



Michaelmas Term
[2014] UKPC 37
Privy Council Appeal No 0009 of 2014

JUDGMENT

**Sheikh Mohamed Ali Alhamrani and others
(Appellants) v Sheikh Abdullah Ali Alhamrani
(Respondent)**

**From the Court of Appeal of the Eastern Caribbean
Supreme Court (British Virgin Islands)**

Before

**Lord Neuberger
Lord Mance
Lord Clarke
Lord Sumption
Sir Terence Etherton**

**JUDGMENT DELIVERED BY
LORD CLARKE
ON
10 November 2014**

Heard on 8 and 9 July 2014

Appellant
Victor Joffe QC
Lynton Tucker
James Brightwell
(Instructed by David
Miles, Blake Morgan)

Respondent
Elizabeth Jones QC
Simon Hattan

(Instructed by Caroline
Bassett, Forsters LLP)

LORD CLARKE:

Introduction

1. This appeal arises out of a dispute between brothers, children of the late Sheikh Ali Alhamrani. Specifically it is a dispute between the respondent (“Sheikh Abdullah”) and his six brothers, Sheikh Mohamed, Sheikh Siraj, Sheikh Khalid, Sheikh Abdulaziz, Sheikh Ahmed and Sheikh Fahad (collectively “the Brothers”)¹. It centres on the ownership of shares in a British Virgin Islands registered company called Chemtrade Limited (“Chemtrade”), in which the Brothers held 75% of the shares, Sheikh Abdullah held 12.5%, and their two sisters (“the Sisters”)² together held the remaining 12.5%. (That is, the shares were held in Sharia proportions: the male siblings each owned one eighth of the shares and the female siblings each owned one sixteenth.) In the action Sheikh Abdullah sought a declaration that the 75% shareholding held by the Brothers in Chemtrade was comprised in an offer made by the Brothers to Sheikh Abdullah in a letter dated 12 April 2008 (“the Offer Letter”) and so passed into his ownership when he unconditionally accepted that offer on 5 August 2008, so that on his case he became the owner of 87.5% of the shares.
2. Chemtrade is the owner of 50% of the shares in Fuchs Oil Middle East Limited (“FOMEL”), which is a BVI company registered under the same Act as Chemtrade, namely the BVI Business Companies Act 2004. The remaining 50% of the shares in FOMEL are owned by a German public company called Fuchs Petrolub SE (“Fuchs”), with which FOMEL is operated as a joint venture.
3. In February 2008, a Saudi court known as the Board of Grievances initiated a mediation or conciliation process. It related to Saudi litigation primarily between Sheikh Abdullah and the Brothers. In April 2008 the Brothers, by the Offer Letter, which was written to the Board of Grievances, made an offer to purchase the interests of Sheikh Abdullah and the Sisters in jointly owned assets at a set price per share, or to sell their interests in the same assets at the same price per share. Subsequently, the offer of sale of the Brothers’ interests was accepted by Sheikh Abdullah alone.
4. In August and October 2008, in judgments known as “Judgment 1080” and “Judgment 1220”, the Board of Grievances affirmed the existence of an

¹ The fourth appellant (who is also the first appellant) is the representative of the original fourth defendant, who died during the trial.

² The Sisters are not parties to the action, although they play a part in the story.

agreement (“the Sale Agreement”) between the Brothers and Sheikh Abdullah. The Sale Agreement was enforced by the Saudi Ministry of the Interior between December 2008, when assets were transferred into the possession and control of Sheikh Abdullah, and September 2009, when the Brothers received the purchase price. There is no dispute that there was a Sale Agreement between the Brothers and Sheikh Abdullah. The question in these proceedings is whether the sale included the Brothers’ interests in Chemtrade, which (like FOMEL) was not included in lists that were appended to the Offer Letter and set out in Judgment 1080. It is common ground that the Sale Agreement was governed by the law of Saudi Arabia.

5. The action was tried by Bannister J (“the judge”). After a trial lasting 29 days, on 21 December 2012 the judge held that the answer to the above question was no and that the Brothers’ interests in Chemtrade were not included in the Offer Letter and were thus not included in the Sale Agreement. Sheikh Abdullah appealed to the Court of Appeal of the Eastern Caribbean Supreme Court, to which the Board will refer as the ECCA in order to avoid possible confusion with the Court of Appeal of the Board of Grievances in Saudi Arabia. On 18 September 2013, in a judgment delivered by Mitchell JA (Ag), with whom Blenman and Michel JAA agreed, the ECCA reached the opposite conclusion to that of the judge. It held that the answer to the question was yes and that the Offer Letter and the Sale Agreement included the Brothers’ interests in Chemtrade. It accordingly allowed the appeal. In this appeal the Brothers invite the Board to reverse the decision of the ECCA and to restore the decision and order of the judge. Their case in essence is that the issues at trial were issues of fact upon which the judge made clear findings and that the ECCA ought not to have interfered with them.

The background to the dispute and to the Offer Letter

6. For many years after the death of their father, the siblings owned in common a number of Saudi companies, or interests in Saudi companies, along with interests in land, mainly in Saudi Arabia, and also Chemtrade, for the most part in Sharia shares. The siblings also held interests in similar shares under three Jersey Trusts, which held assets known colloquially in the family as the Foreign Investments. Chemtrade was never held within the Jersey Trusts and so did not form part of the Foreign Investments. Although there was no overall holding company and the siblings mostly held their shares directly (but sometimes through other companies), the companies were generally referred to as the Alhamrani Group of Companies. Over the years following their father’s death further companies were added, including FOMEL and a company called Alhamrani Fuchs Petroleum Saudi Arabia (“AFPSA”), which was another joint venture with Fuchs, in which the siblings had a 68% interest and Fuchs a 32% interest. The siblings’ 68% interest was held in other Alhamrani Group companies, known as

AUC and AIG. The assets and the respective shares of the siblings in the assets were accounted for by a central accounting department known as the General Accounting Department or the Sons' Account. The expression "Sons' Account" (which included the Sisters' accounts) was used to refer to the Department and also to the set of assets which were managed and reported on by the Department, including the Foreign Investments, namely the Jersey Trusts. There was a dispute about whether there was any overarching partnership between the siblings. Annual financial statements for the Sons' Account were audited annually by the Group's auditors, Deloitte & Touche Bakr Abulhair ("DTBA").

7. The judge set out the background to the dispute at paras 5 to 22 of his judgment. It is not necessary to repeat that account here. What follows is a summary of the findings of fact made by the judge between paras 23 and 33, which cover the period in February, March and early April 2008 before the date of the Offer Letter, namely 12 April 2008. The origin of the proposal in the Offer Letter was a suggestion made by the Court of Appeal of the Board of Grievances that the parties should explore the possibility of mediation or conciliation. On 10 February it proposed what is sometimes called a shotgun agreement. The proposal, which was made to Sheikh Abdullah and the Sisters, was that Sheikh Mohamed, who had the current management of the companies and the other assets, and was thus better equipped for that task than Sheikh Abdullah, should value each separate Sharia share in the jointly owned assets, with Sheikh Abdullah and the Sisters having the choice either of selling their shares to the Brothers or of buying the Brothers out, in each case at a price equivalent to the Brothers' valuation. The minute of the meeting (as copied by Sheikh Abdullah) showed that Sheikh Abdullah and the Sisters accepted the Court of Appeal's proposal that Sheikh Mohamed would value:

"all the companies, partnerships, shareholdings, funds and all trades and investments in Saudi Arabia and abroad as registered in the financial statements"

and that Sheikh Abdullah and the Sisters should have the choice of either selling their shares to or buying the shares of the Brothers

"in all the partnerships mentioned above in Saudi Arabia and abroad".

