Neutral Citation Number: [2025] EWHC 355 (Comm)

Case No: CL-2020-000367

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

The Rolls Building, Royal Courts of Justice
Fetter Lane, London

Date: 21/02/25

Before:

THE HON MR JUSTICE ROBIN KNOWLES CBE

- -

Between:

(1) ATHENA CAPITAL FUND SICAV-FIS SCA
(2) ATHENA CAPITAL REAL ESTATE AND SPECIAL SITUATIONS FUND 1
(3) WRM CAPITAL MANAGEMENT SARL
(4) RAFFAELE MINCIONE

Claimants

- and -

SECRETARIAT OF STATE OF THE HOLY SEE

Defendant

- -
- -

Charles Samek KC, Tetyana Nesterchuk and Bláthnaid Breslin (instructed by **Withers LLP**) for the **Claimants**
Charles Hollander KC, Samar Abbas Kazmi, James Bradford and Jagoda Klimowicz (instructed by **Hill Dickinson LLP**) for the **Defendant**

Hearing dates: 26-27 June; 1-5 July; 8-11 July; 17-18 July 2024

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JUDGMENT

Robin Knowles J, CBE:

Introduction

1. The Holy See is the seat of governance of the Roman Catholic Church. It is led by His Holiness the Pope and its physical location is the Vatican City. It is recognised as a permanent observer state at the United Nations. In this litigation the Secretariat of State of the Holy See has been made the Defendant. In this judgment the Defendant is referred to as "the State".

2. Within the administrative hierarchy of the State, The Substitute of The Section for General Affairs is the title and position given to a senior figure with a range of responsibilities in service of the Pope and the State. The current Substitute is His Excellency Monsignor Edgar Peña Parra, a Titular Archbishop of Thélepte. He was appointed to the position of Substitute on 15 August 2018, taking up the duties involved two months later, on 15 October 2018. He succeeded His Excellency Cardinal Giovanni Angelo Becciù.

3. About 5 years before this, in 2013 and 2014 the State borrowed US$ 200,500,000 from two commercial banking groups, Credit Suisse and Banca Svizzera Italiana. It did so in order to subscribe, through others, to an investment sub-fund of the First Claimant ("Athena Capital"). Athena Capital and its sub-funds are managed by WRM Capital Asset Management S.A.R.L. ("WRM"), the Third Claimant.

4. The sub-fund in which the State was to invest was originally named the Athena Capital Commodities Fund and later renamed the Athena Capital Global Opportunities Fund ("Athena GOF"). An earlier proposal that Athena GOF would invest in oil, in Angola, receded. A proposal to invest in property development in London took its place. A particular focus was a unique building in the Royal Borough of Kensington & Chelsea ("RBKC").

5. The author Charles Dickens made unflattering reference to Chelsea in the nineteenth century, but views differ and times change. With the address 60 Sloane Avenue, this building had been the location for motor car sales and services earlier in the twentieth century under the "Harrods" brand. The façade of the building was important, historic and distinctive in its design, and included locally sourced terracotta.

6. There was now the potential for development of the building into luxury residential apartments and offices, retail premises and leisure. No doubt not all would agree, but Mr Richard Wilkins, a professional valuer of property called as an expert witness by the Claimants opined that "Harrods is essentially the symbol of Knightsbridge". In due course there were proposals for apartments the largest of which would exceed 5,000 square feet and be assigned a proposed asking price of £27,500,000 each, or more.

7. The building ("the Property") was acquired. The State was initially involved with the Property indirectly as an investor, among others, in Athena GOF. Its indirect interest equalled 45% of the commercial position represented by the Property. The State in due course concluded that to safeguard what it had invested it would need to acquire

the entire commercial position represented by the Property. To that end a number of transactions in relation to the Property and in which the State was involved followed in late 2018 ("the Transaction", defined further below), just around the time that Msgr. Peña Parra was taking up the duties of Substitute.

8. The State ultimately exited its investment altogether with a sale of the Property in 2022. From the point of view of the State the entire enterprise from 2013 to 2018 and since was unsuccessful, and the appropriateness of the State's involvement has been questioned. This trial has concerned a dispute that resulted between the State and the four Claimants, although it sits within a wider frame.

9. Some at least may already be surprised that the Church, through the State, should have become involved in this way in commercial borrowing coupled with investment in oil or luxury property development. Whatever the questions of policy that may have been involved, on any view the evidence at the trial showed that the State itself lacked expertise in these areas of investment, but it got itself involved with and listened to others who claimed that they did have expertise.

10. These included Mr Raffaele Mincione, the fourth Claimant. Mr Mincione is an investment and fund manager. He founded the WRM Group in 2009. The Group includes WRM, and WRM Capinvest Limited ("WRM Capinvest").

This trial, and other legal proceedings

11. The State also engaged Mr Gianluigi Torzi, an Italian businessman. The State alleges that Mr Mincione knew that Mr Torzi, an Italian businessman, was intending to act in breach of duty to the State in November 2018 and that Mr Mincione and the other Claimants were "instrumental components" of a conspiracy to defraud the State and enrich themselves.

12. Events leading to this trial have also led to criminal proceedings before the Vatican criminal tribunal, including against Mr Mincione. The State was admitted as a civil party in those proceedings.

13. Mr Mincione was in due course acquitted in relation to transactions in 2018. He was however convicted in relation to events in 2013 and 2014. Mr Mincione has appealed that conviction. This Court has been told that there are appeals but these have not yet been heard. Further, a complaint has been submitted on Mr Mincione's behalf to the United Nations Office of the High Commissioner of Human Rights. The complaint includes the contention that the Vatican criminal tribunal was not an independent and impartial court.

14. The State has not brought any other claim. The Claimants have brought these proceedings before this Court in England. Two central contracts in 2018, a Framework Agreement and a Sale and Purchase Agreement ("SPA"), contained exclusive jurisdiction clauses choosing the English Court. The principal remedies sought by the Claimants from this Court are declarations. The question whether the claim seeking declarations was suitable to be tried, and tried now, was considered by the Courts in England, which held that it was.

15. As between the parties the issues are sensitive and seen as important beyond the sums of money involved. The litigation between them has attracted a considerable public profile. It has been fought by legal teams of great experience. I pay particular tribute to the mastery of detail shown in the oral closing of Mr Charles Samek KC, leading Ms Tetyana Nesterchuk and Mr Bláthnaid Breslin, and instructed by Withers LLP for the Claimants.

16. The terms of some of the declarations sought have been changed by the Claimants in the course of the proceedings, and a number are no longer pursued. The State asks the Court to refuse the declarations sought. Among other things they have no purpose, it says.

17. Ultimately a total of 31 declarations are sought from this Court by the Claimants. The declarations sought are set in full in Annex 1.

Mr Mincione and Msgr. Peña Parra, the Substitute

18. In Mr Mincione's own words:

> "I'm involved everywhere when it comes to a deal".

Mr Mincione accepted he is "the guy who is leading the way" and that important matters, such as the Transaction, required his say-so.

19. His assistant was Mr Gianluigi d'Andria who sought Mr Mincione's comments and approval on anything important. On the evidence of Mr Julian Jacobson, Chairman of the Board of WRM Group Holdings SA, Mr Mincione decided who played what role in the companies involved and could move people around at will within the group structure.

20. Mr Mincione and Msgr. Peña Parra are from different worlds. Since 2018 they have grown to distrust each other and each other's world. There was Mr Mincione, a flamboyant deal maker, stimulated by the world of business. Then there was the steadier Msgr. Peña Parra, for all his seniority in the Catholic Church, finding himself and his office out of their depth or overwhelmed in terms of financial administration.

21. Msgr. Peña Parra addressed the challenge of administration in his evidence:

> "… I found in the administrative office they are very good people … but superficial many times and naïve others. What I have is a systematical methodology of work based on confidence to them.
>
> … Imagine that I take care of 184 embassies, but I believe in the people who bring to me things and I sign it.
>
> Sir, if I read every paper that I receive every day, every day, carefully, I will need to have the eternity to do my job.
>
> We have people working for us. I have today, but I had the office of administrative office. I believe on them at that moment. I don't have any reason to control every particular things of that, because we study the situation. …

> I am not an expert in things – in transaction with London or with whatever country. My previous experience was a very simple experience as an ambassador, but not somebody doing things with the – of this amount of money. And I believe, I believe in them. I believe in them.
>
> …
>
> On the year 2019, I prepared for the Holy Father, it was the year that the Holy Father travel a lot, and I prepared six Apostolic visits of the Holy Father to different countries.
>
> …
>
> I'm not in charge of the – still now of the administrative office."

22. As Substitute, in my assessment, Msgr. Peña Parra found himself tangled in a world of business in which he was inexperienced and inexpert and with insufficient time at his disposal. He was also affected by a sense of disappointment in what he believed he was seeing or coming to understand of the behaviour of others outside the State.

23. The pursuit of return on investment had taken the eye of the State off the nature and consequences of its investments. It found itself involved in the type of investment that required a close and experienced assessment of how to engage, step by step, and with whom, individual by individual. The reality today is that the management of wealth on the scale involved needed greater strategy, experience and expertise than it had. The descriptions available to me did not show that these attributes could be found within the State.

24. Remarkably the line of decision making as regards investments and their management, reached His Holiness the Pope himself. This brings further into question the realism of the State itself managing successfully to sustain the type of involvement in investment it was attempting.

25. Both the Substitute and Mr Mincione gave oral evidence at the trial before this Court. The evidence of each had its imperfections. The age, complexity and uncertainty of things meant that it would expect too much of either that they would always be accurate. There is also the point that each had, for different reasons, at the time of events focused on how things would appear to others or publicly, and this came to have its effect in how they saw things.

26. Mr Mincione's strong feelings about the dispute and the allegations he has faced affected the quality of his account in places. In any event his experience lay in finding business opportunities rather than the detail of transactions. His recollection was imprecise.

27. On the other hand, and respectfully, Msgr. Peña Parra's account of an information note he had written, allowed a glimpse, under close cross examination, that he too could not always be expected to be a wholly accurate source of evidence. That is not, however, an observation about his honesty generally (which was not on trial, and which I have no good reason to doubt) or the honesty of his evidence at trial (which I accept).

28. At one point in the cross examination of Msgr. Peña Parra by Mr Samek KC there was this exchange:

> "Mr Samek KC: Monsignor Peña Parra, this isn't about banking skill, this is about honesty, and you were not being honest with Credit Suisse, were you?
>
> Msgr. Peña Parra: Yes, thank you.
>
> Mr Samek KC: You were not being honest with Credit Suisse, because you were sending them a false invoice as if it was genuine, weren't you?
>
> Msgr. Peña Parra: You said that I was not honest. I accept that.
>
> …
>
> Msgr. Peña Parra: I would like, my Lord, to remember, a very humble way, that I, for sure, is responsible for what I did.
>
> …
>
> Msgr. Peña Parra: I am the responsible – I take my responsibility. I'm here because I feel responsible. But I ask this court to understand what is my role at the Vatican, no?".

These are striking exchanges, but it is very important that what the Substitute was saying is understood properly and in context. In my judgment it involved acceptance of personal imperfection or a degree of failure, and not of bad faith or dishonesty in the ordinary sense of the word.

Mr Mincione and Mr Torzi

29. There had been earlier or separate dealings between Mr Mincione and Mr Torzi and the companies with which they were involved.

30. Mr Torzi led the company Sunset Enterprise ("Sunset"), among other companies. Following a pitch by Sunset in June 2018, Athena GOF made a separate subscription of €10 million in bonds issued by the company Sierra One SPV Srl. WRM on behalf of Sunset agreed to buy the bonds back from Athena GOF for a pre-determined price on 16 July 2018. When the time came it did not do so.

31. Mr Mincione sent Mr Torzi invoices for what were described as consultancy services in July 2018 (for €500,000) and December 2018 (for €1 million). In cross-examination Mr Mincione confirmed that these invoices were paid and stated that:

> "… we did a lot of deals and he was supposed to give me money".

He could not recall what the invoices were for specifically because "there were so many".

32. Mr Mincione took out a personal loan from Mr Torzi on 3 October 2018. He said this was also a repayment for "a lot of business that we did". Their business dealings involved a proposed development project in America.

33. By early November 2018, Mr d'Andria and Mr Torzi were discussing a delay in a repayment by Mr Mincione of a loan. It was in the interests of both Mr Mincione and Mr Torzi that a margin call was paid in late 2018 in connection with an, ultimately unsuccessful, strategy by Mr Mincione and others to control a bank known as Banca Carige.

34. Alongside the transactions and events just mentioned there was other contact with Mr Torzi. Mr Mincione's assistant, Mr d'Andria, spent time with Mr Torzi. They went to an Inter Milan football game, and there was an invitation to a "small, very informal" birthday party at Mr Torzi's house in January 2019. Mr Torzi introduced Mr Mincione to the Prime Minister of Libya in September 2018 and Mr Mincione also attended a conference organized by Mr Torzi in October 2018.

35. By November 2018, Mr Mincione had also got to know quite well a lawyer, Mr Nicola Squillace, who was based in Milan. Mr Squillace worked with Mr Torzi but throughout 2018 on several occasions Mr Squillace asked to meet Mr Mincione alone. There was an invitation to eat risotto at Mr Squillace's house. Mr Squillace sent WhatsApps to Mr Mincione asking to meet him for a coffee.

36. The State describes the financial interests of Mr Mincione and Mr Torzi as "intertwined". When it came, as described in more detail below, to dealings that affected others, including the State, the State contends that it is unlikely that Mr Mincione and Mr Torzi were truly looking after the interests of others, rather than themselves. My assessment is that there were clear risks that objectivity could be compromised, but each situation falls to be examined on its particular facts.

Acquisition of the Property and further related dealings

37. The Property was originally put up for auction by Deka Immobolien Investment GmbH, a pension fund.

38. The marketing of the Property involved extensive information being made available to prospective buyers over a period of time and the use of a data room. Various reports were commissioned including a measured survey of the Property, a building survey report including an estimate of maintenance costs, and an assessment of essential and upgrade refurbishment works.

