

ENGLAND AND WALES / JUDGMENT

Willmont & Anor v Shlosberg

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Case Nos: HC-2014-001398, CR-2014-007636, BR-2014-002127 Neutral Citation Number: [2017] EWHC 2446 (Ch) IN THE HIGH COURT OF JUSTICE CHANCERY DIVISION IN THE MATTER OF WEBINVEST LIMITED (IN LIQUIDATION) AND IN THE MATTER OF MIKHAIL SHLOSBERG (A BANKRUPT) Royal Courts of Justice Strand, London, WC2A 2LL Date: 9 October 2017 Before : MR JUSTICE ARNOLD

- ----- Between :

(1) JEREMY MARK WILLMONT AND Applicants MICHAEL FINCH (AS JOINT LIQUIDATORS OF WEBINVEST LIMITED)

(2) JEREMY MARK WILLMONT AND EMMA SAYERS (AS JOINT TRUSTEES IN BANKRUPTCY OF MIKHAIL SHLOSBERG)

- and - MIKHAIL SHLOSBERG

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- ----- Respondent Antony Zacaroli QC and Riz Mokal (instructed by Dechert LLP) for the Trustees and (instructed by Eversheds Sutherland (International) LLP) for the Liquidators Philip Marshall QC and James Mather (instructed by Enyo Law LLP) for the Respondent Hearing date: 3 October 2017

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Judgment

MR JUSTICE ARNOLD : Contents TopicParas

Introduction

Factual background The principal parties The Avonwick Loan The Globoid Arbitration The Original Avonwick Proceedings The Freezing Order Bankruptcy of Mr Shlosberg and winding up of Webinvest The Conspiracy Claim Discharge from bankruptcy The Privilege Application The Possession Proceedings The Edelweiss Claim The starting point: common officer holders Compulsion Material Beneficial pursuit of the insolvency proceedings in which the material is obtained Unearthing of dishonesty or other malpractice A note of caution Disclosure Material Privileged Material

Introduction

1-2 3-45 4-8 9-10 11-18 19-20 21-23 24-34 36-40 41-43 44-45 46-50 51-83 57-75 76-81 82-83 84-89 90-96

1. 2. These are applications by Jeremy Mark Willmont and Michael Finch, the joint liquidators (“the Liquidators”) of Webinvest Ltd (“Webinvest”), a company incorporated in St Vincent and the Grenadines (“SVG”) and by Jeremy Mark Willmont and Emma Sayers, the joint trustees in bankruptcy (“the Trustees”) of the Respondent (“Mr Shlosberg”) for directions concerning the proper use of three categories of documents and information relating to Webinvest’s and Mr Shlosberg’s insolvency estates, namely (i) documents and information obtained under compulsion, (ii) disclosure documents and (iii) privileged documents. I shall refer to the Liquidators and the Trustees collectively as “the Applicants”. Mr Shlosberg opposes the applications. I circulated a draft of this judgment to the parties on 4 October 2017. Shortly afterwards the same day, I received a letter from Mr Shlosberg’s solicitors purporting to correct an error in the analysis of Webinvest’s financial position relied upon by counsel for Mr Shlosberg at the hearing. On 6 October 2017 I received a note dated 5 October 2017 from counsel for Mr Shlosberg submitting that the draft judgment showed that I had misunderstood his submissions with respect to the Compulsion Material (as defined below) in two respects and requesting reconsideration of those aspects of the matter both in the light of the clarification of those submissions and in the light of the corrected financial analysis. I also received a note in response from counsel for the Applicants. I have reconsidered the points in question and reached essentially the same conclusions, although my reasoning is slightly different. Factual background

The principal parties

3. Mr Shlosberg is a Russian businessman who is domiciled in England. He was the beneficial owner of Webinvest, which the Applicants contend was used by Mr Shlosberg as the principal vehicle for his business dealings. Mr Shlosberg’s family are among the beneficiaries of the Castle Family Foundation (“CFF”), a Liechtenstein private family foundation, which ultimately owns Castle Investment Fund Ltd (“Castle”) a company incorporated in the British Virgin Islands (“BVI”). Avonwick Holdings Ltd (“Avonwick”) is also a company incorporated in BVI. It is beneficially owned by Eleana Gayduk. Mrs Gayduk is the wife of Vitaliy Gayduk, a Ukrainian businessman. The Avonwick Loan

4. 5. 6. 7. In early 2010 Mr Shlosberg approached Mr Gayduk with an investment proposal relating to Vimetco NV (“Vimetco”), a Dutch company which operated aluminium plants. Vimetco was owned by Vi Holding NV (“Vi Holding”), which was owned or controlled by Vitaliy Machitski. Mr Machitski was, and Avonwick believes remains, a close friend of Mr Shlosberg. Mr Shlosberg informed Mr Gayduk that Mr Machitski was proposing to de-list shares in Vimetco in London and to re-list them in Hong Kong, where it was considered that the shares would be more highly valued. In order to achieve this, Mr Machitski needed to recover control of Vimetco from Vi Holding’s banks by repaying Vi Holding’s borrowings to secure release of the shares in Vimetco which had been charged as security. According to Mr Shlosberg, US\$200 million was required for this purpose. Mr Shlosberg was willing to lend US\$100 million to Mr Machitski, but needed a further US\$100 million. Mr Gayduk agreed to lend Mr Shlosberg US\$100 million so that Mr Shlosberg could invest the whole US\$200 million in the project. Avonwick was selected to act as the lender in respect of the loan and Webinvest was selected to act as the borrower. A loan agreement was signed on 23 April 2010 and