8. The judge correctly held that the authenticity of the minute could not be in doubt because it was relied upon on 10 March in litigation in Jersey over the Jersey Trusts at a time long before the dispute about whether FOMEL was included in

the Brothers' Offer Letter, which itself was not made until over a month later, had erupted.

9. On 11 February a similar proposal was made by the Court of Appeal to Sheikh Mohamed and the Brothers. The judge noted that there was no documentary note of the meeting, but he accepted that Sheikh Siraj's evidence that the judges did not specify what particular assets were to be included in the calculation was credible. However, he noted that it was admitted in the Brothers' defence in the action that the Court of Appeal proposed a valuation of all assets in joint ownership both within and outside Saudi Arabia. He concluded that at the very lowest the Brothers did not understand that Sheikh Mohamed was to value only assets within Saudi Arabia. Otherwise (he said) they would not have asked the Court of Appeal on 11 March for permission to postpone the valuation of the Jersey Trusts on the ground that valuation at that time was impracticable. As the judge put it, they would not have had to refer to the Jersey property at all. The judge concluded, in the Board's view correctly, that the proposal was put to the Brothers in similar terms to those noted in Sheikh Abdullah's copy of the minute referred to in para 7 above.

10. On 13 February Sheikh Mohamed instructed the Group Finance Director to arrange a valuation by DTBA. On 16 February the Finance Director instructed his assistant to arrange a valuation "for the whole group, every single asset", and then divide by eight. Property not owned in those shares (ie Sharia shares) was to be excluded. The judge held, rightly or wrongly, that that evidence was not inconsistent with the evidence of Sheikh Siraj referred to above. The judge described the methodology to be used in the valuation process, which it is not necessary to rehearse here. On 24 February DTBA made a preliminary presentation using one or more slides which referred to FOMEL. Chemtrade was, however, at no time mentioned by name. The Jersey Trusts were not included in the valuation materials at that time, because of the litigation in Jersey. On 15 March DTBA presented their completed valuation to Sheikhs Mohamed, Siraj and Abdulaziz. FOMEL (or half of FOMEL) was again included. The valuation valued the Group as a whole at SR2.3 billion. The half share of FOMEL represented by the Chemtrade shares was valued at SR75 million. FOMEL was at no stage removed from the valuation, nor was its value ever reduced from that ascribed to it by DTBA. The judge added that, importantly, Sheikh Mohamed asked the Finance Director to calculate a figure per Sharia share which the Brothers could afford to pay if Sheikh Abdullah and the Sisters opted to sell, rather than buy. Such a price was to take account of the cost of necessary bank borrowings to fund the purchase and the capability of the retained businesses to service the debt.

11. On 25 March a meeting of all the Brothers except one was convened with DTBA by Sheikh Siraj in order to discuss the outcome of the DTBA valuation and to

agree on a price to be submitted to the Board of Grievances on 12 April 2008, which was the deadline for submitting the offer. At the meeting, DTBA produced reworked figures (which included FOMEL as before) and a figure of SR150 million was put forward as an affordable price per share. There was a dispute about the outcome of the meeting. Mr Sajid, who was called to give evidence by Sheikh Abdullah, told the judge that at the end of the meeting Sheikh Mohamed turned to the Brothers present and asked them if they agreed that the offer price should be SR150 million per share. The judge noted that, although the witness was cut off when about to give the response to that question, he had said in his witness statement that the price was agreed at the meeting. The Brothers' evidence was that, while there was a general consensus that SR150 million was the right price, the figure was not finally agreed upon until sometime later.

12. The judge resolved that issue in para 31. He accepted the evidence of Sheikh Mohamed that the Brothers would never have concluded an important family agreement in the presence of employees. He held that no concluded agreement on the price was reached between the attending Brothers in the presence of Mr Sajid. The final agreement on the price and on the contents of the offer was reached between the time when DTBA and the Group employees withdrew from the meeting on 25 March and 12 April, when the offer was submitted to the Court of Appeal. The Brothers' evidence was that there was a succession of informal discussions during that period before final agreement was reached. For reasons given in his paras 31-32 the judge accepted the Brothers' evidence (and case) that the final agreement was not made on 25 March but sometime later. It is not necessary to revisit that issue in order to resolve this appeal.

The Offer Letter and the Sale Agreement

13. The Offer Letter is the critical document in this case. It was submitted to the Chairman of the Board of Grievances by the Brothers on 12 April 2008. A copy of Sheikh Abdullah's preferred translation of it was appended to the judge's judgment and, for convenience, is appended to this judgment. The judge summarised the terms of the Offer Letter in para 34 and made some further comments on it between paras 35 and 41. For example, he noted in paras 38 and 39 that the offer was based on a price and not a value and that the Offer Letter conspicuously avoided stating the value either of the assets as a whole or of a single asset. He noted that it did not therefore comply with the proposal put forward by the Court of Appeal in February. In the first sentence of para 40, he summarised the first sentence of para (8) of the Offer Letter, then added further comments in the remainder of para 40 and in para 41 as follows:

“40. [T]he letter not only omits Chemtrade from the list of companies in Appendix 1, it draws the attention of the Court of

Appeal to the fact that the valuation was restricted to all the funds, properties and partnerships contained in shares in the companies, real estates and movable property located inside KSA [ie the Kingdom of Saudi Arabia] in accordance with the contents of Appendix 1. That too, if read in accordance with the ordinary and common meaning of words, was not true. Chemtrade was on no sensible view 'located' in KSA. Its bearer shares were there and its administration was carried on from there, but it was a foreign company whose commercial activities were carried on and could only be carried on in territories other than KSA. It was non-resident for Saudi tax purposes and the evidence showed an anxiety amongst the family members that its non-resident status should not become open to challenge. Yet while Appendix 1 omitted Chemtrade, FOMEL had been included in the DTBA valuation.

41. Finally, because of the nature of the process in which the Court of Appeal and the parties were engaged, neither Sheikh Abdullah nor the Court of Appeal had any means of testing the accuracy of the statements made in the offer letter - or if they had such means, they were never resorted to. Certainly, and importantly, neither the Court of Appeal nor Sheikh Abdullah ever saw any of the valuations prepared by DTBA, nor were they privy to the affordability calculation which determined the price."

