

IN THE HIGH COURT OF JUSTICE

Claim No. HQ17M01386

QUEEN'S BENCH DIVISION

MEDIA AND COMMUNICATIONS LIST

BETWEEN

HONOURABLE ABDUL HADI AWANG MP

Claimant

and

CLARE REWCASTLE BROWN

Defendant

DEFENCE AND COUNTERCLAIM

Except where otherwise stated, references in this Defence and Counterclaim to paragraph numbers are references to the numbered paragraphs in the Particulars of Claim.

DEFENCE

The parties and the claim

1. The number of members of PAS is not admitted and the Claimant is put to proof of the same. Otherwise paragraph 1 is admitted.
2. The Claimant's claim to have suffered serious harm to his reputation whether in England and Wales or Singapore or Malaysia is denied. Otherwise the Defendant makes no admissions as to paragraph 2.

3. Paragraph 3 is admitted.
4. Paragraph 4 and the contention that the Website is widely read in Malaysia is admitted.
5. Paragraph 5 is admitted.
6. Paragraph 6 is admitted.
7. Paragraph 7 is admitted. The Defendant will rely on the entirety of the Article as the context of the words that the Claimant has selected for complaint.
8. Paragraph 8 is admitted.
9. Paragraph 9 is admitted.
10. Paragraph 10 is admitted. The email sent on 7 August 2016 was opened by 4,161 recipients in Malaysia, by 1,435 recipients in Singapore and by 447 recipients in England and Wales.
11. Except that no admissions are made as to what the fact there had been 82 reader comments made on the Article indicates regarding the “popularity” of the Article, paragraph 11 is admitted. As at August 2017 the webpage carrying the Article had had 1,306 unique page views from the UK, 6,816 from Singapore and 9,835 from Malaysia, almost all of these occurring in the days immediately following first publication and negligible views from any source since September 2016.
12. The highest office bearers in PAS have at all material times been its spiritual leader and deputy spiritual leader. The Claimant has been the President of the party. Except as aforesaid the Defendant makes no admissions as to paragraph 12 and puts the Claimant to proof thereof, particularly whether and how well known as “the leader” of PAS the Claimant was in Malaysia or in Singapore or in England and Wales.
13. Except that no admissions are made as to whether or when any reader of the Article had read the article dated 24 August 2015, paragraph 13 is admitted.

14. Paragraph 14 is denied. In contrast to the clear reference to identified individuals in the account of events in the Article preceding the words complained of, the words complained of do not, and would be understood not to intend to, identify or point to the Claimant as being involved in the receipt of money from Najib Razak or UMNO. On the contrary, the said words refer only to a very large class or group of people, being not only the “top echelon” of the PAS party, but the “top echelons” (plural) of the PAS party, and to the involvement of some in that class or group in receiving money. This class or group at least included:

- 14.1 Members of the Spiritual Council of PAS, including its Leader, Deputy Leader, Secretary and Council Members;
- 14.2 The Central Working Committee of the Party (having over 20 members) and their senior staff;
- 14.3 Senior Office Bearers in the party, including the President, the Deputy President, the three Vice Presidents, the Dewan Ulamak Chief, the Dewan Pemuda Chief, the Dewan Muslimat Chief, the Secretary-General, the two Deputy-Secretary Generals, the Treasurer, the Information Chief and the Election Director.
- 14.4 Members of Dewan Ulamak PAS Pusat (DUPP), including its Speaker, Deputy Speaker, Auditors, Chief, Deputy Chief, Vice Chief and Central Working Committee.
- 14.5 Members of Dewan Pemuda PAS Pusat (DPPP) (the Youth Council), its Speakers, Chiefs, Secretary, Auditor, Treasurer, Election Director, Information Chief and Central Working Committee members.
- 14.6 Dewan Muslimat PAS Pusat (DMPP), its Speakers, Chiefs, Secretary, Auditor, Treasurer, Election Director, Information Chief and Central Working Committee members.
- 14.7 The two PAS Senators (members of the Dewan Negara) and their senior staff.
- 14.8 The 14 PAS Members of Parliament (members of the Dewan Rakyat) and their senior staff.
- 14.9 The 80 PAS members of state legislative assemblies, including those holding the majority in the Kelantan State Legislative Assembly and their senior staff.
- 14.10 The Executive Council and Menteri Besar (leader) of Kelantan State, including their senior staff.

The Defendant will contend that the Claimant could not reasonably be understood to be referred to by the words complained of and that affording the Claimant a cause of action as a person referred to by the said words would be a disproportionate, unnecessary and

unjustified interference and inhibition of the Defendant's and the public's rights to freedom of expression pursuant to Article 10 and particularly the exercise of those rights in the free discussion of political matters.

15. The "experiences" of the individuals identified at paragraphs 19.3.1 to 19.3.6 asserted in those paragraphs, which are not admitted, do not disclose any case that either they or any other reader of the words complained of reasonably understood them to refer to the Claimant.

16. It is denied that the words complained of bore or were capable of being understood to bear the meaning contended for at paragraph 16 or any meaning defamatory of the Claimant.

17. Paragraph 17 is denied. One strong indicator that publication of the words complained of had no substantial impact on the Claimant's reputation is the marked decrease in Google search activity by reference to his name in the period following first publication, when interest in the Claimant would be expected to be increased. Google Trends data shows that as at 30 August 2017:

17.1 Google searches worldwide for 'Abdul Hadi Awang' were uncharacteristically low for the month of August 2016, with relative values of 7, 6, 7 and 5 out of 100 for the four week following publication, where 100 represents the peak popularity for the search over the previous five years.

17.2 Google searches for 'Abdul Hadi Awang' in the UK for the four week period following publication of the article were even more strikingly low, with relative values of 0 out of 100, meaning the search term in this period was less than 1% as popular as its peak in the previous five years.

18. As regards paragraphs 18.1 to 18.8:

18.1 Denied. The Defendant repeats paragraphs 14 and 16 above.

18.2 "The allegation" is denied. No admissions are made as to the Claimant's commitment to the democratic process, his political philosophy or conduct or what the perception was of these matters by readers of the words complained of in England and Wales, Malaysia or Singapore, as to which the Claimant is put to proof.

- 18.3 Admitted.
- 18.4 No admissions are made as to how substantial the readership of the Website is in Malaysia, Singapore or England and Wales. It is denied that the readership of the Website is indicative of the number of readers in England and Wales, Malaysia or Singapore who will have read the Article, including the words complained of appearing in its final paragraphs. As to the numbers of such readers and subscribers in those jurisdictions, the Defendant repeats paragraphs 10 and 11 above, with the caveat that unique page views may be views by a person who did not in fact read the Article or the entire Article, including the words complained of, while a subscriber also may not have opened and read the entire Article including the words complained of.
- 18.5 No admissions are made as to the alleged results of the Similarweb analysis service or the significance of those results for the number of visits to the Website from England and Wales or from Malaysia or from Singapore. It is denied that numbers of visits to the Website is indicative of the number of readers in England and Wales, Malaysia or Singapore who will have read the Article, including the words complained of appearing in its final paragraphs. The Defendant repeats paragraph 11 above, with the caveat that unique page views may be views by a person who did not in fact read the Article or the entire Article, including the words complained of. The comments posted on the Website do not indicate: that the Article was reasonably understood to refer to the Claimant or to bear the defamatory meaning contended for by the Claimant; or that serious harm has been done to the Claimant's reputation by the publication of the Article on the Website.
- 18.6 The words complained of did not appear on the Sarawak Report Facebook page posting on 8 August 2016. All visits to the webpage carrying the Article by means of the link on the Sarawak Report Facebook page will have resulted in a unique page view. The Defendant repeats paragraph 11 above, with the caveat that unique page views may be views by a person who did not in fact read the Article or the entire Article, including the words complained of. "Likes" and "Shares" of the posting are irrelevant to issues of reference, meaning or harm to the Claimant's reputation. No

comments on the Article posted on the Sarawak Report Facebook page indicate: that the Article was reasonably understood to refer to the Claimant or to bear the defamatory meaning contended for by the Claimant; or that serious harm has been done to the Claimant's reputation by the publication of the Article on the Website.

18.7 Admitted. The words complained of did not appear in the Tweet on 7 August 2016. All visits to the webpage carrying the Article by means of the link in that Tweet will have resulted in a unique page view as referred to above. The Defendant repeats paragraph 11 above, with the caveat that unique page views may be repeat readings by the same person and/or by a person who did not in fact read the Article or the entire Article, including the words complained of.

18.8 The Defendant repeats paragraph 18.5 above.

19. As regards paragraphs 19.1, 19.2 and 19.3.1 to 19.3.6:

19.1 It is admitted that Sarawak Report is respected as a credible source of news about Malaysia. It is not understood what paragraph 19.1 purports to add to paragraphs 18.3 to 18.8, if anything. The Defendant repeats paragraphs 18.3 to 18.8 above.

19.2 The allegations in the words complained of said to have been the subject of discussion are not identified. The participants in and occasions of the alleged discussions are not identified. The content of those discussions is not identified. Unless and until proper particulars are provided, the Defendant declines to plead to paragraph 19.2, which should be struck out as disclosing no reasonable grounds for bringing the claim and as an abuse of process.

19.3 The contention at paragraph 19.3 that paragraphs 19.3.1 to 19.3.6 contain examples ("indicative" or otherwise) of how the Claimant's reputation has been damaged by the publication complained of is impermissible and should be struck out as disclosing no reasonable grounds for bringing the claim and as an abuse of process. Each of paragraphs 19.3.1 to 19.3.6 either discloses an alleged factual basis from which the court can conclude that publication has caused such damage or it does

not. They cannot establish that there are other factual bases for concluding that publication has caused such damage.

19.3.1 No admissions are made to any of the factual contentions in paragraph 19.3.1. The allegations about which Dr Junaidi is said to have been spoken to are not identified, nor are any of those persons said to have spoken to him, nor are any occasions on which any of them are said to have spoken to him. The only identified statements Dr Junaidi is alleged to have heard spoken do not substantiate that any damage has been caused to the Claimant's reputation. It is denied that paragraph 19.3.1 discloses any case that damage has been done to the Claimant's reputation by the publication complained of.

19.3.2 No admissions are made to any of the factual contentions in paragraph 19.3.2. It is denied that those factual contentions disclose any case that damage has been done to the Claimant's reputation by the publication complained of.

19.3.3 No admissions are made to any of the factual contentions in paragraph 19.3.3. The persons alleged to have spoken to Dr Annuar are not identified, nor what the content of the Article was that any of them is alleged to have spoken to her about. It is denied that paragraph 19.3.3 discloses any case that damage has been done to the Claimant's reputation by the publication complained of.

19.3.4 No admissions are made to any of the factual contentions in paragraph 19.3.4. Neither the number nor the persons alleged to have raised with Dr Esa the allegations the Claimant contends were made by the words complained of are identified. Nor are the concerns that any of those persons are alleged to have raised with Dr Esa. It is denied that paragraph 19.3.4 discloses any case that harm has been done to the Claimant's reputation by the publication complained of.

19.3.5 No admissions are made to any of the factual contentions in paragraph 19.3.5. Neither the number nor the persons alleged to have raised and discussed with Aizuddinir Zakaria the allegations the Claimant contends were made by the words complained of are identified. Nor is the content of any of the alleged

discussions. It is denied that paragraph 19.3.5 discloses any case that damage has been done to the Claimant's reputation by the publication complained of.

19.3.6 The first three sentences of paragraph 19.3.6 are admitted. No admissions are made to the factual contentions in the final sentence. None of the friends, family or restaurant customers referred to is identified, nor what about the Article any of them are alleged to have raised with Raja Petra bin Raja Kamarudin ("RPK"). RPK is a self-professed friend and supporter of the Claimant and the paid propagandist for Najib Razak and his government, for whose political advantage he has relentlessly and vilely abused, harassed and falsely defamed the Defendant and Sarawak Report on his Malaysia Today website and on The Third Force website. In the premises, if, which is not admitted, anyone has raised anything about the Article with him, it is to be inferred that he would have taken the opportunity to discredit the Article, the Defendant and Sarawak Report, negating any impact on the Claimant's reputation. It is denied that paragraph 19.3.5 discloses any case that damage has been done to the Claimant's reputation by the publication complained of.

20. The factual contentions in paragraph 20 are admitted. It is denied that those contentions disclose any case that the publication complained of has caused serious harm to the Claimant's reputation in Singapore.