US\$100 million advanced on 27 April 2010 (“the Avonwick Loan”). Mr Shlosberg personally guaranteed Webinvest’s obligations under the Avonwick Loan pursuant to a deed of guarantee dated 23 April 2010 (“the Guarantee”). Webinvest used the proceeds of the Avonwick Loan, together with another US\$100 million lent by Castle (“the Castle Loan”), to finance the Vimetco project proposed by Mr Machitski by making a loan of US\$200 million (“the Globoid Loan”) to Mr Machitski’s company Globoid Finance Establishment (“Globoid”), which was incorporated in Liechtenstein. Globoid and Webinvest default 8. The Globoid Loan was due to be repaid on 14 May 2012. The Avonwick Loan was due to be repaid a few days later on 17 May 2012. In the event, Globoid did not repay the Globoid Loan. In turn, Webinvest failed to repay the Avonwick Loan. The Globoid Arbitration 9. 10. On 15 May 2013 Webinvest commenced an arbitration against Globoid under the ICC rules for the recovery of the Globoid Loan, claiming more than US\$300 million including interest (“the Globoid Arbitration”). The Globoid Arbitration was subsequently settled through a series of agreements, and in particular agreements dated 23 and 24 June 2014 (“the Settlement Agreements”). On 16 January 2015 Globoid was placed in liquidation. The Original Avonwick Proceedings 11. 12. On 9 April 2014 Avonwick served statutory demands on Webinvest and Mr Shlosberg for US\$180,891,155.88 representing the principal of US\$100 million plus accrued interest. On 30 May 2014 Webinvest applied for an injunction to restrain presentation of a winding up petition and Mr Shlosberg applied to set aside the statutory demand served on him. The asserted basis of these applications was that there had been a collateral oral agreement between Mr Gayduk and Mr Shlosberg on behalf of Avonwick and Webinvest respectively to the effect that payments of principal and interest by Webinvest in respect of the Avonwick Loan would only fall due when Webinvest itself had received corresponding payments from Globoid in respect of the Globoid Loan (referred to as the “pay if paid” agreement).

13. Webinvest’s application came before Peter Smith J on 14 and 15 July 2014. Peter Smith J ordered an expedited trial of Avonwick’s claim for repayment of the outstanding sums due under the Avonwick Loan and Guarantee (“the Original Avonwick Proceedings”). 14. Avonwick was represented in the Original Avonwick Proceedings by Dechert LLP. Webinvest and Mr Shlosberg were represented by Fladgate LLP until 16 December 2014.
15. Webinvest and Mr Shlosberg refused to disclose any documents relating to the Globoid Arbitration or the Settlement Agreements in the Original Avonwick Proceedings. Accordingly, Avonwick sought specific disclosure of those documents. On 10 October 2014 HHJ Walden-Smith ordered the disclosure of the arbitration and settlement documents. Webinvest and Mr Shlosberg applied for permission to appeal to the Court of Appeal, but that application was refused, following which Webinvest and Mr Shlosberg finally disclosed documents relating to the Globoid Arbitration. Some (but, as it subsequently transpired, not all) of the documents relating to the Settlement Agreements were provided to Avonwick at around 8pm on 17 October 2014, the Friday before the trial commenced the following Monday. 16. 17. 18. The trial of the Original Avonwick Proceedings was heard by Sales J, as he then was, from 20 to 29 October 2014. Judgment was handed down on 6 November 2014 ([2014] EWHC 3661 (Ch)). In his judgment Sales J found that the allegation of a collateral oral agreement was a dishonest defence advanced to stave off the enforcement by Avonwick of

its rights under the Avonwick Loan Agreement and under the Guarantee. His assessment was that both the witnesses who had given evidence on behalf of Webinvest in support of such agreement, namely Mr Shlosberg and his associate Julia Mutieva, were dishonest witnesses. By an order dated 6 November 2014 Sales J gave judgment for Avonwick against Webinvest and Mr Shlosberg in the amount of US\$195,159,649.03 and interest at a daily rate of US\$42,774.72. He also awarded Avonwick its costs of the action on the indemnity basis. There has been no appeal against that order. The Freezing Order 19. 20. On the same day as handing down judgment, Sales J granted Avonwick a worldwide freezing order against Webinvest, Mr Shlosberg and Castle (“the Freezing Order”), holding that there was a good arguable case that Castle was beneficially owned and controlled by Mr Shlosberg. In addition, having reviewed such documentation relating to the Settlement Arrangements as had been disclosed to Avonwick at that time, Sales J made the following findings: “28. ... The materials disclosed in relation to the settlement agreement are obscure and incomplete, but even on the best case advanced by the defendants it seems that the effective proceeds of a settlement of the Webinvest claim against Globoid in the sum of US\$172 million, have been transferred to Castle, and not to Webinvest (the owner of the relevant contractual rights against Globoid), in circumstances where Castle proposes to pay on to Webinvest only half that amount to make it available to recovery by the claimant. No good explanation has been given on why the whole amount of the proceeds of sale should have been diverted to Castle rather than simply going to Webinvest (as owner of the relevant rights being compromised) and then being available for the claimant to execute against 29. Furthermore, on a less optimistic and generous interpretation of the various documents, contrary to the submissions of the defendants, it appears that there is a real risk that even half of the proceeds of the settlement sum of US\$172 million which the defendants say will be available for Webinvest (and hence for the claimant) will in reality not be paid to Webinvest at all, leaving the claimant with nothing against which to execute the Judgment that it has obtained.” Bankruptcy of Mr Shlosberg and winding up of Webinvest 21. 22. 23. Neither Webinvest nor Mr Shlosberg has paid any sum in respect of the judgment obtained by Avonwick. On Avonwick’s petition, a bankruptcy order was made against Mr Shlosberg on 14 January 2015 and a winding up order was made against Webinvest on 27 February 2015. The Trustees were appointed on 20 January 2015 and the Liquidators were appointed on 24 March 2015. All three of the Trustees and Liquidators practice from Moore Stephens LLP. Shortly after their respective appointments, both the Trustees and the Liquidators instructed Dechert to act for them. As a result of the bankruptcy, Mr Shlosberg’s shares in Webinvest vested in the Trustees. It is presently unclear what other assets are included in the bankrupt estate, but the Trustees have brought the Possession Proceedings described below in respect of two properties which they believe form part of the bankrupt estate. Although Webinvest has some minor assets, its principal assets appear to be its interests in the Conspiracy Claim and the Edelweiss Claim described below. The principal creditor of both Mr Shlosberg and Webinvest is Avonwick. In the case of Mr Shlosberg, it appears that Avonwick’s judgment represents at least 95%, if not more, of the debts owed by the bankruptcy estate. Unsurprisingly in those circumstances, Avonwick is funding the pursuit by the Liquidators

