

AIML has 30 days to refer this Decision Notice to the Financial Markets Tribunal (FMT). If referred, the FMT will determine what (if any) the appropriate action is for the DFSA to take, and remit the matter to the DFSA with such directions as the FMT considers appropriate.

DECISION NOTICE

To: Abraaj Investment Management Limited (in Provisional Liquidation) (**AIML**)

Address: C/- Mr Stuart Keith Sybersma
Deloitte & Touche
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Grand Cayman KY1 1109

and

Mr David Soden
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Athene Place, 66 Shoe Lane
EC4A 3BQ
London, United Kingdom

(together the Joint Provisional Liquidators or **JPLs**)

Date: 29 July 2019

ACTION

1. For the reasons given in this Notice and pursuant to Article 90(2)(a) of the Regulatory Law 2004 (the **Regulatory Law**), the Dubai Financial Services Authority (the **DFSA**) has decided to impose on Abraaj Investment Management Limited (**AIML**) a fine of USD 299,300,000 (the **Fine**).
2. This figure consists of:

- a. USD 115.4 million in respect of AIML's 'Unauthorised Activity', contrary to Article 41 of the Regulatory Law. This figure is based on 20% of AIML's Management fees from April 2007 to January 2018; plus
 - b. USD 183.9 million in respect of AIML's misleading and deceptive conduct since 21 August 2014, contrary to Article 41B of the Regulatory Law. This figure is based on 100% of the approximate shortfall in the APEF IV and IGCF Funds as at 31 March 2018.
3. The Notice is addressed to AIML alone. Nothing in this Notice constitutes a determination that any person other than AIML breached any legal or regulatory rule, and the opinions expressed in this Notice are without prejudice to the position of any third party, or of the DFSA in relation to any third party.

DEFINITIONS

4. Defined terms are identified in this Notice by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in Annex A. Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

SUMMARY OF REASONS

5. The DFSA has decided to take the action set out in this Notice as it considers that AIML carried on activities in or from the Dubai International Financial Centre (the **DIFC**) in contravention of the following legislation administered by the DFSA:
 - a. in the period from April 2007 to January 2018, Article 41 of the Regulatory Law in that AIML carried on a Financial Service activity, that is Managing a Collective Investment Fund or Managing Assets, in or from the DIFC when it was not an Authorised Firm with a Licence authorising it to carry on such an activity; and
 - b. in the period from 21 August 2014 until the appointment of the Joint Provisional Liquidators (**JPLs**) to AIML on 18 June 2018, Article 41B of the Regulatory Law in that AIML engaged in misleading and deceptive conduct in relation to Funds managed by AIML and Financial Services activity carried on by AIML in or from the DIFC.
6. AIML is a Cayman Islands exempted Company and part of the Abraaj Group of companies (the **Abraaj Group**). Despite being based in Dubai and carrying on activities from the DIFC, AIML did not have a DIFC commercial licence and was not authorised

by the DFSA to carry on Financial Services activities in or from the DIFC. AIML is a wholly owned subsidiary of Abraaj Holdings (**AH**), another Cayman Islands exempted Company.

7. The only entity in the Abraaj Group incorporated in the DIFC and authorised or regulated by the DFSA is Abraaj Capital Limited (**ACL**D).

Unauthorised Activity

8. Article 41 of the Regulatory Law prohibits a person from carrying on a Financial Service in or from the DIFC unless, under Article 42(3), the person is an Authorised Firm whose Licence authorises it to carry on the relevant Financial Service.
9. AIML has never been a DFSA Authorised Firm. Nor did it satisfy the other criteria that would have permitted it to carry on a Financial Service in or from the DIFC.
10. The DFSA considers that AIML carried on a Financial Service in and from the DIFC from 2007. Specifically, it carried on the Financial Service of Managing a Collective Investment Fund (**Fund**) as defined in GEN Rule 2.12.1. Alternatively, AIML carried on the Financial Service of Managing Assets as defined in GEN Rule 2.10.1.
11. For each of the Funds listed out in paragraph 64, the General Partners (**GP**) of the Funds entered into Investment Management Agreements or Deeds which appointed AIML to act as the Manager of the Fund and AIML agreed to so act. As the appointed manager of the Fund, AIML was authorised to take all necessary or desirable actions in connection with the operation of the Funds, the management of the Funds' investment portfolios or otherwise in the furtherance of the Funds' businesses.
12. The registered office addresses of both AH and AIML were in the Cayman Islands. These were mere paper offices; neither firm had physical premises or staff in the Cayman Islands.
13. From at least September 2009, the date of the first on-site risk assessment of ACLD by the DFSA, until the appointment of the JPLs in 2018, both AIML and ACLD were co-located in premises inside the DIFC. Staff on ACLD visas considered themselves employees of the Abraaj Group rather than ACLD. From 2015 onwards, ACLD disclosed to the DFSA that only between 8% and 12% of the staff on ACLD visas were engaged in regulated activities on behalf of ACLD.
14. This is consistent with the fact that AIML delegated certain activities to ACLD in respect of a small subset of Funds for which AIML was the Manager. Even in respect of those

delegated Funds, AIML retained responsibility for making investment and divestment decisions and, from October 2011, responsibility for fund administration.

15. The principal investment decision-making body for the Abraaj Group was a committee called the Global Investment Committee (**GIC**). The GIC comprised a number of AIML's senior management.
16. The majority of GIC meetings were held in the Abraaj Group Offices in the DIFC. Those members of the GIC who were travelling would join the meetings by conference call, or video call. The host and the majority of the attendees at those calls and video conferences were usually situated within the Abraaj Group Offices in the DIFC.
17. All permanent members of the GIC had Dubai residence status, with family homes in Dubai, and their own physical offices were in the Abraaj Group Offices in the DIFC.
18. In an internal memo dated 10 November 2016, a member of the Abraaj Group Compliance stated that the GIC's activities within the DIFC had not been disclosed to the DFSA, but acknowledged that (i) Abraaj Group staff were involved in Managing Assets, (ii) for all intents and purposes the meetings occurred within the DIFC, and (iii) it would be difficult to argue that the investment decisions were taken in the Cayman Islands.

Misleading and deceptive conduct by AIML

19. Article 41B (General prohibition against misconduct) of the Regulatory Law came into force on 21 August 2014 and states as follows:

"A person must not, in or from the DIFC, engage in conduct in connection with a Financial Product or a Financial Service that is:
 - (a) misleading or deceptive or likely to mislead or deceive;*
 - (b) fraudulent; or*
 - (c) dishonest."*
20. Accordingly, the relevant period for contraventions of this provision, for the purposes of this Notice, is from 21 August 2014 until the appointment of the JPLs to AIML on 18 June 2018.
21. Since 21 August 2014, AIML directed the use of Abraaj Fund monies to meet AIML operating expenses and to meet cash shortfalls in other Abraaj Funds. AIML concealed the fact that it was doing so by providing misleading financial information to investors

and making untrue statements about the reasons for delays in making investments and distributions.

