agreement has been duly and validly authorised by all necessary corporate or other action, and that by entering into this Agreement, it will not violate, conflict with, or cause a material default under any other contract, agreement, indenture, decree, judgement, undertaking, conveyance, lien or encumbrance to which it is a party or by which it may become subject.

23. NOTICES

Any notice, request, demand or other correspondence required under this Agreement or any notice which either Party may desire to give to the other Party shall be in writing and shall be hand-delivered, sent by facsimile, or similar means of delivery to the Party intended to receive the same, as the case may be, and shall be effective upon receipt at the following address:

If to Government:
Honourable Minister of Petroleum Resources
NNPC Towers
Herbert Macaulay Way
Abuja, Nigeria

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If to: Process and Industrial Development Limited (P&ID)
The Chairman
Process and Industrial Development Limited
15B Buchanan Crescent
Off Aminu Kano Crescent
Wuse II, Abuja
FCT, Nigeria

Attention: Mr Neil C. Hitchcock, Projects Director

EXHIBIT 'A'

[An email from Addax Petroleum (Nigeria) Limited to Mr Hitchcock dated 18 November 2009 stating "Neil, Attached – basis of current compression facilities design" with the schedule below]

Gas Component	OML 123 Gas Composition Low MW Case	High MW case
C1	0.9562	0.9207
C2	0.0222	0.0347
C3	0.0103	0.0240
C4	0.0021	0.0063
C5	0.0010	0.0025
C6	0.0004	0.0022
C7	0.0006	0.0021
CO2	0.0065	0.0065
H2O	0.0002	0.0002
H2S	0.0000	0.0000
N2	0.0005	0.0008
	1.0000	1.0000

(2) <u>Arbitration Act 1996</u>

<u>Section 1</u>:

"General principles

The provisions of this Part are founded on the following principles, and shall be construed accordingly—

(a) the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;
(b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;

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(c) in matters governed by this Part the court should not intervene except as provided by this Part."

Section 66:

"Enforcement of the award.

(1) An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.

(2) Where leave is so given, judgment may be entered in terms of the award.

(3) Leave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award.

The right to raise such an objection may have been lost (see section 73).

(4) Nothing in this section affects the recognition or enforcement of an award under any other enactment or rule of law, in particular under Part II of the Arbitration Act 1950 (enforcement of awards under Geneva Convention) or the provisions of Part III of this Act relating to the recognition and enforcement of awards under the New York Convention or by an action on the award."

Section 67:

"Challenging the award: substantive jurisdiction.

(1) A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court—

(a) challenging any award of the arbitral tribunal as to its substantive jurisdiction; or
(b) for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction.

A party may lose the right to object (see section 73) and the right to apply is subject to the restrictions in section 70(2) and (3).

(2) The arbitral tribunal may continue the arbitral proceedings and make a further award while an application to the court under this section is pending in relation to an award as to jurisdiction.

(3) On an application under this section challenging an award of the arbitral tribunal as to its substantive jurisdiction, the court may by order—

(a) confirm the award,
(b) vary the award, or
(c) set aside the award in whole or in part.

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(4) The leave of the court is required for any appeal from a decision of the court under this section."

Section 68:

"Challenging the award: serious irregularity.

(1) A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award. A party may lose the right to object (see section 73) and the right to apply is subject to the restrictions in section 70(2) and (3).

(2) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant—

(a) failure by the tribunal to comply with section 33 (general duty of tribunal);
(b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction: see section 67);
(c) failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties;
(d) failure by the tribunal to deal with all the issues that were put to it;
(e) any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award exceeding its powers;
(f) uncertainty or ambiguity as to the effect of the award;
(g) the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy;
(h) failure to comply with the requirements as to the form of the award; or
(i) any irregularity in the conduct of the proceedings or in the award which is admitted by the tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award.

(3) If there is shown to be serious irregularity affecting the tribunal, the proceedings or the award, the court may—
(a) remit the award to the tribunal, in whole or in part, for reconsideration,
(b) set the award aside in whole or in part, or
(c) declare the award to be of no effect, in whole or in part.

The court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.

(4) The leave of the court is required for any appeal from a decision of the court under this section."

Section 69:

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"Appeal on point of law

(1) Unless otherwise agreed by the parties, a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings.

An agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section.

(2) An appeal shall not be brought under this section except—

(a) with the agreement of all the other parties to the proceedings, or
(b) with the leave of the court.

The right to appeal is also subject to the restrictions in section 70(2) and (3).

(3) Leave to appeal shall be given only if the court is satisfied—

(a) that the determination of the question will substantially affect the rights of one or more of the parties,
(b) that the question is one which the tribunal was asked to determine,
(c) that, on the basis of the findings of fact in the award—
(i) the decision of the tribunal on the question is obviously wrong, or
(ii) the question is one of general public importance and the decision of the tribunal is at least open to serious doubt, and
(d) that, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.

(4) An application for leave to appeal under this section shall identify the question of law to be determined and state the grounds on which it is alleged that leave to appeal should be granted.

(5) The court shall determine an application for leave to appeal under this section without a hearing unless it appears to the court that a hearing is required.

(6) The leave of the court is required for any appeal from a decision of the court under this section to grant or refuse leave to appeal.

(7) On an appeal under this section the court may by order—

(a) confirm the award,
(b) vary the award,
(c) remit the award to the tribunal, in whole or in part, for reconsideration in the light of the court's determination, or
(d) set aside the award in whole or in part.

The court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.