21. Paragraph 21 is denied.

22. Further the Defendant will contend that the Claimant's purpose and intention in these proceedings has not been the legitimate one of correcting and protecting himself from any perceived serious harm to his reputation but rather for the illegitimate purposes of:

(a) protecting the reputation and advancing the political purposes of the PAS party; and

(b) protecting the reputation and advancing the political purposes of Najib Razak.

22.1 It is apparent from the public statements by the Claimant and the party PAS from first publication of the Article and in the period before and since these proceedings

were begun that their concern about the Article has not been with injury to the Claimant's reputation or feelings but rather with injury to the reputation of the party and its political prospects. For example:

- 22.1.1 On 9 August 2016 the New Straits Times website reported the party announcing that the party intended to take legal action against Sarawak Report over allegations that the party had received RM90million from PM Najib Razak. PAS Deputy President Datak Tuan Ibrahim Tuan Man was quoted: "The party is unsure of their intention in linking us with UMNO and we will take legal action towards Sarawak Report, which clearly has a wrong intention of wanting to tarnish the party's name."
- 22.1.2 On 16 August 2016 the New Straits Times reported the party announcing that it had started proceedings to sue Sarawak Report in the UK following its article alleging that the party received RM90m in political contribution from UMNO. The Claimant was reported saying: "We are in discussions on the appointment of lawyers in London."
- 22.1.3 On 16 August 2016 the Borneo Bulletin Online reported the party announcing that it was in the process of suing Sarawak Report over its allegation that the party had received millions from PM Najib Razak.
- 22.1.4 On 16 December 2016 the freemalaysiatoday.com website reported the statement by PAS Secretary General Takiyaddin Hassan that the party's lawyers in London had sent a letter of demand to the Defendant. The Secretary General stated he was mindful that the party must protect its reputation. PAS Deputy President Datak Tuan Ibrahim Tuan Man was reported stating the party would take action against Sarawak Report for tarnishing the party's reputation as well as its Islamic policies.
- 22.1.5 On 16 December 2016 the AstroAwani website reported PAS Secretary General Takiyaddin Hassan saying that PAS had sent a letter of claim demanding: retraction of the claim that the party's top leadership received RM90m from PM

Najib Razak; an apology according to terms agreed by the party and an undertaking not to publish “false accusations” in the future.

22.1.6 On 16 December 2016 the malaymailonline website reported the “PAS mouthpiece” the Harukah Daily quoting PAS Secretary General Takiyaddin Hassan announcing that the party had sent a letter of demand to the Defendant making three demands: to retract the article; to publish an apology and retraction of all allegations; an undertaking to avoid publishing “false allegations” in the future, and saying the party and PAS President Hadi Awang were parties named in the notice to the Defendant.

22.1.7 On 10 February 2017 the news365 website reported PAS Deputy President Datak Tuan Ibrahim Tuan Man saying the party denied the allegation by Kelantan Amanah adviser Husam Musa that PAS had received RM90m from UMNO and “PAS will take legal action against Husam Musa just like we did against the Sarawak Report.”

22.1.8 On 15 February 2017 the freemlaysiatoday.com website reported that PAS Youth had lodged a report with the police that the party had been slandered by Husam Musa and the allegation that RM90m had been given to the party by UMNO.

22.1.9 On 12 March 2017 malaymailonline reported under the headline “PAS initiates lawsuit over claim of RM90m from Umno in Affin Bank account”: the party’s announcement that it had “started the legal process against its detractors who accused it of being a recipient of RM90m from ruling party UMNO after the allegations started surfacing in August last year”; that the party had said the suit would be filed by the party’s law and human rights bureau; and that the party had said in December it had sent a letter of demand to the Defendant in the UK.

22.1.10 On 1 May 2017 the Malaysia Gazette reported PAS Deputy President Datak Tuan Ibrahim Tuan Man announcing at the close of a debate at the party’s 63rd General Assembly, attended by the Claimant, the launch of a fund to finance proceedings against the Defendant. The Deputy President stated that the

proceedings were being brought by the party because the party had decided to take legal action to defend the party's reputation from an allegation that the party had accepted cash from UMNO leaders.

22.2 The Claimant has colluded with the Malaysian government of Najib Razak and their agents to exploit these proceedings as part of their propaganda efforts to exonerate Najib Razak and disable and discredit the Defendant and Sarawak Report and its justified campaign that Najib Razak be removed from office and brought to justice for his corrupt and criminal conduct, particularly his embezzlement with his family and associates of astronomical sums of public money. To this end the Claimant has himself or by his agents passed information concerning these proceedings to those agents, enabling and encouraging the publication of articles viciously and racially abusing, defaming and harassing the Defendant by means of The Third Force website and RPK's Malaysia Today website (and by the inevitable subsequent republications of those articles' content, for example on Malaysia Outlook, Malaysiakini, Free Malaysia Today, Malaysian Insight and The New Strait Times) on the pretext of reporting on developments in the proceedings, doing so in order falsely and dishonestly to claim that those developments discredit the case against Najib Razak and demonstrate his innocence. The Defendant will rely on the following articles and all such other articles and instances of harassing conduct, whether by publication on The Third Force or Malaysia Today or otherwise as may come to her attention, whether as a result of disclosure in these proceedings or otherwise:

22.2.1 An article dated 5 August 2017 on The Third Force website written by Dr Ahmad Samsuri Mokhtar, the Claimant's Political Secretary, under the heading "Civil suit against Clare Rewcastle Brown (Sarawak Report)"

22.2.2 An article dated 6 August 2017 on The Third Force website reproduced on Malaysia Today headed "UK court rules no evidence that Najib and Malaysian judiciary are corrupt".

22.2.3 An article dated 23 August 2017 on The Third Force headed "Clare Rewcastle desperately changing horses midstream".

22.2.4 An article dated 25 August 2017 on The Third Force website reproduced on Malaysia Today headed “Clare, let's wait and see what happens on 30th August”.

22.2.5 An article dated 31 August on The Third Force website reproduced on Malaysia Today websites under the headline “Sarawak Report fails to meet 4pm deadline”.

22.2.6 An article dated 2 September 2017 on The Third Force website reproduced on Malaysia Today under the headline “Clare Rewcastle donor’s actually giving Hadi money”.

22.2.7 An article dated 4 September 2017 on The Third Force website headed '*Evidence surfaces that Clare Brown and hubby stole taxpayers' money*', reported on 5 September 2017 on Malaysia Today and hyperlinked.

Defence of publication in the public interest

23. Further or alternatively the statements complained of were or formed part of statements on matters of public interest and the Defendant reasonably believed that publishing the statements complained of was in the public interest. The Defendant relies on the defence pursuant to Section 4 of the Defamation Act 2013.

24. The matters of public interest

The statements complained of were or formed a part of statements on matters of public interest, namely the corrupt and criminal history and activity and corrupting conduct and influence on the government and political and judicial processes of Malaysia and fitness for office of Najib Razak, the serving Prime Minister of Malaysia.

Reasonable belief that publishing the statements complained of was in the public interest

25. The Defendant will rely on the following facts and matters in support of the contention that in all the circumstances of the case she reasonably believed that publishing the statements complained of was in the public interest

Najib Razak and 1MDB

- 25.1 1MDB is a strategic investment and development company wholly-owned by the Malaysian government through the Malaysian Ministry of Finance, ostensibly formed to pursue investment and development projects for the economic benefit of Malaysia and its people. It was formed in 2009 at the instigation of Najib Razak, the Prime Minister of Malaysia, out of the Terengganu Investment Authority (“TIA”), a body formed in February 2009 by the municipality of Terengannu, assisted by Goldman Sachs International, to invest and manage its public funds. One of those who had worked with Goldman Sachs establishing TIA had been Jho Low Taek (“Jho Low”), a close friend of Najib Razak’s stepson Riza Aziz, who had become a friend of the family and close associate and adviser to Najib Razak.
- 25.2 The Malaysian Ministry of Finance assumed control of TIA in July 2009. Its name was changed to 1Malaysia Development Berhad, known as 1MDB, in September 2009. Under its Articles of Association, Najib Razak had the authority to approve all appointments to and removals from 1MDB’s Board of Directors and senior management team. Any financial commitments by 1MDB, including investments that were likely to affect either a guarantee given by the government of Malaysia for the benefit of 1MDB or any policy of the Malaysian government, had to be approved by him.
- 25.3 1MDB’s first commercial venture was a joint venture (“the Joint Venture”) with PetroSaudi International Ltd (“PetroSaudi”), a private Saudi Arabia-based oil services company incorporated in Saudi Arabia. The founders of PetroSaudi were its CEO Tarek Obaid and Prince Turki bin Abdullah, the seventh son of the late King Abdullah bin Abdulaziz, the ruler of Saudi Arabia from 2005 until his death in 2015. Jho Low introduced the parties to the Joint Venture, arranging a meeting of Tarek Obaid and

Prince Turki with the Malaysian prime minister, his wife and stepson in August 2009 aboard a yacht off the coast of Monaco.

- 25.4 The purported purpose of the Joint Venture was for 1MDB and PetroSaudi to jointly invest in a company, 1MDB PetroSaudi Ltd (also “the Joint Venture Company”), to exploit energy concession rights that PetroSaudi purported to own in Turkmenistan and Argentina. 1MDB was to invest US\$1 billion in exchange for a 40% equity interest in the Joint Venture, while PetroSaudi had a 60% equity interest in exchange for the right to exploit its claimed mineral extraction concessions.
- 25.5 From its inception there had been controversy over 1MDB and particularly the secretive financing of its business ventures. In July 2013 the Defendant had publicised on Sarawak Report concern over the bond issue by 1MDB that had been arranged by Goldman Sachs International to finance the acquisition in 2012 of a privately-owned Malaysian power company, Tanjong Energy Holdings Sdn Bhd. That purchase by 1MDB had been widely criticised as having been unjustified and at much too high a price. The Defendant revealed that not only had the bonds been issued by an offshore Labuan-incorporated subsidiary of 1MDB at an extraordinarily high return of 5.99% p.a., but that US\$196.2 million had been deducted from the proceeds of the issue for fees, commissions and expenses, which the Defendant understood to represent Goldman Sachs’s arrangement charges, amounting to an exceptionally high 8.8% of the issue’s total nominal value.
- 25.6 In January 2014 the US \$100 million film *The Wolf of Wall Street* was launched. The Defendant learned that it had been produced and financed by an inexperienced film company owned by Riza Aziz. Enquiries revealed that Riza Aziz (who had spent just two years as a junior associate banker in London) had also acquired a mansion in Beverley Hills and a penthouse in New York. His prominent companion had been Jho Low, who had featured in the credits for *The Wolf of Wall Street*. Receiving a Golden Globe Award, the film’s star Leo DiCaprio had thanked “Jho and Riza for taking a risk on the movie”.
- 25.7 The Defendant had also established from documents in London litigation that in January 2011 1MDB had promised to back a bid of £1billion by Jho Low’s company

The Wynton Group for the hotel group that owned Claridge's, the Connaught and The Berkeley hotels in London (a bid that 1MDB would later claim had been part of a joint venture between 1MDB and the Abu Dhabi sovereign wealth fund company Aabar that had never come to fruition to establish a Hotel Management School in Kuala Lumpur).

25.8 In June 2014 the Defendant had learned of a former director of PetroSaudi, Xavier Justo, who had obtained documents ("the Justo documents") relating to the company after leaving following a dispute. After months of discussions, the Defendant had introduced him to The Edge media group, who had said they were willing to purchase the documents for US\$2 million (which was never paid). In return for organising this agreement, in January 2015 the Defendant received copies of the Justo documents.

25.9 The Justo documents had shown the following:

25.9.1 Contrary to Jho Low's protestations that he had had nothing to do with TIA or 1MDB since working for TIA, the Joint Venture project had been conceived, negotiated and then managed by him and his associates, with Jho Low holding himself out in dealings with associates at PetroSaudi as the unofficial representative and agent of Najib Razak and the Malaysian government.

25.9.2 Contrary to the dishonest claims of Najib Razak and 1MDB shortly after the Joint Venture Agreement was made that PetroSaudi was contributing US\$1.5 billion, PetroSaudi was in fact contributing no money and only "investing" its claimed mineral extraction rights in Argentina and Turkmenistan.

25.9.3 Under the Joint Venture Agreement, immediately on 1MDB paying its US\$1 billion investment in the Joint Venture, 1MDB PetroSaudi Ltd had to "repay" a US\$700 million loan that PetroSaudi had purportedly made to it by a loan agreement dated 25 September 2009 (3 days before the Joint Venture Agreement).