22. These cash shortfalls were due to its high investment costs and operating expenses far exceeding its fee revenue, as a result of the following factors:
 - a. **AH's GP or warehoused commitment.** In order to ensure that the Abraaj Funds met their fund size targets, AH took large stakes in its own Funds. In addition to these commitments, the Abraaj Group would often cover for defaulting investors, while planning to find new investors to replace the defaulting investors' share in the Fund. AH did not always have the monies to make good those required contributions to drawdown requests;
 - b. **Abraaj Group's working capital.** This included payroll, bonuses and transfers and loans to individual AIML employees and entities connected to them, in amounts totalling hundreds of millions of dollars;
 - c. **The promotion of new funds.** Abraaj Group continued to spend lavishly on promoting new Funds such as APEF VI; and
 - d. **Interest and capital repayment on borrowings.** The Abraaj Group had amassed debts of around USD 1 billion and the cost of servicing and, on occasion, repaying these debts was substantial.
23. The Limited Partners (**LPs**) were not informed that their monies were being transferred from the Funds and used to meet Abraaj Group cash shortfalls or to fill holes in other Funds. Rather, AIML actively and deliberately misled the LPs through the GP Reports, the Abraaj Funds' financial statements, the Limited Partners Advisory Committee (**LPAC**) meetings, and other correspondence, to ensure that the LPs did not discover the use of Fund monies for Abraaj Group operating purposes.
24. Further, AIML actively misled and deceived the LPs into believing that their cash remained within the Funds by:
 - a. temporarily depositing money in the Fund for the purpose of obtaining a bank balance confirmation for the year-end Fund audits. In both June 2016 and June 2017, Abraaj Group borrowed approximately USD 200m from a non-bank entity for this purpose;

- b. changing the financial year-end of one particular Fund from 30 June to 31 December, so that it did not have to source monies to cover the shortfall in the Fund in June for audit purposes;
 - c. using entities that did not form part of the Abraaj Group for accounting consolidation purposes, but were owned and controlled by members of AIML senior management, to disguise or hide liabilities of AH and AIML, including amounts owed to Abraaj Funds;
 - d. refusing the LPs' demands for bank statements in relation to a Fund that would have revealed the money flows to AIML operating accounts. Rather than informing the LPs that AIML had taken monies from their Fund, AIML once again borrowed monies from a non-bank entity, to place temporarily in the Fund's account, to obtain a bank balance confirmation;
 - e. inventing excuses to justify the delay in distributing exit proceeds from the sale of Fund investments where those sale proceeds had been used for non-Fund purposes;
 - f. not disclosing the transfer of monies to AH and AIML in the quarterly reports to the LPs (the **GP Reports**); and
 - g. up until late 2017, not accruing or paying interest on the money taken from the Abraaj Funds.
25. In relation to one particular Fund, AIML transferred interest income earned by the Fund to an AIML operating bank account. AIML did not distribute the interest payments to the LPs but, instead, used the monies for purposes not relating to the Fund.
26. Further, AIML misled the LPs of that Fund through the Fund's audited financial statements and GP Reports, which failed to disclose that the interest earned and received for the benefit of the Fund had been transferred to AIML.
27. In addition to concealing from investors and misleading them about the fact that monies from the Funds had not been used for the purposes for which they were intended, AIML used Fund assets as collateral for Abraaj Group borrowing.
28. By engaging in the misleading and deceptive conduct summarised in paragraphs 21 to 27, AIML contravened (after 21 August 2014) Article 41B of the Regulatory Law.

FACTS AND MATTERS RELIED UPON

Structure of the Abraaj Group

29. By 2018, the Abraaj Group was the largest private equity firm in the Middle East with an estimated USD 14 billion assets under management in numerous private equity and other funds that were typically structured as limited partnerships. The Abraaj Group has over 300 entities (including Special Purpose Vehicles (**SPVs**)) in its structure and physical offices around the world, in Dubai, the USA, the UK, India, Singapore, Turkey, Mauritius and other locations, and mere paper offices in the Cayman Islands. However, the Abraaj Group was perceived as being 'headquartered' or 'based' in Dubai. The Abraaj Group leveraged off the Dubai and the DIFC brand to attract investors. ACLD, was the only entity in the Abraaj Group licensed and authorised by the DFSA to carry on Financial Service activities in or from the DIFC.
30. AIML was the primary investment adviser and manager of the private equity funds in the Abraaj Group. AIML is a Cayman Islands exempted Company and, until 28 January 2008, AIML's name was Abraaj Capital (Cayman) Limited.
31. AIML's registered office address is in Ugland House, South Church Street, PO Box 309, Georgetown, Grand Cayman, Cayman Islands. However, as an exempted company, AIML was not permitted to, and did not, carry on any business from its registered office in the Cayman Islands. Instead, AIML carried on its activities from Dubai and primarily operated from the Abraaj Group Offices in the DIFC.
32. AIML had a "Branch of Foreign Company" licence, issued by the Dubai Department of Economic Development, to carry out feasibility studies and management consultancy services. Notably, this licence did not include the provision of private equity fund management services. The Branch of Foreign Company licence expired on 28 September 2018. At no time did AIML have a DFSA licence authorising it to carry on Financial Services in or from the DIFC.
33. AIML is wholly owned by Abraaj Holdings (formerly known as Abraaj Capital Holdings Limited). AH is the ultimate holding company of the Abraaj Group and incorporated in Cayman Islands as a Cayman Islands exempted Company.
34. ACLD is a subsidiary of AIML and was incorporated in the DIFC on 19 March 2006 and authorised by the DFSA on 20 March 2006. ACLD was authorised by the DFSA to carry on Financial Services in or from the DIFC, including:

- a. Advising on Financial Products;
 - b. Arranging Deals in Investments;
 - c. Arranging and Advising on Credit;
 - d. Managing Assets; and
 - e. Providing Fund Administration.
35. While ACLD was authorised by the DFSA and licensed to carry on certain Financial Services, the scope of its Licence did not include Managing a Collective Investment Fund (as defined in GEN Rule 2.12.1 and set out in paragraph 50).
36. AH, AIML and ACLD shared common senior management, with all of AIML's Directors sitting on the Board of AH and ACLD. AIML's senior management all held the most senior positions at ACLD and, with one exception, were all employed by ACLD. All of AIML's senior management were based at Abraaj Group Offices in the DIFC.