and the Trustees of the Conspiracy Claim, the Edelweiss Claim and the Possession Proceedings. The Conspiracy Claim 24. 25. 26. 27. On 19 November 2014 Avonwick commenced proceedings against Castle (“the Conspiracy Claim”). At that time, Avonwick had been provided with some (but not all) of the documents making up the Settlement Agreements, and the proceedings sought relief solely against Castle under section 423 of the Insolvency Act 1986 (transactions defrauding creditors). Avonwick again instructed Dechert to act for it. Avonwick pressed for disclosure of the remaining documents relating to the Settlement Agreements. Following an order by Peter Smith J, these were eventually disclosed by Castle on 23 February 2015. On 8 May 2015 Avonwick obtained permission from Master Price to amend its claim to (a) join Webinvest and the Liquidators as additional claimants, (b) join Vi Holding, Globoid and Mr Machitski as additional defendants and (c) advance a claim for unlawful means conspiracy. No application was made for permission to serve the proceedings on Vi Holding, Globoid or Mr Machitski out of the jurisdiction at that stage. Although Mr Shlosberg was at the centre of the alleged conspiracy, Avonwick did not seek to join him to the Conspiracy Claim at that time. This was because section 285(3) of the 1986 Act imposes a stay on the commencement of proceedings against a bankrupt. On 16 May 2015 Ms Sayers, one of the Trustees, having obtained independent advice from Moon Beever, confirmed that the Trustees did not object to the stay being lifted. On 19 May 2015 Avonwick issued an application to lift the stay. On 14 August 2015 Webinvest issued a parallel application. On 2 September 2015 Avonwick and Webinvest applied to join Mr Shlosberg as a defendant and for 28. 29. 30. 31. permission to re-amend its claim not only so as to join Mr Shlosberg, but also so as to advance claims under section 238 and 239 of the 1986 Act (transactions at an undervalue and preferences). Avonwick’s applications were opposed by Mr Shlosberg. Avonwick also applied for permission to serve the proceedings on Vi Holding and Mr Machitski outside the jurisdiction. The claim which Avonwick sought to advance against Mr Shlosberg was that, as explained in more detail below, Mr Shlosberg had entered into a conspiracy with Mr Machitski/Globoid/Vi Holding to use unlawful means by (i) acting contrary to sections 238, 239 and/or 423 of the 1986 Act and/or (ii) procuring a breach by Webinvest’s directors of their fiduciary duties in entering into the Settlement Agreements. In the context of those applications, Mr Shlosberg asserted that the reason why Avonwick wished to join him to the proceedings was to provide a jurisdictional anchor to enable proceedings in this country to be brought against Vi Holding and Mr Machitski. Avonwick did not deny that this was one reason, but contended that another reason was in order to obtain a judgment which would survive Mr Shlosberg’s discharge from bankruptcy. It is common ground that Avonwick’s claim against Mr Shlosberg, if established, would be one founded on fraud and would therefore survive discharge. It follows that Mr Shlosberg has a strong personal interest, distinct from any interest of his bankruptcy estate, in defending the claim, notwithstanding that the liability would also be provable in the bankruptcy. The applications ultimately came before HHJ Dight sitting as a judge of this Court. On 15 December 2015 he gave judgment in favour of Avonwick ([2015] EWHC 3832 (Ch)). Accordingly, he made an order joining Mr Shlosberg to the Conspiracy Claim, giving Avonwick permission to re-amend the claim and giving Avonwick permission to serve the

proceedings out of the jurisdiction on Vi Holding and Mr Machitski. As now formulated, the Conspiracy Claim concerns the purpose and effect of the Settlement Agreements. In short, the claimants (Avonwick, Webinvest and the Liquidators) allege that the Settlement Agreements were part of a scheme put in place to render Webinvest judgment proof in the face of the very substantial claims asserted against it by Avonwick. Avonwick believes that the Settlement Agreements were part of an unlawful conspiracy between Mr Shlosberg on the one hand and Mr Machitski/Globoid/Vi Holding on the other hand to ensure that the value of Webinvest's main asset would not be available to satisfy Avonwick's claims against Webinvest, but would instead be diverted to Mr Shlosberg or companies owned or controlled by him. 32. In more detail, the claimants allege that: i) ii) Webinvest agreed to transfer its rights against Globoid in respect of the Globoid Loan and Globoid Arbitration to Castle under the terms of an assignment agreement. Castle and Globoid then agreed to settle the Globoid Arbitration under the terms of a settlement deed in return for Globoid transferring a number of shares in Vimetco to Castle ("the Vimetco Shares"). iii) iv) v) vi) Vi Holding agreed to purchase the Vimetco Shares from Castle under the terms of a share purchase agreement ("the SPA") for US\$172 million. This is despite the fact that the market value of the Vimetco Shares was in the region of US\$12,071,659. In return for the assignment of rights against Globoid from Webinvest, Castle agreed (a) to make a set off under the Castle Loan in the amount of US\$12,071,659 (being the alleged market value of the Vimetco Shares) and

- (b) to transfer to Webinvest the amount (or make a set-off under the Castle Loan and to discharge Webinvest's debt for the amount) equal to one half of each payment received from Vi Holding for the Vimetco Shares under the SPA. In light of the rights of set-off afforded to Castle, there is no obligation on the part of Castle to pass any money it receives from Vi Holding to Webinvest. In other words, the effective proceeds from the settlement of the Globoid Arbitration would not be available to satisfy Avonwick's claims against Webinvest. In addition, Castle and Vi Holding entered into a deed of pledge ("the Deed of Pledge") pursuant to which Vi Holding was granted security over the same Vimetco Shares that it was under an obligation to purchase. The "Events of Default" under the Deed of Pledge appear to have been deliberately designed and structured as a "poison pill" so that in the event Webinvest (or a liquidator or creditor of Webinvest) were to take any steps to pursue Castle, Vi Holding would no longer be obliged to pay the US\$172 million. Accordingly, the effect of the Settlement Agreements has been to strip away the value of Webinvest's principal asset, the Globoid Loan, leaving Webinvest as an empty shell and thwarting Avonwick's right to obtain satisfaction of its judgment against Avonwick. Whilst, prior to the entry into the Settlement Agreements, Webinvest had a valuable asset in the form of rights to repayment from Globoid, the effect of the Settlement Agreements is that it has been stripped of this asset and left with no assets of any value with which to meet the claims of its creditors. 33. 34. HHJ Dight refused Mr Shlosberg permission to appeal against his decision. On 11 July 2016 David Richards LJ refused Mr Shlosberg's application to the Court of Appeal for permission to appeal for the reasons given in his judgment of the same date [2016] EWCA Civ