- 25.9.4 The US\$700 million that 1MDB PetroSaudi Ltd had been required to pay to PetroSaudi on demand in “repayment” of its purported loan had not been paid to PetroSaudi or any affiliate company, but had been paid at the direction of Jho Low and his associates into the Swiss bank account of a company called Good Star that was controlled by Jho Low.
- 25.9.5 The senior lawyer at London lawyers, White and Case, Tim Buckland, and Patrick Mahony, of the hedge fund Ashmores, who directed the negotiation and financing of the Joint Venture Company in cooperation with Jho Low and his associates, had shortly afterwards both resigned their positions to become Directors of PetroSaudi.
- 25.9.6 On the day that the CEO of PetroSaudi, Tarek Obaid, gave notice requiring 1MDB PetroSaudi Ltd to “repay” the US\$700 million “loan” to PetroSaudi, triggering the hijacking of that money to Good Star, Good Star undertook by deed to pay him a US\$85 million “brokers fee” within 5 business days, purportedly for services performed and to be performed in relation to investments from the Kingdom of Saudi Arabia into Malaysia.
- 25.9.7 On the same day Good Star made an investment agreement with Patrick Mahony whereby within 3 days it transferred US\$85 million to him purportedly for him to manage as investment manager for Good Star, for an annual fee of 2% of that sum (US\$1.7 million), reimbursement of all business costs and expenses and an incentive payment of 10% of earnings above Gold Star’s capital contribution when a 10% or greater return was achieved on that capital contribution.
- 25.9.8 In 2012 Jho Low had bought a Hollywood mansion, 1423 Oriole Drive, for US\$39 million. The Defendant had already established that in 2011 Jho Low had bought the penthouse in Trump Tower, New York, for US\$ 33.5 million and probably owned Equanimity, the 34th largest ocean-going yacht in the world, and that Riza Aziz had bought a Beverley Hills mansion, 912 North Hillcrest Road, for US\$17.5 million in 2010 and US\$33.5 million property, Park Laurel, in New York in 2012.

- 25.9.9 Jho Low had negotiated further loans of US\$1 billion to be made by 1MDB to the Joint Venture Company in 2010, seeking to avoid those loans being notified, as they should have been, to the Bank Negara of Malaysia for approval, by asserting it was sufficient that Najib Razak had approved them as Finance Minister and Prime Minister. A loan of \$US500 million was made in July and US\$500 million in September. Hundreds of millions of these loans had been siphoned off by Jho Low: in each case US\$340 million had been paid to a 1MDB PetroSaudi account, but US\$160 million had been paid (like the US\$700 million “loan repayment” by 1MDB PetroSaudi) to the Zurich account of Jho Low’s company Good Star. Of the US\$340 million paid to 1MDB PetroSaudi in September, US\$260 million had subsequently been paid on to Javace Sdn Bhd, a subsidiary of PetroSaudi Seychelles, named to appear related to PetroSaudi but in fact unrelated and controlled by Jho Low.
- 25.9.10 In February 2013 Good Star had paid US\$20.75 million to the Luxembourg bank account of Vasco Investment Services, a company owned by Khamal al-Qubaisi, the Managing Director of the Abu Dhabi sovereign wealth fund International Petroleum Investment Corporation (“IPIC”) and chairman of Aabar Investments PJS, a subsidiary of IPIC.
- 25.10 By early 2015 1MDB was in crisis. The fund was more than US\$12 billion in debt. The planned public flotation of the fund had been called off. Investigations into its dealings were under way by the Auditor General and the Parliamentary Public Accounts Committee and by four official Task Forces deputed to investigate by the Royal Malaysian Police, the Attorney General, the Malaysian Central Bank and the Malaysian Anti-Corruption Commission (“MACC”).
- 25.11 In April 2015 the Defendant obtained copies of BSI Bank Singapore documents supplied by the Singapore financial regulatory authorities to the Malaysian investigation into 1MDB’s finances. These showed that in September 2010 Jho Low had opened a BSI Bank account of which he was beneficial owner in the name Abu-Dhabi-Kuwait-Malaysian Investment Corporation (“ADKMIC”). Between June 2011 and September 2013 nearly US\$529 billion had been paid into this account from the same Jho Low-controlled Good Star account in Zurich that had received the US\$700

million “loan repayment” of 1MDB money by 1MDB PetroSaudi and US\$160 million of the purported loan of US\$500 million by 1MDB to PetroSaudi in September 2010.

25.12 Copies of further documents from the Malaysian authorities’ investigation showed that in 2011 a purported loan by 1MDB to PetroSaudi of US\$300 million, that had been approved by regulatory authorities for payment to a (supposed) subsidiary of PetroSaudi, 1MDB PetroSaudi Ltd (BVI), had in fact been paid in tranches of US\$30 million, US\$65 million, US\$110 million and US\$ 125 million to the Good Star account in Zurich, but thereafter reported by 1MDB to Bank Negara Malaysia as having been made to 1MDB PetroSaudi.

25.13 At the end of June 2015 the Defendant received information and copy documents from a confidential source deriving from the Malaysian authorities’ investigation into 1MDB that established that hundreds of millions of US\$ of 1MDB money had been secretly paid to private bank accounts belonging to Najib Razak. These showed:

25.13.1 Days after a bond issue of US\$3billion by 1MDB purportedly to finance a joint project between 1MDB and Aabar Investments called Abu Dhabi Malaysia Investment Company (“ADMIC”) to develop the Tun Razak Exchange Project and very shortly before Najib Razak called the 2013 General Election, US\$620 million had been paid from BVI-registered Tanore Finance Corporation’s account at the Singapore branch of the IPIC-owned private bank Falcon Bank (chairman ex-Aabar Investments CEO Mohammed Ahmed Badaway al-Husseiny) to an account belonging to Najib Razak at AmPrivate Bank.

25.13.2 On 25 March 2013 a further US\$61 million had been paid from the same source to the same account. UMNO candidates had informed the Defendant that in the 2013 election Najib Razak had given them personal cheques signed by him for millions of ringgits to spend on campaign expenses.

25.13.3 On 26 December 2014 two payments of RM27million and RM5 million had been received from 1MDB subsidiary SRC International Sdn Bhd (CEO Nik Faisal Ariff Kamil, close friend and business associate of Jho Low) in two private accounts at AmPrivate Bank belonging to Najib Razak. On 10 February 2015 two payments

each of RM5 million had been received from the same source paid into one of the same Najib Razak accounts at AmPrivate Bank.

25.14 At the same time the Defendant had obtained documents confirming that Jho Low had arranged and arranged payment for purchases of millions of dollars-worth of diamonds and jewellery for Najib Razak's wife, Rosmah Mansor.

25.15 At the end of July 2015 the Defendant had received copies of documents, including draft indictments, showing that the Malaysian Attorney General Abdul Gani Patail had been preparing to charge Najib Razak in relation to the RM27 million payment from SRC International Sdn Bhd to his AmPrivate Bank account with offences of accepting an inducement or a bribe under s.17 (a) of Malaysian Anti-Corruption Act 2009.

25.16 Najib Razak had not responded by explaining his involvement in and knowledge of 1MDB's activities and the payments to his personal bank accounts. Rather:

25.16.1 He had moved to close down all investigation and inquiries. He had sacked the Attorney General, the Deputy Prime Minister and other cabinet ministers who had been critical of the scandal surrounding 1MDB, he had suspended the Parliamentary Accounts Committee hearings that had been investigating 1MDB and his newly-appointed Attorney General had disbanded the investigation into 1MDB that had been conducted by the Attorney General's Chambers, the Royal Malaysian Police, the Malaysian Anti-Corruption Commission ("MACC") and the Bank Negara Malaysia.

25.16.2 He had announced that *The Edge Financial Daily* and *The Edge Weekly*, which had been reporting extensively on the 1MDB issue, were suspended for a period of three months. He had blocked internet access to Sarawak Report from within Malaysia. The website Medium, which was printing *Sarawak Report's* articles, would be blocked in January 2016.

25.16.3 A warrant for the arrest of the Defendant had been issued by the Royal Malaysia Police on charges under Sections 124B and 1241 of the Penal Code (introduced

by Najib Razak in 2012 supposedly to counter terrorism) that she had committed “an activity detrimental to parliamentary democracy” and had “spread false reports” or made “false statements likely to cause public alarm” and an abusive request had been made of Interpol that it issue a Red Notice to its members’ police forces requesting that the Defendant be located and provisionally arrested pending extradition to Malaysia.

25.16.4 He had gone on to launch a PR attack on the Defendant and Sarawak Report, stirring up racism by characterising Sarawak Report’s reporting as interference by white foreigners and promulgating the false allegation that Sarawak Report had fabricated or deliberately distorted documentary evidence to support its reports on the 1MDB affair.

25.17 The Defendant had received the draft indictments and information relating to the planned prosecution of Najib Razak and the consequent dismissal of Attorney General Patail the day after that dismissal from a public prosecutor, Kevin Morais. He had been involved in the Attorney General and MACC’s investigation into 1MDB and the drawing up of the draft indictments. He had also given the Defendant information about the findings of the MACC investigation, including personal expenditure by Najib Razak using credit cards issued to 1MDB subsidiary SRC International Sdn Bhd. A few weeks later, when he had been planning to come to London, Kevin Morais had been abducted from his car in traffic in Kuala Lumpur, tortured and murdered. His body had been found encased in a drum of cement.

25.18 Najib Razak’s only explanation of payments of 1MDB money to his personal accounts had been to claim that the US\$681 million received from the Tanore Finance Corporation account had been a donation by Middle Eastern donors to him personally for use in election costs. He did not explain who the claimed donors were, or how it could have been legal, appropriate or justified secretly to receive personally and secretly to deploy on election expenses of UMNO many times the amount permitted under Malaysian electoral law.

25.19 Najib Razak’s newly-appointed Deputy Prime Minister Zahid Hamidi had claimed to have met the Arab King and Prince who had made the donation to Najib Razak,

claiming they had told him they made the donation for use in the election because of Malaysia's commitment in fighting terrorism and its being a moderate Muslim country with a plural society and because of Najib Razak's anti-Jewish stance, and that "Malaysia was not the only country they had donated money to". Zahid Hamidi would not identify the King and Prince. He said it had been explained to him that the first US\$100 million had been donated by a cheque made payable to Najib Razak and the rest paid through "other channels".

25.20 In mid-August 2015 the Defendant was informed by reliable source(s) that on 30 August 2013 some US\$650 million of the claimed donation towards election expenses had been transferred back from one of the recipient accounts of Najib Razak at AmPrivate Bank to the source Tanore Finance Corporation account at Falcon Bank in Singapore.

25.21 By mid-December 2015 the Defendant had confirmed from evidence submitted to regulatory authorities that, contrary to claims by 1MDB and PetroSaudi, Jho Low had been the sole beneficial owner of Good Star Ltd. The company had been incorporated on May 18 2009 in the Seychelles and Jho Low was the only shareholder. The only named director was a company called Smart Power Limited, which had been incorporated on the same day. Jho Low was the only shareholder of Smart Power Ltd. Good Star Ltd had been dissolved on 2 May 2014.

25.22 In January 2016 the Defendant had established that the MACC investigation into 1MDB had discovered that Najib and his wife had spent RM449,000 and RM2.8 million in August 2014 on hotels, meals, jewellery and other personal luxury expenditure while visiting Europe, using two credit card accounts of SRC International Sdn Bhd, the 1MDB subsidiary from which Najib Razak had received payments totalling RM42million in December 2014 and February 2015.

25.23 In January 2016 the Defendant had established that between 2011 and 2012 another Jho Low-controlled company, BVI-registered Blackstone Asia Real Estate Partners Ltd ("Blackstone") had paid hundreds of millions of US dollars to Khadem al-Qubaisi, then Chairman of Aabar Investments PJS ("Aabar"), in the period when 1MDB and Aabar were negotiating joint ventures for 1MDB to acquire power assets

of Tanjong Energy Holdings Sdn Bhd and Genting Berhad. A total of some US\$470 million had been paid to the same Luxembourg account that in February 2013 had received US\$20.75 million from Good Star: US\$158 million on 29 May 2012; US\$100.75 million on 3 August 2012; US\$129 on 31 October 2012; and US\$85 million on 4 December 2012. Sources had informed the Defendant that in 2011 payments totalling US\$170 million had been made by Blackstone to the same AmPrivate Bank account into which Najib Razak would receive US\$681 million from Tanore Finance Corporation in 2013.