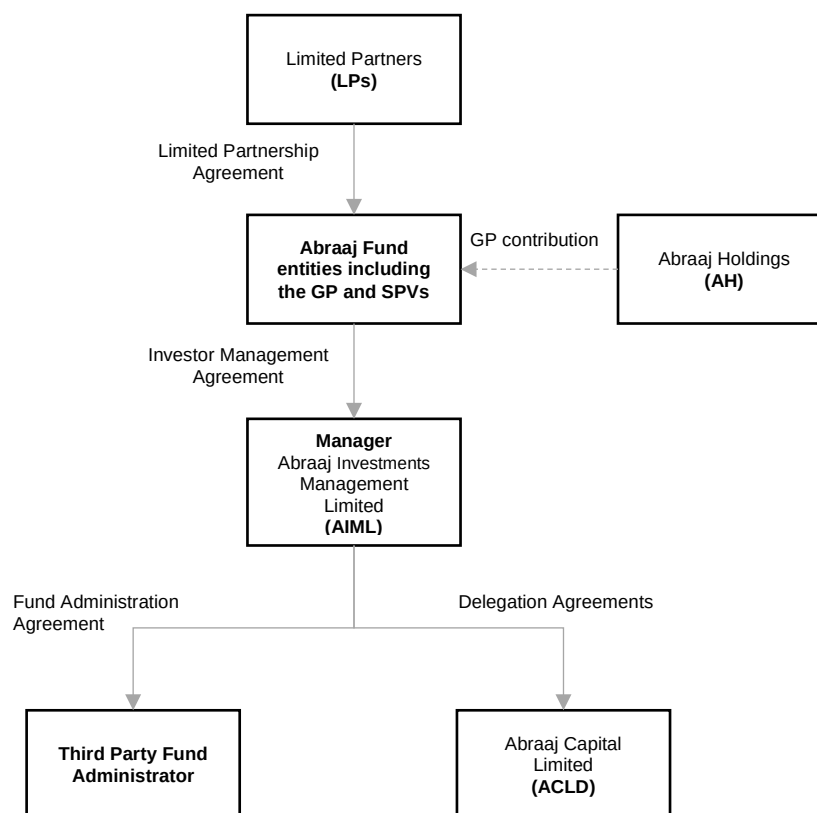
Appointment of Provisional Liquidators

37. In or around June 2018, AIML and AH voluntarily declared bankruptcy and, on 18 June 2018, the Grand Court of the Cayman Islands issued orders appointing Joint Provisional Liquidators to AH and AIML since the entities could not meet their liabilities as they became due.
38. As ACLD was reliant on AH and AIML for funding, and with both of them being in liquidation, ACLD became unable to meet its debts as they fell due and voluntarily applied to be wound up. On 15 August 2018, ACLD was placed into provisional liquidation by the DIFC Courts.

Abraaj Funds

39. As the primary Manager in the Abraaj Group, AIML was responsible for managing the majority of the Abraaj Group's private equity Funds. Those Funds were typically set up as Limited Partnerships with a GP, which appointed a Manager of the Fund (in most instances AIML), and LPs who were the investors. In turn, since March 2007, AIML delegated to ACLD certain of its functions in relation to seven Funds specified in the ACLD financial statements (however, functions in relation to not more than five Funds were delegated at any one time).

40. The structure of the Abraaj Group and Abraaj Funds was complex. The chart below sets out a simplified overview of how most Abraaj Funds were structured and managed.



41. Specifically, under delegation agreements and a Services Agreement entered into between AIML and ACLD since March 2007 (together, the **Delegation Agreements**), AIML delegated to ACLD the performance of investment management and fund administration functions for not more than five Funds at any one time. An Investment Advisory and Service Level Agreement (**IASLA**) between AH and ACLD in October 2011 purported to supersede these Delegation Agreements but did not materially change the delegation arrangements put in place by the pre-existing Delegation Agreements.
42. Typically, the main participants in an Abraaj Fund are:
- the Fund's LPs, who are the investors who committed to contribute to the Fund on the issuance of the Drawdown Notices;
 - the Fund's GP, which is an entity typically owned by the Manager of the Fund and which also commits capital to the Fund; and
 - within the Fund structure, there were typically a number of SPVs set up for various tax, jurisdictional, regulatory or investment purposes.

43. The rights and obligations of the LPs and the GP are governed by the Limited Partnership Agreement (**LPA**) for each Fund.
44. The GP usually appointed AIML as Manager of the particular Fund through an Investment Management Agreement (**IMA**). The Manager is responsible for the management and operations of the Fund, including making investments and divestments.
45. The Manager might delegate some of its duties to another entity, typically referred to as a Sub-Manager or Investment Advisor. As indicated above, AIML had delegated certain services for a small number of Funds to ACLD under Delegation Agreements dated in 2007 and 2009. AIML had also delegated some of its Fund Administrator duties to third party providers under Fund Administration Agreements (**FAA**).

PART A: UNAUTHORISED ACTIVITY

The Financial Services Prohibition

46. Article 41 of the Regulatory Law prohibits a person from carrying on a Financial Service in or from the DIFC unless, under Article 42(3), the person is an Authorised Firm whose Licence authorises it to carry on the relevant Financial Service, an External Fund Manager managing a Domestic Fund, or an Authorised Market Institution whose Licence authorises it to carry on the relevant Financial Service.
47. AIML has never been a DFSA Authorised Firm. Nor did it satisfy the other criteria that would have permitted it to carry on a Financial Service in or from the DIFC.
48. Under GEN Rule 2.2.1 an activity constitutes a Financial Service if it is an activity specified in GEN Rule 2.2.2 and the activity is carried on by way of business in the manner described in GEN section 2.3. Under GEN Rule 2.2.2, the activities specified include 'Managing Assets' and 'Managing a Collective Investment Fund'.
49. The DFSA considers that AIML carried on a Financial Service in and from the DIFC from 2007. Specifically, it carried on the Financial Service of Managing a Collective Investment Fund as defined in GEN Rule 2.12.1. Alternatively, AIML carried on the Financial Service of Managing Assets as defined in GEN Rule 2.10.1.