819. Disclosure in the Conspiracy Claim took place on 2 June 2017. Mr Shlosberg declined to permit inspection of the documents disclosed by him by the Liquidators, and by consent an order was made staying inspection pending the determination of the present applications. The trial is listed to commence in the week of 18 June 2018 with an estimated duration of 4-5 weeks. Discharge from bankruptcy 35. On 15 December 2015 the Trustees issued an application for the suspension of Mr Shlosberg's discharge from bankruptcy. On 4 October 2016 Deputy Registrar Middleton ordered Mr Shlosberg to provide certain information to the Trustees as a condition of discharge. On 29 November 2016 Mr Shlosberg was discharged from bankruptcy pursuant to a consent order agreed with the Trustees. The Privilege Application 36. 37. 38. 39. 40. At an early point after Dechert's retainer by the Trustees, Mr Shlosberg's present solicitors ("Enyo") raised concerns about Dechert acting for both Avonwick and the Trustees. Dechert responded that those concerns were not well founded. On 2 September 2015 Enyo was informed by Fladgate of enquiries being made of it by the Trustees. Fladgate provided Enyo with a copy of a letter from Dechert to Fladgate dated 29 July 2015 setting out a number of queries with respect to Mr Shlosberg's affairs. That letter referred to the provision by Fladgate to the Trustees of three CDs containing PDF copies of a large quantity of documents ("the Fladgate CDs"). The contents of the Fladgate CDs were at that time believed to relate to the following matters: i) ii) litigation in the county court regarding an attack on Mr Shlosberg's cat; the statutory demands served by Avonwick on Mr Shlosberg and Webinvest and the subsequent applications by Mr Shlosberg and Webinvest to set aside the statutory demand against Mr Shlosberg and to restrain Avonwick from presenting a winding-up petition against Webinvest; and iii) the Original Avonwick Proceedings. On 20 October 2015 Enyo wrote to Dechert and Moon Beaver expressing concern on behalf of Mr Shlosberg at what had transpired and demanding that appropriate steps be taken to protect his rights, including by Dechert ceasing to act. Dechert and Moon Beaver replied in letters dated 28 October 2015 declining to take the steps demanded. On 4 December 2015 Mr Shlosberg issued an application for an order that Dechert should cease acting as solicitors for both Avonwick and the Trustees ("the Privilege Application"). The Privilege Application was made primarily in respect of Dechert's position as solicitors for Avonwick, and only secondarily in respect of Dechert's position as solicitors for the Trustees. In the event, the application was only pursued as against Avonwick. The basis for the Privilege Application was Dechert's possession and review of the documents on the Fladgate CDs, which Mr Shlosberg contended were subject to legal professional privilege and/or were confidential. There was no dispute that many of the documents were privileged and confidential. The respondents to the Privilege Application contended, however, that the benefit of the privilege had passed to the Trustees and that there was no real risk of any misuse of information confidential to Mr Shlosberg by Dechert. For the reasons given in a judgment dated 5 May 2016 (*Shlosberg v Avonwick Holdings Ltd* [2016] EWHC 1001 (Ch), [2017] Ch 210) I concluded that, with the exception of the privilege in the documents in category (i), Mr Shlosberg's privilege in the documents on the Fladgate CDs had not passed to the Trustees. In the light of that conclusion, I granted Mr Shlosberg an injunction restraining Dechert from continuing to act for Avonwick. On 18 November 2016 the Court of

Appeal dismissed an appeal against that order ([2016] EWCA Civ 1138, [2017] Ch 210). Subsequently Avonwick instructed Quinn Emmanuel Urquhart & Sullivan LLP to act for it in the Conspiracy Claim. The Possession Proceedings 41. 42. On 5 January 2017 the Trustees commenced proceedings (“the Possession Proceedings”) against various defendants seeking principally declarations that Mr Shlosberg is the beneficial owner of two large properties in London called The Elms and Elm Cottage and of two SVG companies that are the respective registered owners of those properties, namely Elm International Ltd (“EIF”) and Elmers Investment Ltd (“Elmers”). Both EIF and Property Finances Ltd (“PFL”), which has registered charges against both properties, are alleged to be (directly or indirectly) owned by CFF. The properties are believed to be worth in the region of £40 million. On 3 March 2017 the Trustees applied without notice for permission to serve the proceedings out of the jurisdiction and for an interim injunction restraining EIF, Elmers and PFL from dealing with their assets (including the two properties) and from acting on instructions from Mr Shlosberg and restraining CFF and another Liechtenstein foundation from dealing with their interests in EIF, Elmers and PFL and from acting on instructions from Mr Shlosberg. Stephen Smith QC sitting a Deputy High Court Judge granted permission and an injunction for the reasons given in his judgment of that date ([2017] EWHC 428 (Ch)). The injunction was continued until trial by a consent order dated 4 April 2017. 43. Defences were filed in the Possession Proceedings on 9 June 2017. The Edelweiss Claim 44. On 9 March 2017 Webinvest and the Liquidators issued a claim (“the Edelweiss Claim”) against Indago Ltd (an SVG company that owned some of the shares in Castle), the former directors of Webinvest, Margarita Prokofyeva (Mr Shlosberg’s wife) and Edelweiss Immobilere SA (“Edelweiss”). The claimants in the Edelweiss Claim allege that, prior to mid-2014, Webinvest owned a valuable receivable under a loan agreement between Webinvest and Edelweiss, which owned a ski chalet in Megeve, France. The claimants further allege that Ms Prokofyeva assisted the former directors of Webinvest to transfer the receivable from Webinvest to Ms Prokofyeva. Claims are made against the former directors of Webinvest for breach of fiduciary duty, against Ms Prokofyeva for dishonestly assisting such breach and against the former directors, Ms Prokofyeva and Indago under sections 238 and 239 of the Insolvency Act 1986. As I understand it, the quantum of the claim is equivalent to £3,423,000 (plus interest). 45. The Edelweiss Claim has recently been served on the defendants to the claim. The starting point: common office-holders 46. In considering the Applicants’ applications, the starting point is that it is not unusual for there to be one or more common office-holders of connected insolvency estates. The practice has been approved at the highest level: see *Parmalat Capital Finance Ltd v Food Holdings Ltd* [2008] UKPC 23, [2008] BCC 371, where Lord Hoffmann delivering the judgment of the Judicial Committee of the Privy Council said at [23]: “... It is not unusual for the same liquidators to be appointed to related companies, even though the dealings between them may throw up a conflict of interest. It avoids the expense of having different liquidators investigate the same transactions. The attitude of the court has been that any conflicts of interest can be dealt with by the court (on the application of the liquidators) when they arise: see *Re Arrows Ltd* [1992] BCC 12; *Re Maxwell Communications Corp plc* [1992] BCC 372.” 47. The advantage of the practice noted by Lord