25.24 By the end of January 2016 Najib Razak's explanation for the payments of US\$681 million from the Tanore Finance Corporation account and subsequent repayment to that account of US\$620 million had not improved and had only been expanded on to claim that the money had been a donation by the Saudi royal family. Najib Razak had admitted receiving the payment of RM42 million from SRC International Sdn Bhd in December 2014 and February 2015.

25.25 On 26 January 2016 Najib Razak's appointed Attorney General Mohamed Apandi Ali announced he had cleared Najib Razak of corruption. He claimed that the MACC investigation had established that the US\$681 million received from the Tanore Finance Corporation had been a "personal donation" from the royal family of Saudi Arabia. He claimed MACC officials had met the person they had identified as the donor. He claimed there was no evidence the donation had been an inducement or reward. But he would not identify the donor, did not say for what purpose it had been found the donation had been given, did not say what it had been found the donation had in fact been used for and did not explain to whom it had been found Najib Razak had paid the US\$620million that had been transferred back to the Tanore Finance Corporation in August 2013 (as he confirmed had happened), or what had been found to be the reason for and purpose of this transfer. Najib Razak had claimed, incredibly, that he had thought the millions of ringgit paid to him from SRC International Sdn Bhd had come from the US\$681 million he claimed had been a personal donation by the Saudi Royal family.

25.26 At the press conference called to announce that he had cleared Najib Razak of corruption, the Attorney General had inadvertently disclosed the content of MACC

investigation documents revealing that a further RM33 million from SRC International Sdn Bhd had been paid into Najib Razak's personal accounts in July and August 2014 in addition to the RM42 million he had admitted receiving in December 2014 and February 2015. These documents also showed that there had been payments from these monies of more than RM23.5million to 17 recipients (not identified) and more than RM10million to 16 recipients (not identified).

25.27 On 6 April 2016 the Malaysian Parliamentary Accounts Committee ("PAC") had tabled its "Report on Governance and Management Control of 1Malaysia Development Berhad (1MDB)". This did not contradict anything the Defendant had established concerning the misappropriation of 1MDB funds by Najib Razak, his family and associates. It entirely corroborated that 1MDB had been managed without or in defiance of control and monitoring by its Board of Directors by an incompetent or corrupt senior management who had connived in the fund's investment ventures being controlled by Najib Razak and his associates, his family and associates.

25.28 On 11 April 2016 IPIC and its subsidiary Aabar Investments PJS made a statement to the London Stock Exchange that the BVI-registered company Aabar Investments PJS Ltd ("Aabar BVI") that it had emerged had received hundreds of millions of dollars of 1MDB money from the funding of 1MDB's acquisition of Malaysian power assets in 2012, was not a subsidiary of either company and that neither had received payments from or assumed any liabilities on behalf of Aabar BVI.

25.29 In March 2015 the National Audit Department had been ordered to investigate 1MDB. The Auditor General's consequent report had been delayed and then, when submitted to the PAC in April 2016, suppressed by Najib Razak by being declared an Official Secret. In early July 2016 the Defendant obtained access to and published contents of the report, the conclusion of which had been that 1MDB's management had given changing, incredible, un-evidenced or inadequately evidenced and unreliable explanations for the funds dealings such that nearly US\$7 billion of payments by the fund could not be verified or satisfactorily explained or justified. The report corroborated everything that the Defendant had established showing that 1MDB management had colluded in or permitted US\$ billions of 1MDB money

to be embezzled by Najib Razak and his family in conspiracy with Jho Low and his criminal associates in 1MDB's investment partners.

Financial authority and criminal proceedings

Switzerland

- 25.30 By the end of July 2016 the Swiss financial regulatory authority FINMA had investigated transactions through about 100 1MDB-related accounts at BSI AG Bank, finding serious breaches of due diligence against money laundering and serious violations of risk management in relation to dubious transactions involving hundreds of millions of US\$ that had not been satisfactorily scrutinised. The bank had been ordered to pay CHF95 million as profits earned from illegal transactions and FINMA was continuing to investigate two former top BSI managers.
- 25.31 FINMA had been investigating Falcon Private Bank since early 2016 in relation to US\$3.8 billion of 1MDB-related assets that had been transferred to accounts at the bank between 2012 and 2015. By August 2016 FINMA had established that the bank's management had repeatedly failed to properly investigate, analyse or transactions amounting to approximately US\$ 2.5 billion via the accounts of two offshore companies within the 1MDB Group, had not sufficiently queried or assessed the plausibility and commercial basis for US\$1.3 billion transferred from one account to another in pass-through transactions and particularly, had failed to verify how its client (Jho Low), a young Malaysian businessman with links to individuals in Malaysian government circles (Najib Razak), had been able to acquire assets of US\$ 135 million in an extremely short period of time or why a total of US\$1.2 billion had been transferred to his accounts at a later date. The bank had also failed to adequately investigate pass-through transactions of US\$681 million and the repayment six months later of USD 620 million via these accounts, despite conflicting evidence as to their purpose.
- 25.32 FINMA had ordered Falcon Bank to pay CHF 2.5 million as illegally generated profits and had launched enforcement proceedings against two of the bank's former executive office holders implicated in the 1MDB-related transactions.

- 25.33 Since the beginning of 2016 FINMA had also been investigating Coutts Bank in relation to US\$2.4 billion in transactions it discovered had been transacted through accounts related to 1MDB and Jho Low at its Zurich branch.
- 25.34 In May 2015 the Swiss Attorney General had begun criminal proceedings against 1MDB officials (Casey Tang and Jasmine Loo) and persons unknown for fraud, bribery and money laundering in relation to US\$ 4 billion believed to have been misappropriated in 4 cases identified by the Swiss authorities: the PetroSaudi case, the SRC case, the Genting/ Tanjong power company case and the ADMIC case.
- 25.35 In January 2016 the Swiss had asked for mutual co-operation in the investigation from the Malaysian authorities. Significantly, this had been refused by Najib Razak's appointed Attorney General. In April 2016 the Swiss had added Aabar officials Khadem al-Qubaisi and Mohamed al-Husseiny as defendants. In May 2016 the Swiss had begun related criminal proceedings against BSI Bank for failing to prevent the 1MDB money laundering and corruption offences.

Singapore

- 25.36 In March 2015 the Singapore Attorney-General, the Commercial Affairs Department of the Singapore Police Force (CAD) and the Monetary Authority of Singapore (MAS) had begun investigating 1MDB-related transactions, including those connected with Good Star Limited, Aabar BVI and Aabar Investments PJS Limited (Seychelles) and Tanore Finance Corporation.
- 25.37 By the end of July 2016 bank accounts had been seized and dealings in properties stopped. Assets amounting to US\$240 million had been seized, including bank accounts and properties totalling about S\$120 million belonging to Jho Low and his immediate family. MAS had completed its examination of BSI Bank in May 2016 and had withdrawn its status as a merchant bank. MAS had completed inspections of DBS Bank Ltd (DBS), Standard Chartered Bank, Singapore Branch (SCB), and UBS AG, Singapore Branch (UBS), finding control failings in all three banks, weaknesses in the processes for accepting clients and monitoring transactions and undue delay in detecting and reporting suspicious transactions and was embarking on regulatory

actions against them. Supervisory examination continued into Falcon Private Bank Limited, Singapore Branch (Falcon PBS). MAS was finalising regulatory actions against licensed money changer and remittance agent, Raffles Money Change.

The findings of the US Department of Justice

25.38 On or about 20 July 2016, following investigation by the Federal Bureau of Investigation and the Inland Revenue Service Criminal Investigation Division, the United States Department of Justice brought a complaint in the United States District Court for Central California seeking the forfeiture and recovery of assets acquired by participants in the 1MDB conspiracy. This was the largest action yet brought under the Kleptocracy Asset Recovery Initiative established by the Department of Justice in 2010 to curb high-level public corruption around the world.

25.39 As related in the complaint, that investigation had established the following:

25.39.1 That between 2009 and at least 2013 the high-level officials of 1MDB, their relatives and other associates, including the Malaysian Prime Minister Najib Razak and his stepson Riza Aziz, had participated in a conspiracy that had misappropriated more than \$3.5 billion in 1MDB funds, fraudulently laundering them through a series of transactions and fraudulent shell companies with bank accounts located in Singapore, Switzerland, Luxembourg and the United States.

25.39.2 From its formation, Najib Razak had assumed a position of authority to approve all appointments to 1MDB's Board of Directors and Senior Management Team. Any investments or other financial commitments by 1MDB that were likely to affect either guarantees by the government of Malaysia for the benefit of 1MDB or any policy of the Malaysian government required his approval.

25.39.3 In 2009 the conspirators had embezzled approximately \$1 billion intended for investment in a joint venture with PetroSaudi International ("PSI"), a private Saudi oil extraction company, to exploit that company's purported energy concessions. They had misappropriated more than \$1.3 billion in funds raised through two bond offerings by 1MDB in 2012 and a further \$1.2 billion following another bond offering in 2013. The stolen funds had been laundered into the

United States and used to acquire and invest in more than US\$1 billion-worth of assets, including high-end real estate and hotel properties in the USA, a \$35 million jet aircraft, more than \$200 million in works of art by Vincent Van Gogh, Claude Monet and others, an interest in the music publishing rights of EMI Music, the production of Hollywood films including the 2013 film *The Wolf of Wall Street* and to pay gambling expenses at Las Vegas casinos. 1MDB had retained no interest in any of these assets nor received any return on these investments.

The Good Star Phase

25.40 The DoJ investigation had established the following:

25.40.1 The joint venture with PSI in 1MDB PetroSaudi Ltd, the corporate entity operating what was referred to as “the 1MDB-PetroSaudi JV” or “the Joint Venture”, had been *one of 1MDB’s* first investment projects. Its stated purpose had been to exploit energy concession rights in Turkmenistan and Argentina that PSI purportedly owned. 1MDB agreed to invest \$1 billion in cash in the Joint Venture in exchange for a 40% equity interest, while PSI agreed to give its mineral extraction concessions, with a claimed value of approximately US\$2.7 billion, for a 60% equity interest.

25.40.2 However the conspirators, and principally Taek Jho Low (“Jho Low”), the 29-year-old Malaysian national who, while having no formal position at 1MDB, had been involved in 1MDB’s formation and had thereafter controlled its dealings, contrived that US\$700 million of its US\$1 billion investment was diverted to an account at RBS Coutts Bank in Zurich held in the name of Good Star Limited (“the Good Star Account”).

25.40.3 Under the Joint Venture Agreement (“JVA”) establishing the Joint Venture, 1MDB’s \$1 billion contribution was to be made to a bank account with the BSI Bank in the name of and nominated by 1MDB-PetroSaudi JV. The JVA had also provided that the 1MDB-PetroSaudi JV pay US\$700 million to PSI, purportedly as repayment for a loan PSI had agreed to make to the 1MDB-PetroSaudi JV on 25 September 2009, three days before execution of the JVA. But PSI had made no such loan.

25.40.4 On 26 September 2009 1MDB's Board of Directors had authorised US\$1 billion to be transmitted to the 1MDB-PetroSaudi JV through a foreign exchange transaction with Deutsche Bank (Malaysia) Berhad into the bank account of the 1MDBPetroSaudi JV. In the event, only US\$300 million of the total US\$1 billion of 1MDB's funds had been received for the Joint Venture, being paid to an account at J.P. Morgan (Suisse), S.A. in Switzerland in the name of the 1MDB-PetroSaudi JV. The conspirators had contrived that US\$700 million of 1MDB funds be paid to the Good Star Account, deceiving Deutsche Bank that this was a PSI account (because, they pretended, Good Star Ltd was 100% owned by PSI) and deceiving RBS Coutts that the US\$700 million was being paid by 1MDB under an agreement to invest in a real estate and private equity venture that was to be managed by Good Star Ltd.

25.40.5 In reality, Good Star Ltd's sole shareholder and the signatory and sole beneficiary of the Good Star Account had been Jho Low. The 1MDB Board had never approved an investment agreement with Good Star Ltd and the funds transferred from 1MDB to the Good Star Account were not used for investments benefiting 1MDB.

25.40.6 The Board had been misled by the management team (appointed by Najib Razak and effectively directed by Jho Low): it had not been told that the Joint Venture Agreement required repayment of the purported loan by PetroSaudi until after the money had been transferred to Good Star and then been lied to that there had been such a loan (when there had not) and that the money had been sent to PetroSaudi in repayment of that loan (when it had not).