Managing a Collective Investment Fund

50. The Financial Service of 'Managing a Collective Investment Fund' is defined in GEN Rule 2.12.1 as:

- “(a) being legally accountable to the Unitholders in the Fund for the management of the property held for or within the Fund under the Fund’s Constitution; and*
- (b) establishing, managing or otherwise operating or winding up a Collective Investment Fund.”*

51. To the extent that any activity carried on by AIML in the course of Managing a Collective Investment Fund constituted any of the Financial Services of ‘Managing Assets’ (GEN Rules 2.2.2(g) and 2.10.1), ‘Providing Fund Administration’ (GEN Rules 2.2.2(u) and 2.24), ‘Dealing in Investments as Agent’ (GEN Rules 2.2.2(e) and 2.8), ‘Dealing in Investments as Principal’ (GEN Rules 2.2.2 (d) and 2.7), ‘Arranging Deals in Investments’ (GEN Rules 2.2.2 (f) and 2.9) or ‘Providing Custody’ (GEN Rules 2.2.2(j) and 2.13), such a Financial Service is taken to be incorporated within Managing a Collective Investment Fund. Therefore, even if AIML was not Managing a Collective Investment Fund, its activities were such that it was carrying on other Financial Services.
52. Each of the Partnerships (General and Limited Partners) referred to in this Notice constituted a Fund as defined in Article 11 of the Collective Investment Law (**CIL**). Article 11 of CIL provides:

- “(1) A Collective Investment Fund (“Fund”) is, subject to Article 12, any arrangements with respect to property of any description, including money, where:*
- (a) the purpose or effect of the arrangements is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;*
 - (b) the arrangements must be such that the persons who are to participate (“Unitholders”) in the arrangements do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions; and*
 - (c) the arrangements have either or both of the following characteristics:*
 - (i) the contributions of the Unitholders and the profits or income out of which payments are to be made to them are pooled; or*
 - (ii) the property is managed as a whole by or on behalf of the Fund Manager.*
- (2) If the arrangements provide for such pooling as is mentioned in Article 11(1)(c)(i) in relation to separate parts of the property, the arrangement is not to be regarded as constituting a single Fund unless the Unitholders are entitled to exchange rights in one part for rights in another.”*

53. The relevant arrangements, as contained in the LPAs, Private Placement Memoranda and General Partner agreements, were made with respect to property that varied from Fund to Fund, and was constrained by investment restrictions, usually attached as the first schedule to each LPA.
54. The relevant arrangements set out in the LPAs allowed the Abraaj Funds to invest in property including shares, loans, debentures and convertible loans. The actual investments made by AIML on behalf of the Abraaj Funds were in line with the permissible types of investments in the LPAs. For example, AIML made investments from the DIFC, on behalf of the Fund APEF IV, in shares, convertible loans, secured loans, and investments in a combination of debt and equity and on behalf of the Fund AGHF in shares in companies undertaking greenfield and brownfield projects.
55. The purpose or effect of such arrangements, with respect to property, was to enable the LPs to receive profits from the acquisition, holding, management and disposal of property within the Fund. In particular:
- a. LPs committed to an agreed level of investment through the life of the Fund;
 - b. the GP, via AIML, would direct the LPs to make payments, from time to time, up to the agreed level of commitment;
 - c. the Fund, through AIML-staffed Investment Committees, would direct those payments towards capital investments in, or loans to, portfolio companies within the Funds; and
 - d. the Investment Committee for each Fund would, from the DIFC, monitor the performance of those investments, receive and consider recommendations from 'investment teams' located in the DIFC and the country in which the portfolio company was based, and make decisions on further investment.
56. The LPs did not have day-to-day control over the management of the property of the Funds referred to above. Rather, the relevant property was controlled and managed by AIML as set out in the Investment Management Agreements or Management Deeds.
57. The contributions of the LPs and the profits or income out of which payments were to be made to them were pooled. Specifically, AIML senior management members were involved in the following:

- a. as members of both the GIC and the Investment Committee of specific Funds, they made decisions on when to instruct drawdowns of LP commitments and the amount of those drawdowns;
 - b. either directly or via a third party fund administrator, they directed LPs to make payments to a bank account in the name of the individual Funds, of which AIML was the manager;
 - c. as members of both the GIC and the Investment Committee of specific Funds, they approved the payment of monies from the Fund bank account towards the purchase of property (see paragraph 54 for the classes of property);
 - d. they were signatories/controllers on the bank accounts into which the proceeds of the sale of property within Funds were pooled;
 - e. they took the decisions on distributions of the pooled profits; and
 - f. they authorised the transfer of monies from the Fund bank accounts to the bank accounts of LPs.
58. AIML was legally accountable to the LPs under the terms of the Investment Management Agreements and Management Deeds entered into by AIML and the respective GP for each Fund.
59. The arrangements did not fall within any of the relevant exclusions from Article 11 of CIL, set out in Chapter 2 of the Collective Investment Rules (CIR) module of the DFSA Rulebook, so as not to constitute a Fund.
60. The purpose or effect of the arrangements referred to at paragraphs 52 to 58 appears to the DFSA, on reasonable grounds, to have been investment management, in the exercise of discretion for a collective purpose, of Investments, for the benefit of the LPs.
61. The term 'Investment' is defined in GEN Rule A2.1.1 as being either a 'Security' (which, for example, includes Shares) or a 'Derivative', and includes the types of property described in paragraph 54.
62. Each of the Funds managed by AIML was a Foreign Fund, as defined in Article 13 of CIL, as the LPs were not established or domiciled in the DIFC, and they were not External Funds as defined in Article 14 of CIL, as they were not managed by a Fund Manager that was an Authorised Firm.

63. Between 30 June 2012 and 30 June 2018, ACLD disclosed to the DFSA that it had provided Financial Services to four Abraaj Funds. This is consistent with the revenue streams and costs disclosed to the DFSA over the same period, in the audited financial statements for ACLD, discussed in more detail below.
64. The following table contains a list of the Funds in relation to which AIML was appointed to act as Manager of the Funds:

AIML appointed as Manager of Fund (no Delegation to ACLD)	Funds Delegated to ACLD as recorded in financial statements for the years ending June 2012 to June 2017
Abraaj Growth Markets Health Fund (AGHF)	Abraaj Buyout Fund
Abraaj Private Equity Fund IV (APEF IV)	Abraaj Buyout Fund II
The Infrastructure and Growth Capital Fund	Abraaj Real Estate Fund
Abraaj Africa Fund III	ASAS Fund
Abraaj Global Growth Markets Aggregator Fund	
Abraaj Global Growth Markets Fund	
Abraaj Global Growth Markets Fund (B)	
Abraaj Global Growth Markets Strategic Fund	
Abraaj Latin America Fund II	
Abraaj Pakistan Fund I	
Abraaj Turkey Fund I	
Aureos Latin America Fund II	
Abraaj Private Equity Fund VI	

For the avoidance of doubt, where activities were delegated to ACLD, the DFSA does not consider that this amounted to ACLD acting as the Manager of those Funds.