Hoffmann is the efficiency of one set of office-holders investigating the same transactions. This necessarily assumes that information relevant to each estate will, where appropriate, be pooled by the office-holders. In *Beattie v Smailes* [2011] EWHC 1563 (Ch), [2012] BCC 205, where the Court approved the appointment of the same liquidators to two related companies notwithstanding the potential for conflicts to arise in relation to claims as between those companies, Norris J said at [18]: “18. ... conflicts between competing duties are regularly encountered in the liquidations of associated companies where there are intercompany dealings which have to be unscrambled. Of itself the competition between those competing duties does not disqualify a liquidator from acting, or properly found any application for his removal. [He cited the passage from *Parmalat* quoted above]. 19. In the instant case there was evident good sense in appointing the same liquidators to [the two companies] so that there could be a pooling of the resources to investigate both sides of the relevant transactions by reference to all the papers, such as they were. It may be anticipated any conflict which arises when ultimate decisions have to be made can be addressed in the way indicated by Lord Hoffman, and more recently by Newey J in *Re York Gas Ltd (in liq.)* [2010] EWHC 2275 (Ch), [2011] BCC 447.” 48. 49. The potential for conflict exists where an issue arises as between the two estates, and does so because of duties owed by an office-holder to the separate creditors of each estate (since it is to the creditors that the office-holder owes duties). In the present case Mr Willmont is both a Trustee of Mr Shlosberg’s bankrupt estate and a Liquidator of Webinvest’s insolvent estate. Although Mr Finch is only a Liquidator and Ms Sayers is only a Trustee, all three individuals are supported by the same team of staff at Moore Stephens and, save with respect to certain privileged documents as described below, no information barriers have been put in place. The Applicants contend that this arrangement is justified for the reasons outlined above. In any event, no application has been made for the removal of Mr Willmont from either of his offices. 50. Furthermore, counsel for Applicant asserted that no conflict had yet arisen between Mr Willmont’s duty to Mr Shlosberg’s creditors and his duty to Webinvest’s creditors. Counsel for Mr Shlosberg did not directly contest this assertion. Compulsion Material 51. 52. 53. 54. 55. The first category of material consists of material obtained from third parties pursuant to the relevant officer-holders’ powers to compel third parties to provide documents and information, or as a result of the threat of the exercise of such powers (“Compulsion Material”). The Trustees have exercised, or threatened to exercise, their powers under section 366 of the 1986 Act to obtain Compulsion Material from various third parties. So far, the Liquidators have not exercised, or threatened to exercise, their powers under section 235 and 236 of the 1986 Act. Accordingly, any question with respect to Compulsion Material obtained by the Liquidators is presently hypothetical. I shall therefore confine my consideration to Compulsion Material obtained by the Trustees. It is common ground that, where statute confers a power on a person or body compulsorily to obtain private documents and/or information from another person or body, then such documents and/or information may only be used by the first person or body for the purposes for which, as a matter of statutory construction, the power was conferred: see *In Re Arrows Ltd (No 4)* [1995] 2 AC 75 at 104D (Lord Browne-Wilkinson). It is also common ground that, where documents and/or information are compulsorily

obtained pursuant to the exercise of such a power, the person or body which obtained them owes a duty of confidence to the person from whom the material was obtained only to use the material for such purposes: see *Marcel v Commissioner of Police of the Metropolis* [1992] Ch 225 at 236B-237H (Browne-Wilkinson V-C), 261B-C (Nolan LJ) and 262D, 263E-H (Sir Christopher Slade). The Trustees seek a direction to the effect that they may share Compulsion Material with the Liquidators without the permission of the Court or, if the permission of the Court is needed, giving them such permission. To the extent that the Trustees have already shared Compulsion Material with the Liquidators, the Trustees' applications seek ratification of what they have done. It is common ground that the principal purpose of the powers to compel third parties to provide material to office-holders under sections 235, 236 and 366 is to assist with the beneficial winding up of the company or bankruptcy of the individual in question: see *Re Esal (Commodities) Ltd* (1988) 4 BCC 475 at 480 (Dillon LJ) and *Bishopsgate Investment Management Ltd v Maxwell* [1993] Ch 1 at 47D-F (Stuart-Smith LJ), both citing with approval the following statement of Buckley J in *Re Rolls Razor Ltd*

[1968] 3 All ER 698 at 700: "The powers conferred by section 268 are powers directed to enabling the court to help a liquidator discover the truth of the circumstances connected with the affairs of the company, information of trading, dealings, and so forth, in order that the liquidator may be able, as effectively as possible and, I think, with as little expense as possible and with as much expedition as possible, to complete his function as liquidator, to put the affairs of the company in order and to carry out the liquidation in all of its various aspects, including, of course, the getting in of any assets of the company available in the liquidation." 56. Counsel for the Applicants submitted that it was in accordance with the purposes for which the section 366 power was conferred for the Trustees to share Compulsion Material with the Liquidators and for the Liquidators to use Compulsion Material for two distinct reasons. He further submitted that the permission of the Court was not needed in either case, but if it was needed it should be given. I will consider these points in turn. Beneficial pursuit of the insolvency proceedings in which the material is obtained 57. Counsel for the Applicants submitted that where, as here, the sharing is by the office-holder appointed to a shareholder with the liquidator of the company, then provided there is at least some prospect of a surplus arising in the liquidation, it will always be in the interests of the shareholder's estate to share information relevant to the liquidation with the liquidator, and thus within the purposes for which the information was sought by the office-holder of the shareholder, to make such disclosure. 58. In support of this submission, he relied in particular upon the following passage from the judgment of Dillon LJ in *Re Esal* at 480-481: "With a group structure, where the parent company of a group goes into liquidation, it is often the case that the liquidators of the parent company find that the de facto control of subsidiaries rests with directors of the subsidiaries who were appointed by the previous directors or shareholders of the parent company, in effect, and those directors may well be hostile to the liquidators. In such circumstances it is common form for the liquidators to remove the previous directors and appoint as