25.40.7 Between May and October 2011 further sums totalling approximately US\$330 million of 1MDB funds had been siphoned off to the Good Star Account. In June 2010, 1MDB had decided to dispose of its 40% equity interest in the 1MDB-PetroSaudi JV by selling its shares back to the Joint Venture. In exchange, the Joint Venture had agreed to give 1MDB US\$1.2 billion in debt notes issued by the Joint Venture, issued pursuant to an Islamic loan facility called a Murabaha

Financing Agreement (“MFA”). Pursuant to this MFA, 1MDB had also agreed to provide the 1MDB-PetroSaudi JV with an additional loan of up to US\$1.5 billion.

25.40.8 In September 2010, the 1MDB-PetroSaudi JV had sought to draw down on the additional loan a sum of US\$500 million. On or about 12 May 2011 the 1MDB-PetroSaudi JV issued a second Notice of Drawing pursuant to the MFA, seeking to draw down an additional US\$330 million, requesting that 1MDB transmit \$330 million to the Good Star Account. Wire transfer foreign exchange transactions through financial institutions in Malaysia including AmBank and Deutsche Bank and processed through a U.S. correspondent bank account at J.P. Morgan Chase transferred US\$30 million on 20 May 2011, US\$65 million on 23 May 2011, US\$110 million on 27 May 2011 and US\$125 million on 25 October 2011. Jho Low had sought to justify these transfers of 1MDB funds to the Good Star Account to RBS Coutts by producing a fraudulent sale and purchase agreement for the sale of certain assets to 1MDB, including the Mark Hotel in New York City, which neither Jho Low nor Good Star Ltd owned, and the L’Ermitage Beverly Hills Hotel, which had never been acquired by 1MDB.

25.40.9 In total, 1MDB had purported to invest a total of US\$1.83 billion in the 1MDB-PetroSaudi Joint Venture through a combination of equity and debt investments, of which US\$1.03 billion had been fraudulently diverted to the Good Star Account.

25.40.10 Between February and June of 2011, approximately US\$24.5 million of the 1MDB funds siphoned off into the Good Star Account had been transferred to an account at Riyad Bank maintained in the name of two Saudi nationals who were associates of Jho Low (“the Saudi Account”): approximately US\$12.5 million on or about 18 February 2011 and approximately US\$12 million on or about 10 June 2011. Within days, US\$20 million from those funds had been transferred to an account at Ambank belonging to Najib Razak: approximately US\$10 million being transferred on or about 23 February 2011 (some five days after the Saudi Account had received US\$12.5 million) and approximately US\$10 million on or about 13 June 2011 (some three days after the Saudi Account had received US\$12 million). Jho Low had falsely represented to RBS Coutts that the purpose

of the transfers to the Saudi Account had been to invest in real estate developments in Mecca and Medina under an Investment Management Agreement with one of the two Saudi Account holders.

25.40.11 Jho Low had laundered hundreds of millions of dollars siphoned off from 1MDB through the Good Star Account for the personal benefit of himself and his associates. Between October 2009 and October 2010 transfers totalling approximately US\$368 million had been sent to an account held by the law firm Shearman & Sterling LLP in the USA. These funds had been used by Jho Low and his associates for purchases and investments in luxury real estate, a Beverly Hills hotel, a private jet, and a major Hollywood motion picture, in addition to funding their luxurious lifestyles.

25.40.12 In less than 8 months between October 2009 and June 2010, more than US\$85 million had been wired to associates and family members of Jho Low as well as to Las Vegas casinos, luxury yacht rental companies, business jet rental businesses and a London interior decorator. Between October 2009 and October 2010, approximately US\$12 million had been wired to Caesars Palace, the Las Vegas casino, approximately US\$13.4 million to the Las Vegas Sands Corp, owner of the Venetian Las Vegas casino, approximately US\$11 million to Jho Low's associate Tan Kim Loong, approximately US\$4 million to Jet Logic Ltd., a luxury jet rental service, approximately US\$3.5 million to Jho Low's sister, approximately US\$3 million to Rose Trading, a Hong Kong jeweller, approximately US\$2.7 million to Yachtzoo, a luxury yacht rental service, approximately US\$2,3 million to Argent Design Ltd., a UK interior designer, approximately US\$670,000 to Excel Air, a jet rental company, approximately US\$460,000 to Skyline Private Air, an aircraft rental company and approximately US\$155,000 to Billiyon Air, a jet rental company.

The Aabar-BVI Phase

25.41 The DOJ investigation had established how, in 2012, approximately US\$1.367 billion in 1MDB funds raised in two separate bond offerings had been misappropriated and fraudulently diverted to bank accounts in Switzerland and Singapore:

25.41.1 1MDB had needed to raise capital to fund its operations after US\$1.03 billion had been misappropriated in the Good Star Phase. It had issued two bond offerings to fund the acquisition of power assets from two Malaysian companies, Tanjong Energy Holdings Sdn Bhd and Genting Berhad. The International Petroleum Investment Company of Abu Dhabi (“IPIC”), an investment fund wholly-owned by the government of Abu Dhabi, had guaranteed both those offerings. The Managing Director of IPIC and Chairman of a legitimate subsidiary of IPIC, Aabar Investments PJS (“Aabar”), Khadem Abdulla al-Qubaisi (“Khadem Qubaisi”), and Aabar’s CEO, Mohamed Ahmed Badawy Al-Husseiny (“Mohamed Husseiny”), in collusion with Jho Low, had set up a BVI-registered company with a name similar to Aabar, Aabar Investments PJS Limited (“Aabar-BVI”), with an account at BSI Bank, Lugano (“the Aabar-BVI Account”).

25.41.2 More than 40% of the net proceeds of the two 1MDB bond issues, a sum totalling approximately US\$1.367 billion, had then been siphoned off by being paid by 1MDB to Aabar-BVI, into the Aabar-BVI Account. On or about 21 May 2012, a total of US\$907.5 million in proceeds from the first bond sale had been transferred to a 1MDB account at Falcon Private Bank Limited (“Falcon Bank”), from which roughly one day later a wire in the amount of US\$576.9 million had been sent to the Aabar-BVI Swiss Account. This was more than one third of the net proceeds from that bond sale. On or about 19 October 2012, 1MDB transferred the proceeds of the second bond sale, totalling US\$1.64 billion, to a 1MDB account at Falcon Bank. On the same day 1MDB wire transferred US\$790.3 million through correspondent bank accounts at J.P. Morgan Chase and Citibank in the USA to the Aabar-BVI Swiss Account (amounting to nearly 50% of the net proceeds of the second bond sale).

25.41.3 Within days of receiving these funds from 1MDB, Aabar-BVI had transferred a total of approximately US\$636 million to a Singapore bank account held by Blackstone Asia Real Estate Partners (“the Blackstone Account”), an account controlled by Tan Kim Loong (“Tan Loong”), a Malaysian national and close associate of Jho Low. During the same period, Aabar-BVI had additionally

transferred, through multiple overseas investment funds, approximately US\$465 million to the Blackstone Account.

25.41.4 Funds transferred to the Blackstone Account by Aabar-BVI had been distributed to officials of IPIC, Aabar, and 1MDB. Between May and November 2012, shortly after Blackstone's receipt of funds from the Aabar-BVI Swiss Account, Blackstone had transferred US\$472.7 million into an account at Bank Privee Edmond de Rothschild in Luxembourg beneficially owned by Khadem Qubaisi, who used part of those monies to acquire real property in the USA worth about US\$100 million. During roughly the same time period, Blackstone had transferred US\$66.6 million into two different accounts beneficially owned by Mohamed Husseiny. In October and November 2012, Blackstone had sent US\$30 million to Najib Razak, transferring US\$5 million on or about 30 October 2012 and US\$25 million on or about 19 November 2012 into the same Ambank account that in 2011 had received US\$20 million of 1MDB funds from Good Star via the Saudi Account. In December 2012, Blackstone had transferred US\$5 million to a Swiss account beneficially owned by Loo Ai Swan, then 1MDB's General Counsel and Executive Director of Group Strategy.

25.41.5 Shortly after receiving proceeds of the two 2012 bond sales from 1MDB, Aabar-BVI had also transferred US\$238 million to a Singapore bank account belonging to Red Granite Capital, an entity owned by Najib Razak's stepson and friend and associate of Jho Low, Riza Aziz. Riza Aziz had used these funds to purchase nearly US\$100 million-worth of luxury real estate in the United States and the United Kingdom for his personal benefit and to fund his movie production company, Red Granite Pictures. He had also funded gambling expenses of himself, Jho Low and Tan Kim Loong. On or about 21 June 2012, Riza Aziz had US\$41 million wired from his Red Granite Capital bank account to an account at Standard Chartered Bank in the name of Alsen Chance Holdings Limited ("the Alsen Chance Account"). On or about 10 July 2012, a wire for US\$11 million had been sent from this account to a bank account in Jho Low's name maintained by Las Vegas Sands LLC, the owner and operator of the Venetian Resort-Hotel-Casino in Las Vegas. On or about 11 July 2012 an additional US\$2 million had been wired from the Alsen Chance Account to a Las Vegas Sands LLC account in

the name of Tan Loong. Venetian Casino records had shown Jho Low gambled at that casino for about seven days from about 10 July 2012. On or about 15 July 2012 Jho Low had withdrawn US\$1.15 million at the Venetian Casino when gambling with several individuals, including Riza Aziz, Christopher “Joey” McFarland, the co-founder of Red Granite Pictures, and the film star Leonardo DiCaprio.

The Tanore Phase

25.42 The DoJ investigation established how more than \$1.26 billion in 1MDB funds that were raised in a third bond offering in 2013 had been misappropriated and fraudulently diverted to bank accounts in Switzerland and Singapore:

25.42.1 In March 2013 1MDB had issued an offer for US\$3 billion in bonds, purportedly to invest in a joint investment venture with Aabar called Abu Dhabi Malaysia Investment Company (“ADMIC”). More than US\$1.26 billion of the proceeds of the bond issue had been diverted to overseas shell company accounts unconnected with either 1MDB or ADMIC, including a bank account at Falcon Bank in Singapore held in the name of a shell company, Tanore Finance Corporation (“the Tanore Account”). Tan Loong was the beneficiary of the Tanore Account, which he had opened as its sole signatory on 20 November 2012.

25.42.2 Shortly after these 1MDB funds had been diverted to the Tanore Account, US\$681 million had been transferred to Najib Razak. On or about 21 March 2013 US\$620 million had been transferred to the same Ambank account in which Najib Razak had received US\$20 million of 1MDB funds from Good Star in 2011 and, in October and November 2012, US\$30 million from the proceeds of the two 1MDB bond sales that year. On or about 25 March 2013 a further US\$61 million had been transferred to the same account. On 26 August 2013 US\$620 million had been wired from a different Ambank account belonging to Najib Razak, returning US\$620 million to the Tanore Account.

25.42.3 The DoJ complaint noted that on 26 January 2016 the Malaysian Attorney-General had confirmed these transfers between the Tanore Account and Najib

Razak and had characterised the payment of US\$681 million as “a personal donation” to Najib Razak from the Saudi Royal family. The DOJ countered this claim, reiterating that Tan Loong had been the beneficiary of the Tanore Account and 1MDB official Loo Ai Swan had been made a signatory on the account the day before the transfer of US\$620 million had been made from the Tanore Account to Najib Razak.

25.42.4 1MDB funds from the 2013 bond sale had also been used by Jho Low and Tan Loong to purchase US\$137 million-worth of artwork for their personal benefit and to purchase an interest for Jho Low in the Park Lane Hotel, New York.

The Scorpene submarine deal and murder of Altantuyah Shaariibuu

25.43 Najib Razak was also implicated in receiving corrupt payments in the Scorpene submarine purchase scandal, the subject of criminal proceedings in France, and in attempts corruptly to cover up his connection to murder victim Altantuyah Shaariibuu (“Altantuyah”) and to pervert the course of justice in the prosecution of her murderers.

25.44 In 2001 and 2002, when Najib Razak was Defence Minister, Malaysia negotiated and agreed the purchase for €1 billion of two Scorpene submarines and a second hand Agosta submarine from Direction des Constructions Navales (DCN, later renamed DCNS) and the Thales group, contracting in a joint venture company Armaris, and Spanish company Navantia (“the Scorpene submarine deal”).

25.45 The key Malaysian government agent for the Scorpene submarine deal was businessman Abdul Razak Baginda (“Baginda”), a close associate of Najib Razak. Altantuyah was a Mongolian model and interpreter who had been a lover of Baginda and claimed to have worked for Baginda on the Scorpene submarines deal.