65. For each of the Funds listed in the table at paragraph 64, AIML carried on the following activities under the IMAs:
- entering into agreements to act as Manager of Funds;

- b. making decisions about the management of property in the Funds, including investment decisions;
- c. marketing the Funds through making and distributing PPM and other marketing materials;
- d. directing the drawdown and disbursement of the LP contributions; and
- e. making decisions about the valuation of assets within Funds.

Agreements to act as Manager of Funds

- 66. For each of the Funds listed in the table at paragraph 64, the GP of the Fund entered into Investment Management Agreements or Management Deeds with AIML, in which it appointed AIML to act as the Manager of the Fund and AIML agreed to so act. However, many - if not all - of the IMAs contained a paragraph attempting to exclude AIML from being a “Manager” within the terms of CIL.
- 67. Notwithstanding these paragraphs in the IMAs, AIML, by the activities set out in this Notice, did in fact “Manage” at least thirteen Funds. The activities include those set out in the LPAs.
- 68. The LPAs set out the authority and power granted to AIML as Manager of the particular Fund. This included, but was not limited to:
 - a. formulating the investment policy of the partnership;
 - b. locating, evaluating and negotiating investment and divestment opportunities;
 - c. monitoring the performance of Portfolio Companies and other entities in which the partnership had invested;
 - d. borrowing money, including on a joint and several basis with other Fund vehicles;
 - e. holding the partnership assets as trustee on trust for the partnership; and
 - f. investing Fund monies in cash deposits pending the completion of an Investment or the making of distributions.

AIML carried out its fund management and asset management activities in the DIFC

69. The registered office addresses of both AH and AIML were in the Cayman Islands. These were mere paper offices; neither firm had physical premises or staff in the Cayman Islands. In contrast, from at least 2002, AIML leased office space in various buildings outside the DIFC, including in Emirates Towers, immediately adjacent to the DIFC.
70. On 19 March 2006, ACLD was incorporated in the DIFC. On 10 August 2007, ACLD entered into an agreement for a five-year lease of two floors of premises within the DIFC. The lease was renewed and the offices remained occupied until the appointment of the JPLs for ACLD in August 2018.
71. Between 2009 and 2011, AIML reduced its leased office space outside the DIFC from approximately 14,000 square feet to approximately 2,000 square feet. In March 2009, 'Abraaj Capital' announced to its clients and its banks that it had outgrown its space and was moving its Dubai office to the DIFC, which it described as the region's premier financial services centre. From 2009, AIML and ACLD operations were headquartered in various offices inside the DIFC. The majority of both firms' staff, and their core IT and telecommunication infrastructure, were located in those offices.
72. From at least September 2009, the date of the first on-site risk assessment of ACLD by the DFSA, until the appointment of the JPLs, both AIML and ACLD were co-located in premises inside the DIFC.
73. From June 2011, over 140 employees on ACLD-sponsored visas occupied Abraaj Group Offices in the DIFC. The staff interviewed by the DFSA identified themselves as employees of 'Abraaj' with no distinction made between ACLD or AIML
74. In 2015, the DFSA introduced a new requirement that all Authorised Firms report the numbers of staff they employ, the broad categories of work that those staff performed at the firm, and their grades. ACLD submitted this information for each quarter from Q1 2015 to Q2 2018. That information is summarised in the table below:

Year ACLD Reported Staff Numbers	2015				2016				2017				2018	
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
Asset Management	0	0	0	0	10	10	0	0	0	0	15	15	12	9
Fund Management	13	13	13	13	3	3	15	17	16	16	0	0	0	0
Fund Administration	3	3	3	3	3	3	3	3	3	3	3	3	3	2
Other	118	113	114	127	115	115	141	158	155	154	144	172	165	107
Total	134	129	130	143	131	131	159	178	174	173	162	190	180	118

75. From the above data, for at least Q1 2015 to Q2 2018, ACLD reported to the DFSA that only 8% to 12% of its staff were engaged in regulated activities.

AIML only delegated limited activities to ACLD

76. As set out above, the GPs of Abraaj Funds appointed AIML as the Manager of their Funds under a variety of 'Investment Management Agreements' and 'Management Deeds'.
77. Between March 2007 and October 2010, AIML and ACLD entered into a series of agreements specific to Funds managed by AIML, which purported to delegate to ACLD some of the services AIML provided as Manager of the Funds. Those Funds included Abraaj Buyout Fund LP, Abraaj Buyout Fund II, Abraaj Real Estate Fund LP and ASAS Fund.
78. Typically executed as pairs of agreements, these consisted of a 'Delegation Agreement', setting out the contractual obligations between the two firms, and a 'Service Agreement', specifying the particular activities and services ACLD would undertake on behalf of AIML.
79. The services delegated to ACLD common to all the above agreement pairs included identifying investments, managing the execution of investments, asset valuation and performance monitoring, and processing investor commitments, subscriptions and distributions.
80. AIML retained for itself the decision-making powers in relation to investment for the Funds.
81. On 4 October 2011, AH and ACLD entered into an umbrella agreement called the IASLA. Although the IASLA purported to supersede the Delegation Agreements, the effect of it was, in all material respects, to retain the existing Fund delegation arrangements in place under the Delegation Agreements. It also made no difference to what ACLD reported to its auditor and the DFSA about the Funds to which it provided Financial Services.
82. In its returns to the DFSA, ACLD stated its revenue was based on fees earned from providing Financial Services for the Funds as set out in its financial statements. Based on those financial statements, ACLD claimed to undertake activities for only the following Funds:

March 2007 to December 2007	January 2008 to May 2009	June 2009 to June 2010	June 2010 to June 2017
Abraaj Buyout Fund	Abraaj Buyout Fund	Abraaj Buyout Fund	Abraaj Buyout Fund
Abraaj Buyout Fund II	Abraaj Buyout Fund II	Abraaj Buyout Fund II	Abraaj Buyout Fund II
Abraaj Real Estate Fund	Abraaj Real Estate Fund	Abraaj Real Estate Fund	Abraaj Real Estate Fund
Abraaj Special Opportunities Fund II		ASAS Fund	ASAS Fund
Abraaj BMA Pakistan Buyout Fund		MENASA Opportunity Fund I	