directors representatives of the liquidators' firm. Alternatively the subsidiaries are put into liquidation with liquidators from the liquidators' firm. In the usual case, such as I have mentioned, in my view it would be fully open to the liquidators of the parent company to make documents obtained under sec. 561 available to the directors or liquidators of the subsidiaries to assist them in getting in assets or defending assets for the ultimate benefit not merely of the subsidiary, but also of the parent company itself. That, as it seems to me, is common practice. Of course there are possible conflicts of interest. It is unnecessary to go into them in detail, but one of the more obvious is that in an insolvency situation the subsidiary will have its own creditors whose claims will have to be met. Sometimes the creditors will include the parent company or the subsidiary next up the line. Sometimes the interest of the parent company or subsidiary next up the line will merely be an interest as shareholder which ranks behind the creditors of the subsidiary. But these sort of potential conflicts do not in practice give rise to any serious difficulty because they are well-known to the experienced insolvency practitioners." 59. He also relied from the following passage from the judgment of Dillon LJ in *Re Arrows Ltd* (No. 4) [1993] Ch 452 at 494G-495A: "In some cases, disclosure will clearly be justified because, to adopt the words of Millett J. in *In re Barlow Clowes Gilt Managers Ltd.* [1992] Ch. 208, 217G, 'the use proposed to be made of the material is to assist the beneficial winding up of the company;' an instance would be where a parent company in compulsory liquidation has solvent subsidiaries which are not in liquidation at all but are under the control of directors nominated by the liquidators of the parent company and it is desired to disclose transcripts to the directors of the subsidiary so that the subsidiary can bring proceedings for the ultimate benefit, indirectly, of the winding up of the parent company. But the mere fact that the transcript is wanted for use in proceedings, whether civil or criminal, is not enough." 60. 61. 62. 63. Counsel for Mr Shlosberg submitted that it was not sufficient that the putative use of the material might provide an incidental benefit to the bankrupt estate by assisting a claim which might reduce a proof in the estate, relying upon *Re Esal Commodities Ltd* (No 2) [1990] BCC 708 at 724 (Millett J) and *Shlosberg v Avonwick* in the Court of Appeal at [84]-[85] (Sir Terence Etherton MR). He also submitted that officeholders' statutory powers were not conferred upon them to enable a prospective litigant to improve the prospects of litigious success by giving him rights which other litigants lack, relying upon *First Tokyo Index Trust v Gould* [1996] BPIR 406 at 412 (Lord Cameron of Lochbroom) and *Sutton v GE Capital Commercial Finance Ltd* [2004] EWCA Civ 315, [2004] 2 BCLC 662 at [41] (Chadwick LJ delivering the judgment of the Court of Appeal). At the hearing, I nevertheless did not understand counsel for Mr Shlosberg to dispute the proposition advanced by counsel for the Applicants which I have recorded in paragraph 57 above; but instead to argue that, upon the facts of the present case, there was no real prospect of a surplus arising in the liquidation of Webinvest, and thus it could not be concluded that it was in accordance with the purposes for which the section 366 power was conferred for the Trustees to share Compulsion Material with the Liquidators. In his note dated 5 October 2017 counsel for Mr Shlosberg states that the proposition advanced by counsel for Applications is disputed. He submits that it must be shown that the

disclosure of the material to the liquidators of an insolvent company will actually be of benefit to the insolvent estate of the parent company or shareholder. I do not accept this submission for the following reasons. Counsel for Mr Shlosberg submits that the observations of Dillon LJ in *Re Esal* at 480 quoted above have to be considered in the context of the facts of that case, which were that the parent company had two solvent subsidiaries which undoubtedly held assets of value. I disagree with this. In my view the observations of Dillon LJ are a general statement of principle which explicitly applies to the situation where both parent and subsidiary are insolvent (and where the liquidators of both are from the same firm, as here). 64. Furthermore, it is not necessarily correct that the two subsidiaries in question were both solvent. Dillon LJ expressly stated at 481 that “the two American subsidiaries are in liquidation, or the equivalent, in the US”. He had previously stated at 477 that there 65. 66. 67. 68. 69. 70. were “two American subsidiaries, *Esal (US) Inc* and *Chadbourn Industries Inc*”. He also stated that *Chadbourn* was wholly owned by *Esal* which was wholly owned by the parent company and that *Chadbourn* owned the *Holland Hotel* in New York “which was said to be of value”. There is no analysis in Dillon LJ’s judgment of the financial position of either *Chadbourn* or *Esal*. Still further, Dillon LJ concluded that disclosure could be made to all five subsidiaries of the parent company (see 477 and 482). These included an English subsidiary called *Shadereed Ltd* which Dillon LJ expressly stated at 481 “is in liquidation”. Given that he stated at 478 that the *Holland Hotel* and a shareholding which a subsidiary called *Jokai Tea Holdings Ltd* held in an Indian company that owned a tea plantation were “the only remaining assets of substance of the group”, it appears that *Shadereed* did not have any substantial assets. I am prepared to accept that, in concluding that disclosure of compulsorily-obtained material by the liquidators of the parent to the liquidators of those subsidiaries was proper, Dillon LJ may have proceeded on the basis that there was a real, as opposed to a fanciful, prospect of the parent company’s estate receiving some value from those subsidiaries. I do not accept that it can be inferred that he considered that disclosure would definitely benefit the parent. Counsel for Mr Shlosberg also relies upon Dillon LJ’s reference in *In Re Arrows* (No

- 4) to disclosure to “solvent subsidiaries which are not in liquidation at all” “for the ultimate benefit, indirectly, of the winding up of the parent company”. But Dillon LJ expressly stated at 394H that this was “an instance” where disclosure was proper. He did not address insolvent subsidiaries in this passage, and it cannot be inferred that he intended to confine his earlier statement of principle either to solvent subsidiaries or to cases where it was clear that there would be a benefit to the parent. Finally, counsel for Mr Shlosberg relies upon the statement of Lord Cameron in *First Tokyo* at 410H-411A that in *Re Esal* “the court was concerned with disclosure of material to directors or liquidators of subsidiaries to assist them in getting assets or defending assets for benefit not merely of the subsidiary but also the parent company itself”. I do not accept that Lord Cameron was intending to limit the breadth of the principle stated by Dillon LJ, however, and in any event I am bound by *Re Esal* and not by *First Tokyo*. Thus I do not consider that counsel for Mr Shlosberg’s submission is