39. The Jersey-based company 60 SA Ltd ("60 SA") contracted to purchase the Property on 19 September 2012. On 17 December 2012, 60 SA entered into a £75 million Term and £4.5 million Capital Expenditure Facility Agreement with Deutsche Bank AG in connection with the purchase. The purchase was completed by 60 SA for £137 million on 18 December 2012. The facility was later refinanced.

40. Further companies were introduced into the structure. 60 SA owned the Property and was owned by 60SA-1 Limited which was in turn owned by 60SA-2 Limited. 60 SA-2 Limited was an asset of Athena Capital Real Estate and Special Situations Fund 1 ("RESS1"), the Second Claimant and itself a sub-fund.

41. There were a number of valuations of the Property at this time. These included by Sloane & Cadogan, who valued the Property on 19 June 2014 at the request of the State. CBRE valued the Property on 22 July 2014 at the request of 60 SA.

42. Mr Giulio Corrado an investment and fund manager employed by WRM Capinvest, gave evidence. On the whole, he sought in his evidence to be precise so as to help the Court. There were April 2016 negotiations with a Qatari-based fund, Constellation Holding, to purchase the Property for around £360 million. On 26 April 2016 WRM Capinvest and 60 SA entered into an Investment Advisory Agreement. This was said to be effective 1 January 2013, but later on, in April 2018, they would enter into a new Investment Advisory Agreement.

43. On 31 December 2016 planning permission was granted by RBKC to demolish and redevelop the Property, behind the Harrods façade, so as to add two new floors and create 49 luxury residential apartments and offices, retail and leisure. To remain valid this permission had to be implemented within 3 years. At the instance of RBKC a "section 106 planning agreement", imposing legal obligations to mitigate the impacts of the development proposal, was also entered into on 30 December 2016.

44. At the point at which Msgr. Peña Parra was appointed as the Substitute in 2018, the State's involvement with the Property was as a significant investor in a fund that was significantly invested in the Property. One month after Msgr. Peña Parra took up the duties of Substitute, in mid November 2018, Mr Mincione was advised by Msgr. Alberto Perlasca, then the head of the administrative office of the First Section of the State, that the State wished to buy the Property itself and that Mr Torzi was authorised by the State to conclude the purchase.

"The Transaction"

45. On 19 November 2018 Mr Mincione and Mr Torzi met to agree key terms. A further meeting took place on 20 November 2018. On or in the days following 22 November 2018, the Framework Agreement, the SPA and a Letter of Comfort were entered into, with other documents.

46. The Transaction is defined and described by the Claimants as follows:

> "7 In order to give effect to the Holy See's desire and intention to become the ultimate beneficial owner and controller of the Property, it was agreed (as between the parties to the contracts referred to in paragraph 8 below and as recorded in those contracts) that:
>
> 7.1. The Holy See would, acting by its agent - a company incorporated in Luxembourg, Gutt SA ("Gutt") – purchase all the shares of 60 SA-2 from RSS1, acting by its agent for such purpose, Athena Capital.
>
> 7.2. The consideration for the sale 60 SA-2 Shares was to consist of the aggregate of (i) a fixed cash sum of £40 million to be paid by Gutt and (ii) the transfer by the Holy See of the Athena GOF Shares."

47. On the Claimants' formally stated or pleaded case:

> "8 The contracts and related documents (the "contractual documents") for the Transaction were and are as follows:
>
> 8.1. A Framework Agreement dated [22 November 2018] and made between Gutt (as Purchaser), Athena (as Seller, representing RSS1 – Athena duly represented

by its General Partner WRM) and the Holy See (the "Framework Agreement"). Msgr. Alberto Perlasca executed the Framework Agreement on behalf of the Holy See. The Framework Agreement is subject to English law and the jurisdiction of the Courts of England and Wales.

8.2. A Sale and Purchase Agreement for the 60 SA-2 Shares dated [3 December 2018] between Gutt (as Purchaser) and RSS1 (as Seller, represented by Athena Capital, in turn duly represented by its General Partner WRM) (the "SPA"). The SPA is subject to English law and the exclusive jurisdiction of the Courts of England and Wales.

8.3. A Transfer Agreement relating to the transfer of shares in [Athena] GOF dated [3 December 2018] and made between the Holy See (as Transferor), RSS1 (as Transferee, duly represented by its General Partner WRM) and Athena GOF (the "Transfer Agreement"). The Transfer Agreement is subject to Luxembourg law and the exclusive jurisdiction of the Courts of Luxembourg. (For the avoidance of doubt, no claim is made by the Claimants in this action and in the Courts of England and Wales under or in respect of the Transfer Agreement.)

8.4. A letter of authority written by the Holy See dated [22 November 2018] and submitted by it to Athena and RSS1 (the "Letter of Authority").

8.5 A comfort letter written by the Holy See dated [23 November 2018] and submitted by it to RSS1 (the "Comfort Letter").

8.6 A written opinion of TheMIS Lex Avocats dated [3 December 2018] (the "TheMIS Lex Opinion").

8.7 A written resolution of Gutt's board of directors/managers dated [27 November 2018] inter alia approving Gutt's entry into the SPA and associated documents. (the "Gutt Resolution")"

Provisions in the Framework Agreement

48. The Framework Agreement included these recitals:

"…

(A) The Purchaser is instructed and funded by The Holy See in connection with the acquisition of the Shares as described in this Framework Agreement and has full authority to negotiate this Framework Agreement and any other documentation required to effect the Transaction (as defined below).

(B) The Holy See is the sole beneficial owner, through Credit Suisse London Nominees Limited ("CS") acting as registered shareholder on behalf of The Holy See, of the no. 200,713.71 Class 1 Shares (ISIN LU0878427896) (the "GOF Shares") of ATHENA CAPITAL GLOBAL OPPORTUNITIES FUND ("GOF"), a sub-fund of ATHENA CAPITAL FUND SICAV-FIS S.C.A., an investment company with variable capital – specialized investment fund (société d'investissement capital variable – fonds d'investissement spécialisé) organised under the laws of the Grand Duchy of Luxembourg (Luxembourg) as a corporate partnership limited by shares' (société en commandite par

actions – S.C.A.) subject to, and authorised under, the Luxembourg law dated 13 February 2007 on specialised investment funds and the Luxembourg law dated 10 August 1915 on commercial companies, as amended, supplemented or re-enacted from time to time, with registered office located at … Luxembourg registered with the Luxembourg trade and companies register under the number B 167355, duly represented by the General Partner.

(C) 60 SA 2 LIMITED is a private limited company incorporated in Jersey, Channel Islands (registered number 111353) whose registered office is at … Jersey … (the "Company") having a share capital of GBP 45,500,000 (forty-five million five hundred thousand) fully paid ordinary shares (the "Shares")

(D) The Seller is the sole legal and beneficial owner of the Shares that constitute 100% of the share capital of the Company.

(E) The Company is the sole legal and beneficial owner of 100% of the share capital of 60 SA-1 Limited, a private limited company incorporated in Jersey, Channel Islands (registered number 111352) whose registered office is at … Jersey … ("60SA1")

(F) 60SA1 is the sole legal and beneficial owner of 100% of the share capital of 60 SA Limited, a private limited company incorporated in Jersey, Channel Islands (registered number 109799) whose registered office is at … Jersey … ("60SA") (the Company, 60SA1 and 60SA2 together, the "Sale Group").

(G) 60SA is the sole legal and beneficial owner of the freehold property located at 60 Sloane Square Avenue, SW3 3XB (the "Property").

(H) Planning permissions PP/16/03878 and PP/16/03873 were granted on December 30, 2016, and subject to an "Agreement Pursuant to s.106 of the Town and Country Planning Act 1990 relating to land at 60 Sloane Avenue, London, SW3 3XB and 253-261 Kensal Road, London, W10 5DE, PP/16/03878 and PP/16/03873" with (amongst others) The Mayor and Burgesses of The Royal Borough of Kensington and Chelsea (the "Planning Permission").

(I) The Planning Permission, among other things, provides that "Restriction on Occupation of the Residential Units – Not to permit the installation of the M&E Services as part of the Sloane Avenue Developments until the construction of the ground floor slab on the Kensal Road Developments has been completed" (see: Planning Permission, schedule 2, paragraph 8.).

(J) It is intended that the Seller and the Purchaser will enter into a binding sale and purchase agreement ("SPA") in respect of the Shares for a consideration consisting of (a) a fixed cash consideration and (b) the transfer to the Seller of the GOF Shares, so that the Purchaser becomes the owner of 100% of the share capital of the Company (as well as, in turn, indirectly, the owner of 100% of the share capital of 60SA1 and 60SA).

(K) The Holy See currently intends, given the positive progress and developments having occurred in respect of the management of GOF by the

General Partner including, for example, the value creation arising from the Planning Permission, to consummate the Transaction, which will enable the Holy See to take control of the Property through the ownership of the Sale Group. The Property has become a strategic asset for the Holy See and retains significant upside potential. As a result, The Holy See wishes to exercise greater oversight of the Property through the Purchaser as its agent whom it is anticipated will carry out future strategic decisions relating to the development of the Property. The Holy See has determined that the Purchaser is suitably experienced and qualified for this purpose.

(L) The Holy See has had, as an indirect investor in the Fund via the investment in GOF, an interest in respect of the Sale Group for approximately 4 years and has, as an indirect and separate matter, taken the decision to propose and engage in the Transaction.

(M) Each of the Purchaser and The Holy See is aware that the Property is subject to security interests in connection with a loan granted to 60SA pursuant to a loan agreement and that such loan agreement is subject to early prepayment upon the current investment advisor

(N) The Seller, the Purchaser and the Holy See acknowledge and confirm the statements in the recitals above and it is the common understanding between them that such statements are the basis on which this Framework Agreement is being entered into and will be the basis on which the SPA will be entered into and completed.

(O) The Seller, Purchaser and the Holy See wish to record in this Framework Agreement their common understanding of the material terms of the SPA (all of which are, for the avoidance of doubt, acknowledged and understood by the Holy See)."

49. The Framework Agreement included these provisions:

"…

3: PURCHASER'S AND HOLY SEE'S REPRESENTATIONS AND WARRANTIES FOR THE PURPOSES OF THIS FRAMEWORK AGREEMENT

3.1. The Purchaser and The Holy See jointly and severally represent and warrant to the Seller that:

(a) (i) in the case of the Purchaser, it is duly organized and validly existing companies, operating under their representative applicable laws; they have all authorizations, licenses and approvals required for conducting their respective activities; they are not subject to any liquidation or insolvency procedures, to the extent applicable, nor have they applied for admission to such procedures, nor has any such application been filled or threatened in writing by any third party, and (ii) in the case of The Holy See, it is the duly organized entity which, operating according to the respective applicable laws, manages the general administrative

operations of the sovereign State of Holy See; it has all authorizations, licenses and approvals required for conducting its activities;

(b) the entry into and performance by it of this Framework Agreement does not and will not (i) breach any provisions of its articles of association, by-laws or equivalent constitutional documents, nor (ii) result in a breach of any laws or regulations applicable to it, or of any order, decree or judgment of any court or any governmental or regulatory authority;

(c) all consents, approvals, authorizations and other requirements provided for under any applicable law, which must be obtained or satisfied for the execution and consummation of this Framework Agreement by it, have been or will be obtained and satisfied by the Closing Date;

(d) The Holy See is the beneficial owner of the GOF Shares free from any encumbrances.

(e) the Purchaser and/or The Holy See, have (and on the Closing Date shall have), sufficient funds and full unfettered authority to instruct the transfer of the GOF Shares in order to pay the Purchase Price due for the sale and purchase of the Shares envisaged in Clause 1.2 (Purchase Price and Closing) and to make all other necessary payments of fees and expenses in connection with the Transaction and the consummation of this Framework Agreement and/or the Final Agreements; and

(f) the negotiations in connection with the Transaction and for the consummation of this Framework Agreement have been carried on by the Purchaser, on behalf of The Holy See, directly with the Seller and no agent, broker, investment bank, person acting on behalf of the Purchaser and/or the Holy See is or will be entitled to claim any fee vis-à-vis the Seller in connection with the Transaction.

3.2. Each of the Purchaser and the Holy See acknowledges that the Seller has entered into this Framework Agreement in reliance of the representations and warranties given by the Purchaser and the Holy See in this Clause 3.

4: FURTHER REPRESENTATIONS BY THE HOLY SEE FOR THE PURPOSES OF THIS FRAMEWORK AGREEMENT

4.1. In consideration for the mutual representations and understanding between the Parties, the Holy See hereby further represents, acknowledges, confirms and agrees to the Seller (and shall be deemed to have represented, acknowledged, confirmed and agreed at the Closing Date that):

a) it has had the opportunity to carry out all relevant assessments and assumptions in respect of the Transaction and/or the Shares and/or the Sale Group and/or the Property.

(b) it shall notify CS of the existence of this Framework Agreement and procure that CS obtain all necessary approvals and execution of documents in order to consummate the Transaction and execute the Final Agreements (to the extent pertaining to CS);

(c) it has engaged the Purchaser to perform the role as Purchaser in connection with the purchase of Shares in connection with the Transaction.

4.2 In consideration for the mutual representations and understanding between the Parties, the Holy See hereby further acknowledges, confirms and agrees, also for its controlled companies and/or entities (and shall be deemed to have acknowledged, confirmed and agreed at the Closing Date that), and shall procure that on or before the Closing Date also CS irrevocably and unconditionally acknowledges, confirms and agrees, that it does not and shall not have any claims of any kind, rights and causes of action, (relating to obligations, actions, damages, costs, expenses and compensations) whether known or unknown, direct or indirect, irrespective of their legal nature and whether past, present or future against the Seller, the General Partner and any of their affiliates (including, for the avoidance of doubt, the Seller's managers and/or principals, as well as representatives and consultants), which are a result of or connected with any acts, omissions or events in respect of any matters relating to the Transaction or any part thereof, the Shares and/or the Sale Group and/or the Property and/or the GOF Shares and any investment and/or holding in GOF (including the GOF Shares) and in any other fund and/or entity managed by the General Partner, including without limitation as regards any past, present or future tax liabilities.