Division of work between AIML and ACLD

83. The activities of AIML (whether delegated to ACLD as set out in the respective service agreements or otherwise) were mainly carried on in or from the DIFC where AIML senior management and other employees were based.
84. In the financial statements provided to the DFSA by ACLD, the firm's income and expenses (in USD) for the financial periods 2014-2017 was as follows:

Financial Period	Total ACLD Revenue	ACLD Revenue from AIML Management Fees	Costs recharged by AIML	Total Profit (Loss) ACLD	Dividend paid by ACLD to AIML
2014	11,525,000	11,525,000	7,996,000	3,400,000	3,000,000
2015	7,035,000	7,035,000	4,900,000	2,065,000	2,000,000
2016	2,478,000	2,478,000	1,796,000	591,000	1,000,000
2017	2,256,000	2,256,000	1,635,000	542,000	500,000

85. The associated revenue and costs (salaries and end of service benefits, etc.) were recorded in AIML accounts. The table below sets out the revenue, expenses, and assets under management as reported respectively in the ACLD, consolidated AIML, and consolidated AH audited financial statements for the financial years ending 30 June 2015 to 30 June 2017 (the latter being the last set of audited financial statements for these companies).

Comparison of revenue, expenses and AUM in 2015-2017

USD m	Revenue			Expenses			Assets under management		
	ACLD	AIML	AH	ACLD	AIML	AH	ACLD	AIML	AH
Jun-15	7	80	119	5	134	225	442	8,000	9,000
Jun-16	2	160	211	2	130	186	433	9,000	10,250
Jun-17	2	78	156	2	123	154	368	9,330	10,760

86. The distribution of revenue and costs between ACLD and AIML is consistent with the majority of the fee-earning work in relation to Abraaj Group Funds, namely the provision of Financial Services, being carried on in the DIFC by AIML and not ACLD.
87. Based on the audited financial statements, the majority of the employees who occupied Abraaj Group Offices in the DIFC were, in fact, undertaking tasks for AIML and AH and not ACLD.
88. For these reasons, since 2007, AIML carried on all of its activities in or from the DIFC.

Investment and divestment decisions made in the DIFC

89. As the appointed Manager of the Fund, AIML was authorised by the GP to take all necessary or desirable actions in connection with the operation of the Funds, the management of the Funds' investment portfolios, or otherwise in the furtherance of the Funds' businesses.
90. The principal investment decision-making body for the Abraaj Group was the GIC, made up of four permanent members of AIML senior management and an additional floating member.
91. The majority of GIC meetings were held in the Abraaj Group Offices in the DIFC. Members of the GIC when travelling would join the meetings by conference call, or video call. The host, and the majority of the attendees at those calls and video conferences were usually situated within the Abraaj Group Offices in the DIFC.
92. The minutes of the GIC meetings were headed 'Abraaj Investment Management Limited' as the 'Manager' of the respective Abraaj Fund, and record the GIC's consideration of recommendations from the relevant investment teams within the Abraaj Group. The minutes also document the GIC decisions to approve particular investments, or instructions to the investment teams on next steps in the investment process. In the majority of cases, the minutes record that those meetings were held in Dubai.
93. All permanent members of the GIC had Dubai residence status, with family homes in Dubai, and their own physical offices in Abraaj Group Offices in the DIFC.
94. In an internal memo dated 10 November 2016, a member of the Abraaj Group Compliance stated that the GIC's activities within the DIFC had not been disclosed to the DFSA. Further, the memo recorded that (i) Abraaj Group staff are involved in "Managing Assets" in the DIFC, (ii) "for all intents and purposes" the meetings occurred

within the DIFC, and (iii) it would be difficult to argue that the investment decisions were taken in the Cayman Islands.

95. For these reasons, AIML, through its GIC, was the primary decision-maker for investment and divestment decisions of all the Abraaj Funds in relation to which AIML had been appointed as the Manager of the Fund and carried out that decision-making function in the DIFC.

Directing Drawdowns from LPs

96. Prior to approved investments being made on behalf of Funds, instructions would be issued to Funds' investors via a Drawdown Notice. The Drawdown Notices were issued by the Manager of the Fund as defined in the LPAs, that is, AIML, and signed by an 'authorised signatory' of the GP for the respective Fund.
97. Drawdown Notices would be drafted by Abraaj Group employees and sent to investors by each Fund's Administrator. For some Funds, Drawdown Notices were sent directly to investors by Abraaj Group employees based in the DIFC.
98. Drafting and issuing Drawdown Notices forms part of AIML's activities that constitute the Financial Service of Managing a Collective Investment Fund, which requires DFSA authorisation if it is performed in or from the DIFC.

Managing Assets

99. The Financial Service 'Managing Assets' is defined in GEN Rule 2.10.1 as:

"managing on a discretionary basis assets belonging to another if the assets include any Investment or rights under a contract of Long-Term Insurance, not being a contract of reinsurance."

100. The GPs of the Abraaj Funds who appointed AIML as Manager of their Funds did so under a variety of 'Investment Management Agreements' and 'Management Deeds (see paragraph 66).
101. Under the agreements, the respective GP appointed AIML to act as Manager of the Fund, which included managing investments consistently with the investment restrictions of the particular partnership and taking investment decisions on behalf of the partnership as a discretionary manager.

102. As set out in paragraphs 89 to 95, AIML made all investment and divestment decisions in relation to Abraaj Group Funds in the DIFC. As a result, the DFSA considers that AIML carried on the Financial Service of Managing Assets in the DIFC. As set out in paragraph 94, the Abraaj Group Compliance identified this in November 2016 but no steps were taken, by ACLD, AIML or any other Abraaj Group entity, to address AIML's unauthorised activity.
103. For the reasons given in paragraphs 46 to 102, the DFSA considers that, in the period from April 2007 to January 2018, AIML carried on a Financial Service activity, that is Managing a Collective Investment Fund or Managing Assets, in or from the DIFC when it was not an Authorised Firm with a Licence authorising it to carry on such an activity. In so doing, AIML contravened Article 41 of the Regulatory Law.

PART B: MISLEADING AND DECEPTIVE CONDUCT BY AIML

Background

104. Article 41B (General prohibition against misconduct) of the Regulatory Law came into force on 21 August 2014 and states as follows:

"A person must not, in or from the DIFC, engage in conduct in connection with a Financial Product or a Financial Service that is:

- (a) misleading or deceptive or likely to mislead or deceive;*
- (b) fraudulent; or*
- (c) dishonest."*

105. Accordingly, the relevant period for contraventions of this provision for the purposes of this Notice is from 21 August 2014 until the appointment of the JPLs to AIML on 18 June 2018.
106. In the period after 21 August 2014, AIML transferred Abraaj Fund monies to AIML operating accounts. AIML then used Fund monies for its own operating purposes or for other Abraaj Funds, and concealed the fact that it was doing so by providing misleading financial information to investors and making untrue statements about the reasons for delays in making investments and distributions.