25.46 The first corrupt commission paid in the Scorpene submarine deal to be identified was a payment of €114 million made to a company, Perimekar, owned and controlled by Baginda and his wife, purportedly under a contract to provide support

and coordination services for the deal. Further payments of more than €30 million had come to light following the prosecution of Altantuyah's killers.

- 25.47 In October 2006 Altantuyah had travelled to Kuala Lumpur to see Baginda to demand money she claimed was owed to her for work on the Scorpene submarines deal, and perhaps to blackmail Baginda with threats to reveal information. Baginda had said in a statement to police that she had demanded US\$500,000. On 19 October 2006 she had been kidnapped and killed by two Malaysian Special Branch Officers, previously bodyguards to Najib Razak, Azilah Hadridan ("Azila") and Sirul Azhar Omar ("Sirul"). She had been shot and her body had been blown up using military grade explosives.
- 25.48 Azilah and Sirul had been prosecuted for the murder of Altantuyah. Baginda had been prosecuted for abetting the murder, on the case that he had commissioned the murder. Interviewed under caution, Sirul had stated that he and Azilah had been offered RM100,000 to kill a woman who was causing embarrassment for Baginda.
- 25.49 Baginda had been acquitted at the High Court murder trial in October 2008 at the close of the prosecution case. Azilah and Sirul were convicted of murder in April 2009 and sentenced to death. That conviction had been overturned by the Court of Appeal in August 2013. The prosecution had appealed and in early 2015 the Federal Court had allowed that appeal, reinstating the High Court conviction and death sentence. But Sirul had been able to flee to Australia before the Federal Court decision, where he had remained, in custody in Australia for immigration offences, unextraditable because of Australia's policy of refusing extradition without guarantees that the death penalty will not be carried out. The trial process had been characterised by the prosecution's failure to establish a motive for the killing and by both prosecution and defence avoiding any attempt to investigate any involvement of Najib Razak with Baginda or Altantuyah or her death or the prosecution.
- 25.50 Perumal Balasubramaniam ("Bala") was a private investigator and former member of the Malaysian Special Branch Police Office who had been hired by Baginda to investigate Altantuyah when she was pursuing him for money in October 2006. He had been a witness for the prosecution at the High Court murder trial.

- 25.51 Before the close of the prosecution case, on 1 July 2008 Bala had made a statutory declaration, saying that he did so because he was disappointed by the standard of investigations conducted into the circumstances surrounding the murder of Altantuya, because he wanted to bring to the notice of the relevant authorities the strong possibility that there were individuals other than the three accused who had played a role in her murder and because he wanted the authorities to reopen investigations so that fresh evidence could be presented prior to submissions at the end of the prosecution case.
- 25.52 In this statutory declaration Bala stated that Baginda had told him: Najib Razak had introduced him to Altantuyah at a diamond exhibition in Singapore; Najib Razak had had a sexual relationship with Altantuyah, including anal intercourse; that Najib Razak had wanted Baginda to look after Altantuyah so she did not harass him now that he had become Deputy Prime Minister; that he and Najib Razak and Altantuyah had been at a dinner together in Paris; and that Altantuyah wanted money from Baginda as she was entitled to US\$500,000 commission on a submarine deal she had assisted with in Paris. Bala said that Altantuyah had told him that she met Baginda in Singapore with Najib Razak; that she also met Baginda and Najib Razak as a dinner in Paris; that she had been promised US\$500,000 for assistance with a submarine deal in Paris; that Baginda had bought her a house in Mongolia; and that Baginda had married her in Korea; and that she had asked if he could arrange for her to see Najib Razak if he would not allow her to see Baginda.
- 25.53 Baginda had also declared that when he had made a statement to police investigating Altantuyah's murder he had told them everything Baginda and Altantuyah had told him about their relationships with Najib Razak but, when given his statement to sign, this information had been left out. Bala had also declared that when he had been with Baginda at his lawyer's office on the day Baginda was arrested: Baginda had said that he had sent Najib Razak an SMS message the previous evening, because Baginda refused to believe he was to be arrested, to which Baginda said he had received no response; and shortly after this Baginda had received an SMS from Najib Razak that he had shown Bala and Baginda's lawyer

which had read “I am seeing IGP at 11.00 a.m. today matter will be solved ... be cool”.

- 25.54 Bala had published this first statutory declaration at a Press Conference held on 3 July 2009 at the national headquarters of the PKR party. The following day, 4 July 2009, Bala had attended another Press Conference called at the Prince Hotel, Kuala Lumpur, at which a second statutory declaration in Bala’s name was given to representatives of the Press by which he retracted the entirety of the statutory declaration published the previous day and expressly retracted all of the statements in that declaration relating to Najib Razak detailed above, stating that he had made the previous declaration under duress (though not specifying the source, nature or substance of this duress). Bala and his family had then disappeared.
- 25.55 Bala and his wife had subsequently stated and, after his death, Bala’s widow and children had pursued proceedings for compensation against Najib Razak, his wife Rosmah Mansour and two younger brothers, Ahmad Razak and Nazim Razak and a businessman associate of Najib Razak, Deepak Jaikishan, and others, asserting that these people had conspired to extract the second statutory declaration from him. They asserted that on 3 July 2009 Bala had been offered money and threats had been made to his and his family’s safety to induce him to make the second statutory declaration falsely retracting the statements concerning Najib Razak in the first statutory declaration. He had been detained while that statutory declaration was prepared. He had been forced to sign that statutory declaration unread and forced to attend the press conference at the Prince Hotel where a lawyer posing as his representative, Arulampalal Mariampillai, had informed the Press representatives that Bala had made a declaration retracting the one published the day before and had handed out copies of the second before closing the press conference without questions or any statement by Bala. Bala and his family had been transported by van to Singapore that same day. Deepak Jaikishan had arranged that they subsequently be removed to Bangkok, to Kathmandu and finally to Chennai.
- 25.56 Bala and his family’s account had subsequently been corroborated by Deepak Jaikishan.

- 25.57 In 2009 the French newspaper *Libération* had published detailed allegations of corrupt commissions in the Scorpene deal and of Baginda's involvement in the murder of Altantuyah. The Malaysian Human Rights NGO Suara Rakyat Malaysia (SUARAM) had pursued investigations into the Scorpene deal and in late 2009 and 2010 had filed complaints with the French courts regarding the bribery of Malaysian officials. SUARAM's complaints had focused on the €114 million payment to Perimekar.
- 25.58 A raid by French investigators on DCN offices in 2010 had led to the seizure of documents that had supported the case that illegal payments had been made through contracts with Perimekar but also through subsequent contracts with a network of companies. These had been designed to conceal bribes and corrupt commissions that had only been outlawed in France by its ratification and implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- 25.59 In March 2012 examining magistrates had been appointed to investigate, including investigation of payments to Terasasi, a company controlled by Baginda and jointly owned with his father. Documents supplied to the investigation had showed that some €3 million had been paid when Terasasi had been domiciled in Malaysia and €33 million after it had then been incorporated in Hong Kong. Under one of the contracts investigated, a subsidiary of DCN had paid €30 million to Thales' Asian operation, Thales International Asia ("Thint Asia") while Thint Asia had paid a corresponding sum to Terasasi, purportedly for consultancy work.
- 25.60 By the end of July 2016, the French investigating magistrates had indicted the former president of Thint Asia, Bernard Baiocco, and a former president of DCN, Dominique Castellan, charging that they had been complicit in bribing Najib Razak through his advisor Baginda. In July 2017 a former chairman of DCN, Philippe Japiot, and a former president of Thales, Jean-Paul Perrier, would be indicted, accused of complicity in bribing Najib Razak through Baginda. Baginda would be indicted in the same month, accused of accepting bribes and paying bribes to Najib Razak.

25.61 A senior French banker from the Asian division of a major French bank had described to a Malaysian banker, Pascal Najadi, how he had witnessed Najib Razak, when he was Defence Minister, taking delivery of a defence deal bribe at the 5 Star Plaza Athene Hotel in Paris. He had seen Najib Razak being shown a large suitcase filled with millions of dollars that Najib Razak had then ordered be taken to another room where it had been received by his wife, Rosmah.

Prosecution of Anwar Ibrahim for sodomy

25.62 Najib Razak had also been found to be implicated in the corrupt prosecution, conviction and imprisonment for his political advantage of the leader of the PKR Opposition, Anwar Ibrahim (“Anwar”) while Deputy Prime Minister and then Prime Minister.

25.63 In the 1990s Anwar had been Deputy Prime Minister of Malaysia. In 1998 he had been charged with sodomizing his wife’s driver and subsequently corruptly attempting to interfere with the police investigation. He was convicted and imprisoned, but released in September 2004 when Malaysia’s Federal Court overturned the sodomy conviction. The complainant was found to have been an unreliable witness on whose uncorroborated testimony alone Anwar Ibrahim should not have been convicted. During his six year imprisonment Amnesty International had declared him to be a prisoner of conscience who had been arrested to silence him as a political opponent.

25.64 The Federal Court rejected Anwar Ibrahim’s appeal against conviction for acting corruptly. He was accordingly prevented by Malaysian law from returning to Parliament until April 2008. The then Prime Minister and UMNO leader of the BN coalition, Abdullah Ahmed Badawi, called an early General Election for March 2008. Although Anwar Ibrahim had been prevented from standing for election, he was instrumental in a massive swing to the Opposition by which BN lost its two-thirds majority and 5 states to the Opposition pact and survived in power only by a slim majority. Anwar’s wife Dr Wan Azizah Wan Ismail, who had been Opposition leader, declared that she would resign her parliamentary seat and force a by-election.

Anwar would subsequently win that by-election with a 15,000-plus majority on 26 August 2008, returning to Parliament as leader of the Opposition PKR.

- 25.65 Mohd Saiful was a 23-year-old unemployed failed electrical engineering student who had been active in BN but who, shortly before the election in March 2008 had been invited by a friend of Anwar to work in the Opposition leader's office as a volunteer. He later became a paid private assistant to Anwar.
- 25.66 On 28 June 2008, Mohd Saiful lodged a police report claiming not only that Anwar had sodomized him on the afternoon of Thursday 26 June 2008 at a private condominium at Desa Damansara, but that he had been sexually assaulted by Anwar Ibrahim eight or nine times over the previous two months. On 30 June 2008 Anwar publicly insisted he would fight a by-election later that year and form a new government despite rumours he was soon to be charged with sodomy. He announced that he would contest a by-election for the Permatang Pauh parliamentary seat vacated by his wife and PKR leader, Dr. Wan Azizah Wan Ismail. The same day, it was reported that the police investigations into the sodomy complaint against Anwar had been completed and that the papers had already been delivered to the Attorney General for further action.
- 25.67 On 7 August 2008 Anwar was charged under s. 377B of the Penal Code with committing sodomy on 26 June 2008. Despite Mohd Saiful's allegations of earlier sexual assaults, Anwar was not charged with any offence of non-consensual assault.
- 25.68 The case against Anwar was that Mohd Saiful had gone to a private hospital two days after the alleged offence to be medically examined. He had told the examining doctor that for the past few days his anus had been painful and that a "plastic" item had been inserted into it. A proctoscopy examination by that doctor had shown no physical signs of penetration and a normal anus and rectum. After the examination, Mohd Saiful had told the doctor he had been sodomized by a "VIP". The doctor had recommended he be re-examined at a government hospital. Two hours later Mohd Saiful had gone to Hospital Kuala Lumpur, very close by. Later that night three specialist doctors had examined him but no evidence of injury or clinical findings suggestive of penetration to the anus or of any significant defensive wound.

- 25.69 Various swabs had been taken for scientific analysis, including high and low rectal swabs and blood samples for DNA profiling. DNA testing samples had taken two days to reach the laboratory for analysis. There had also been an issue about the proper labelling of the exhibits.
- 25.70 Curiously when he claimed the sodomy had been a non-consensual assault and professed to be a devout Muslim (and so someone who would need to wash before daily prayers) Mohd Saiful testified at trial that he had told his medical examiners he had not washed his anus or defecated between the alleged offence and the examination and, under cross-examination, that he had not washed in order to preserve the evidence.
- 25.71 Immediately following Anwar's arrest, Najib Razak had claimed he did not know Mohd Said and had not been involved in the case. That had been exposed as a lie when the Opposition produced a photograph of Mohd Said at Najib's office with a member of his staff. Najib Razak thereupon had lied again, saying the photograph had been taken three months earlier on an occasion when Mohd Saiful had visited his office to apply for a government educational scholarship. That was revealed as a lie when, a few days later, Najib Razak made a statement at a Press conference that Mohd Saiful had in fact met with him at his residence several days before the alleged incident on 26 June 2008 and had told him he had been sodomised by Anwar. This statement was also a lie, in that Najib Razak falsely claimed: that he had simply received Mohd Saiful as a leader (Deputy Prime Minister) receiving an ordinary citizen who wanted to tell him something; that he had not known him before this meeting; and that he had not advised Mohd Said to make a report to the police. As Mohd Said revealed in evidence at the trial, he had gone on to have a secret meeting with Senior Assistant Commissioner Rodwan Mohd Yusof, Deputy Director of the Criminal Investigation Department of the Royal Malaysian Police Force, in a room at the Concorde Hotel at Kuala Lumpur the day before the alleged incident with Anwar. SAC Rodwan had played a key role in Anwar's prosecution and trials in 1998, in which he had been accused by the defence of illegally using a blood sample from Anwar for DNA testing and planting fabricated DNA samples on a mattress.