supported by the authorities. Moreover, it seems to me that it is impracticable. It will often be the case that, at the time that office-holders need to decide whether or not to disclose compulsorily-obtained material to the liquidators of an insolvent company, the prospects of recovery from that company are uncertain. It is not unknown for apparently insolvent estates to turn out to be solvent after all. I turn, therefore, to consider counsel for Mr Shlosberg's argument that there is no real prospect of a surplus arising in the liquidation of Webinvest. In support of this argument, he pointed out that, on the evidence, Webinvest has at best four assets: (i) depositary receipts worth £507,000, (ii) bank funds worth £57,000, (iii) the Conspiracy Claim for US\$172 million (about £130 million) plus interest (say £18 million by Summer 2018) and (iv) the Edelweiss Claim for £3.423 million plus some interest, a total of about £152 million. Against this, Webinvest owes £134 million to Avonwick together with contractual interest at 24% per annum (say £58 million by Summer 2018) and the liquidation costs are at least £280,000 so far. Even assuming full recovery on the Conspiracy Claim and the Edelweiss Claim, and ignoring an alleged debt of £52 million claimed by Castle, which has not been accepted by the Liquidators, this suggests that there will be a deficiency of £40 million. In their letter dated 4 October 2017 Mr Shlosberg's solicitors claim that the only basis upon which the debt to Castle has been disputed by the Liquidators is that the debt is extinguished by a cross-claim, namely the Conspiracy Claim. Thus it is said that the true deficiency is £92 million. This is disputed by counsel for the Applicants. Furthermore, there is a live issue in both the Conspiracy Claim and the Edelweiss Claim as to whether Castle itself is an asset that should form part of the bankrupt estate. Counsel for the Applicants' principal answer to this argument was to point out that it ignored any prospect of independent recoveries by the Trustees which might produce a dividend for Avonwick. If, for example, the Trustees were successful in the Possession Proceedings and were able to realise the value of the two properties in question, then Avonwick's claim against Webinvest would be significantly reduced. Furthermore, he pointed out that both the Trustees and the Liquidators were continuing to investigate the potential assets falling within their respective estates. Accordingly, he submitted that there was a real prospect of a surplus arising in the liquidation of Webinvest which would benefit Mr Shlosberg's bankrupt estate. Counsel for Mr Shlosberg argues in his note dated 5 October 2017 that the value ascribed to the two properties of £40 million (see paragraph 40 above) was unsupported by evidence. As he accepts, however, the evidence in the Possession Proceedings refers to a desktop valuation of £38-40 million, although he submits that that (a) is unreliable and (b) ignores the costs of recovery and realisation. Moreover, the valuation of the properties is admitted by the other defendants to the Possession Proceedings. I accept the submission of counsel for the Applicants on this point. Although I agree that it presently appears unlikely that there will be a surplus arising in the liquidation of Webinvest, I do not consider that the prospect is merely fanciful. Accordingly, it is not necessary for me to consider counsel for the Applicants' wider argument that the principle articulated by Dillon LJ in the passages cited above is not limited to cases where there is a real prospect of benefit to the estate of the parent company or shareholder. All I will say, therefore, is that I have some doubt about the correctness of that proposition. Counsel for the Applicants submitted that the Trustees did

not need the permission of the Court in order to share Compulsion Material with the Liquidators in accordance with the principles discussed above. In my view this question is academic, since the Court has been asked to rule upon the propriety of what the Trustees are proposing to do (and, to some extent, have already done). All I will say, therefore, is that my provisional view is that counsel for the Applicants is correct. 71. 72. 73. 74. 75.

Unearthing of dishonesty or other malpractice 76. Counsel for the Applicants submitted that an additional purpose of the powers conferred on an office-holder to compel production of material is to facilitate discovery of dishonesty or other malpractice by bankrupts and officers of insolvent companies. Discovery of such dishonesty or malpractice serves public interests and not merely the private interests of the direct stakeholders in the insolvency proceeding in question. In support of this submission he relied in particular upon the following passage from the judgment of Dillon LJ in *Bishopsgate v Maxwell* at 31 which was cited with approval by Lord Walker of Gestingthorpe in *In Re Pantmaenog Timber Co Ltd* [2003] UKHL 49, [2004] 1 AC 158 at [82]: “It is plain to my mind - and not least from the Cork Report - that part of the mischief in the old law before the Insolvency Act 1985 was the apparent inability of the law to deal adequately with dishonesty or malpractice on the part of bankrupts or company directors... That was a matter of public concern, and there is a public interest in putting it right. As steps to that end, Parliament has, by the Act of 1986, greatly extended the investigative powers available to office-holders, with the assistance of the court, and has expressly placed the officers of the company, and others listed in section 235(3), under a duty to assist the office-holder.” 77. 78. 79. Counsel for Mr Shlosberg accepted that the discovery and remedying of dishonesty or other malpractice by bankrupts and officers of insolvent companies was within the purposes for which office-holders could use compulsorily-obtained material without the permission of the Court, but submitted that this was limited to disclosure to public authorities for the purposes of criminal investigations and directors’ disqualification proceedings. Counsel for the Applicants submitted that there was no such limitation, and pointed out that one of the “three principal procedures available on winding up for the protection of the public” identified by Lord Walker in *Pantmaenog* at [79] was “summary proceedings for misfeasance or some other breach of duty” now based on sections 212-214 of the 1986 Act. Such proceedings are private law causes of action vested in liquidators. It follows that disclosure to public authorities is not the only way in which material which has been compulsorily obtained may properly be used to discover and remedy dishonesty and malpractice. In his note dated 5 October 2017 counsel for Mr Shlosberg accepts that compulsorily- obtained material raising issues of dishonesty or malpractice may be used by the office-holders themselves for the bringing of proceedings for the benefit of their own estate; but he submits that it does not follow that office-holders may share such material with third parties without the leave of the court simply because it raises issues of dishonesty or malpractice and that the cases of *Re Esal Commodities Ltd* (No

- 2) [1990] BCC 708 and *First Tokyo* are authority for the contrary proposition. 80. On further reflection, I consider that counsel for Mr Shlosberg’s submission is well founded. Although in *Re Esal* (No 2) permission was required because of an earlier agreement to that effect, in