Abraaj Group Liquidity Problems

107. Throughout the period from 21 August 2014 to the appointment of the JPLs in June 2018, the Abraaj Group, and AIML and AH in particular, had significant liquidity problems because its investment commitments and operating expenses far exceeded its income.

108. Abraaj Group's high investment costs and operating expenses were caused by a combination of the following factors:

- a. **AH's GP or "warehoused" commitment.** In order to ensure that the Abraaj Funds met their fund size targets, AH took large stakes in its own Funds. In addition to these commitments, the Abraaj Group would often acquire the stakes of defaulting investors. As a result, the Abraaj Group had substantially greater stakes in its own Funds than the 1% to 8% range normally expected as the GP contribution in private equity funds. For example, AH had a commitment of USD 394.5m, or approximately 19.7%, in the USD 2 billion Infrastructure and Growth Fund LP (**IGCF**). Further, AH did not always have the monies to make good those required contributions to drawdown requests;
- b. **Abraaj Group's working capital including payroll and bonuses.** This included transfers and loans to AIML staff members and entities connected to them, in amounts totalling hundreds of millions of dollars;
- c. **The promotion of new Funds.** Abraaj Group continued to incur large costs associated with promoting new Funds including new hires, private air travel, sponsorships and conferences; and
- d. **Borrowings.** Over the years, the Abraaj Group borrowed hundreds of millions of dollars from banks as well as non-bank entities. In most, but not all, cases, the Abraaj Group would avoid repaying principal by extending the principal repayment date but it did make interest payments, which in some cases were as high as 10%.

Misuse of monies pending investment or distribution

109. An Abraaj Fund typically had two scenarios which resulted in it having a large cash balance:

- a. **Monies pending investment.** These were drawn down monies from the LPs for an approved investment that had not been used for the investment due to a range of possible reasons (political, regulatory, financial); and
- b. **Monies pending distribution.** These were the sale proceeds from the exit of an investment and investment income awaiting distribution to LPs.

110. Monies transferred from the Abraaj Funds would typically be paid into an AIML account and occasionally to an AH bank account. From these accounts, AIML or AH would then

make payments to satisfy liquidity demands, including replenishing other Abraaj Funds from which money had previously been taken.

111. The transfer of monies from the Abraaj Funds was a common feature of the Abraaj Group's overall cash flow management. Over the years, the Abraaj Group became increasingly reliant on LP drawn down monies to fund its operations and shortfalls. The Abraaj Funds were also an attractive source of cash for the Abraaj Group, as its usual practice was not to pay interest on money taken from the funds, as compared with an average third party borrowing cost of over 6% in 2017 and a non-bank borrowing cost of up to 10%. This non-payment of interest was notwithstanding the fact that, from November 2012, an Agreement between AH and AIML (**AH-AIML Agreement**) required the payment of interest. As set out in paragraphs 192 to 193, once AIML was questioned about its use of Fund monies, AIML started calculating interest liabilities, at first by reference to bank deposit account rates and then by reference to the AH-AIML Agreement. By June 2017, the Abraaj Group owed over USD 400m to the various Abraaj Funds.
112. The LPs were not informed that their monies were being transferred from the Funds and used for Abraaj Group working capital purposes or to fill shortfalls in other Abraaj Funds. Rather, AIML actively and deliberately misled the LPs through the GP Reports, the Abraaj Funds' financial statements, the LPAC meetings, and other correspondence, to ensure that the LPs did not discover the transfers to and from the AIML bank accounts.
113. The Abraaj Group finance team, which was based in the DIFC, managed the cash flows through a series of spreadsheets, accounting records, and internal emails discussing shortfalls and possible solutions.
114. From 21 August 2014, AIML's misuse of investor monies mainly occurred in two Funds - APEF IV and AGHF.
115. In May 2015, IGCF sold a portion of its investment in Integrated Diagnostics Holdings (**IDH**) for USD 228.9m. AIML received USD 154m of the IDH sale proceeds, most of which was used for non-IGCF purposes, including Abraaj Group corporate expenses and transfers to other Abraaj Funds, leaving IGCF unable to distribute fully the IDH sale proceeds to its LPs, as required by the terms of the LP Agreement. By 29 December 2015, the net amount owed by AIML to IGCF was USD 103.6m. Transfers into IGCF on 30 December 2015 for the purpose of the year-end audit are discussed at paragraphs 123 to 125.

Misuse of APEF IV investor monies

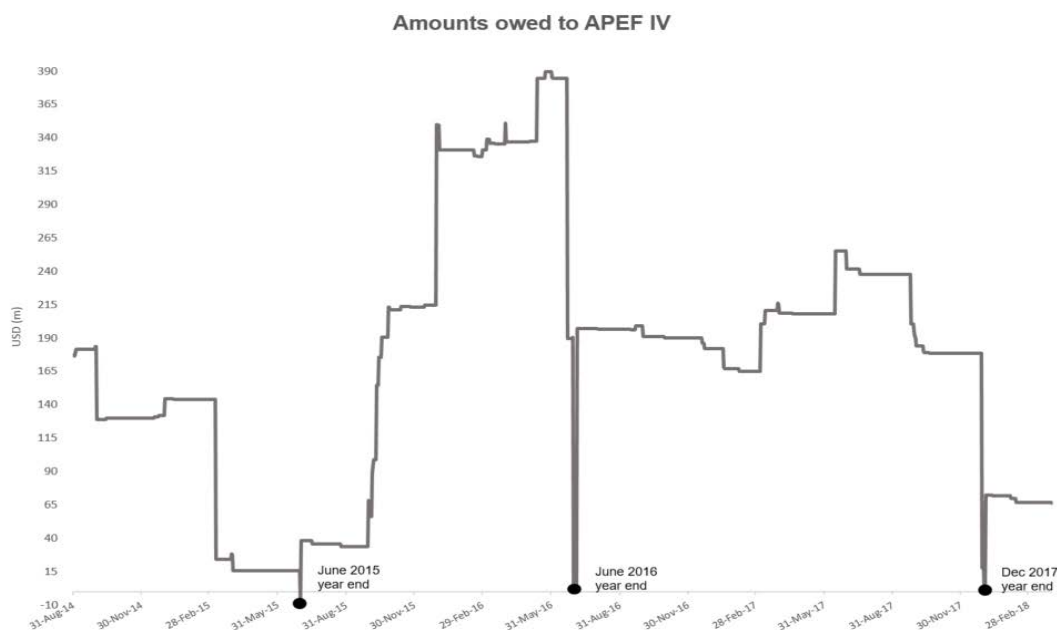
116. While clause 5.2(q) of the APEF IV LPA provided for uninvested monies to be held in bank deposits, maintained with banks which have a Standard & Poor's credit rating of BBB or better, it did not authorise AIML to use those monies as working capital.