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(8) The decision of the court on an appeal under this section shall be treated as a judgment of the court for the purposes of a further appeal.

But no such appeal lies without the leave of the court which shall not be given unless the court considers that the question is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

Section 70:

"Challenge or appeal: supplementary provisions.

(1) The following provisions apply to an application or appeal under section 67, 68 or 69.

(2) An application or appeal may not be brought if the applicant or appellant has not first exhausted—

(a) any available arbitral process of appeal or review, and
(b) any available recourse under section 57 (correction of award or additional award).

(3) Any application or appeal must be brought within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process.

(4) If on an application or appeal it appears to the court that the award—

(a) does not contain the tribunal's reasons, or
(b) does not set out the tribunal's reasons in sufficient detail to enable the court properly to consider the application or appeal,

the court may order the tribunal to state the reasons for its award in sufficient detail for that purpose.

(5) Where the court makes an order under subsection (4), it may make such further order as it thinks fit with respect to any additional costs of the arbitration resulting from its order.

(6) The court may order the applicant or appellant to provide security for the costs of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.

The power to order security for costs shall not be exercised on the ground that the applicant or appellant is—

(a) an individual ordinarily resident outside the United Kingdom, or
(b) a corporation or association incorporated or formed under the law of a country outside the United Kingdom, or whose central management and control is exercised outside the United Kingdom.

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(7) The court may order that any money payable under the award shall be brought into court or otherwise secured pending the determination of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.

(8) The court may grant leave to appeal subject to conditions to the same or similar effect as an order under subsection (6) or (7).

This does not affect the general discretion of the court to grant leave subject to conditions."

Section 73:

"Loss of right to object

(1) If a party to arbitral proceedings takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitration agreement or the tribunal or by any provision of this Part, any objection—

(a) that the tribunal lacks substantive jurisdiction,
(b) that the proceedings have been improperly conducted,
(c) that there has been a failure to comply with the arbitration agreement or with any provision of this Part, or
(d) that there has been any other irregularity affecting the tribunal or the proceedings,

he may not raise that objection later, before the tribunal or the court, unless he shows that, at the time he took part or continued to take part in the proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection.

(2) Where the arbitral tribunal rules that it has substantive jurisdiction and a party to arbitral proceedings who could have questioned that ruling—
(a) by any available arbitral process of appeal or review, or
(b) by challenging the award,

does not do so, or does not do so within the time allowed by the arbitration agreement or any provision of this Part, he may not object later to the tribunal's substantive jurisdiction on any ground which was the subject of that ruling.

Section 80:

"Notice and other requirements in connection with legal proceedings

(1) References in this Part to an application, appeal or other step in relation to legal proceedings being taken "upon notice" to the other parties to the arbitral proceedings, or to the tribunal, are to such notice of the originating process as is required by rules of court and do not impose any separate requirement.

(2) Rules of court shall be made—

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(a) requiring such notice to be given as indicated by any provision of this Part, and
(b) as to the manner, form and content of any such notice.

(3) Subject to any provision made by rules of court, a requirement to give notice to the tribunal of legal proceedings shall be construed—

(a) if there is more than one arbitrator, as a requirement to give notice to each of them; and
(b) if the tribunal is not fully constituted, as a requirement to give notice to any arbitrator who has been appointed.

(4) References in this Part to making an application or appeal to the court within a specified period are to the issue within that period of the appropriate originating process in accordance with rules of court.

(5) Where any provision of this Part requires an application or appeal to be made to the court within a specified time, the rules of court relating to the reckoning of periods, the extending or abridging of periods, and the consequences of not taking a step within the period prescribed by the rules, apply in relation to that requirement.

(6) Provision may be made by rules of court amending the provisions of this Part—

(a) with respect to the time within which any application or appeal to the court must be made,
(b) so as to keep any provision made by this Part in relation to arbitral proceedings in step with the corresponding provision of rules of court applying in relation to proceedings in the court, or
(c) so as to keep any provision made by this Part in relation to legal proceedings in step with the corresponding provision of rules of court applying generally in relation to proceedings in the court.

(7) Nothing in this section affects the generality of the power to make rules of court."

Section 81:

"Saving for certain matters governed by common law

(1) Nothing in this Part shall be construed as excluding the operation of any rule of law consistent with the provisions of this Part, in particular, any rule of law as to—

(a) matters which are not capable of settlement by arbitration;
(b) the effect of an oral arbitration agreement; or
(c) the refusal of recognition or enforcement of an arbitral award on grounds of public policy.

(2) Nothing in this Act shall be construed as reviving any jurisdiction of the court to set aside or remit an award on the ground of errors of fact or law on the face of the award."

Part III Section 103:

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"Refusal of recognition or enforcement

(1) Recognition or enforcement of a New York Convention award shall not be refused except in the following cases.

(2) Recognition or enforcement of the award may be refused if the person against whom it is invoked proves—

(a) that a party to the arbitration agreement was (under the law applicable to him) under some incapacity;
(b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made;
(c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;
(d) that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration (but see subsection (4));
(e) that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country in which the arbitration took place;
(f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

(3) Recognition or enforcement of the award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to recognise or enforce the award.

(4) An award which contains decisions on matters not submitted to arbitration may be recognised or enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those on matters not so submitted.

(5) Where an application for the setting aside or suspension of the award has been made to such a competent authority as is mentioned in subsection (2)(f), the court before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the recognition or enforcement of the award.

It may also on the application of the party claiming recognition or enforcement of the award order the other party to give suitable security."

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