4.3 With effect from Closing, the Holy See hereby it irrevocably and unconditionally waives, and forever releases the Seller, the General Partner and any of their affiliates (including, for the avoidance of doubt, the General Partner's managers and/or principals, as well as representatives and consultants), from, any and all claims, of any kind, rights and causes of actions, demands, obligations, actions, damages costs, expenses and compensations whether known or unknown, direct or indirect, irrespective of their legal nature and whether past, present or future, against the Seller, the General Partner and any of their affiliates (including, for the avoidance of doubt, the Seller's managers and/or principals, as well as representatives and consultants), which are a result of or connected with any acts, omissions or events in the period up to the Closing Date in respect of any matter relating to the transaction or any part thereof, the Shares and/or the Sale Group and/or the Property and/or the GOF Shares and any investment and/or holding in GOF (including the GOF Shares) and in any fund and/or entity managed by the General Partner, including without limitation as regards any past, present or future tax liabilities.

4.4 Each of the Purchaser and the Holy See acknowledges that the Seller has entered into this Framework Agreement and will, upon exchange and completion of the Final Agreements, have entered into such Final Agreements in reliance of the representations, acknowledgments, confirmations and agreement by the Purchaser and the Holy See in this Clause 4. Notwithstanding anything to the contrary in the Final Agreements, this Clause 4 shall survive exchange of contracts on the Final Agreement.

5.1: The Transaction is subject to the following conditions:

(a): the relevant Parties being satisfied (in good faith) with the consent of, and having executed and signed, all Final Agreements and any related documentation

required to give effect to the sale and purchase of the Shares and, more in general, to consummate the Transaction.

…"

Provisions in the SPA

50. The SPA included these provisions:

"…

6.1: The Buyer warrants to the Seller that each of the Buyer's Warranties is true and accurate at the date of this Agreement and at Completion.

…

8.8.2: Each Party (in the case of the Seller subject to Clause 8.8.3) confirms that:

(A): in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Agreement or the Agreed Form documents referred to in it; and

…

8.8.3: The Buyer acknowledges that in entering into this Agreement the Seller has relied on the representations, acknowledgments, confirmations and statements by The Holy See in para. 4 of the Framework Agreement between the Seller, the Buyer and The Holy See and dated 22 November 2018.

…

Schedule 6: BUYER'S WARRANTIES

1. CAPACITY AND AUTHORITY

…

1.2: The Buyer has all the powers, has been duly authorised and has carried out all the necessary corporate actions in connection with the execution of the Transaction Documents and the performance of the obligations provided therein.

1.3: The Buyer has all consents, approvals, authorisations and other requirements provided for under any Applicable Law, which must be obtained or satisfied for the execution and consummation of the Transaction Documents.

…

1.7: The ultimate beneficial owner of the Buyer is The Holy See."

The Letter of Authority and the Comfort Letter

51. The terms of the Letter of Authority were:

"From the Vatican, 22 November 2018

The undersigned: S.E. MONS. EDGAR ROBINSON PEÑA PARRA in his capacity as: Deputy for General Affairs of the: Secretariat of State – Vatican City delegates: MONS. ALBERTO PERLASCA in his capacity as: Head of Administrative Office of the First Section for General Affairs of: Secretariat of State – Vatican City

…

to sign, with single signature:

1. the contract called "FRAMEWORK AGREEMENT", to be entered into today with GUTT S.A., Company Luxembourg, registration number B178735, ATHENA CAPITAL FUND SICAV – FIS S.C.A., Luxembourg Company, registration number B167355 and the Secretariat of State, concerning the purchase of 45,500,000 shares of 60 S.A. 2 LIMITED, Jersey, Channel Islands company, registration number 111353 (for the purchase, through companies controlled by the latter, of ownership of the property located at 60 Sloane Avenue, SW3 3XB, London);

2. the contract called "SHARE PURCHASE AGREEMENT" to be entered into today concerning the purchase of 30,000 shares of GUTT S.A., Luxembourg company, registration number B 178735, with Mr Gianluigi Torzi, born in Termoli on 16.01.1979;

3. the "COMFORT LETTER", addressed to Athena Capital, concerning the aforementioned transaction;

By conferring to the same attorney-in-fact the most ample power relating to what will be provided for in the aforementioned documents, with a promise of ratification and validity.

Edgar Peña[,] Deputy Secretariat of State[,] General Affairs Section[,] Vatican City"

52. The terms of the Comfort Letter were as follows:

"To: Athena Capital Real Estate and Special Situations Fund 1, a sub fund of Athena Capital Fund SICAV-FIS S.C.A. … Luxembourg

Dear Sirs,

RE: COMFORT LETTER

We write in connection with the Framework Agreement executed on 22 November 2018 between The Secretariat of State of the Holy See (Segreteria di Stato della Santa Sede, Prima Sezione – Affari Generali), Athena Capital Real Estate and Special Situations Fund 1 (duly represented by its general partner, WRM Capital Asset Management S.à.r.l) and GUTT S.A. (**"GUTT"**) in respect to the potential acquisition of the entire share capital of 60 SA-2 Limited (the "**Transaction**").

> We hereby further confirm that (a) GUTT is instructed and has full authority to pursue the Transaction as purchaser on behalf of The Secretariat of State of the Holy See and (b) GUTT will be fully funded via equity by The Secretariat of State of the Holy See in order to pursue the Transaction.
>
> Yours Sincerely, Mons. Alberto Perlasca[,] Capo Ufficio Administrativo[,] Segreteria di Stato"

The Declarations sought

53. A substantial number of the 31 declarations sought in these proceedings are derived from provisions of the Framework Agreement and the SPA, together with the Comfort Letter, the Letter of Authority and Transfer Agreement. These provisions were agreed by the parties to those documents. Indeed, each of these declarations sought is coupled by the Claimants with a reference to the contract provisions involved.

54. The following three declarations sought are however quite different. They seek declarations from this Court about the good faith of the Claimants:

> "(21) The Claimants (or any of them) had acted in good faith in and about the Transaction and the negotiation and execution of the contractual documents (so far as applicable)."
>
> "(25) The Claimants (or any of them) were satisfied in good faith with the content of all Final Agreements and any related documentation required to give effect to the sale and purchase of the 60 SA-2 Shares and, more in general, to carry out the Transaction."
>
> "(26) The Claimants (or any of them) had cooperated in good faith in order to facilitate the Transaction and carry it into effect."

55. For the State, Mr Charles Hollander KC, leading Mr Samar Abbas Kazmi, Mr James Bradford and Ms Jagoda Klimowicz, instructed by Hill Dickinson LLP, summarised in closing argument at the trial (emphasis removed):

> "The declarations sought in respect of the Claimants themselves … boil down to pleas that the Claimants simply relied on what was in the documents and acted at all times 'in good faith' 'in and about the 'Transaction', negotiation and execution of the contractual documents', were satisfied in good faith with the content of all the London Agreements and related documents, and cooperated in good faith in order to facilitate the 'Transaction' and carry it into effect. These are not simply 'logical corollaries' to the contractual terms as the Claimants' assert, that can be simply divined by reference to the wording of those documents."

56. The State's position, as Mr Hollander KC confirmed in closing, is positively that the Claimants did not act in good faith. The State contended in closing argument at the trial that:

> "The relationship between [the State] and the Claimants had been conspicuous for the misleading and self-serving information provided to [the State] at all material times."

57. Also different are the final two of the 31 declarations sought. These are in these terms (the bold text is as in the original):

> "(30) The Framework Agreement and/or the SPA and/or the authority of Mons Perlasca is valid, enforceable and is binding on Gutt and the State (so far as applicable)."

> "(31) The Claimants have no **civil** liability (howsoever arising, under any system of law or regulation, in contract, tort/delict, statute or otherwise), **save in the case of fraud**, to the State in respect of the Transaction **or any part thereof, the 60 SA-2 Shares and/or the Sale Group and/or the Property and/or the Athena GOF Shares and any investment and/or holding in Athena GOF (including the Athena GOF Shares) and in any other fund and/or entity managed by WRM**, insofar as the determination of such liability depends on any of the propositions described in the preceding paragraph or the denial of any of the propositions and/or facts and/or matters pleaded in [paragraphs 34.1.12, 34.2.14 and 34.2.15 of the Amended Particulars of Claim]."

58. The cross reference to paragraphs 34.1.12, 34.2.14 and 34.2.15 of the Amended Particulars of Claim was to paragraphs in these terms:

> "34.1.12 [Gutt] [d]id not and does not have any claims of any kind, rights and causes of action, (relating to obligations, actions, damages, costs, expenses and compensations) whether known or unknown, direct or indirect, irrespective of their legal nature and whether past, present or future, against the Claimants or any of them which were a result of or connected with any acts, omissions or events in respect of the Transaction or any part thereof, the 60 SA-2 Shares and/or the Sale Group and/or the Property and/or the GOF Shares and any investment and/or holding in GOF (including the GOF Shares) and in any other fund and/or entity managed by WRM, including without limitation as regards any past, present or future tax liabilities …"

> "34.2.12 [The State] [d]id not and does not have any claims of any kind, rights and causes of action, (relating to obligations, actions, damages, costs, expenses and compensations) whether known or unknown, direct or indirect, irrespective of their legal nature and whether past, present or future, against the Claimants or any of them which were a result of or connected with any acts, omissions or events in respect of the Transaction or any part thereof, the 60 SA-2 Shares and/or the Sale Group and/or the Property and/or the GOF Shares and any investment and/or holding in GOF (including the GOF Shares) and in any other fund and/or entity managed by WRM, including without limitation as regards any past, present or future tax liabilities …"

> "34.2.15 [The State] [i]rrevocably and unconditionally has waived, and forever released the Claimants (all or any of them) from, any and all claims, of any kind, rights and causes of actions, demands, obligations, actions, damages, costs, expenses and compensations whether known or unknown, direct or indirect, irrespective of their legal nature and whether past, present or future, against the Claimants (all or any of them) which are a result of or connected with any acts, omissions or events in the period up to the Closing Date in respect of any matters relating to the Transaction or any part thereof, the 60 SA-2 Shares and/or the Sale

Group and/or the Property and/or the GOF Shares and any investment and/or holding in GOF (including the GOF Shares) and in any other fund and/or entity managed by WRM, including without limitation as regards any past, present or future tax liabilities."

The Property and Athena GOF: to 2014

59. The price at which the Property had been acquired in December 2012 was £129 million with costs of £8 million. There had been marketing by CBRE and Savills as agents who knew the Property and the location well. There had been what was described as "strong interest" from a number of overseas buyers. However RBKC were concerned about loss of office space arising from any change of use.

60. In a valuation dated 11 September 2013, CBRE had valued the Property (for the purposes of accounts) on the basis that existing use would continue but with the special assumption that the Property was fully let on relatively long-term 10-15 year leases at ERV. With this special assumption, and assuming a yield of 4.77%, CBRE valued the Property at £173.5 million.

61. In an appraisal in November 2013 by DS2 LLP, planning and social housing consultants, a residualised price for proposed development of £151,237,389 had been arrived at. They considered the achievable average price per square foot for 49 apartments to be £2900.

62. The State's interest in the proposed investment by Athena GOF in oil was formally withdrawn in June 2014. The purpose of Athena GOF (then named Athena Capital Commodities Fund) was expanded from commodities to 'general opportunities'. The Property was put forward as one of these opportunities.

63. Mr Mincione denied the State's allegation that he had a conflict of interest over the question whether the opportunity was taken up in this way. He referred to the presence of other investors in RESS1. He also described his position as "the ultimate beneficiary of a trust at which I was so far removed with so many independent people". These responses do not meet the point about conflict of interest, but in the event I do not need to resolve the point in these proceedings.

64. Mr Mincione also referred to the trust as a middleman for other clients, although here I was not satisfied that those other clients were third parties rather than connected with him or his family. Mr Mincione said that his duty in 2014 in implementing the opportunity was to use the "correct price" based on valuation. The State says that the price was anything but, but again I do not need to resolve that in these proceedings in order to decide whether the declarations sought should be made.

65. On one view the money the State had borrowed was by now already "locked in" to Athena GOF for a term of years and that affected its choice or control in the decision to take the opportunity. Separately a restriction was placed by the Luxembourg regulator, the Commission de Surveillance du Sectueur Financier ("CSSF"), on investments or finance transactions with WRM companies or a company known as Time & Life S.A., but it does not appear this had an effect.

66. On 13 June 2014, Savills produced a report which arrived at a then-current 'Market Value' of £125 million. With a special assumption of vacant possession, their valuation was £107 million.

67. CBRE was asked to run a series of valuations on a number of different bases. Their 'Market Value' as at 31 December 2013 was £159,700,000; and value with special assumptions of fully let at ERV of £194,700,000.

68. CBRE valuations with a valuation date of 30 June 2014 were £180,325,000 on the assumption that current use continued (described as 'MV'); £197,350,000 on the assumption that the Property was fully let at ERV; and £196,058,541 on the basis of appraising a proposed residential development scheme. The last of these assumed a price per square foot of just over £3600 and 5.75% finance.

69. Between December 2013 and February 2014, WRM Capinvest had also procured from the Rome office of Mazars, a firm of accountants, a draft report valuing the Property on its residential development potential at £197 million, revised to £208,000,000 by the time of the final report. Deloitte, as auditors, were later to reject the report citing a number of flaws, including calculation errors and concern that those preparing the report did not appear to have property valuation expertise or expertise in the London market.

70. Accounts of 60SA were in due course worded in this way:

> "The freehold investment property was purchased in December 2012 and is held in the accounts at fair market value (FMV). The FMV of the investment property at 30 June 2014 was £259,740,434 (December 2013 - £183,549,915). The valuation utilised in the accounts was effected as at 17 July 2014 by CBRE Limited and has been prepared in accordance with the RICS Valuation - Professional Standards (2012) ("the Red Book"). It is a requirement of the senior lender that the building be valued annually. The Valuation utilised in the 31 December 2013 accounts was effected on 18 August 2013 and performed by CBRE Limited to Red Book standards."