14. The Board will return to the true construction of the Offer Letter below. The issue between the parties is now and has throughout been a narrow one, namely whether the parties' interests in Chemtrade were included in the sale or purchase as the case might be. As already noted, the judge held that they were not, whereas the ECCA held that they were.
15. Between paras 42 and 77, the judge considered in some detail events post the Offer Letter. However, save as appears below, it is not necessary to set them out in detail here. They involved a good deal of dispute between the parties on various points. In para 43 the judge noted that Sheikh Abdullah wrote to the Court of Appeal saying that he would like to buy the Brothers' shares. He then described how the Brothers put obstacles in Sheikh Abdullah's way. Matters came to a head in August 2008, when, on 5 August, Sheikh Abdullah attended the Court of Appeal and told it that he was waiving his right to carry out due diligence. He deposited the purchase money in the form of cash and bank guarantees and asked the Court to order the Brothers to transfer the sold assets to him. The judge explained at para 49 that on 10 August Sheikh Siraj and Sheikh Abdulaziz attended upon the Court, complained that Sheikh Abdullah had failed to procure their releases from the bank guarantees and asked the court to compel Sheikh Abdullah to sell his interests to the Brothers.

16. On the same day or the next day the Court of Appeal issued its Judgment 1080. The judge summarised the position at paras 51 to 56. The Court of Appeal upheld the case for Sheikh Abdullah. It referred back to the events of February and held that there was an agreement based upon a reconciliation brought about “by means of the court” and directed the Brothers to deliver up the sold assets. It is of comparatively little assistance to the resolution of this appeal because the question whether the FOMEL assets were part of the deal had not yet arisen. It did not arise until the end of June 2009. The Brothers appealed but on 22 October 2008 the Court of Appeal reaffirmed its original order: see para 28 of Judgment 1220. The Brothers refused to hand over the assets but the Ministry of the Interior enforced the judgment: see para 60 of the judge’s judgment. In the event, although the purchase price had been lodged with the Board of Grievances in August 2008, the Brothers did not receive the purchase price until 16 September 2009; see para 62.
17. None of the post-Agreement material is of any great significance in the context of this appeal until some exchanges in April and May 2009, which are of some importance: see below. It should be noted that the Brothers did not take the point that FOMEL was excluded from the sale until it was raised by their Jersey advocates towards the end of June 2009.

The correct approach to contractual interpretation

18. As stated above, it is common ground that the Offer Letter and the Sale Agreement which depends upon it are governed by the law of Saudi Arabia. The question for decision is what is the true construction or interpretation of the Offer Letter. The correct approach to that question is the same in England and in the BVI. The court will receive expert evidence of the foreign law, here the law of Saudi Arabia, which includes the correct approach to interpretation and the relevance or otherwise of particular types of evidence. It is then for the BVI (or English) court to decide for itself what the contract means.
19. The position is, as ever, put with clarity in *Dicey, Morris & Collins on The Conflict of Laws*, 15th ed, (2012) at para 9-019:

“The function of the expert witness in relation to the interpretation of foreign statutes must be contrasted with his function in relation to the construction of foreign documents. In the former case, the expert tells the court what the statute means, explaining his opinion, if necessary, by reference to foreign rules of construction. In the latter case, the expert merely proves the foreign rules of

construction, and the court itself, in the light of these rules, determines the meaning of the documents.”

See also paras 32-143 to 145. The point was again put with clarity by Lord Greene MR in one of the cases cited in *Dicey, Rouyer Guillet & Cie v Rouyer Guillet & Co Ltd* [1949] 1 All ER 244 (CA):

“I must make it clear that the evidence of French law is subject to a certain differentiation as between the evidence of the meaning of the law of 1925 and the evidence of the meaning of the articles. As I understand the law of England, evidence as to the meaning of the statute is to be obtained from the evidence of expert French witnesses and the decisions of the French courts. On a matter of French law the decision of a French court would be most persuasive. On the other hand, evidence on the construction of a private document, such as articles of association, is admissible so far as it deals with French rules of construction or French rules of law or the explanation of French technical terms, but evidence as to its meaning after those aids have been taken into account is not admissible. It is for the court to construe the document, having fortified itself with the permissible evidence.”

See also, to the same effect, two more recent first instance decisions: *Svenska Petroleum Exploration AB v Government of the Republic of Lithuania* [2005] EWHC 2437 (Comm), per Gloster J at para 29, and *Toomey v Banco Vitalicio de Espana SA de Seguros y Reaseguros* [2003] EWHC 1102 (Comm), per Andrew Smith J at para 37.

20. The Board was referred to Scott LJ’s judgment in *A/S Tallinna Laevauhisus v Estonian State Shipping Line* (1947) 80 LL Rep 99 (CA), at pp 107-108. However, Scott LJ was there discussing the position in relation to the need to prove the existence and effect of Estonian legislation. He does at one point speak in general terms about the interpretation and application of a “foreign document” (top of p 108), but then goes back to referring to “foreign statutes”, so that it seems tolerably clear that he is not addressing his mind to the distinction between statutes and private documents such as contracts (where the intention of the parties rather than the foreign State is in issue). The issue in the instant case is not what is the correct approach to the interpretation of a foreign statute or decree but what is the correct approach to the interpretation of a contract governed by a foreign law.

The expert evidence

21. Both the judge and the ECCA treated the expert evidence of Saudi Arabian law as of the utmost importance. The judge preferred the evidence of Dr Al-Ghazzawi, who gave evidence on behalf of the Brothers, to that of Sheikh AlGasim, who gave evidence on behalf of Sheikh Abdullah. In particular, the judge said that he had complete confidence in what Dr Al-Ghazzawi told him and complete confidence that he was giving his independent opinion, whereas, by contrast, he found Sheikh AlGasim's evidence partisan and generally less compelling.
22. That said, it appears to the Board that on the issues upon which the opinion of the experts was admissible in accordance with the principles set out above, there was little, if any, significant difference between them. The differences were on questions of interpretation of the Offer Letter (and therefore the Agreement), including the important question whether it was ambiguous. For the reasons given above, those were not matters of expert opinion for the expert witnesses but were matters for the trial judge and, on appeal, for the ECCA to decide.
23. The question for decision under Saudi law is what the parties objectively intended to agree. In interpreting the contract the court will apply the Sharia principles of good faith and fairness, so that a party will be taken to act fairly and in good faith. There are two stages. At the first stage the court must consider whether the agreement is ambiguous and, if not, what was agreed. It must consider first the text of the document, here the Offer Letter. It will consider the document as a whole, not just some of the words. In doing so, it will not consider the document in a vacuum but in its context. Thus evidence of the context or factual matrix is admissible on the question whether the agreement is ambiguous. In so far as there was some difference between the experts on the question whether context was relevant at the first stage, that is no longer of importance because it was expressly submitted to the ECCA on behalf of the Brothers that the law was clear. The court must first look at the contract, which involves consideration of both the wording of the contract and its factual matrix. If the meaning is clear there is no room for external evidence of intention. If the court concludes, after approaching the matter in this way, that the agreement is not ambiguous, it will so find. That is the end of the matter.
24. However, if the court concludes that the agreement, construed in its context, is ambiguous, it will then consider all available evidence which might bear on the underlying question, namely here whether the parties intended that the Brothers' interests in Chemtrade were to be transferred under the agreement. The court will thus consider all actions and statements emanating from the parties before, at the time of and after the agreement and the external context, together with any

custom as between the parties and the inherent probabilities. One of the factors to be taken into account is any acknowledgment or admission made by or on behalf of one or both of the parties. The question remains the same throughout, namely what is the objective intention of the parties. At stage two the Saudi court will take account of all the circumstances of the case. It appears to the Board that those circumstances are somewhat wider than would be admissible under English law. So, for example, Saudi law admits evidence which, under English law, would not be admissible on an issue of interpretation but would or might be admissible on an issue of rectification, such as evidence of negotiations carried on prior to entry into the agreement.