First Tokyo Lord Cameron appears to have proceeded 81. upon the basis that permission was required and refused to give it. Furthermore, the decisions of Harman J in *Re a Company* No. 5374 of 1993 [1993] BCC 734 and the Court of Appeal in *Sutton v GE* cited by counsel for the Applicants are both consistent with this. I therefore turn to consider whether permission should be granted in the present case. Counsel for the Applicants relied upon the fact that the claims made by the Liquidators (together with Webinvest) in both the Conspiracy Claim and the Edelweiss Claim involved allegations of impropriety, in the former case by Mr Shlosberg and in the latter case by Ms Prokofyeva and the then directors of Webinvest. Counsel for the Applicants also relied upon the fact that Webinvest appeared to be Mr Shlosberg's business vehicle and upon the alleged involvement of Mr Shlosberg, directly or indirectly, in the wrongdoing complained of. In both the Conspiracy Claim and the Edelweiss Claim, it is alleged that the wrongdoing was part of a dishonest scheme on the part of Webinvest and Mr Shlosberg to divest themselves of their assets in order to put them beyond the reach of their respective creditors. In those circumstances, I consider that disclosure is justified. Accordingly, I shall grant permission to the Trustees to make it. A note of caution 82. 83. I think it is appropriate to add a short note of caution. In my view it does not necessarily follow from the analysis above that it would be proper for the Trustees to share all the Compulsion Material currently in their possession with the Liquidators. Rather, the Trustees need to consider in respect of each category of documents whether disclosure to the Liquidators would serve one of the two purposes considered above. On the other hand, I should make it clear that I do not consider that any problem arises in this regard out of Mr Willmont's position as both Trustee and Liquidator. If it is not lawful for the Trustees to disclose any Compulsion Material to the Liquidators, then it will not be lawful for the Liquidators to use that Compulsion Material for the purposes of the liquidation, such as by deploying the Material in the Conspiracy Claim and/or the Possession Proceedings. Disclosure Material 84. 85. The second category of material consists of documents disclosed by Mr Shlosberg in the Conspiracy Claim ("Disclosure Material"). The proper use of disclosure documents in the Possession Proceedings and in the Edelweiss Claim may arise in the future, but is not ripe for consideration at this stage. The issue here is whether the inspection by Mr Willmont as Liquidator, or by Dechert as the Liquidators' solicitors, of documents disclosed in proceedings to which the Liquidators are a party constitutes a breach of CPR rule 31.22(1), which provides as follows: "A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where- (a) the document has been read to or by the court, or referred to, at a hearing which has been held in public; (b) the court gives permission; or (c) the party who disclosed the document and the person to whom the document belongs agree." 86. It is common ground that the word "use" in the rule is to be given its natural meaning, and covers merely reviewing documents. Accordingly, review of a document for a purpose unconnected with the proceedings in which the document was disclosed is not permitted unless one of paragraphs (a), (b) or (c) applies: see *Tchenguiz v Grant Thornton UK LLP* [2017] EWHC 310 (Comm), [2017] 1 WLR 2809. This is subject to the qualification articulated by Knowles J in that case at [31] as follows: "If ... the purpose of the review of documents

disclosed in litigation was to advise on that litigation, but when undertaken the review showed that other proceedings would be possible or would be further informed, then (i) the review would not have been for a collateral purpose, (ii) a further step would be a use for a collateral purpose, but (iii) the use of the document for the purpose of seeking permission or agreement to take that further step would be impliedly permitted.” 87. 88. 89. The Applicants contend that, as a Liquidator, Mr Willmont may without the need for permission review Disclosure Material and that that review would not be a collateral use even if it shows that the Trustees might fruitfully commence proceedings or take a more informed view in proceedings they had already commenced. They accept, however, that any further use by Mr Willmont of Disclosure Material, including through deployment of the information thereby obtained, is prohibited except where one of the exceptions in rule 31.22(1) applies, whether that use is in his capacity as Liquidator or otherwise. Counsel for Mr Shlosberg submitted that the problem with this analysis was that it did not address the risk of unconscious use of the documents by Mr Willmont for purposes other than those of the proceedings. Once he had read the documents in his capacity as Liquidator, he would not be able to put their contents out of his mind and there was a risk that he might unconsciously use that information in his capacity as Trustee. The same problem arose out of Dechert’s dual role as solicitors to the Liquidators and to the Trustees. He further submitted that there was an obvious solution to the problem, which was for Mr Finch to inspect documents disclosed to the Liquidators and for the Liquidators to instruct different solicitors. I am not persuaded that there is any real risk of unconscious use of Disclosure Material by Mr Willmont or by Dechert for purposes other than those of the proceedings. Mr Willmont is an experienced insolvency practitioner and Dechert are experienced solicitors. They will be well aware that they cannot use the information in the documents disclosed by Mr Shlosberg for any purpose other than that of the proceedings unless one of the exceptions applies. This is not a situation like that which arises where the documents contain a trade secret and the inspecting party is a commercial competitor of the disclosing party, when unconscious use can be a real risk unless safeguards are put in place. Privileged Material 90. The third category of material consists of material over which Mr Shlosberg has a claim to privilege which is not joint with Webinvest (“Privileged Material”). The Court of Appeal held in *Schlosberg v Avonwick* that, save for the documents in category (i) referred to above, the benefit of Mr Shlosberg’s privilege had not been transferred to the Trustees, but was retained by Mr Shlosberg. 91. The Trustees seek the Court’s approval of a Privileged Material Segregation Protocol for the protection of Mr Shlosberg’s privilege. This operates as follows: i) ii) iii) iv) any material that might be Privileged Material has been removed from, and is not placed on, any systems to which Mr Willmont and Dechert may have access; any such material is provided to Moon Beaver, who review it in consultation with Ms Sayers, with assistance from independent counsel where appropriate; material which upon review Moon Beaver consider either (a) not Privileged Material or (b) not relevant to Webinvest’s liquidation, is provided to Mr Willmont and Dechert; and, material which Moon Beaver identify as Privileged Material and relevant to Webinvest’s liquidation is kept segregated from other material held by the Applicants, and in particular is withheld from Mr Willmont

and Dechert. 92. Counsel for Mr Shlosberg submitted that the Privileged Material Segregation Protocol did not adequately protect Mr Shlosberg's privilege. He further submitted that the risks were demonstrated by the fact that Mr Willmont had already reviewed some Privileged Material.

93. Mr Willmont has explained in his evidence on the present application that, whereas at the time of the Privilege Application the Applicants and Dechert had understood that two of the Fladgate CDs related to Mr Shlosberg and Webinvest's dispute with Avonwick, and therefore were subject to the joint privilege of Mr Shlosberg and Webinvest (subject to the issue over the transfer of Mr Shlosberg's privilege to the Trustees), it subsequently emerged that one of the CDs (referred to as to the "MS Bankruptcy CD") contained material relating to Fladgate's instruction by Mr Shlosberg in relation to the statutory demand served upon him by Avonwick, and thus was subject to the sole privilege of Mr Shlosberg (i.e. Privileged Material). Mr Willmont has apologised for unwittingly misleading the Court in this respect. In addition, Mr Shlosberg contends some of the documents on the other CD (referred to variously as the "Joint Privilege CD" and the "Avonwick CD") are also Privileged Material. Mr Willmont has acknowledged that it is likely that he and Dechert have reviewed some of those documents prior to the claim for privilege being advanced.
94. Mr Willmont makes the point that this issue has arisen because of Fladgate's belief, which it now appears may have been erroneous, that the Liquidators were entitled to see the documents in question. Thus it has nothing to do with his dual role. 95. 96. Counsel for Mr Shlosberg submitted that the proper protection of Mr Shlosberg's privilege required that potentially Privileged Material should be reviewed only by Ms Sayers and Moon Beever, and not by Mr Willmont and Dechert, but he did not make any specific criticisms of the Privileged Material Segregation Protocol, which is designed to achieve just that. In my judgment, based on the evidence presently before the Court, the Privileged Material Segregation Protocol provides adequate protection for Mr Shlosberg's privilege.

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