71. The information that was being provided to the State at this time included in April 2014 a presentation by WRM Capinvest which provided a "Gross Valuation: approximately £230m at 3.75% yield" based on the continuation of the existing non-residential use. To arrive at this, one of the CBRE valuations was taken (£173.5 million on a special assumption of fully let ERV) and then the yield was changed from 4.77% to 3.75%. In explaining this, Mr Mincione himself referred to "the distance between one valuation and another".

72. On 24 June 2014, Athena Capital sent a letter to the State referring to the acquisition of 45% of the Property, meaning the shares of RESS1. The value of the Property was said "based a conservative estimate" to be approximately £230 million with the asset being held in "long-term view without the change of the current use (office/commercial) and no change in the existing volume". A letter sent to the State on 24 July 2014 stated that a valuation of £259.7 million had been obtained from independent valuers. Mr Mincione said that the £259 million figure involved a 'correction' to the Red Book valuation to reduce the assumption of 100% financing to 50% financing.

73. Mr Mincione emphasised in his evidence that what was being sold was not a building, but a project. While Mr Mincione claimed, and I accept, that he was not the person dealing with the detail of valuations, he accepted that he did get involved with the "results". Important documents were always sent to him and he was aware of exchanges with CBRE.

74. When asked whether he had discussions with his employees as to the calculations to reach £230 million he responded:

> "I'm sure I did. I mean, I must have been told, but I do not recall with who or when."

As the State points out, when questioned about the changing assumptions, he spoke, using the first person:

> "No. They weren't my assumptions full stop."

75. The State additionally alleges attempts to lobby CBRE improperly to increase the valuation to benefit the seller. On the evidence available to me at this trial, I am not satisfied attempts of this description were made. This still leaves, of course, the valuations that CBRE did provide and how they were and were not used.

The interim period 2014-2017

76. Valuations on the basis of existing use and on the basis of treating the Property as an investment property that were obtained in this period were comparable. Some made a special assumption of the space being fully let. The range was £182.9 million in January 2016 to £175.4 million in November 2017.

77. Development potential valuations obtained were on a residual basis on the assumption that a scheme known as the Chipperfield scheme (after the architect Sir David Chipperfield and as provisionally costed by the firm Faithful & Gould) would be implemented. Residual valuations carried out during this period assumed a price per square foot which was in line with the figure of just over £3600 which CBRE had assumed in June 2014.

78. PwC Luxembourg accepted variations leading to a valuation of £275.9 million in fund accounts. However, the PwC Channel Islands team determined the special assumptions used were not suitable. The valuation was £220 million in the 60SA accounts.

79. In cross-examination, Mr Jacobson confirmed that as internal compliance officer he did not see his role as getting into the merits of valuations. However, he did accept that the approach to valuation should be consistent from year to year, and that checking consistency was his function. He was asked about a change in LTV assumptions to 50% (from 60%). Asked why this did not ring alarm bells, he replied that he relied on "the expertise of CapInvest". WRM Capinvest was joined by a Mr Rosati and he did raise a concern as to consistency.

Planning

80. With the grant of planning permission in respect of the Property on 30 December 2016, the intention of Mr Mincione and Mr Corrado was to sell the project and not to undertake the project themselves. However, a sale did not materialise. Mr Mincione attributed this to a market freeze related to Brexit. Meanwhile the planning permission was due to expire on 30 December 2019 if the development had not been commenced by that date.

81. The Section 106 agreement with RBKC required development of another site at Kensal Road. At least a ground floor slab for the Kensal Road development had to be constructed, and that prior to the installation of M&E Services at the Property. A construction plan for Kensal Road submitted with the planning documents had indicated that the laying of the ground floor slab would not occur for 23 months after the start of work on that site. It was suggested that completion of M&E works would take more than a year once started. By 2018 no work (including demolition) had been done at Kensal Road.

82. Construction costs for Kensal Road were expected to be around £40 million for the full development, and at least £7 million up to laying of the ground floor slab. There was an estimate that the development of the Property would cost £118 million, but I am satisfied this should be considsered an underestimate. Faithful & Gould made it clear in a 2015 exercise that it had excluded significant costs from its assumptions, which were clearly preliminary and provisional. To these costs there fell to be added the costs of the debt which remained from the purchase of the Property.

83. Mr Corrado's evidence was:

> "… yes, we couldn't do the development, but in fact we couldn't even do any of the pre-development preparations to get us to development."

Financing

84. A breach of covenant with the loan which initially funded the purchase of the Property was followed by a temporary waiver granted for a period of two months on 20 January 2016. The loan was then repaid and replaced by a new facility on 18 February 2016 in the form of a two-year loan of £80 million at 5.49% interest and with restrictive covenants preventing vacant possession.

85. In early 2017, financing was sought for both the construction and the refinancing of current debt on the Property, as well as for Kensal Road. Starwood was approached. By October 2017 the proposal changed to financing only a pre-development phase, for a total of £140 million. By December 2017, the proposed amount sought from Starwood had gone down to £100 million with a potential later uplift of £11 million.

86. Mr Corrado's evidence was that many potential financing counterparties were spoken to and:

> "… it was clear that the main thing that they were worried about was committing to a full development financing, without having completed the design stage".

It was increasingly clear there was no appetite in the market for funding the entire project. Mr Corrado stated that he was in talks with around 30 lenders and in the end had only 3 viable offers, and these were for pre-development financing.

87. In the event a loan from Cheyne was entered into in April 2018. This provided financing of £128 million in total (£121 million plus £7 million for the repayment of interest) at an interest rate of 7.22%. The loan from Cheyne was again for pre-development financing.

88. Development would require Cheyne's consent. Mr Mincione accepted that if the Claimants had wanted to carry out the development themselves, new financing would have been necessary to fund it. However, with the loan from Cheyne in place it had at least become harder to achieve further financing if that further financing was to be secured on the building.

2018: The State's desire to exit

89. Msgr. Perlasca, with a Mr Fabrizio Tirabassi (an official of the State), informed Mr d'Andria at a meeting on 25 June 2018 that the State wanted some liquidity from Athena GOF. On 28 July 2018 Mr Tirabassi sought to reject a proposal "to invest in the banking sector" and asked for a "progressive and gradual liquidation of the Fund's assets". In the event, on 27 and 30 July 2018, Athena GOF made a further investment, in Banca Carige.

90. Mr Tirabassi later wrote that the State:

> "… confirms what was stated in the previous email in that it wishes to stay out of the Banca Carige transaction altogether and would like to be informed as to whether or not such a position exists and whether it may be liquidated and by what margin of gain or loss".

On 27 September 2018, Mr Tirabassi emphasised that "our Office did not approve" the Banca Carige transaction. On 30 September 2018, Mr d'Andria advised that the position held in Banca Carige was approximately 0.6% of the bank's capital with a carrying value of around €3 million and accounted for about 2% of the net asset value or NAV of Athena GOF.

91. On 24 September 2018 Mr Tirabassi reiterated a request for a repayment of the funds invested by the State. He emailed Mr d'Andria, Mr Mincione and others at WRM, noting that:

> "we have repeatedly stated to Mr Mincione and as he has promised, we expect a gradual repayment of the amounts invested in the Fund".

92. Alongside the above, from March 2017 and throughout early 2018, CSSF as regulator was in regular contact. In October 2018 WRM contacted CSSF with an action plan to mitigate investment breaches. CSSF continued to raise concerns in relation to Time & Life from whom Athena GOF had acquired assets including Banca Popolare di Milano shares in 2016.

93. The actions of CSSF increased the pressure on the Claimants to sell the Property. But even at this point it was not the plan that the State should itself be the purchaser.

94. On 12 November 2018, Msgr Perlasca sent text messages to Mr Mincione saying that he was "really worried."

As at November 2018

95. Mr Corrado explained:

> "… any development requires several stages in order -- even before you can get contractors, even before you can send requests for contractors to bid for the project. So, stages one and two get you to planning. Stage three, which is a detailed design stage to be able to have designs … that have sufficient detail that allow contractors to be able to properly price the project. So we had only completed stages one and two of the development design stage to get us to planning. The third stage, if everything went according to plan, would take 12 months."

96. Mr Corrado accepted that the project faced difficulties "over time":

> "Mr Hollander KC: So what I am suggesting to you is that by November 2018 what had initially been something that had been bought into with high hopes was actually looking quite difficult?
>
> Mr Corrado: Generally, specifically the 60 SA project, yes, we faced difficulties over time. That doesn't stop us from continuing to find solutions for the problems that we envisage."

97. By November 2018, the Claimants had two principal options. One was to carry out the minimum works to maintain the planning consent, but without carrying out either the full development of the Property or of Kensal Road because they did not have the finance and were not otherwise ready. The other was to sell the Property one way or another but against a background of existing lack of success in attempts to do so.

98. As to the first option, the Claimants commissioned a report from Savills and Arup. This was issued in draft in October 2018 and finalised in December 2018. Despite a recommendation from Savills, no legal opinion was obtained on whether the works proposed would be sufficient to maintain the planning consent.

99. The first option may further have required an application for variation of planning conditions to be lodged with RBKC, and the determination period for this was 13 weeks. Mr Corrado properly accepted that, even if such an application had been lodged, there was a risk that it would have been refused by RBKC, although there was expert evidence at trial (which I accept) that refusal was unlikely. However, in addition consent from Cheyne would be required.

100. The minimum course involved in the first option had an additional consequence. This was that it would impact on existing tenants at the Property. As proposed by Arup, the Property would be left with part of the 4th floor demolished and waterproofed. Mr Mincione made the point that tenants were on short notice and could leave. However, that left the problem that if they did leave that would mean losing the rental income they provided.

101. On the second option, of selling the property, Mr Corrado's evidence included the following:

> "Mr Hollander KC: But you aren't doing the project, you haven't got the money to do the project… and you've been trying to sell it since December 2016 and you haven't got any buyers, and that's the problem isn't it?
>
> Mr Corrado: We haven't found a willing buyer at what our expectations of price were, yes, you're correct in that. But I think I made the analogy that I failed 27 times until I – if I had stopped there, I would have just failed. You don't stop, you keep going until you get the result that you're looking for."

102. This evidence is characterised by the State as unrealistically positive. This may not ultimately matter, but it strikes me more as evidence that does in fact show how difficult things were, but which also conveys the separate point that Mr Corrado was not going to give up.

103. Mr Mincione's evidence in chief was:

> "There were attempts to find a buyer for the property, but Brexit was a common negative theme amongst prospective buyers who wanted to wait to see how the markets would fare. From around 27 August 2018 my team and I had been in contact with Mr Torzi regarding one possible buyer, but this buyer also hesitated due to concerns surrounding Brexit."

104. There had been what was considered to be interest from a Sheikh Salah. Mr Corrado brought things up to date in his evidence that:

> "… at some point in the first part of 2018 we stopped receiving any further substantial news from … Sheikh Salah."

All Mr Mincione remembered from a meeting with Sheikh Salah in August 2018 was "getting to know each other, just a shake of hands or something."

105. At various points in his evidence Mr Mincione instanced interest from others over time, and mentioned some of the figures involved or that he hoped for, but the fact was that that interest had not come to anything.

The Strutt & Parker report

106. A report by Strutt & Parker, obtained on 14 June 2018 but as at 31 December 2017, arrived at a "market value" of £220 million on the basis of financing cost of 5.75%. Using a special assumption that the project would be carried out in accordance with the planning consent and using 50% financing and 50% equity, the report arrived at a value of £275 million.

107. Mr Corrado was correct to accept that:

> "… that approach to valuation is only relevant to somebody who has got 50% in cash and is prepared to use it in this way".

108. Where figures are arrived at by assuming 50% financing and no cost of money is attributed to the balance of the funds required, the picture is incomplete. The State points to Red Book principles, requiring that:

> "Even if an entity is intending to self-fund the project, an allowance should be made for interest at a rate which would be obtainable by a participant for borrowing to fund the completion of the project on the valuation date.".

109. The State further highlights a point made by the Claimants themselves in opening at the trial that where there are special assumptions, there cannot be market value:

> "The key point for the moment is this: that is not a real market valuation because of the use of special assumptions. As soon as you import a -- and I don't think this is in dispute by the valuers. As soon as one imports a special assumption, then it can't be ex hypothesi a market value."

Mr Eric Shapiro, a professional valuer of property called as an expert witness by the State, in cross examination agreed with the proposition:

> "Where you make a special assumption, that is not consistent with market value, because the whole point of market value is you don't make a special assumption …".

110. Prior to issuing a final report, Strutt & Parker and the Claimants liaised as to different variations of assumption. Mr Corrado spent time testing the amount by which the value would increase if the discount factors applied by Strutt & Parker were reduced. Mr Corrado accepted that between different options presented by Strutt & Parker, he chose 50% loan to value (LTV) for the final report, rather than 55% LTV, and the reason he did so was because it led to a valuation which was higher by £1 million. The choice did not come from actual conditions.

111. Mr Manuel Baldauff was called by the Claimants as an expert and I found in him a conscientious witness who had studied his duties to the Court and was trying to do his best, though perhaps in an unfamiliar context. He gave evidence of company valuation in these terms:

> "The 275 million value, which is referred to in the [Strutt & Parker] report as investment value, relates to a value that takes into consideration the whole corporate structure of the scheme … So it is not like 220 on the one hand and 275 on the other hand; they are two figures of a range, they are two figures with a different DNA, with a different nature, and it's very important to make that distinction."

The Fund Activity Overviews

112. The State alleges that information provided to it by the Claimants in the period between its subscription in Athena GOF and the Transaction in 2018 was grossly misleading. It refers in particular to Fund Activity Overviews provided by the Claimants.

June 2017 Fund Activity Overview at December 2016

113. In June 2017 a Fund Activity Overview at December 2016 gave a potential selling value of £280-£320 million and acquisition price of £300 million. These figures do not appear to have a basis in valuations at the time.