25. For the reasons given above, the distinction between the role of the expert witnesses and that of the judge, the ECCA and indeed the Board, is that the evidence of the experts is relevant and admissible in order to identify what questions should be asked and what evidence is relevant to answer the questions but is not admissible on questions of interpretation, which include these questions: (1) whether, having regard to the terms of the Offer Letter construed in its context, there was a relevant ambiguity, and, if not, what the parties objectively intended; and (2) if there was a relevant ambiguity, what the parties objectively intended in the light of the wider considerations relevant to this question described above. These questions have been regarded as being asked at stage 1 and stage 2 respectively. They are questions for the judge and, on appeal, for the ECCA, and not for the experts.

The approach of the ECCA in principle

26. The correct approach of a court of appeal in a case of this kind is not in doubt. The case does not involve any question of the exercise of a discretion. The question for the ECCA was whether the judge erred in principle or in fact. In deciding whether the judge erred as a matter of fact, the court must of course have regard to the fact that the judge had the advantage of seeing the witnesses give evidence. In the opinion of the Board, the ECCA correctly directed itself on the right approach. The question is whether it reached the correct conclusion.
27. As the Board sees it, the proper meaning of a contract governed by foreign law is not a finding of primary fact which an appeal court is particularly cautious about overturning in view of the advantage of the trial judge in seeing and hearing the witnesses. It is an application to the primary facts of the principles of interpretation of the foreign law identified by the experts. That is an exercise which the appeal court, whether it is the ECCA or the Board, is in as good a position to carry out as the trial judge.

The approach of the judge and the ECCA to the expert evidence and their conclusions on ambiguity

28. As the Board reads the judgment, the judge treated the answer to the question whether the Offer Letter (and therefore the Agreement) was ambiguous as dependent (at any rate in the first place) upon the evidence of the expert witnesses. This is clear from the judge's paras 111 to 113. Thus he said at para 111 that his conclusions must be based in large part upon his assessment of the expert evidence and that he preferred the evidence of Dr Al-Ghazzawi to that of Sheikh AlGasim. In the opinion of the Board, for the reasons already given, it was wrong in principle to approach the matter in this way as a matter for the experts. However, to be fair to the judge, he also considered the matter for himself. He said at para 113:

“I prefer the evidence of Dr Al-Ghazzawi that there is no ambiguity in the offer letter or in Sheikh Abdullah's acceptance of it to the evidence of Sheikh Al-Gasim, not only because of the authoritative manner in which it was given but also because, unless the word 'ambiguous' has some special definition for the purposes of Saudi law, which no one suggested is the case, it is plainly correct. It is not possible to read the offer letter as amounting to anything other than an offer to sell property in KSA listed in Appendix 1. Chemtrade was neither listed in Appendix 1 nor situate in KSA. The offer letter flagged up to the Court of Appeal (and thus to Sheikh Abdullah) that the offer was confined to assets within the Kingdom.”

29. So it appears that the judge did not rely entirely on the evidence of Dr Al-Ghazzawi but considered the question for himself. Moreover he gave further reasons for his view at paras 114 to 127. However, he focused on the construction and meaning of the Offer Letter without regard to the factual matrix, which (as was common ground in the ECCA) was not the correct approach. This is clear from his para 112, where he said this:

“The whole foundation, as expounded in his Report, of Sheikh Al-Gasim's evidence that material outside the four corners of the offer letter would be admissible in a Saudi Court to identify the parties' intentions was based upon the contention that because the Court of Appeal in February 2008 was looking for a settlement covering all jointly owned property, both within and outside the Kingdom, the terms of the offer letter were ambiguous, because it did not enable the reader to know whether or not Chemtrade was included in the offer. Although his acceptance of the fact that the parties were free

to contract or otherwise following the February meetings with the Court of Appeal largely destroyed the factual basis for this proposition, it is inherently specious, because it is based upon an *a priori* assumption that Chemtrade ought to have been among the assets sold. Without that assumption, there is no ambiguity at all. An otherwise unambiguous contract may require to be rectified to include property not referred to within it, but no claim for rectification is made in this case. As elsewhere, Sheikh Al-Gasim is relying upon what is required to be proved as a step in reasoning.”

30. The Board is not able to accept that reasoning. It is true that, as was common ground between the parties, there was no binding contract in February 2008 and that either party could have refused to enter into a contract based upon the arrangements made in February. However, in the opinion of the Board, it flies in the face of reality to hold that those arrangements were irrelevant to the Offer Letter or Sale Agreement.

31. It was the case for Sheikh Abdullah before the ECCA and before the Board that the judge was wrong to hold that letter was unambiguous and wrong to construe the letter as he did. The ECCA disagreed with the judge. It held at para 71 that the acceptance of the judge that the Offer Letter, the resulting Sale Agreement and Judgment 1080 were not ambiguous flew in the face of “what on any plain reading of them was an obvious inconsistency”. It gave these reasons:

“That the price per share proposed in the Offer Letter was based on the inclusion of the Alhamrani Group's share of FOMEL's assets should have been clear. First the Brothers had agreed to include all the assets in arriving at a valuation and a price. Second, [DTBA] had come up with a valuation per share of SR150m on the basis that FOMEL was included. Third, the income of FOMEL was demonstrated by [DTBA] in the evidence to be necessary for the Brothers to be able to afford to buy out Sheikh Abdullah and the Sisters. Fourth, the Offer Letter stated throughout its body that it was a valuation of all the assets inside KSA. It seems clear that the list of companies that had been valued by the Brothers given at Appendix 1 was mistaken in omitting Chemtrade/FOMEL. The resulting contradiction between the body of the Offer Letter and the list in Appendix 1 created an ambiguity. The agreement and the judgments that followed were all affected by the same ambiguity.”