- 25.72 The Australian barrister Mark Trowell QC in his report in August 2010 for the Committee on the Human Rights of Parliamentarians of the Inter-parliamentary Union on the continuing High Court trial had concluded that the prosecution case had by then been completely compromised by the conduct of the prosecution in the context of serious allegations of political interference at the highest level and should have been abandoned.
- 25.73 Anwar was acquitted by the High Court on 9 January 2012. The Judge found that the DNA evidence was not reliable, it could not be ruled out that it had been contaminated, and there was no other evidence corroborating Mohd Saiful's evidence he had been sodomised.
- 25.74 There had been no good reason why the prosecution and the Najib government's Attorney General should not accept the High Court verdict. For political reasons, the Attorney General appealed to the Court of Appeal. On 7 March 2014 the Court of Appeal had overturned the acquittal, sentencing Anwar to five years imprisonment. Anwar was immediately prevented from contesting a Selangor state seat he had been expected to win and to become Chief Minister of Selangor. On 10 February 2015 Anwar's appeal to the Federal Court had been dismissed, his conviction and sentence upheld and he had been jailed. He had thereby been excluded from seeking political office until after the next General Election.
- 25.75 The prosecution of Anwar and his subsequent imprisonment had been Internationally condemned as a politically motivated breach of human rights by both governments, including the United States, and human rights organisations, including Human Rights Watch.
- 25.76 In December 2015 the European Parliament had passed a resolution condemning the increasingly repressive regime of the Najib Razak government and its suppression and criminalisation of public debate, free speech and political opposition (including in relation to the 1MDB affair) on the whole of which resolution the Defendant will rely, recognising that Anwar was a political prisoner who had been sentenced and imprisoned as a result of a politically motivated

prosecution which had resulted in proceedings that had failed to meet international standards of fair trial, and who had been deprived of appropriate medical care when a prisoner.

25.77 The European Parliament had urged the Malaysian Government (inter alia):

25.77.1 immediately to release Anwar with all political prisoners, to provide him and other political prisoners with appropriate medical care, and to drop politically motivated charges being pursued against Malaysian journalists, bloggers, academics, political dissidents and human rights activists;

25.77.2 to repeal the Sedition Act it had been using to silence critics and quell public discontent, peaceful expression and debates on matters of public interest (including the 1MDB affair), and to bring legislation, including the Prevention of Terrorism Act, the Printing Presses and Publications Act, the Communications and Multimedia Act, the Peaceful Assembly Act, and other relevant provisions of the penal code, in line with international standards on freedom of expression and assembly and the protection of human rights.

Endemic corruption in Malaysia and Malaysian politics

25.78 Consistent with the facts and matters above, corruption was perceived to be rife and endemic in Malaysia and particularly in political parties. This is reflected in Transparency International Malaysia's Malaysian Corruption Barometer survey published in May 2014, a year after the 2013 General Election, showing that political parties were the institution most perceived to be corrupt by respondents (45% of respondents).

25.79 Transparency International Malaysia's Annual Report for 2015 had recorded that the country's ranking for corruption had worsened significantly from the previous year, its Corruption Perceptions Index score falling 52/100 to 50/100, and its country ranking dropping significantly from 50th to 54th (which position would have been worse still had 7 countries previously ranked not been missing from the year's results).

- 25.80 In his annual review in January 2016 the President of Transparency International Malaysia had observed that the country had come “dangerously close” to becoming a “failed state” after Najib Razak’s unjustified sacking of Ministers and removal of the Attorney General and of MACC officials engaged in the 1MDB investigation, all obstructions and obstacles made to slow down the investigation process: “Corruption has been and continues to be among the greatest challenges of all times facing the nation. The corruption scandals in Malaysia highlight the extent this country suffers from poor governance while displaying a lack of transparency and accountability. Corruption fundamentally distorts public policy, leads to the misallocation of resources and particularly hurts the vulnerable and impoverished. Concerns are being expressed daily on the risks relating to the integrity of the politicians and the independence of public office holders arising from conflict of interests, undue influence and corruption, and especially now more than ever.”
- 25.81 The same corrupt political culture among political parties and party officials was demonstrated in their conduct of elections and the “buying” of votes. The Observation Report by Bersih 2.0 (the Coalition for Clean and Fair Elections) on the 2013 General Election had found it to be compromised by rampant electoral misconduct by candidates and their party machines, including the bribing of voters by parties and candidates from candidate nomination day, through the campaign and on polling day. Notably it had found that bribery of the electorate by candidates and parties offering cash or goods or promises of benefit was institutionalised, to the point that there was a widespread belief that bribery was an intrinsic part of election campaigning. This was due to the habitual use of cash handouts or the promise of the same and other valuables to “buy” votes.
- 25.82 In May 2016 Bersih 2.0 had reported to similar effect on the Permantau Sarawak Committee’s observation of the 11th Sarawak Election. There had been repeated observations of bribery of voters by cash throughout the campaign and on polling day. Slips exchangeable for cash after voting had been distributed by BN outside polling stations in all the observed constituencies. During the campaign voters in one constituency had received a letter from BN inviting them to collect money, while in

another voters had reported receiving cash from BN party workers when they visited their house.

Najib money politics in the 2013 General Election

- 25.83 It was notorious that the support and co-operation of allies of UMNO and its partner parties in BN was bought by Najib Razak in what is known in Malaysia as “money politics”. It had been established that the 1MDB embezzlement had fuelled a massive escalation of this “money politics” by Najib Razak. He had paid US\$7 million of 1MDB money through his brother Nazir to ruling party politicians prior to the 2013 election. The UMNO Back Bench Chairman Shahrir Abdul Samad had received RM1 million. The Deputy Finance Minister Ahman Maslan had received RM2 million. Mas Ermieyati Samsudin of the Public Accounts Committee had received RM50k. Anecdotal evidence of widespread payments by Najib Razak was sound: payments totalling more than RM500 million of money extracted from 1MDB were made, including vast payments to political parties and organisations allied to UMNO, especially UMNO headquarters, SUPP Sarawak, Malaysian Indian Congress (at least RM20 million in cheques signed by Najib) and the Malaysian Chinese Association.
- 25.84 Individuals identified as receiving 1MDB money from Najib Razak include: Jacob Sagan MP paid RM200,000; Ahmad Bashah Hanipah, Menteri Besar(State Chief) of Kedah, RM200,000; Ruslan Kassim, Communications Head for the militant Muslim group Perkasa, RM200,000; B Aziz Kaprausi, UMNO Sri Gading, RM 100,000, Kasitah Bin Gaddam, UMNO Sabah, two payments of RM100,000; Richard Riot, SUPP Sarawak, two payments of RM100,000; Hassan Malek, UMNO Negeri Sembilan, RM100,000; Ismail Adb Mattalib, UMNO Pahang, RM100,000; Wetrom bin Bahanda, UMNO Sabah, RM100,000, Mohamed Idris Abu Bakar, UMNO State Assemblyman, RM100,000; Hanafi bin Mamat, Kelantan UMNO Senator, RM10 million; Bustari Yusuf, Sarawak businessman and politician, payments totalling around RM60 million.
- 25.85 Despite his massively escalated corrupt, “money politics” payments to party officials, political allies and supporters and widespread vote-buying and corrupt electoral practices, as recorded by Bersih 2.0, and despite being more personally popular with voters than his party, the result of the 2013 General Election was disastrous for

Najib Razak and his and BN's prospects of retaining power. It was the worst ever General Election result for UMNO. Gerrymandered constituencies meant that the BN coalition retained 60% of the 222 Parliamentary seats, but it had won less than 47% of the popular vote.

Post GE13 and 1MDB revelations

25.86 Following the 2013 General Election result, it was clear (or clearer) that Najib Razak's political survival depended on him dividing the Opposition coalition and the anti-BN electoral vote.

25.87 From mid-2014 , the investigation into 1MDB and the emergence of Xavier Justo's documented evidence and following the revelations beginning in January 2015, there had been even greater and increasing pressure on Najib Razak and UMNO to divide the Opposition parties and their electoral support.

The conspicuously wealthier ulama faction take control of PAS

25.88 Until his death in February 2015, the Spiritual Leader of PAS had been Nik Aziz Nik Mat. Under his leadership, party policy and particularly a policy of cooperation with political allies in the Opposition Pakatan Rakyat against Najib Razak and UMNO had been directed by him and a moderate, progressive faction. Nik Aziz Nik Mat had been succeeded as Spiritual Leader by Dr Haron Din. Haron Din and the Claimant represented a hardline, conservative ulama faction within the party, dedicated to making Malaysia a conservative, non-secular Islamic society. They opposed co-operation with secular Opposition parties, particularly the Democratic Action Party (DAP), that were opposed to extending the powers of the Syaria courts and application of Hudud law.

25.89 This hardline, conservative ulama faction had won overwhelming control of the party at its General Assembly in June 2015, increasing its control of the youth and women's wings and winning all the seats in the main executive committee, almost entirely ousting the moderate, progressive faction. The ulama faction campaign had been observed to be funded far beyond the party's previous, modest means.

Delegates were accommodated at far greater expense than previously. Meetings around the assembly had been held in luxurious venues in stark contrast to spending on previous assemblies. Canvassing for the hardline faction had also been unprecedentedly efficient, notably by the adoption from UMNO of a practice of circulating a “chai list”, or menu of the faction’s preferred candidates, including putting it on the Dewan Ulama Facebook page.

25.90 The immediate result of the hardline faction taking control at the General Assembly had been a vote that PAS cease all co-operation with the DAP. To Najib and UMNO’s immediate political advantage, the unity and political effectiveness of the Opposition had been broken. For as long as PAS was not co-operating with the DAP and its hitherto allies in the Opposition, the anti-BN electoral vote was divided and the prospects of Najib and UMNO surviving in power enormously improved.

25.91 It had been widely believed that Najib Razak’s money politics and funding from UMNO was the explanation for the ulama faction’s greatly increased resources and affluence. This belief had been reinforced by the conspicuously greater affluence of the party’s leadership and public activities following the ulama faction taking control.

Funding PAS private schools

25.92 In the same period, Najib had been buying the support or cooperation of the hardline PAS and its officials by huge payments to fund privately-owned Islamic religious schools (madrasas, pondok and tahfiz institutions) in PAS strongholds. These were unprecedented payments, entirely contrary to previous UMNO policy, which was against religious schools because they were socially divisive and potentially radicalising. They also channelled public money into private businesses and the pockets of PAS personnel and supporters who owned and ran them. Najib Razak has continued to buy the support and cooperation of PAS with public money by this funding of its religious schools, allocating RM80 million to private schools in April 2017, including RM30 million dedicated to a new policy to develop tahfiz education and an allocation of nearly RM21 million to schools in Kelantan.