114. The value of Kensal Road was put at £21-23 million. As the State says this can be compared with a Knight Frank valuation of £15 million up to £20 million as at the year end of 2016, with special assumptions. An email from Mr Corrado to Mr d'Andria and Mr Cerqua is instructive on the issue of the approach taken:

> "With regard to Kensal, if PWC agrees not to deduct Entry and Exit stamp duty costs (£2m) we will have a valuation of £16m+£2m=£18, more or less unchanged from last year. Then they could consider reducing their financing costs by applying a 50% LTV and not 100% LTV, which adds £2.2m in value."

Mr Mincione and Mr Corrado both claimed the numbers were based on offers to buy Kensal Road but they offered no sufficient detail of this and there is no independent contemporaneous supporting evidence.

115. The Fund Activity Overview also gave what was termed a "conservative Red Book valuation" of £276 million. It went on to suggest this was a very significant year on year increase of over 20% in market value from 2015.

116. In contrast, a CBRE report produced on 25 May 2017, just before the Fund Activity Overview, gave a market value as at 31 December 2016 of £228.7 million. Only by taking an investment value that assumed 60% debt financing was a figure of £275.9 million reached.

117. Then on 30 May 2017, again shortly before the Fund Activity Overview, 60SA's board minutes show adoption of the market value of £228.7 million from the CBRE report. It was noted that this represented a reduction, not an increase, in the booked market value from the previous year. The reduction was attributed to "a softening in the London commercial property market".

118. Mr d'Andria's position was that what was being given to the State were the fund manager's "opinions" as to "an expected liquidation scenario". However, I accept the State's response that this suggestion does not sit with the reference to "conservative Red-Book valuation".

119. The Claimants denied that the Fund Activity Overview was misleading, whilst the State's case is that this was an instance of:

> "… the Claimants' bad faith conduct towards [the State] during the entirety of their relationship and was to set the scene for what was to come".

I accept that the Fund Activity Overview was misleading, and that at least far more detail would have been required for it to avoid that character.

June 2018 Fund Activity Overview

120. A June 2018 Fund Activity Overview referred to "the current refinancing of the debt in order to carry forward the redevelopment". The State points out there was no refinancing for this purpose. I agree. I regret to record that, in contrast to other

evidence from him, Mr Corrado's explanation at the trial for what had been said was in my judgment of thin quality:

> "I think the intention here is to show that we're progressing in the right direction."

October 2018 Fund Activity Overview

121. A Fund Activity Overview dated 25 October 2018 is described by the State as:

> "… a grossly misleading document [that] contains a material misrepresentation as to the value of the [P]roperty".

122. The Fund Activity Overview said that the "audited valuation" of the Property was £275 million, with a selling value of £280-320 million. It went on to represent that a conservative approach had been taken to these valuations, using this language:

> "We highlight that the UK real estate assets have been booked in the Fund using the "red book valuation" methodology, which despite being the market standard approach in the United Kingdom, provides a conservative view on the realisable value of the real estate assets."

123. The Overview did not refer to the special assumptions by which the £275 million figure was obtained, nor to lower valuations received which used the Red Book. The State says that given the valuations received, the Claimants could not have drafted or produced the Overview with its statement about the £275 million figure "in the belief that this statement was truthful". I agree that if the figure was to be used, it had to be accompanied at least by reference to the special assumptions. Without that reference, it is not to the point to say that the figure was used in an audit.

The meetings on 19 and 20 November 2018

124. With the State's desire to exit making no progress, the Claimants and the State moved to the idea that the State should itself acquire the Property. At least then it would control its investment and could decide what should be done with the Property.

125. There is evidence of some contact between Mr Mincione and Mr Torzi in early November, but the key terms of the Transaction were agreed in just two days, in meetings on 19 and 20 November 2018, with legal documentation following rapidly after that.

126. According to Mr Mincione, it was not until the meeting in the evening of the 20 November that Mr Torzi and Mr Squillace were confirmed to him to be the agents of the State through which communications for the Transaction should go.

127. In relation to the meeting that evening, in the course of the cross examination of Mr Mincione by Mr Hollander KC, there was this exchange in particular:

> "Mr Hollander KC: Alright. So let's look at the 20th, the meeting on the 20th. Now, I think what you now say about the 20th in your witness statement, we looked at this earlier, was the meeting was very short?
>
> Mr Mincione: Yes.

Mr Hollander KC: And so it was confirming -- was there a discussion at all?

Mr Mincione: Yes, yes, there was -- the fact was that they confirmed to me that he was the agent and from now on every part of the transaction, any type of discussion, it would have to happen with Mr Torzi and Squillace. That's when I went back to my office and say, okay, exchange contract with these people. That's how we started.

Mr Hollander KC: And the 275 million was referred to in the Fund activity overview that we looked at yesterday, wasn't it?

Mr Mincione: Yes. I would also add that also on top of the activity fund overview, which is a sort of -- again, it is a little bit misleading when you say that. There are 48 NAV monthly given to the Vatican for four years, and the overview was just like a certain piece of paper that we used to prepare from time to time for the Vatican, which was in fact with so many disclaimer on top of it, that one as well, which you have not produced yesterday. But doesn't matter. There are 48 NAV of the building. Once every month.

Mr Hollander KC: Do you say that at the meeting on the 20th the 275 million was discussed, or you can't remember?

Mr Mincione: I think it must have been discussed, but it must have been common knowledge, I don't know, that that was the price that I wanted, yes.

Mr Hollander KC: So you are telling the Secretariat of State that the 275 is, what, the value of the Property?

Mr Mincione: That's just -- I am saying that is the NAV of the building itself, and that's what I wanted to have. I want to have 40 million plus the rest in kind. 50 million, not 40.

Mr Hollander KC: So are you telling -- so they have got the Fund activity overview document?

Mr Mincione: No, they had the NAV, 48 NAV. It is better to talk about the NAV, the NAV. They had 48 monthly NAV, and I'm sure that we can produce it. They must be somewhere in the documents. It is impossible –

Mr Hollander KC: But the NAV doesn't contain property valuations, does it?

Mr Mincione: The NAV express a number.

Mr Hollander KC: A number which is derived, if you do the maths, from a property calculation. That's why we have forensic accountants in this case to work out the combination?

Mr Mincione: Which they completely agreed, and everything was done properly and legally.

Mr Hollander KC: So what I am -- so are you saying –

> Mr Mincione: -- remind me of the forensic.
>
> Mr Hollander KC: So are you saying -- presumably the Secretariat would treat 275 as the value of the building based on the Fund activity overview document --
>
> Mr Samek KC: My Lord, I do rise at this point. That really is not a fair question. He can't be asked what the Secretariat might be thinking.
>
> Mr Hollander KC: All right. All right. So did you -- so you, at the meeting that you're referring to on the 20th, you raised the 275, and you're talking about the value of the building, aren't you?
>
> Mr Mincione: No, I'm talking about, if you remember, 50 million plus the rest in kind. That to me is the figure. It's more than the building itself, it is about having cash in kind. It is something that you seem to be ignoring all the time. I don't know why you do that. But I ask 50 million, which it was 10 million more, or 40 plus the assets. That got us to 275.
>
> Mr Hollander KC: And you explained that to Tirabassi at the meeting on the 20th, did you?
>
> Mr Mincione: Yes, I think so."

128. Having heard his evidence, and considered it in context, I am quite satisfied that at the meeting on 20 November 2018, Mr Mincione represented to the State that the value of the Property was £275 million.

129. The figure had also been mentioned the day before between Mr Mincione and Mr Torzi. As for the meeting on 19 November, between Mr Mincione and Mr Torzi, Mr Mincione was asked by Mr Hollander KC whether he told Mr Torzi that the Property was worth £275 million or whether Mr Torzi told him. Mr Mincione said that he did not know and could not remember that. I am satisfied that Mr Mincione told Mr Torzi.

130. The State says that figure "has no basis in reality". Of course, Mr Mincione represented the sale side of the Transaction, with an interest in achieving a high price. But there was a particular background to the matter, including the investment relationship of the State with the Claimants. In his reference to £275 million he was not, in my judgment, referring to an asking price. He did not elaborate his meaning of value at the meetings, and without elaboration what he said was not frank and was misleading.

131. I do not overlook Mr Mincione's emphasis at trial that the State was being sold a project, not a building:

> "This is something very important. We have sold always a project. Never a building. This is the most important part."

Nor do I disregard his emphasis that net asset valuations of the fund involved were important. But the fact remained that he represented the value of the Property at this meeting.

Speed

132. The first part of the signing of the Transaction took place less than 48 hours after the meeting on 20 November. In WhatsApp messages on 20 November Mr d'Andria was writing "Everything will be closed tomorrow by lunch" "Let's go at the speed of light" "Let's close it fast!".

133. The State itself received a copy of what was by then said to be the "final draft of the framework agreement" at 21:48 GMT on 21 November 2018. This was then sent on to Msgr Perlasca "for consideration and approval" at 22:09 GMT. Msgr Perlasca asked questions of Mr Torzi on the morning of 22 November 2018.

134. This did not lead to a pause. Mr d'Andria suggested that there was concern that the Claimants would change their minds about selling. However, in my judgment, in context, contemporaneous text exchanges showed that the concern was rather that the State (with a "thousand thoughts") might change its mind about buying.

135. The State says the speed and timing of the agreement is:

> "extraordinary and highly reflective of this not being a genuine negotiation".

136. I accept the speed was extraordinary, but the matter was not new to either party. The speed was not just a matter for Mr Torzi; it was for the State too to decide to move quickly. It knew about the pace and went along with it. At the same time, I accept that the pace suited Mr Torzi and Mr Mincione and served their interests.

Drafting process

137. The State argues that, together with the speed, the process by which the Framework Agreement was drafted is also indicative of there being no sincere negotiation between counterparties. The State says this was a joint endeavour between Mr Torzi and Mr Mincione to ease the significant financial pressure which they were both facing including to retain the Banca Carige shares.

138. But it is the fact that the State wanted to exit, and had decided to do so in this way.

139. Herbert Smith Freehills LLP, solicitors, were brought in at speed to undertake some of the drafting. The firm was instructed early on 21 November 2018. There is no challenge, at all, to the integrity or professionalism of the firm. A number of drafts had already been exchanged between Mr d'Andria or Mr Corrado and Mr Squillace over the course of 20 November and early 21 November by then. Mr Mincione, perfectly understandably, refers to the involvement of the firm as showing that the Transaction was not fraudulent. Of course, it is important to keep in mind that the firm would have been acting on instructions.

140. Some of the criticisms by the State of the Transaction are however made on the face of its terms. I address below, in the next sections, the principal relevant individual aspects of the Transaction that were addressed at trial.

Due diligence

141. The State says that very little due diligence was done before the Framework Agreement was concluded.

142. It takes as an example the fact that although Mr Jacobson had stated in internal correspondence that this was necessary, it was only after the conclusion of the Framework Agreement that Mr Squillace was asked for a copy of Msgr. Perlasca's passport and a structure chart. Further, with the assistance of expert evidence now available from canon lawyers it appears that on 22 November 2018, Msgr. Perlasca did not have actual authority to negotiate and execute the Framework Agreement on behalf of the State. It had to be ratified (and this was done by no later than 27 November 2018).

143. Focusing on the terms of the Framework Agreement, the State highlights the wording of clause 4.1(a):

> "… the Holy See hereby further represents, acknowledges, confirms and agrees to the Seller … a) it has had the opportunity to carry out all relevant assessments and assumptions in respect of the Transaction and/or the Shares and/or the Sale Group and/or the Property;"

The State's argument is that "everyone involved" knew this to be "entirely untrue".

144. The State argues that a proper negotiation by parties acting in good faith to sell and purchase a property of this nature would require due diligence and the Claimants would have appreciated there was little. The State contrasts the position on due diligence when the Property was purchased in 2012.

145. I am not convinced by these arguments in the context of this case.

146. The first point to emphasise is that 2012 was not comparable. Due diligence was nonetheless to be expected in 2018 and it does appear that very little due diligence was done, as the State says. But the force of the point is tempered by the fact that by 2018 the parties had known each other for some time, and the State had known the Property and the project for some time.

147. It has not, in my judgment, been demonstrated that there was so little due diligence as to suggest from that fact that (as the State alleges) Mr Torzi was intentionally acting in breach of duty to the State and the Claimants were involved in a conspiracy with Mr Torzi. The circumstances also cause me to decline to accept the State's description of the reference in clause 4.1(a) to "the opportunity" "to carry out all relevant assessments and assumptions" as untrue.

148. Taking the specific example raised by the State, I am not satisfied that at the time the Framework Agreement was signed the Claimants did not have reason to believe that Msgr. Perlasca had actual authority to sign it. Msgr. Perlasca had previously been involved for the State, he held senior office, and the State allowed him to continue to play a part. I am satisfied that the Claimants would not have accepted his signature if they had believed that he had no authority.

Waivers

149. The Framework Agreement contained waivers by the State. The State describes waivers at Clause 4.2 and 4.3 as "… extraordinary in their breadth and patently not in the State's interest".

150. The strength of the waiver provisions in the Framework Agreement was pointed out to Mr Mincione just before he gave the final go ahead to sign. The State contends:

> "… there is no evidence of Mr Torzi or Mr Squillace properly raising any concerns on behalf of their purported client (the State) about the scope and nature of these clauses."

151. In an explanatory memorandum by Mr Squillace in relation to the Framework Agreement, the State was informed:

> "The clauses, as intended, are the result of lengthy negotiations with the seller and are typical of this type of contract where the parties tend to hold themselves harmless in the future against reciprocal claims …. These clauses do not create any risk for the Secretariat of State but mark a definitive closure with regard to the past."

The reference to "lengthy negotiations" was false.

152. I do not feel able to draw much that is relevant to the matters in issue in these proceedings from the wording of Clauses 4.2 and 4.3. If I may put it this way, in the course of sitting as a Judge of this Court, I have seen clauses attempt to reach as far as these do, whether usefully or not, and whether validly or not. But in these proceedings the State alleges knowledge by the Claimants that Mr Torzi was acting in breach of duty, or the involvement by the Claimants in a conspiracy, and I do not consider the wording helps them show that.