32. The Board agrees with the ECCA that there was an ambiguity in the Offer Letter, albeit not for quite the same reasons. The judge placed no weight on context at all. His analysis was that there was no binding agreement in February 2008, the Offer Letter was different from the February proposal of the Court of Grievances, the Offer Letter made clear that it was different from the February proposal and therefore the February proposal was irrelevant and the interpretation of the Offer Letter should be confined to a consideration of its contents alone without reference to any extrinsic evidence. When the judge did consider context, he did so at para 124 by reference to the actual valuation, which it is common ground was inadmissible at stage 1.
33. In the opinion of the Board there was an ambiguity in the Offer Letter even on the footing that only the text can be considered, principally because the Offer Letter is framed on the assumption that the assets identified in Appendix 1 constituted all the assets other than the trusts the subject of litigation in Jersey, an assumption which could only be correct on the footing that AFPSA and FOMEL were the same commercial entity.
34. Up to para (8)³, the Offer Letter gives the clear impression that both the Offer Letter itself and the valuation exercise that had been undertaken are pursuant to and in accordance with the February proposal. That is the literal meaning of the words used; see eg the expressions: “for the task of valuating the companies and joint properties of the dispute parties” in para (4); “it was on that basis that all of us ... took part in the work of compilation and valuation” in the introduction to para (6); and “we have arrived at this price solely on the basis of the data obtained from a fair valuation of the share, including not only the rights linked to this share reached this price through a fair evaluation of the share, but also the obligations and guarantees attached to this share for the benefit of third parties” at the end of para (7). The express reference in para (8) to “foreign investments”, which it is common ground was a reference to the Jersey Trusts, is consistent with this interpretation.
35. The impression given, at any rate up to para (8), was that Appendix 1 to the Offer Letter contains or was intended to contain all the jointly owned assets (as recorded in “the Sons’ Account”). So far as Chemtrade/ FOMEL is concerned, that would be consistent with a pragmatic and commercial view that the parties regarded FOMEL as a Saudi enterprise because (leaving aside that the original bearer shares were physically situated in Saudi Arabia) its affairs had been substantially run from AFPSA’s offices in Jeddah since 2006: see para 19 of the Agreed Statement of Facts and Issues. Sheikh Abdullah was aware that that was the case even though he had not participated in its management. As appears from paras 96 and 120 respectively, the Judge took a somewhat legalistic approach to

³ The Board has added para numbers to the version of Appendix 1 attached for ease of reference.

the separate identity of Chemtrade/FOMEL, on the one hand, and AFPSA, on the other hand, rather than asking what objectively the Brothers and Sheikh Abdullah would reasonably have understood the Offer Letter to mean.

36. However that may be, the Board concludes that Appendix 1 and the Offer Letter, especially para (8), when read together, are ambiguous. For the reasons already given, the February arrangements are plainly part of the factual matrix which led to the Offer Letter. As further discussed below, it was originally intended by the Board of Grievances and by the parties that all the Sharia property, including FOMEL, should be included in any settlement achieved through the court. Yet para (8) was in these terms:

“It goes without saying that the valuation was restricted to all the funds, properties and partnerships contained in shares in the companies, real estates, and movable property, located inside the Kingdom of Saudi Arabia in accordance with what is stated in the enclosed appendix No 1.”

One construction of that sentence is that only the Sharia properties identified in Appendix 1 were to be included, whereas it had originally been intended that they should all be included, including FOMEL, which meant that Chemtrade would also be included. Yet on the face of it the list of companies in Appendix 1 does not include FOMEL. It was not included by name in Appendix 1 and could only have been included if it could properly be described as a Saudi company. Yet if it was not a Saudi company (and it was certainly not formally a Saudi company) it appears that investment in it (or Chemtrade) it could not properly be described as a “foreign investment” because that expression was limited to the Jersey Trusts.

37. In these circumstances it is the view of the Board that the ECCA was correct to hold that the agreement arising out of acceptance of the Offer Letter was ambiguous. It follows that the question is what the objective intentions of the parties were when regard is had to all the circumstances which, under Saudi law, are admissible in determining that question. Those circumstances are many and various: see para 24 above.
38. When regard is had to those circumstances, the Board is of the opinion that the case for Sheikh Abdullah that it was intended that FOMEL/Chemtrade should be included is almost overwhelming. In the language of para (8) of the Offer Letter, the parties must have seen FOMEL as “located in the Kingdom of Saudi Arabia” (as opposed to a “foreign investment”, a term which the parties agreed referred only to the Jersey assets), and must have overlooked its omission from the annex.

This is principally because: (1) the February arrangement was to disengage on the basis of a valuation of everything; (2) only the Jersey trusts were later excluded, and then only by permission of the Board of Grievances; (3) the agreement on the price was plainly made on the assumption that it was the price of assets which included FOMEL; (4) the 10 May 2009 letter admits of no other explanation; and (5) there are concurrent findings that all parties thought in May that FOMEL was included. The Board turns briefly to each of those considerations.

(1) *The February arrangements*

39. The February arrangements are described in paras 7 to 10 above. The extract of the minute of 10 February quoted at para 7 above shows that it was proposed to Sheikh Abdullah and the Sisters that all the investments in Saudi Arabia and abroad were to be valued for incorporation in any settlement. As stated in para 9, on 11 February the same proposal was made to the Brothers. The proposition was that Sheikh Abdullah and the Sisters should have the choice of either selling shares to the Brothers or buying shares from the Brothers. There can be no doubt that FOMEL (and Chemtrade) were included. Moreover, as stated in para 10, that they were included is evidenced by DTBA's preliminary presentation on 24 February and by its complete valuation on 15 March, both of which included them.

(2) *Only the Jersey Trusts were excluded*

40. FOMEL (and Chemtrade) were at no stage excluded from the total valuation which was used as a base for making a reduction of a certain figure in order to ensure that the sum ultimately chosen was affordable by the Brothers if Sheikh Abdullah and the Sisters opted to sell: see paras 10 and 11 above. Only the Jersey Trusts were excluded and then only by permission of the Board of Grievances after a request on behalf of the Brothers by letter dated 11 March because of the litigation in Jersey.

(3) *Agreement on the price*

41. Although, as stated in paras 11 and 12 above, final agreement may not have been reached on the amount to offer until somewhat later, it is common ground that at the meeting on 25 March 2008 there was a general consensus between the Brothers that SR150 million per male share was the right price to offer when they presented their offer to the court, which they were to do on 12 April 2008. It is also common ground that there was no suggestion at any time before or at that meeting that FOMEL was being excluded from the deal. The Board accepts

the submissions advanced on behalf of Sheikh Abdullah that the ECCA was correct. They may be summarised as follows.

42. The Brothers' pleaded case was that the reference in the Offer Letter to "data obtained from a fair valuation of the share" was to data obtained in the company balance sheets, the DTBA valuation, valuations of real estate (which were in fact already taken into account in the DTBA valuation), material provided at the meeting on 25 March 2008, and data known to Sheikh Mohamed relating to the business and affairs of the companies.
43. It is not in dispute that the DTBA valuation included FOMEL or that the material provided to the meeting on 25 March 2008 included the workings of the Finance Department and DTBA on the various deductions to be made from the DTBA valuation. It is common ground that those deductions did not relate to FOMEL. By reason of the deductions the overall valuation was reduced to about SR1.4 billion. The result was that the price per share was reduced to about SR168 million per share. It is not in dispute that the material provided to the meeting on 25 March 2008 included material produced by the Finance Department staff, who had looked into the question of affordability and made presentations on that subject. It had been contemplated from the outset that any valuation reached by DTBA would have to be tempered by sensitivity analyses related to the amount which could be afforded. Other deductions were also made which related to unquantifiable risks but which, so far as the Board can see, are not directly relevant for present purposes.
44. As stated in paras 10 and 11 above, the finance department had reached the conclusion that the Brothers could only afford to borrow SR300 million to finance the purchase the shares of Sheikh Abdullah and the Sisters (ie SR150 million for Sheikh Abdullah's share and SR75million for each of the Sisters' shares). There is no real doubt that the presentation of the affordable amount which could be borrowed was prepared on the assumption that FOMEL was included, and that the whole of the 50% share would be available to the Brothers if they were the buyers. Forecast free cash flow workings were prepared that included figures for "FOMEL @ 50%". The figures in the row "Consolidated FCF", which incorporated the FOMEL 50% figures, were reproduced in the presentation to the Brothers on 25 March 2008 in the column entitled "Free Cash flow available". Mr Sajid confirmed that the calculations included the full 50% of FOMEL, and Mr Karamat, who gave evidence on behalf of the Brothers, confirmed that at that stage (ie 25 March 2008) everyone was working on the basis that FOMEL was included in the calculation and that no-one had subsequently told him that it was intended that FOMEL should be excluded. Accordingly all the evidence was that the very data which the Brothers say they were referring to in the Offer Letter included FOMEL.