Extension of Hudud law

- 25.93 In May 2016 Najib had demonstrated his determination to buy off PAS criticism of his appalling political and personal corruption and to split the Opposition by promoting PAS's widely-reviled, socially divisive and constitutionally corrosive agenda for the application in Malaysia of Hudud law, including the infliction of such penalties as stoning, crucifixion, amputation of hands and feet and public floggings of as many as 100 lashes.
- 25.94 Pursuing this agenda, PAS had devised a Private Member's Bill introduced by the Claimant by which the penalties that Syaria courts could impose on Muslims under state legislation for offences against precepts of the religion of Islam would no longer be limited to prison sentences of no more than three years, fines of no more than RM5,000 and floggings of no more than 6 strokes. Instead Syaria courts were to be empowered to impose any sentence allowed by Islamic law, potentially including crucifixion, amputation, floggings of up to 100 lashes, forfeiture of property, and imprisonment for unspecified periods. Under Kelantan statute, offences such as drinking alcohol would potentially attract penalties of 100 lashes, a fine of RM100,000 and 30 years imprisonment. The DAP party's opposition to this PAS goal had been the cause of the rift between PAS and the Opposition alliance secured by the ulama faction taking control of PAS.
- 25.95 On 25 May 2016, a motion for leave to table the Bill for debate had been added as the last item on the Order Paper for business in the Dewan Rakyat the following day, the last day of its session. On that day, on Najib's instructions, the government fast-tracked the Bill towards debate and potential enactment by unprecedently exercising a power to move to take any business out of order and before its own government business. This had never previously been done to progress a Private Member's Bill. The Claimant had elected not to speak to his motion that day but to defer. The result was that his motion had queue-jumped to the top of the non-government business, to be moved when parliamentary time allowed or when the government again moved to proceed with it before other business. Najib Razak was subsequently to announce that UMNO supported the Bill.

PAS's silence

- 25.96 Since the hardline faction had taken control at the June PAS General Assembly, the party had effectively co-operated with Najib Razak. It had disrupted the Opposition coalition by breaking with the DAP and resisting all overtures to restore relations with its erstwhile RKP allies. Whereas previously the party had been vociferous in its criticism, it had effectively supported Najib Razak by ceasing to criticise him, most notably remaining silent in the face of the growing evidence and condemnation of his criminal personal and political corruption in the 1MDB affair.
- 25.97 Notoriously, in June 2015 former UMNO Prime Minister and supporter of Najib Razak, Dr Mahatir Mohamad had revealed that Najib Razak's admission that his political doctrine was "cash is King" i.e. that the way to win or retain people's support in politics was to buy it. In December 2015 Mahatir had stated publicly that Najib Razak had attempted to bribe him not to raise questions or criticism about 1MDB. From June 2016 and a speech made during the P93 Sungai Besar by-election, Mahatir had repeatedly asserted that PAS was being bribed with payments from Najib Razak to cooperate with him and UMNO.
- 25.98 By July 2016 it was the near universal understanding among the Defendant's contacts and sources in the political, legal, human rights and journalistic communities, both in Malaysia and expatriate, and uncontroversial that in his usual way Najib Razak had been channelling money into PAS to secure the support or silence of its policy makers and the party's split from the Opposition.

RM90 million

- 25.99 One of the Defendant's contacts with whom she had spoken in July 2016 was Ambiga Sreenevasan, the internationally and domestically respected and well informed Malaysian lawyer and campaigner for human rights and against corruption in Malaysia.
- 25.100 Discussing Najib Razak and the 1MDB scandal and the chaotic state of the Opposition since PAS's change of allegiance, Ambiga Sreenevasan had confirmed that Najib Razak had used a combination of money and policies, offering support for PAS's Islamic political agenda while buying its support with his usual money politics,

channelling money to senior personnel just as he had with other allies. Ambiga had told the Defendant that her sources, who she said were reliable, had estimated the amount that had been paid was around RM90 million.

25.101 The statements complained of were published by the Defendant in good faith as part of a political commentary in a public discussion on matters of the most serious public interest in circumstances of the gravest public concern and where that discussion and the Defendant's and the public's exercise of their rights of free expression to engage in it were being actively suppressed by Najib Razak, the Claimant's ally, and his abuse of the forces of the Malaysian state.

25.102 The statements were not directed at the Claimant or any individual personally and the Defendant could reasonably expect that they could not be said to do so. The Defendant did not intend and could reasonably expect that the words would not be understood to be a statement referring to the Claimant at all or to convey the imputation against the Claimant that the Claimant contends was conveyed.

25.103 In all the circumstances the Defendant contends that it was entirely reasonable for her to believe that her publication of the Article including the statements complained of was in the public interest and that to find to the contrary would constitute an illegitimate interference with her and the public's Article 10 rights wholly disproportionate to any countervailing need to protect or vindicate the Claimant's reputation rights.

Truth

26. Further or alternatively, if and in so far as the words complained of were reasonably understood to refer to the Claimant they were true in substance and in fact in the meaning that as President of PAS the Claimant has knowingly allowed the party to be compromised and corrupted morally and politically and the democratic process to be undermined by senior party personnel accepting and personally benefitting from enormous secret payments of money from the corrupt Prime Minister of Malaysia Najib Razak, paid to undermine and draw PAS away from the Opposition coalition.

PARTICULARS

- 26.1 The Defendant repeats paragraphs 25.1 to 25.100 above.
- 26.2 Dr Nasharudin Mat Isa (“Nasharudin”) has been a longstanding political ally of the Claimant in the conservative faction of PAS and an advocate of political coalition between PAS and UMNO.
- 26.3 In 1999 Nasharudin became Secretary-General of PAS and was first elected to Parliament, becoming MP for Yan until losing that seat in 2004. In 2005 he was elected Deputy President of PAS, serving as deputy to the Claimant. He was re-elected to that position in 2009. He failed to be re-elected in 2011, when he was defeated by Mat Sabu, from the moderate, progressive faction in PAS. In January 2013 he was expelled from PAS’s Syura Council for arranging and participating in a pre-election publicity trip by Najib Razak to Gaza. Contrary to the wishes of Nik Aziz, then Spiritual Leader of PAS, but with the support of the Claimant, he was not expelled from membership of PAS, but remained as an influential supporter of the Claimant and member of the ulama faction headed by the Claimant and political contact with Najib Razak.
- 26.4 Since 2014 many millions of ringgit have been paid to Nasharudin by or on behalf of Najib Razak, including money siphoned off by Najib Razak from 1MDB, paid into Najib Razak’s personal bank account by 1MDB subsidiary SRC International Sdn Bhd. More than RM200 million has been paid to Nasharudin by or on behalf of Najib Razak from which PAS events have been secretly funded promoting the ulama faction headed by the Claimant.
- 26.5 Millions of ringgit that were spent on PAS party events organised in 2014 and into 2015 by conservatives in PAS in Selangor, Kelantan, Kedah and elsewhere, promoting the ulama faction that would take control at the 2015 General Assembly’ were secretly funded by this money from Najib Razak and UMNO.
- 26.6 These events had promoted the pro-ulama, pro-UMNO group in PAS. They also promoted the Claimant, contributing to his being appointed Vice President of the

World Council of Muslim Scholars, announced in September 2014. Notable among these events was the meeting of the World Ulama Council in March 2015 hosted by the Claimant at Rusila in his Terengganu parliamentary constituency. A payment of some RM10 million was made to fund this event.

- 26.7 The secret funding continued through 2015 and thereafter, including for the General Assembly of June 2015 (see paragraph 25.89 above) and such events as the Himpunan Istiqamah Sampai Kemenangan in June 2015, Himpunan 60K/ Himpunan Fastaqim in October 2015, Himpunan Anak Muda Istiqamah (HAMASAH 2015), September 2015, Himpunan Bantah TPPA, January 2016, RUU 355 at Padang Merbok, February 2017 and the International Conference on Muslim Unity, Kota Baru, July 2017.
- 26.8 Senior PAS personnel other than Nasharudin who have received secret payments deriving from Najib Razak include Takiyuddin bin Hassan, MP for Kota Baru and Secretary General of PAS, Nik Mohamad Abduh, Youth Leader, and Ahmad Samsuri Mohktar, the Claimant's Political Secretary.
- 26.9 Nasharudin and other senior PAS personnel have also benefitted personally, enjoying and exhibiting a new affluence from the money channelled into the party by Najib Razak.
- 26.10 Nasharudin has shown his new-found wealth by acquiring vehicles costing not less than RM1.5 million (including a BMW 525 priced at RM388,000, a Mini priced at RM230,000, a Toyota Vellfire priced at RM290,000, a Toyota Camry, priced at RM150,000 and a Toyota Fortuner priced at RM200,000 and property, including a house at Banggi, Selangor, worth RM3 million, bought with cash. PAS MPs and senior party figures have bought new, luxury cars and new houses and married second and third wives, spending conspicuously in excess of their political salaries and what they could previously afford.
- 26.11 In this way, the Deputy Chief Minister of Kelantan, Mohd Amar Nik Abdullah, has acquired a fleet of luxury cars, including a Range Rover, Audi 6, Toyota Vellfire and Toyota Attis and built several houses for his family. The Spiritual Leader Hashim

Jasim acquired a Porsche Cayman car. PAS MP and Information Chief Khairuddin Aman Razali gave his second wife a RM500,000 Audi Q7 car as a gift. PAS Information Chief Nasrudin Hassan Tantawi bought a RM300,000-plus Toyota Vellfire. Secretary to the Syura Council, Nik Muhammad Zawawi Nik Salleh acquired a luxury Mercedes with the number plate PAS 9, itself worth around RM100,000, and a luxury Audi. Takiyuddin bin Hassan, MP for Kota Baru and Secretary General of PAS has acquired a fleet of expensive cars and a luxury motorbike, including a Volkswagen Passat priced about RM160,000 with personalized number plate TAK 11, itself worth up to RM100,000, Muhammad Khalil, PAS Youth Leader, has acquired a luxury BMW motorbike. Mokhtar Senik, chairman of the PAS Pahang Ulama Council, has acquired a luxury Mercedes and Toyota.

Damages and injunction

27. Paragraph 22 is denied. Paragraphs 14, 16, 22.1 and 22.2 above are repeated. The Defendant contends that this is a legally invalid, politically-motivated claim.
28. By reason of the Defendant's defence herein the Claimant is not entitled to damages, including aggravated damages. As regards the contentions in paragraph 23:
- 23.1 The Defendant repeats her defence as regards reference and meaning and her defences pursuant to s.4 of the Defamation Act 2013 and s.2 of that Act. In the premises it was neither necessary nor appropriate to obtain a response to the content of the Article from the Claimant or from the PAS party before publication.
- 23.2 The factual contentions in paragraphs 23.2.1 to 23.2.3 are admitted. The Defendant repeats her defence as regards reference and meaning and her defences pursuant to s.4 of the Defamation Act 2013 and s.2 of that Act. The Defendant contends that this is a legally invalid, politically-motivated claim. The Defendant has not treated the Claimant's complaint with unjustified contempt.
29. By reason of the Defendant's defence herein, the Claimant is not entitled to injunctive relief, as claimed by paragraphs 24 and 25 or at all.

30. Further or alternatively the Defendant has a counterclaim herein and will seek to set off the same in extinction or diminution of the Claimant's claim.

COUNTERCLAIM

31. The Defendant repeats paragraph 22.2 of the Defence.

32. Publication of the articles identified at paragraphs 22.2.1 to 22.2.7 of the Defence (copies of which form Annexure 1 hereto) on the Third Force website and the Malaysia Today website and each of those publications were, by virtue of their said content and the said circumstances of their publication, occasions of conduct together constituting a course of conduct amounting to harassment of the Defendant proscribed by s.1 (1) of the Protection from Harassment Act 1997.

33. The Claimant by himself and/or his agents was either party to those publications or their publication was aided, abetted, counselled or procured by the Claimant and/or his agents passing information concerning these proceedings to the authors of the articles and/or the publishers of the Third Force and Malaysia Today websites, enabling and procuring publication.

34. At all material times the Claimant and/or his agents knew or ought to have known, alternatively it was reasonably foreseeable, that the publications in contemplation would amount to harassment of the Defendant. The Defendant will rely on:

34.1 The inevitable knowledge of the Claimant and/or his agents of the nature, purposes and intentions towards the Defendant of the contemplated publishers, namely the agents of the beleaguered and notoriously corrupt Najib Razak and his bullies and propagandists who since the Defendant had begun exposing his implication in the 1MDB corruption scandal had been engaged in a campaign of defamation, harassment and intimidation designed to discredit and disable the Defendant and Sarawak Report.

34.2 The self-evidently harassing intention and effect of each successive publication.

35. The said harassment has caused the Defendant severe stress, anxiety and distress, for which she claims damages.

36. Unless restrained by this Honourable Court the Claimant will continue to harass the Defendant.

AND THE DEFENDANT CLAIMS:

- (1) Damages for harassment pursuant to section 3(2) of the Protection from Harassment Act 1997; and
- (2) An injunction pursuant to section 3 of the Protection from Harassment Act 1997 restraining the Claimant from further harassing her.

HARVEY STARTE

STATEMENT OF TRUTH

I believe that the facts stated in this Defence and Counterclaim are true.

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Clare Rewcastle Brown

Date

Served this day of October 2017 by Reynolds Porter Chamberlain LLP