Kensal Road

153. As will already be very clear, Kensal Road was important to the development of the Property given the section 106 agreement with RBKC. Mr Mincione said in evidence:

> "It was the most obvious thing. Those two buildings were linked. If you want to buy only one and not the other you need to make some provision for it."

154. The State highlights that the Transaction did not include a sale of Kensal Road. There was however some provision about it, in Clause 1.3 of the Framework Agreement. This was in these terms:

> "In connection with the proposed sale and purchase of the Shares, it is intended that the Seller shall commit to the Purchaser to carry out such works, within 18 months of the Closing Date, as are specified [in the s106 agreement]."

155. The State says this too is indicative of "the lack of any proper negotiation" that it alleges. To support this allegation, which would implicate the Claimants as parties to the process, the State contends that the provision was, for a number of reasons, no solution at all.

156. I agree the provision had its deficiencies. Its enforceability was at least uncertain; it did not deal with payment for the works; the timeline given was insufficient. The State puts things in this way:

> "Would anyone in their right mind decide to do this expensive development relying on a covenant from Athena Capital (a Luxembourg entity) which if it was not performed would prevent the 60 Sloane Avenue development from being carried out?"

157. But there was a history to the parties, in connection with the Property, that gave room for them to take a view, without impropriety, on the adequacy of the provision. The wisdom of the view taken is not the issue. Further here it is to note that the drafting was not drafting that Herbert Smith Freehills ruled out as incompatible with there having been a proper negotiation.

158. The State adds that "there is not a shred of evidence of the Claimants ever having taken any steps to fulfil this 'obligation'". But that is of course after the event of the Transaction.

Shares in Gutt

159. Gutt was the vehicle by which the State was to acquire the whole of 60SA-2 which indirectly owned the Property. On 22 November 2018, Mr Torzi acquired the direct shareholding of Gutt. He then changed the structure of Gutt by re-organising its 31,000 shares into two categories: 1,000 voting shares and 30,000 non-voting shares.

160. It was the 30,000 non-voting shares that were sold to the State. Mr Torzi kept the 1,000 voting shares for himself. Mr Torzi then appointed himself as a Class A Director of Gutt with Mr Tirabassi as a Class B Director a few days later.

161. The State was told in an explanatory memorandum by Mr Squillace:

> "[Q] That is 30,000 shares. The other 1,000 shares remain with whom? So, will we have 100% ownership?
>
> [A] The shares referred to are those relating to the company GUTT SA and are those purchased by the Secretariat of State before the capital increase, already decided by GUTT SA up to €50 million. It will be fully subscribed by the Secretariat of State through the payment of GBP 40 million and with part of the value relating to the total transfer of the shares invested in the Athena Global Opportunities Fund. As a result of this transaction, the stake held by the Secretariat of State will be equal to more than 99.99% of the share capital of GUTT SA. Please note that the economic rights have already been determined at 100% in favour of the Secretariat of State. The economic relationship with Mr Torzi and the group led by him remain to be defined below and the contents will be agreed to with the Secretariat of State."
>
> "[Q] Is there still a right to the dividend on the transaction?
>
> [A] The thousand shares have the mere function of allowing the third party to administer the company GUTT SA. All economic rights belong to the Secretariat of State."

162. By 14 December 2018, Mr Tirabassi and Msgr. Perlasca appeared to liaise with Mr Squillace to try and change the decision-making structure of Gutt. However, Mr Torzi then procured a board resolution dated 21 December 2018 dismissing Mr Tirabassi. Mr Torzi sent a copy of the resolution to Mr Mincione and Mr d'Andria. Mr Corrado also saw the board resolution.

163. Mr Torzi commented on 21 December 2018:

> "From now on you can tell this guy to go and pick potatoes".

Mr d'Andria responded by saying:

> "Ahahhaa I see that the issue has become gangrenous".

164. Mr Mincione was not able to offer an explanation for these messages when shown them in giving his evidence at the trial. The State was left having to take steps to negotiate with Mr Torzi to acquire the 1,000 voting shares to get effective control of the Property. Mr Torzi's conduct is fairly described by the State as:

> "… extraordinary and irreconcilable with the conduct expected of an agent".

165. Mr Torzi also sent Mr Mincione and Mr d'Andria a draft share purchase agreement containing a proposal for Mr Torzi to give up the 1,000 Gutt voting shares in return for money. On 22 December 2018, Mr Torzi sent Mr Mincione a screenshot of a message from the Substitute calling for a meeting of the Board of Directors of Gutt on 23 December 2018. On 23 December 2018, Mr Torzi appeared to update or try to update Mr Mincione on a meeting in the State.

166. Mr Torzi responded with a text:

> "booooooom"

to which Mr Mincione replied, referring to Banca Carige:

> "Good I like it"
>
> "I have now resigned from the bank too risky".

Mr Torzi responded:

> "That's great so we can stop doing acrobats on the margin".

167. The exchanges at the trial in the cross examination of Mr Mincione over these developments are reflected in these extracts:

> "Mr Hollander KC: What honest basis could there have been for Mr Torzi dismissing Mr Tirabassi as a director of Gutt? Can you think of any honest basis?
>
> Mr Mincione: I don't have to. I mean, it is their relationship, it's not mine.
>
> Mr Hollander KC: And he is sending it to all -- to you, to d'Andria, and Corrado knows about it as well?

Mr Mincione: Yes.

Mr Hollander KC: And then you know that Perlasca is -- you know there's phone calls in to Corrado and he's not responding, and you can see that Peña Parra is calling what effectively is an emergency meeting "tomorrow", as it were, 23 December, at the Secretariat of State, of Gutt. You know perfectly well that Torzi is defrauding the Secretariat of State in relation to this, don't you?

Mr Mincione: No.

Mr Hollander KC: Well, why do you say: "Good I like it."

Mr Mincione: Because as a sub-adviser I need to have clear direction. I want to have somebody on the other side who tells me what to do and I can do it since I am guaranteed a mortgage with Cheyne Capital for them.

…

Mr Hollander KC: You knew perfectly well from this that Mr Torzi was defrauding the Secretariat of State –

Mr Mincione: No, wrong.

Mr Hollander KC: -- and that is the only legitimate reason why you could say "Good I like it", and that was because this was all part of the original plan, and you liked it because it was putting into effect what you had agreed with Torzi in November 2018?

Mr Mincione: I think it is absolutely nonsense what you're saying."

168. A records check had been made on Mr Torzi earlier in the year. Mr d'Andria now informed Mr Torzi that:

> "I would need your criminal record and/or acquittal next week".

In evidence, he accepted that "it could be possible" that he had a belief that Mr Torzi had at least been charged with criminal activity at some point.

169. As the State contends, at all points in early 2019 Mr Torzi kept Mr Mincione up to date with his negotiations with the State that were to lead to Mr Torzi ultimately obtaining €15 million from the State in return for the position he had retained with the 1000 shares.

170. On 28 March 2019, Mr Torzi sent Mr Mincione a document with what appear to be internal comments on the draft share purchase agreement with London 60 SA for the transfer of the shares. Mr Mincione agreed at trial that this was a sensitive document setting out parameters of negotiation. He denied assisting Mr Torzi; his position was he was "finding out". He claimed that the information was being provided to him as what he termed a "sub-advisor", retained within the arrangements because the Cheyne loan continued.

171. This exchange followed in cross examination:

> "Mr Hollander KC: Mr Torzi is sharing with you his negotiating position with the Secretariat in relation to the agreement whereby he is taking what ultimately was 15 million off the Secretariat …
>
> … in order to get back control of Gutt and therefore the Property?
>
> Mr Mincione: Would you want to know if – what's going on in a fight between two people if you're part, as a sub-adviser, of the story?
>
> Mr Hollander KC: This is nothing to do with being a sub-adviser.
>
> Mr Mincione: Yes, I need to know –
>
> Mr Hollander KC: This is him sharing with you his successful attempts to extort money out of the Secretariat –
>
> Mr Mincione: No, it was –
>
> Mr Hollander KC: and asking for your comments.
>
> Mr Mincione: It is not an extortion; it is a negotiation. That is what he is sharing with me. He is sharing the negotiation, not the extortion. I was not familiar with the details. He gave me this, and I believed that he was fund manager that did not make happy any more his investors and he was sent back home. That's what I knew. And I was a sub-adviser and I needed to know who was coming next or what was coming next."

172. In WhatsApp exchanges, Mr Torzi told Mr Mincione that he was still in negotiation and offered to give Mr Mincione the latest version of the draft agreement. Mr Mincione's reply was: "Okay sure I'm here".

173. On 31 March 2019, Mr Torzi sent Mr Mincione a draft of the share purchase agreement with London 60 SA Ltd. He also sent Mr Mincione, on 1 April 2019, a refinancing document in connection with the Property.

174. On 4 April 2019, Mr Torzi sent Mr Mincione a draft message which said among other things that he decided not to proceed with "the sale of the 60 Sloane avenue limited companies". This was a proposed tactic and Mr Torzi asked Mr Mincione's opinion on whether he should send the message.

175. On 6 April 2019, Mr Mincione asked how it was going. Mr Torzi gave a very brief update on the negotiations with the State and they both speculated as to whether there was going to be litigation in relation to the Balancing Payment (to which I turn in the next but one section of this judgment).

176. In his evidence at trial, Mr Mincione said that he had "no idea" with respect to this message of 6 April 2019. He offered the speculation that Mr Torzi was "… trying to scare me to get involved in these things". Mr Mincione then denied (among other things) that it was obvious at this stage that Mr Torzi was trying dishonestly to extort money out of the State. I did not regard his denial of that point as realistic.

177. A proposal made directly by His Holiness the Pope was also rejected by Mr Torzi. Mr Torzi asked for a £20 million payment and, invoking the previous proposed tactic, appeared to withdraw from negotiations altogether on 17 April 2019.

178. Ultimately, in light of Mr Torzi's threats, and after consultation with the National Crime Agency and the Vatican's Autorità di Informazione Finanziaria, the State concluded a deal with Mr Torzi. A new company with the name London 60SA was set up by the State to hold the Property and a payment of €15 million was made to Mr Torzi.

179. On 2 May 2019, Mr Torzi asked for Mr Mincione's opinion as to whether lawyers then involved, Mishcon, could be trusted to deliver €10 million as part of the deal. Mr Mincione responded that he should "see how it was drafted" by Mishcon. Mr Mincione specifically asked about the remaining €5 million and what the status was in relation to that, to which Mr Torzi explained that it would be paid in a separate invoice. Mr Mincione again said to Mr Torzi he should await the drafting. Mr Torzi sent Mr Mincione a photograph of the letter from (it would seem) Mishcon relating to the proposed transaction.

180. The State's payment of the €5 million was made to Sunset Enterprise Ltd. Shortly after that Mr Torzi and Mr Mincione exchanged a draft version of an agreement dated 21 May 2019 whereby Sunset Enterprise undertook to pay WRM €4 million. The amount had increased to €5 million "compensation" by 7 August 2019 when it was approved at a meeting of the board of managers of WRM.

181. The minutes of their meeting record what is represented as the board's understanding that following the "Transaction" in November 2018 with the State:

> "Sunset and/or its affiliates derived significant economic benefit directly or indirectly as a result of the Transaction" and
>
> "the Transaction resulted in a loss of income for the Company both in terms of future management fees and potential performance fees".

182. At trial the position of all parties was that Mr Torzi did not behave reputably. Mr Samek KC for the Claimants said of Mr Torzi that he was:

> "… behaving quite disrespectfully and quite disgracefully in trying to procure … the payment of very large sums of money from the Secretariat for them to have complete control of Gutt",

culminating in the State paying Mr Torzi €15 million.

183. There was no material dispute that Mr Torzi owed the duties of an agent to the State in relation to the Transaction. On the facts I have, at least his conduct over the Gutt shares was in breach of duty, unscrupulous and dishonest. The whole episode is also material in illustrating the point that the State did not have the experience and expertise to protect itself from this type of behaviour.

184. The State contends that when it became apparent that Mr Torzi was seeking to exert control over Gutt and was seeking more money to sell his voting shares in Gutt, the Claimants' reaction contained no expression of surprise at what Mr Torzi was doing;

no criticism or apparent concern at the propriety of his conduct; no attempt to alert the State or any other institution of what Mr Torzi was doing. I accept these facts are made out, save that Mr d'Andria did express surprise.

185. Given those facts, the State in effect contends Mr Mincione (and Mr d'Andria) could not have thought that Mr Torzi had genuinely been acting as an agent. Referring to communications that followed the Transaction, had Mr Mincione and WRM been honest in their dealings, these communications, argues the State, would show some degree of alarm, concern or surprise at Mr Torzi's conduct. Instead, says the State, they show a consistent willingness to assist and ultimately benefit from Mr Torzi's actions, and a level of collusion only consistent with dishonest conduct.

186. The State summarises that at all points, Mr Mincione (and WRM) seem to be acting in complete coordination with Mr Torzi, in full knowledge of his wrongdoing and his (successful) attempt to extort money from the State. It argues that there is no credible explanation for these interactions.

187. I understand how the State reaches the view it does. In my judgment based on the evidence that I read and heard at trial, three things were shown, which do not reach as far.

188. The first is that Mr Mincione and thereby all the Claimants came to realise, after the Transaction, as did the State, that Mr Torzi was prepared, in breach of his duty as the State's adviser, to exploit the 1,000 Gutt shares for his own benefit. The second is that Mr Mincione had the opportunity to try to dissuade Mr Torzi from that course, or to alert or try to assist the State, but he chose not to do so.

189. Third, the reason he chose not to do so was because that would further Mr Mincione's ability to obtain money for the Claimants from Mr Torzi in circumstances where the Claimants considered the Transaction had cost them future fund management earnings and that Mr Torzi was to take on the role of fund manager. I turn further to this third conclusion in the next section of this judgment.