45. As the Board understands it, it is not in dispute that at the second stage it was permissible to put before the court both DTBA's valuation and the affordability valuation prepared by Mr Karamat, even though Sheikh Abdullah was unaware of their contents at the time of the Offer Letter and his agreement to it. Such evidence was admissible as evidence of the original objective intentions of the parties.
46. The Brothers' case at trial was that at some stage before 12 April 2008, following informal meetings between them, they decided to exclude FOMEL from the assets which they were offering to buy/sell. This would in effect mean that, if they were buyers, they would receive fewer assets for their money. There is no documentary support for such an agreement and, as is submitted on behalf of Sheikh Abdullah, it would be flatly in contradiction of the inherent probabilities. In particular, it is submitted on behalf of Sheikh Abdullah with considerable force that the supposed meetings between 25 March and 12 April are not mentioned in the Brothers' witness statements, none of the Brothers could give particulars of any of the meetings and there are no working papers or minutes of the supposed meetings and no contemporaneous communications relating to them. In short the evidence was implausible. This part of the case is not consistent with the Brothers' pleadings, nor with the evidence given by Sheikh Mohamed in his witness statement.
47. The Board accepts the submissions made on behalf of Sheikh Abdullah that there is no coherent basis for removing the FOMEL interests. As it is put in the case for Sheikh Abdullah at para 123.7, having justified the price of SR150 million on the 25 March 2008 on the basis of affordability and the unquantified risks they had identified, and expecting to be buyers rather than sellers, the Brothers cannot seriously have conducted further meetings in order to ensure that they received fewer assets for their money. In all these circumstances, it makes no sense to hold that the FOMEL interests were excluded.

(4) The 10 May 2009 letter

48. It is submitted on behalf of Sheikh Abdullah that all the evidence from the date of the Offer Letter until the end of June 2009, and especially the 10 May 2009 letter, is objective evidence which supports the conclusion of the ECCA and contradicts that of the judge. Objectively considered, it supports the conclusion that the parties intended to include FOMEL in the sale. In this regard the judge rejected much of the Brothers' evidence. It was not suggested that it was not admissible because it did not cross the line between the parties. It was admissible as evidence of the original objective intentions of the parties as part of the consideration of all relevant evidence under the second stage.

49. The relevant facts are these. The judge's account is between paras 63 and 68 of his judgment. On 1 April 2009 Sheikh Abdullah wrote to Prince Naif, the Minister of the Interior, complaining, inter alia, that the Brothers had failed to transfer their Chemtrade shares to him. On 5 April 2009 the Brothers instructed their lawyer to write to Chemtrade's registered agent to tell it that Sheikhs Mohamed and Siraj, who were FOMEL's Chemtrade appointed directors, would be resigning in favour of Sheikh Abdullah, with the current shareholders transferring their shares to Sheikh Abdullah. The letter asked the agent to explain what was required and to provide draft documentation. The agent complied. On 27 April the Fuchs members of the board of FOMEL called a board meeting for 18 May in order to discuss, inter alia, "FOMEL ownership (prospects and ways to manage the situation)".

50. Sheikh Siraj replied in these terms on 10 May:

"I am in receipt of your letter dated 27th April 2009 referring to the above subject. I regret to inform you that we will not be able to meet in the capacity of Board Directors of the aforementioned company - Fuchs Oil Middle East Co - for we were forced to transfer the assets and all shares of CHEMTRADE and therefore the 'Company' to Sheikh Abdullah A Alhamrani.

On the other hand, I believe the relationship we built for the past two decades is a solid relation far beyond a normal business relation. Together we have witnessed growth and successes and set the stage to grow even further, it is unfortunate that we had to part for extenuating circumstances.

Accept our apologies for any inconvenience the above may have cause, wishing you continued success and good health."

51. On the face of it, that letter presents the Brothers with serious difficulties because it evidences a recognition by one of the Brothers that FOMEL was part of the property transferred to Sheikh Abdullah. The judge said in para 66 that Sheikh Siraj eventually accepted that he had discussed the invitation to the board meeting with Sheikh Mohamed, who was abroad and who had instructed him to "answer them and apologise nicely". The judge rejected Sheikh Siraj's explanation for the letter, which was that the Brothers feared that they would have to sacrifice Chemtrade in other words as the judge put it "to cave in to Sheikh Abdullah's demand for transfer of the Chemtrade shares" in order to secure payment of the purchase price under the Sale Agreement, which still remained outstanding. The judge held that Sheikh Siraj speaks impeccable and elegant English and that it was clear from the letter that he then believed that Chemtrade had formed part of the sale. The judge expressly found that Sheikh Mohamed shared that view at that time.

52. In the opinion of the Board, the judge's findings relating to the May letter, which involved rejecting the evidence tendered on behalf of the Brothers as untrue, are strong pointers in support of the conclusion reached by the ECCA and against that reached by the judge. As the Board sees it, there is no sensible reason for holding that, although (as the judge held at paras 66 and 68) both Sheikh Siraj and Sheikh Mohamed believed that FOMEL was included as at May 2009, they were mistaken, as he said at para 117. He gives no reason for or basis of such mistake. It appears that throughout the period between after the acceptance of the Offer Letter in 2008 and June 2009, when the point was first taken, everyone on both sides proceeded on the basis that FOMEL was included. It seems to the Board to be little short of incredible that they could all have made the same mistake.

(5) *Concurrent findings*

53. In para 66, after saying that Sheikh Mohamed shared Sheikh Siraj's view that FOMEL was included in the sale, the judge added that there was other material from Sheikh Mohamed in May and June 2009 which corroborated the fact that, while he appreciated that they remained directors and shareholders of FOMEL as a matter of law for the time being, he accepted that they were going to have to resign and transfer their holdings in due course.

54. The judge added in para 67 that on 18 May 2009 Sheikh Siraj met Mr Fuchs in a hotel in Jeddah. Mr Fuchs made a note to his father, Dr Manfred Fuchs, telling him that Sheikh Siraj had told him that Sheikh Abdullah had "assumed the shares in the Alhamrani Group" and that as a consequence FOMEL, too, would be transferred to him. Sheikh Siraj gave evidence to the judge that he told Mr Fuchs the exact opposite, but the judge held that the note must be accepted at face value.

55. The conclusions of the judge in this regard were echoed by the ECCA, which summarised its conclusions in paras 73 and 74:

"73. It was evident from the conduct of the Brothers and their correspondence, both prior to and subsequent to the agreement to engage in the process of takharuj, that they expected FOMEL to be included. The evidence accepted by the learned trial judge was that the Brothers at all times prior to and subsequent to their agreement intended to include FOMEL. This evidence included not only the May 2009 Letter in which the Brothers indicated to Fuchs that they had sold Chemtrade, but also their other statements and writings related above in which the same admission was made. They allowed Sheikh Abdullah to take possession of the FOMEL

premises and assets in KSA without once raising an objection until a year had passed. The experts were agreed that such acknowledgments are admissible by a Saudi court as proof of original intention, though Dr Al-Ghazzawi was more cautious in applying the principle given that he had already made up his mind that there was no ambiguity. The learned trial judge not only disbelieved the explanations of the Brothers as to their erroneous statements to Fuchs that they had included Chemtrade in the sale, but he held they were deliberately false. He also found as a fact that the Brothers had campaigned to stop Sheikh Abdullah from buying rather than selling. This included, he found, their putting together false evidence in Saudi Arabia in order to make them appear to be the victims of a serious wrong. These findings were compelling evidence of the unreliability of the testimony of the Brothers that they had *never* intended to include Chemtrade.

74. It is the function of a Saudi court, and therefore of the court below, to determine from the context what the intention of the parties was at the time they made the contract, and not to place reliance on some of the words of the contract to the exclusion of the context. There was no dispute between the experts on Saudi law on the importance of the court discovering intention of the parties in the formation of a contract. The preponderance of the evidence was that the effect of the Buy/Sell Agreement did not depend on the clearly erroneous list of companies in Appendix 1 which omitted FOMEL/Chemtrade. The essence of the agreement was for total disassociation in respect of everything recorded in the financial statements, ie everything in which the siblings were partners. The Brothers had at all times done what the Board of Grievances had proposed and what they had agreed to do, as their actions subsequent to Sheikh Abdullah's acceptance indicated. There was no evidence, other than the Brothers' assertion that their valuation of a share at SR150m depended on the exclusion of FOMEL to produce an affordable price. The documentary evidence was clear that [DTBA's] original variation of SR168m was reduced to SR150m solely to take account of various uncertainties and other considerations put forward by the Brothers, which at no time included the omission of FOMEL. Judgment 1080 says that the Offer Letter was the 'required assessment' by the Brothers of all the companies and other property in which the persons concerned were partners. This was powerful evidence that the Offer Letter did not flag up to the Board of Grievances that it was something different from the agreement which had been reached in February."

56. All this is powerful support for the submission that, although the judge and the ECCA did not reach the same conclusion on the ultimate question, they made concurrent findings of fact on important aspects of the case in which they both held that the Brothers' evidence was in significant respects incredible.

Conclusions

57. Unsurprisingly, counsel for Sheikh Abdullah submitted to the judge that those materials showed that the Brothers knew throughout that Chemtrade had been part of the subject matter of the sale. The judge rejected much of the Brothers' evidence as unreliable but accepted their basic point that the Agreement excluded FOMEL/Chemtrade. In the opinion of the Board, essentially for the reasons which it has already given, he was wrong to do so.
58. The judge's analysis involves these steps. It was contemplated in February 2008 that FOMEL (and thus Chemtrade) would be involved in the transaction, whoever was the seller and whoever was the buyer. The calculation of the value and indeed the price, at least initially, proceeded on the basis that FOMEL (Chemtrade) was included, again regardless of who was the seller and who the buyer. Then, at some stage before the Offer Letter, it was agreed that FOMEL (Chemtrade) was excluded, even though there is no external evidence or corroboration of the change. Then, at some further stage after that, without any communications between the parties, they proceeded on the basis that FOMEL (Chemtrade) was included. They did so both in their actions and in their communications with the Brothers.
59. In short, there is no convincing evidence to support the Brothers' case. Once the judge's conclusion as to the agreed price is rejected, as the Board has rejected it in paras 41 to 47 above, and, once the relevance of the February arrangements is accepted, the conclusion reached by the ECCA becomes ever more compelling.
60. This is especially so when account is taken of the probabilities, which may be summarised thus. It is clear that Chemtrade/FOMEL was included in both the DTBA valuation and Mr Karamat's affordability valuation of SR150m per male share. The affordability valuation was made on the basis of what would be needed to fund a SR300m loan. It seems against all probabilities that the Brothers would have volunteered to exclude Chemtrade from the Offer Letter when (a) it was affordable at the price mentioned in the Offer Letter of SR150m per male share, (b) as stated in para 54 of the Statement of Facts and Issues, it was the intention, belief and expectation of the Brothers at the time that Sheikh Abdullah would not be able to exercise the option to purchase the Brothers' shares but would have to sell his share to them, (c) the exclusion of Chemtrade would have

left a continuing source of discord between the siblings when the whole object of the exercise was to eliminate it in the conduct of the Alhamrani group companies' activities, and (d) there had been an operational merger between AFPSA (which was included in the Offer Letter) and FOMEL in 2006 so that FOMEL's affairs were subsequently substantially run from AFPSA's offices in Jeddah and it would not have been straightforward to disentangle them: see judgment para 95. The judge did not address the probabilities at all and gave no explanation as to why the Brothers would have wanted to and did in fact change their mind about the inclusion of Chemtrade.

61. Further, although the Sisters in June 2008 and Sheikh Abdullah in April 2009 were complaining about the failure of the Brothers to transfer the shares in Chemtrade, the argument that Chemtrade was outside Saudi Arabia and so outside the Offer Letter and the Sale Agreement was not advanced by the Brothers until raised by the Brothers' Jersey advocates at the end of June 2009 in reply to a letter from Sheikh Abdullah's Jersey Advocates complaining that the Brothers had failed to perform the sale agreement by not transferring Chemtrade and One Stop.
62. For all these reasons, subject to an argument based on *res judicata*, the Board concludes that the appeal should be dismissed.

Res judicata

63. The Brothers did not formally abandon their fifth ground of appeal, in which they urged that this dispute is governed by the principle of *res judicata* arising out of Judgment 1080 and/or Judgment 1220. However, that submission was not dignified before the Board by oral argument and is hopeless, for the reasons identified by the ECCA at para 77. In short, neither Judgment 1080 nor Judgment 1220 involved any adjudication on what was included in the Agreement. As stated above, the suggestion that FOMEL was excluded was not made until very much later, in June 2009.

Disposal

64. The Board considered whether, in all the circumstances, it should remit the matter to the High Court for a retrial, which the ECCA refused to do. The ECCA was entitled to reach that conclusion, with which it would not be appropriate for the Board to interfere. In any event the Board would not order a retrial. What is really in issue is the proper inference to be drawn from the undisputed facts. The ECCA was and the Board is in a position to draw an appropriate inference without a further trial. In all the circumstances, the Board will humbly advise

Her Majesty that the appeal should be dismissed. The Board will consider submissions in writing on the form of order and on costs. Submissions in writing on those issues should be filed (a) on behalf of Sheikh Abdullah within 21 days of the judgment being handed down, (b) on behalf of the Brothers within 21 days thereafter, and (c) short submissions in reply (if necessary) within 14 days after that.