190. The second and third of the three conclusions do not reflect well on Mr Mincione. But the conclusions do not establish the State's contention that he had knowledge all along that Mr Torzi was intending to perpetrate a fraud on the State. Nor do they assist the State's allegation that Mr Mincione knew Mr Torzi was intending to act in breach of duty to the State in November 2018 and that the Claimants were "instrumental components" of a conspiracy to defraud the State and enrich themselves.

191. Here I do accept that most people would expect more of the Claimants, but not that their response or lack of response to Mr Torzi's actions was consistent only with their thinking at the time of the Transaction that he was not in fact acting as the State's agent in the Transaction. There was a way in which the structure could be legitimate, and that was in the explanation (falsified by the way in which Mr Torzi later proceeded, but capable of being true at the time) that the shares had:

> "… the function of allowing the third party to administer the company GUTT SA. All economic rights belong to the Secretariat of State".

A further agreement between Mr Torzi and Mr Mincione

192. The dealings between the parties did not stop there. Mr Mincione accepts that he agreed with Mr Torzi that Mr Torzi or one of his companies would pay WRM €10 million. Mr Mincione's position is that this was because of lost management fees due or that would otherwise have become due to WRM.

193. The answers given in cross examination are revealing of Mr Mincione's approach and way of seeing things. They included the following:

> "Mr Hollander KC: So you had an agreement with Mr Torzi?
>
> Mr Mincione: A verbal agreement, yes.
>
> Mr Hollander KC: Okay.
>
> Mr Mincione: It was never signed and it was never paid.
>
> Mr Hollander KC: Never signed, all right. So Torzi is -- so as part of the November deal, Torzi is personally going to pay you 10 million euros?
>
> Mr Mincione: I think that it was agreed 5, if you remember well.
>
> Mr Hollander KC: Well, he didn't pay -- it was 10 at the time, wasn't it, and that is what both you and –
>
> Mr Mincione: And then it became 5, and then it was nothing. 10, 5, nothing.
>
> Mr Hollander KC: I just want to understand that. So in return for you doing the deal with the Secretariat –
>
> Mr Mincione: No, it is about the loss and, as you describe it very well, the loss of our fee for the two years that we would take it if -- remember what I say, my Lord, when I say that the Fund still had two and a half years of lock-up, and that lock-up we produced 2% on 275. 5.5 million times two and a half years, 15 million, basically. And that is what I say if I have to sign the contract as a seller on one side on my 55%, it's okay the 40 million. But you, which I was highly surprised at the time that he was the new fund manager, you have to pay me with the money that I am going to lose on the management side, the almost 15 million that will develop, and I will lose for giving away the lock-up period. And then he said, yes, and then he never paid.
>
> Mr Hollander KC: Now, so what's happening is that Mr Torzi is personally agreeing to pay WRM 10 million euros in relation to this deal –
>
> Mr Mincione: Loss of future management fee.
>
> …
>
> Mr Hollander KC: …So what I want you to do is tell his Lordship as to what honest explanation there could be for the agent of the buyer, who is claiming to

be acting for the buyer, personally has agreed to pay your company 10 million euros as a result of this deal?

Mr Mincione: Loss of future management fee.

…

Mr Hollander KC: Yes. What I am concerned about is the fact that it is the agent of the buyer who is agreeing to make the payment of 10 million euros, and what I am suggesting to you is there simply is no honest explanation as to why the agent should be agreeing to pay you or your companies 10 million euros in relation to this deal.

Mr Mincione: I would say it would be worse if I was paying him 10 million to buy the building, but he agreed to pay me 10 million because I was losing loss of future management fee, which they were going to him when he will become the fund manager. Which in fact that's what he was proposing to me, that he was replacing me as a fund manager. And on the back of it I was assuming, and that was wrongly, because I found it out it was 1% and not 2%, but I was assuming then he was making 275, 2%, 5.5 million, 5.5 million times 5, 27.5 million, plus 2 million of lock-up. Because I was thinking then, and I didn't know the contract or the -- I thought they were mirroring exactly the same fee that they paid to me from 2014 to 2018. Then he was making as an agent, and he will become later on fund manager, 27 ... 35 million -- almost 40 million in fee. And I will say if that is the case, my lock-up period is two years. I lose it. Part of your future 40 million that you're going to make, you have to pay me 10 million.

…

Mr Hollander KC: Well, it is important, Mr Mincione, because it is important that you give his Lordship your best evidence in respect of this. I am suggesting to you this is an obviously and manifestly dishonest payment for the agent to agree with you, or the agent of the buyer, in fact, the agent of the buyer, to agree with you to pay you 10 million euros in relation to this transaction?

Mr Mincione: I disagree.

Mr Hollander KC: You see, what I would suggest it shows –

Mr Mincione: I don't see the dishonest in this.

Mr Hollander KC: What I suggest it shows, and shows very clearly, is that when you negotiated this with Mr Torzi in November 2018, you actually, although you were not in any sense counterparties acting in opposite interests, you were acting in your mutual interests, and this was part of the deal whereby you would benefit what was then thought to be 10 million euros for doing the deal?

Mr Mincione: Which they were anyway mine if I did not surrender my two and a half years period of lock-up.

Mr Hollander KC: And the only way one can see how Mr Torzi was willing to agree that is if you knew perfectly well that he intended to use the structure of the

purchase to defraud the Secretariat of State in relation to Gutt?

Mr Mincione: Completely false."

194. The State says that the fact that there was an agreement for the payment of €10m shows that Mr Mincione and Mr Torzi were acting in their mutual interests. In my judgment that is right, although Mr Mincione is entitled to make the point that this particular agreement was in the interests of Mr Mincione rather than Mr Torzi.

195. But the State also contends that the evidence of the agreement demonstrates:

> "… that Mr Mincione was well aware of what Mr Torzi had intended with Gutt following the sale of the Property" and that
>
> "the payment was in return for the Mr Torzi "doing the deal.""

In my judgment the evidence at trial did not go that far.

The Balancing Payment

196. Given the structure of the Transaction, and the fact of the State's original investment, the contract documentation for the Transaction provided for a "Balancing Payment" to be paid by the State.

197. On 13 November 2018, before the Transaction, Mr d'Andria had sent a message to Mr Mincione on the question of the Balancing Payment. It indicated there was a cash difference of €41,884,487.02. In the covering email, Mr D'Andria said:

> "As discussed, please see attached the numbers put down quickly to the last NAV and included Carige to date. It should also be considered that to sell the building in full, it would be necessary to buy back the €5 million of the real estate fund held by EurAsia therefore the net cash would be between €35-40 million".

In his evidence at trial, Mr d'Andria described what he had sent as a "back of an envelope" calculation.

198. The figure that was used in the Transaction as the Balancing Payment was a different figure, in sterling, of £40 million. The State asks rhetorically how this could legitimately have been agreed.

199. It focuses on what happened immediately after the conclusion of the Framework Agreement on 22 November 2018 in relation to the Balancing Payment. Mr d'Andria recalled in his evidence being asked on 23 November 2018 to explain "in broad terms" how the Balancing Payment was calculated. The request was followed up by a WhatsApp message.

200. Mr d'Andria sent to Mr Tirabassi the following message, leading to a higher figure than indicated on 13 November:

> "Fabrizio, the shares of real estate fund B (not your shares), as of 22/11, were worth about €99M minus €52M (Athena GOF shares without the real estate), so there is still a difference of €47M".

Just before sending the message Mr D'Andria sought and received approval by WhatsApp message from Mr Mincione for the message in draft.

201. The State points out that the request on 22 November:

> "… should have been easy to answer: Mr d'Andria could have just forwarded the email of 13 November **…** which set out the basis of the calculation."

Mr d'Andria's evidence was that he was unsure what sources he had used on 13 November, and I do not reject that evidence.

202. Mr d'Andria sent to Mr Torzi a copy of the message he sent to Mr Tirabassi leading to the higher figure, writing:

> "If you get in a mess, blame me, say I was bullshitting you … But the numbers should work".

Later that evening, Mr d'Andria had a phone call with Mr Tirabassi. After this he wrote to Mr Torzi:

> "Everything OK with Fabrizio. He called me back! The numbers add up"

Mr Torzi replied:

> "Yes yes"

> "Ahahahhahahha".

203. Mr Baldauff was cross examined by Mr Hollander KC and re-examined by Ms Nesterchuk. Mr David Stern was cross examined by Ms Nesterchuk and re-examined by Mr Kazmi. Each was called as an expert. Their evidence showed the sum of £40 million to be an inflated figure for the Balancing Payment even at a value for the Property of £275 million. At that value, and using the figures as at 30 September 2018, the figure would be about £36.8 million. (At the lower value of £220 million for the Property the figure would be about £6.6 million using the figures as at 30 September 2018).

204. The question raised by the State's allegation is whether the State has established that the Claimants (as well as Mr Torzi and Mr Squillace) were not acting honestly and in good faith when putting forward a figure for the Balancing Payment of £40 million when they did.

205. The State says that Mr Mincione knew that he was pursuing a Balancing Payment figure that was well in excess of the figure which Mr d'Andria had presented to him a week before, and that is correct. But the State goes on to Say that how the Balancing Payment was calculated and how this basis was communicated to the State is indicative of there not being a genuine negotiation. To pursue a figure of £40 million in the circumstances was, the State contends, not honest and represents serious wrongdoing.

206. I do not agree. As between the Claimants on the sell side and the State on the purchase side, for the Claimants to propose the sterling figure was ambitious and

opportunistic. But it was not enough to show serious wrongdoing by them, or that there was no proper negotiation.

207. The calculation was on the basis of the difference between 55% of RESS1 and the remaining Athena GOF shares. Mr Baldauff also considered whether 100% of the shares of 60 SA-2 was equal to £40 million and 100% of the total Athena GOF shares. This approach is open to debate, but more importantly it was not the calculation that the parties were focused on.

The alleged involvement of the Claimants in a conspiracy to defraud

208. As I have said, the State alleges that Mr Mincione knew Mr Torzi was intending to act in breach of duty to the State in November 2018 and that the Claimants were "instrumental components" of a conspiracy to defraud the State and enrich themselves. This is said by the State to be the inescapable inference from the evidence before the Court.

209. The State says both that the documentary and oral evidence that there is clearly shows that there was not a genuine negotiation of the Transaction between counterparties at arms length but also that there is no clear explanation before the court as to how the "negotiation" with Mr Torzi was carried out and none that is consistent with a genuine negotiation. The State points out that no record or memorandum detailing the terms of the supposed negotiation have been produced. The State asks rhetorically:

> "… what sort of negotiation was this in relation to a property of this value? How could it possibly have been done in this way in good faith?".

210. If there was no good faith negotiation then that may implicate the Claimants. However, I have dealt already with speed, drafting, due diligence and terms of the Transaction. On examination these do not show that there was no genuine negotiation. Further as I have sought to explain, the treatment of Kensal Road, the shares in Gutt (including the further agreement between Mr Torzi and Mr Mincione) and the Balancing Payment do not show that there was no genuine negotiation.

211. The State also argues that Mr Squillace's conduct during this period is indicative that there was not a genuine negotiation. His conduct is one thing, but I am not satisfied it leads to the conclusion that the Claimants were party to a negotiation that they knew was not genuine.

212. I do however wish to return separately to the question of value, given my findings above on the Strutt & Parker report, the Fund Activity Overviews and the meetings on 19 and 20 November 2018. And because ultimately what is sought in these proceedings are particular declarations by the Claimants in the individual terms set out in Annex 1, and not damages by the State for conspiracy to defraud.

On value

213. As already noted, the State's position is that through the entirety of the parties' relationship, significant and material misstatements were made by the Claimants as to the market value of the Property.

214. The State alleges that in the lead up to the Transaction the Claimants intended the State to proceed on the basis that the market value of the Property, ascertained in accordance with the Red Book and by suitably qualified professionals, was £275 million when they knew that this was not the case.

215. I accept the State's contention that for a meaningful arms length negotiation between Mr Mincione and Mr Torzi, Mr Torzi (as the State's agent) would need up to date information about the value of shares in Athena GOF and the value of the Property. The value of £275 million was used as the basis for the Transaction.

216. The State points out that it was not until after the time of the negotiation or purported negotiation that Mr Torzi emailed requesting to see the valuation forming the basis of the Transaction. His email is dated 10 December 2018. Mr d'Andria texted Mr Corrado:

> "If we can send them something like a valuation."
>
> "Anything that can work",

with two laughing face emojis. I accept the State's point that Mr d'Andria's explanation that the two laughing emojis were sent "by mistake" (meaning mistake at the time) is not credible.

217. Mr Mincione put the request down to "an act of laziness" rather than as a request for something that Mr Torzi did not already have, but I do not accept that view. He referred to the availability of public information but later accepted that he did not know what information Mr Torzi had as opposed to what information he had the means to know.

218. At no point before the conclusion of the Framework Agreement or the SPA was the State provided with the latest valuation of the Property. For the State, Mr Tirabassi and a Mr Enrico Crasso (a financial consultant and former employee of Credit Suisse) received the Strutt & Parker report on or around 13 December 2018. This was when Mr Squillace sent an email to Mr Crasso with a link to documents including:

> "… property appraisal as of 31 December 2017, by Strutt & Parker. On page 39 of this document, you will find the Property Assessment which (as can be seen from the extract of the document attached for speed of reference), at the reference date, was GBP 275 million".

219. The State contends that this value "was without sensible justification" and only reached by using assumptions that were "not real". The Claimants, say the State, "can be taken to know that the figure was entirely inappropriate".

220. I accept that it is clear that the Claimants knew that the figure used the special assumption that the project would be carried out in accordance with the planning consent and using 50% financing and 50% equity, with no allowance for the cost of using equity in this way.

221. The figure did have a basis. It is to be noted that the figure was not such that Strutt & Parker had refused to provide it because it was not sensibly justifiable, was unreal or was inappropriate.

222. Mr Shapiro and Mr Wilkins gave, as I have mentioned, expert evidence as professional valuers of property. In the event their evidence did not assist me on the only matters I have to determine which is whether to grant the declarations ultimately sought. Each had a different opinion on the value of the Property at material times.