APPENDIX

(Paragraph numbers have been added by the Board for ease of reference)

Date: 6.4.9 AH

corresponding to: 12.4.2008 AD

APPENDIX

From: The children of Ali Mohammed Alhamrani

To: His Excellency Father Sheikh Mohammed Alamin Ashanqiti, the Chairman of the Board for the Settlement of Complaints, may Allah preserve him,

Your Excellency,

- (1) May peace and the mercy and blessings of Allah be upon you.
- (2) We would like to start by expressing our great attitude and abundant thanks for the amicable attention which His Royal Highness Crown Prince Sultan Abdulaziz, may Allah preserve him, granted to us in making a blessed effort to mend the rift which posed a threat to a giant national economic organization, namely the Alhamrani Group of Companies, because His Royal Highness, may Allah guard him, believed that it was necessary to protect and maintain the great national economic entities and to provide every assistance and support in order to ensure that they prosper and continue. We point this out in order to show that we highly appreciate and esteem the positions adopted by His Royal Highness.
- (3) We would also like to submit, to Your Excellency personally, our sincerest tokens of gratitude and appreciation for the candid effort which Your Excellency has undertaken in the interests of achieving rightness and establishing justice, and for Your Excellency's endeavours to achieve reconciliation, reunification and the avoidance of estrangement. All we can do is ask Allah, the All-Powerful, the Sublime, to confer upon Your Excellency the best reward on behalf of all of us.
- (4) Last but not least, we would like to extend – to Their Excellencies the members of the Auditing Department of the Board of Grievances, who are in charge of the

undertaking to effect reconciliation between the children of Ali Mohammed Alhamrani, may Allah have mercy on his soul – abundant thanks and great gratitude for their rapid efforts aimed at achieving the lofty objectives which were entrusted to them in the form of apposite and rational instructions issued by the Crown Prince, may Allah preserve him.

- (5) We would like to refer to the conclusions which the members of the Seventh Auditing Department, acting in their capacity as the reconciliation committee, arrived at on the fifth day of the month of Safar 1429 AH, to entrust Mohammed Ali Alhamrani - in his capacity as the Chairman of the Alhamrani Companies, in charge of managing them, and who knew more about the affairs of the companies than anyone else - with the task of valuing the companies and funds which are jointly owned by the parties in the dispute, so that he might submit, within sixty days of the date mentioned, the value corresponding to a single share, with the result that Abdullah Ali Alhamrani, and two sisters Noura and Adawiah Ali Alhamrani, would have the option of either selling their shares to Mohammed Ali Alhamrani and his brothers Siraj, Khalid, Abdulaziz, Ahmed and Fahd Ali Alhamrani, or of purchasing for them.
- (6) It was on that basis that all of us, headed by our brother Mohammed Ali Alhamrani, took part in the work of compilation and valuation. From the data arrived at in our accurate analysis of the results of the valuation, we agreed, with complete conviction, that the price corresponding to all the shares of the partners is 1.2 billion Saudi Riyals (one billion two hundred million Saudi Riyals). Therefore, the price corresponding to the share of a female, that is to say the share of each sister, is seventy-five million Riyals, and the price corresponding to the share of a male is the share of two females, is the share of each brother, and one hundred and fifty million Riyals. Thus, the brother Abdullah Alhamrani, and the two sisters Noura and Adawiah, have the option of either selling to us, or purchasing from us, at that price. We for our part are very ready to accept either of the two options and to put it into effect to the letter.
- (7) Because we are doing this, we are guided by what was said by Allah the most High, namely “Don't belittle the things of others” and by the saying of our Prophet “No harm no prejudice”. Because we are offering this price as an unambiguous and final offer, let us adhere to it irrespective of whether we are sellers or purchasers. We are thus acting in accordance with the proverb "Anyone who makes you equal to himself is not treating you unjustly," and are at the same time confirming that we arrived at this price solely on the basis of the data obtained from a fair valuation of the share, including not only the rights linked to this share, but also the obligations and guarantees attached to this share for the benefit of third parties.
- (8) It goes without saying that the valuation was restricted to all the funds, properties and partnerships contained in shares in the companies, real estates, and movable property, located inside the Kingdom of Saudi Arabia in accordance with what

is stated in the enclosed appendix No 1. As regards the foreign investments, it was difficult, or rather it was impossible, for us to carry out a valuation which was fair and satisfactory for all the partners in those investments, because the amount which will be included in the joint ownership, and the amount which each partner will receive of that ownership, is still the subject of a legal dispute being examined by the competent foreign Courts. The determination of that ownership will remain pending until the final judgment is passed regarding it. This is in accordance with the enclosed appendix No 2, drawn up by the Court which is competent to examine the dispute. At the time when the final judgment is passed regarding that ownership, then, the value of the share in the foreign investments can be determined.

- (9) We shall also not omit to point out here that, in the event of sale or purchase, the purchasers or sellers, acting together, must carry out all the legal and regulatory procedures required in order to transfer the ownership of the shares. The purchasers, whoever they may be, are obliged to submit all the guarantees to the authorities concerned and to release the sellers from any obligations. In addition, all the parties to the final contract of sale or purchase are to correct the ownership of some of the real-estate items in the required legal and regulatory manner, since some of the real-estate items are formally registered in the name of one or more partners, including the transfer of the. The ownership of the land located in the Rawda district of the city of Jeddah, with title deed No 687/3 dated 1394 AH, is to be transferred to Mr Mohamed Ali Alhamrani in the event of either sale or purchase.
- (10) For the reason that we are abiding by this unambiguous and definite offer before Allah the Eternal One, the Most High, on the basis of His saying: "O you believers, fulfil your contracts," let us ask Him, the All-Powerful, the Sublime, to put in readiness for you the reasons for ending, in a just and satisfactory way, this dispute which has continued among the parties to it for more than seven years.
- (11) May Allah, the Most High, grant success to Your Excellency in achieving rightfulness, justice and good sense.
- (12) May peace and the mercy and blessings of Allah be upon Your Excellency.

[Signature]

Siraj Ali Mohammed Alhamrani

Acting on his own behalf and by the power of attorney granted to him by his brothers

Mohammed, Khalid, Abdulaziz, Ahmed and Fahd, the children of Ali Mohammed Alhamrani

Appendix No.1

1. Alhamrani United Company "Mohammed Ali Alhamrani and Brothers", (Joint Venture Company).
2. Alhamrani Trading and Import Company, (Joint Venture Company).
3. Alhamrani International Company Limited.
4. Alhamrani Group Industrial Company Limited.
5. Alhamrani Saudi Arabian Fox Petroleum Company Limited.
6. Alhamrani Commercial Investment Company Limited.
7. Alhamrani Industrial Company Limited.
8. Alhamrani Chemicals Company Limited.
9. Alhamrani Real Estate Development Company Limited.
10. International Airport Services Company Limited.

List of lands and real estate owned by the children
NOT REPRODUCED HERE