223. I respect both opinions, although both are open to some criticism. They are best seen (after correction of some accepted errors in Mr Shapiro's work) as at either end of a spectrum of proper professional opinion. Mr Shapiro was professionally sceptical about the Property; Mr Wilkins was professionally positive about the Property. It is that sort of property. Mr Wilkins' opinion shows how a value of £275 million could be supported, but what matters in this case is what was available at the time, and his opinion was not, whilst the various valuations to which I have referred were.

A later sale of the Property

224. In 2022 some demolition was undertaken at Kensal Road. The cost incurred of around £365,000 suggests that this was a small part of the work required up to the ground floor slab. On 7 July 2022 the Property was sold to a third party for £186 million.

Declarations

Declarations (1)-(20), (22)-(24) and (27)-(29)

225. A substantial number of the declarations sought are derived from provisions of the Framework Agreement, SPA, Comfort Letter, Letter of Authority and Transfer Agreement to which the parties to those documents agreed. Each of these declarations is coupled by the Claimants with a reference to the contract provisions involved. There is some repetition and some paraphrasing, but none that prompted oral argument at trial.

226. Given the journey travelled in this dispute, and bearing in mind the resources consumed by that journey, and in the interests of finality, with one exception that I deal with separately below, I am prepared to grant these declarations on the basis just described. Their final wording will however follow as closely as possibly the wording of the contract provision involved.

227. I do have reservations about what these declarations will achieve for the parties in these proceedings. In other cases where a series of contract-based declarations are sought, it is perhaps clearer what will be achieved: see for example the cases on transactions in derivatives (see in particular Deutsche Bank AG London v Provincia di Brescia [2024] EWHC 2967 (Ch) per Hildyard J and Dexia S.A v Regione Emilia Romagna [2024] EWHC 3236 (Comm) at [11] to [13] per Bryan J, and other examples referred to in those decisions; and see BNP Paribas SA v Trattamento Rifiuti Metropolitani SpA [2019] EWCA Civ 768). There are also, for example, some types of case that may call for a particular approach; cases in the Financial List Market Test Case Scheme are an example.

228. In another case the circumstances or the positions taken by the parties might require consideration of some qualification over, for example, the extensive terms of declarations (19) and (20). In the present case the declaration I wish to take separately is declaration (17).

229. This involves clause 4.1(a) of the Framework Agreement discussed above. I appreciate that here as elsewhere the contractual provision from which it is derived may or may arguably give rise to (what is sometimes described as) an estoppel. In the present case I am prepared to make a declaration, but on these lines:

> "(17) The parties agreed that the State had had the opportunity to carry out all relevant assessments and assumptions in respect of the Transaction and/or the 60 SA-2 Shares and/or the Sale Group and/or the Property." (Framework Agreement 4.1(a))."

Declarations (21), (25) and (26)

230. I turn separately to the declarations sought about the good faith of the Claimants:

> "(21) The Claimants (or any of them) had acted in good faith in and about the Transaction and the negotiation and execution of the contractual documents (so far as applicable)."

> "(25) The Claimants (or any of them) were satisfied in good faith with the content of all Final Agreements and any related documentation required to give effect to the sale and purchase of the 60 SA-2 Shares and, more in general, to carry out the Transaction."

> "(26) The Claimants (or any of them) had cooperated in good faith in order to facilitate the Transaction and carry it into effect."

231. In the circumstances of the case, I am not able to make declarations (21) and (26). I am able to make a declaration on the lines of declaration (25) so far as it records that the Claimants were satisfied, but not to include the words "in good faith".

232. I explain why in the next and final main section of this judgment.

Declarations (30) and (31)

233. The final two declarations sought, (30) and (31), are not directly drawn from agreement. Nonetheless in the context of these particular proceedings I am satisfied on the evidence at trial that declarations on these lines should be made. Again, among the considerations is that of finality.

234. That is not to offer encouragement to a party in another case to seek a declaration along the lines of declaration (31), which is a wide negative declaration, unless there was a good reason to do so.

235. Declaration (31) itself will need to be drawn more concisely and I shall need to understand why, if this is to be maintained, the words "any other fund and/or entity managed by WRM" (included by the cross reference to paragraph 32.2.15 of the Amended Points of Claim) should be included.

Good faith

236. By declarations (21), (25) and (26) the Claimants invite declarations as to their good faith.

237. It is important to record that the issue in these particular proceedings is not whether the Claimants owed duties of good faith, or whether there were consequences if they did not act in good faith. It does not, for example, help the Claimants to say they were on one side of what was a sale transaction, because whilst that may be relevant to the question whether there was a duty of good faith, that is not the question here. Nor, for example, is the question one of reliance by the State.

238. The issue is simply whether the Claimants acted in good faith, because that is what the declarations seek to have declared. Within the wording of the declarations, the words good faith are not further defined.

239. In my judgment, on the facts shown at trial the Claimants fell below the standards of communication with the State that could be described as good faith conduct. To state that the value of the Property was £275 million, as Mr Mincione did at the meeting on 20 November 2018, was not frank and was, at least without elaboration, misleading by reference to the sources available to him and in context.

240. That is so whatever independent experts might opine now, looking back, for their opinions were not available to the Claimants at the time.

241. I wish to make quite clear that my declining to declare, in the broad declarations sought, the presence of good faith throughout is just that. It is not a general or overall observation about Athena Capital, RESS1, WRM or Mr Mincione. Nor am I addressing here the question whether the State would have a claim against the Claimants, for which the State would need to establish all elements of a cause of action. As the Claimants emphasise, the State does not bring a counterclaim in these proceedings.

242. The Claimants also have the benefit of a number of findings in this judgment, not the subject of the declarations sought, which reject very serious allegations levelled against them. Here I have been able to, and have taken the opportunity to, deal with particular allegations, including particular allegations of dishonesty and particular allegations of conspiracy. The Claimants are entitled to those findings in relation to those allegations.

243. On the other hand, on the evidence I heard at trial, the State had reason to consider itself utterly let down in its experience with the Claimants. The Claimants made no attempt to protect the State from fraudulent bad actors. They took no care towards the State and they put their own interests first. The State expected more from professional counterparts, in Mr Mincione and others.

ANNEX 1

(1) Gutt had been duly authorised in connection with the execution of the Framework Agreement and the SPA into which it entered to give effect to the Transaction and the performance of its obligations provided therein. (SPA 6.1; Schedule 6 para 1.2)

(2) Gutt had obtained all consents, approvals, authorizations and other requirements provided for under any applicable law, which had to be obtained or satisfied for the execution and consummation of this Framework Agreement. (Framework Agreement 3.1(c); SPA 6.1; Schedule 6 para 1.3).

(3) Gutt was instructed and funded by the State in connection with the purchase of the 60 SA-2 Shares, had full authority to negotiate the Framework Agreement and any other documentation required to affect the Transaction and was its agent in relation to the same. (Framework Agreement Recitals (A) and (K); 3.1(f); 4.1(c); The Comfort Letter)

(4) Gutt was fully funded via equity by the State in order to pursue the Transaction. (Framework Agreement Recital (A); the Comfort Letter)

(5) Gutt had conducted the negotiations in connection with the Transaction and for the execution and satisfaction of the Framework Agreement on behalf of the State. Framework Agreement Recital (A); 3.1(c) and (f); 4.1(c); the Comfort Letter)

(6) Gutt in entering the SPA, did not rely on any representation, warranty, assurance, covenant, indemnity, warranty, assurance, covenant, indemnity, undertaking or commitment which was not expressly set out or referred to in the SPA or the Agreed Form documents referred to in it. (SPA 8.8.2(A))

(7) The State was the ultimate beneficial owner of Gutt (SPA 6.1; Schedule 6 para 1.7)

(8) The State intended and had taken the decision to own and take control of the Property through the ownership by way of Gutt's purchase of the 60 SA-2 Shares (Framework Agreement Recitals (J)-(L)

(9) The State had conferred on Msgr. Alberto Perlasca the widest powers in relation to the Transaction (including causing the State to enter into the Framework Agreement and the Transfer Agreement). (The Letter of Authority; Clause 3.1(c))

(10) The State would fully ratify and approve any documents entered into and/or executed by way of the signature of Msgr. Alberto Perlasca on behalf of the State which related to the Transaction. (The Letter of Authority; Clause 3.1(c))

(11) The State was aware that the Property was subject to security interests in connection with a loan granted to 60 SA pursuant to a loan agreement and that such loan agreement was subject to early prepayment upon the current investment advisor ceasing to be investment advisor. (Framework Agreement Recital (M))

(12) The State had appointed Gutt as its agent for all purposes to do with the Transaction including negotiations in connection with the Transaction and entering into the Framework Agreement and the SPA. (Framework Agreement Recitals (A) and (J)-(K); 3.1(f); 4.1(c); the Comfort Letter)

(13) The State had instructed and funded Gutt in connection with the purchase of the 60 SA-2 Shares and had given Gutt authority to negotiate the Framework Agreement and any other documentation required to effect the Transaction. (Framework Agreement Recital (A); 4.1(c); the Comfort Letter)

(14) The State had engaged Gutt to perform the role as 'Purchaser' in connection with the purchase of the 60 SA-2 Shares in connection with the Transaction and had determined that Gutt was suitably experienced and qualified for the purpose of the purchase of the 60 SA-2 Shares. (Framework Agreement 4.1(c); Recitals (A) and (K); the Comfort Letter)

(15) The State in entering into the Framework Agreement was not in breach of any laws or regulations applicable to it. (Framework Agreement Clause 3.1(b))

(16) The State had obtained all consents, approvals, authorizations and other requirements provided for under any applicable law, which had to be obtained or satisfied for the execution and consummation of this Framework Agreement. (Framework Agreement 3.1(c))

(17) The State had had the opportunity to carry out all relevant assessments and assumptions in respect of the Transaction and/or the 60 SA-2 Shares and/or the Sale Group and/or the Property. (Framework Agreement 4.1(a))

(18) The State was satisfied (in good faith) with the content or, and having executed and signed, the Framework Agreement and any related documentation required to given effect to the sale and purchase of the 60 SA-2 Shares and, more in general, to carry out the Transaction. (Framework Agreement 5.1(a))

(19) The State did not and does not have any claims of any kind, rights and causes of action, (relating to obligations, actions, damages, costs, expenses and compensations) whether known or unknown, direct or indirect, irrespective of their legal nature and whether past, present or future, against the Claimants or any of them which were a result of or connected with any acts, omissions or events in respect of the Transaction or any part thereof, the 60 SA-2 Shares and/or the Sale Group and/or the Property and/or the Athena GOF Shares and any investments and/or holding in Athena GOF (including the Athena GOF Shares) and in any other fund and/or entity managed by WRM, including without limitation as regards any past, present or future tax liabilities. (Framework Agreement 4.2)

(20) The State irrevocably and unconditionally has waived, and forever released the Claimants (all or any of them) from, any and all claims, of any kind, rights and causes of actions, demands, obligations, actions, damages, costs, expenses and compensations whether known or unknown, direct or indirect, irrespective of their legal nature and whether part, present or future, against the Claimants (all or any of them) which are a result of or connected with any acts, omissions or events in the period up to the Closing Date in respect of any matters relating to the Transaction or any part thereof, the 60 SA-2 Shares and/or the Sale Group and/or the Property and/or the Athena GOF Shares and any investment and/or holding in Athena GOF (including the Athena GOF Shares) and in any other fund and/or entity managed by WRM, including without limitation as regards any past, present or future tax liabilities. (Framework Agreement 4.3)

(21) The Claimants (or any of them) had acted in good faith in and about the Transaction and the negotiation and execution of the contractual documents (so far as applicable).

(22) RESS1, in entering into the SPA, the Framework Agreement and the Final Agreements, had relied on the representations, acknowledgements, confirmations and statements by the State in the Recitals, Clause 3 and Clause 4 of the Framework Agreement. (Framework Agreement 3.2; 4.4; SPA 8.8.3; Framework Agreement Recital (N))

(23) Athena Fund and/or WRM and/or Mr Mincione, in causing or procuring that RESS1 enter into the SPA, had relied on the representations, acknowledgements, confirmations and statements by the Holy See in the Recitals, Clause 3 and Clause 4 of the Framework Agreement. (Framework Agreement 3.1-3.2; 4.1-4.4; Recital (N))

(24) The Claimants (or any of them) relied on the Letter of Authority and the Comfort Letter in and about the Transaction. (Letter of Authority; Comfort Letter)

(25) The Claimants (or any of them) were satisfied in good faith with the content of all Final Agreements and any related documentation required to give effect to the sale and purchase of the 60 SA-2 Shares and, more in general, to carry out the Transaction.

(26) The Claimants (or any of them) had cooperated in good faith in order to facilitate the Transaction and carry it into effect.

(27) The State was aware of the terms of the Transaction (as contained in the contractual documentation). (Framework Agreement Recital (N), (O); 5.1(a))

(28) The State was and is bound by the Framework Agreement and the SPA. (Framework Agreement Recital (A), (J)-(K) and O); 4.1(c))

(29) Gutt had authority from the State to enter into the Framework Agreement and the SPA. (Framework Agreement Recital (A), (J)-(K) and O); 4.1(c); The Comfort Letter)

(30) The Framework Agreement and/or the SPA and/or the authority of Msgr Perlasca is valid, enforceable and is binding on Gutt and the State (so far as applicable)

(31) The Claimants have no civil liability (howsoever arising, under any system of law or regulation, in contract, tort/delict, statute or otherwise), save in the case of fraud, to the State in respect of the Transaction or any part thereof, the 60 SA-2 Shares and/or the Sale Group and/or the Property and/or the Athena GOF Shares and any investment and/or holding in Athena GOF (including the Athena GOF Shares) and in any other fund and/or entity managed by WRM, insofar as the determination of such liability depends on any of the propositions described in the preceding paragraph or the denial of any of the propositions and/or facts and/or matters pleaded in paragraphs 34.1.12, 34.2.14 and 34.2.15 [of the Amended Particulars of Claim]. [Original emphasis removed].