117. In addition to this, clause 7.1(g) of the APEF IV LPA reads:

"the General Partner shall use reasonable efforts to distribute such Capital within 45 days after such amounts become available for distribution".

118. Under the AH-AIML Agreement, AH guaranteed to repay any amount borrowed from a Fund within three business days of a request from AIML and to pay an interest rate of at least 0.5% higher than AH's annual cost of funds. As set out below in this section of the Notice, AIML did not disclose this agreement to the LPs, or refer to it in any way when responding to queries from LPs, or pay or require AH to pay interest in accordance with the agreement.

119. The chart below shows the amounts owed by the Abraaj Group to APEF IV from 21 August 2014 to 31 March 2018.



Drawdown 4 used for non-APEF IV purposes

120. In the period from September to December 2015, APEF IV received monies under its fourth drawdown totalling USD 152m. Of this amount, approximately USD 95m was

transferred to AIML, where approximately half of this amount at least was used for a range of non-APEF IV related liabilities including:

- a. to meet liabilities by another Fund, including IGCF IDH distribution;
- b. for “inter office funding”; and
- c. for payroll purposes.

Sale proceeds of Network International not distributed to APEF IV LPs

- 121. In late 2015, APEF IV sold its stake in Network International for USD 330m, receiving the sale proceeds in two tranches in December 2015 and February 2016.
- 122. The first tranche of USD 135m was received into an APEF IV account on 30 December 2015. On the same day, the entire USD 135m was transferred to AIML’s bank account.
- 123. The transfers out from the AIML account on 30 December 2015 included USD 7.5m to a company owned by a member of AIML senior management and approximately USD 92m to IGCF.
- 124. AIML discussed internally the importance of receiving the USD 92m for the IGCF year-end audit in an email, stating: *“It is critical that IGCF distribution of \$67m gets done by 31 Dec and IGCF Intercompany of \$25 million is settled, so the IGCF audit can be completed without any complications and non-compliance disclosures. It is therefore imperative that the [Network International] closing takes place as scheduled on 28th Dec”*.
- 125. In line with this email, of the USD 92m to IGCF, approximately USD 67m was used to pay outstanding IDH distributions as described in paragraph 115 and on 3 January 2016 (3 days after IGCF year-end) USD 23m was transferred back to AIML.
- 126. The second tranche of USD 195m was received into an APEF IV account on 19 February 2016. By this time, APEF IV was facing a serious liquidity crisis, in that it was unable to meet its own investment commitments as described in the Drawdown Notices to the LPs. This was because AIML had taken monies from APEF IV LP drawdowns and used these monies for non-APEF IV purposes.
- 127. On 14 February 2016, an internal email set out that the Abraaj Group’s projected cash shortfall of USD 104.7m at the end of February and USD 297.4m at the end of March was largely driven by planned investment commitments in APEF IV.

128. A further email on the same day stated “*We cannot fund [REDACTED] I don’t know what to do*”. This referred to an APEF IV approved investment of USD 71m.
129. On 16 February 2016, AIML senior management proposed a solution to the problem of how to fund the upcoming APEF IV cash requirements in February and early March “*APEF IV share of [Network International] proceeds is c\$200m can be used to fund the above deals.*” APEF IV should have funded the planned investments from the monies that it had drawn down from the LPs and not from the sale proceeds of Network International. In order to cover up the shortfall in the APEF IV fund, AIML used proceeds from the Network International sale to fund the planned investments without the knowledge or authorisation of the LPs.

Sale proceeds of Saham Finances not distributed to APEF IV LPs

130. In early 2016 APEF IV sold its stake in Saham Finances (**Saham**) for USD 185m, receiving the exit proceeds in two tranches on 8 March 2016 and 11 March 2016 respectively. Of this amount, USD 76m was transferred to AIML to meet various non-APEF IV liabilities, such as margin calls on an IGCF investment.

Strategy to stagger the delayed APEF IV distributions to LPs

131. The combined exit proceeds for Network International and Saham were approximately USD 515m, of which AIML decided to retain approximately USD 200m under the recallable distribution clause of the LPA. Recallable distributions represent monies to be used for further investments by the relevant Fund, in addition to any amounts already drawn down from the LPs. However, in the case of APEF IV, the recalled distributions were used to disguise the shortfall in the drawn down monies caused by earlier AIML transfers from APEF IV for non-APEF IV purposes.
132. After adjusting the exit proceeds for the recalled distribution and Abraaj Group’s share, the net payable to the LPs was calculated to be approximately USD 252m. However, instead of distributing it all to LPs, AIML used a significant portion of this money for other purposes, including liabilities of other Funds and to cover Abraaj Group’s expenses (as set out in paragraphs 122 to 130), and, therefore, did not have the funds to pay the amounts due to the LPs in March and April 2016.
133. In April 2016, AIML decided to prioritise making “*payments in order of importance, noise makers and those that will come back, with the latest being legacy investors and passive voices.*” AIML planned to make distributions to a select group of investors and pay for some approved APEF IV investments in April for a combined total of USD 186m.

According to an internal email on 11 April 2016, APEF IV's cash balance was only USD 170m, leaving an immediate shortfall of USD 16m. In response to that shortfall, AIML further delayed distributions to some of the LPs. Additional projected LP distributions of approximately USD 93m in May and June 2016 widened the shortfall to approximately USD 109m. However, as set out in paragraphs 143 to 147, AIML continued to delay the distributions beyond June 2016, with some LPs only receiving their distribution in November 2016.

134. Despite being in a position of not being able to make the APEF IV LP distributions, AIML continued to transfer money from APEF IV to AIML to fund non-APEF IV related expenses. On 10 May 2016, an internal email set out non-APEF IV related expenses in the amount of USD 46.5m, (including repayment of loans, payroll, and supplier payments), and made the following request: *"Could you please approve transfer of \$47m from APEF IV...After the transfer of \$47m APEF IV will have a cash balance of \$4m"*. On 12 May 2016, USD 47m was transferred from APEF IV to AIML.

APEF IV 2016 Financial Statements - misleading cash position

135. As the financial year for APEF IV was the end of June each year, the LPs would expect APEF IV financial statements to show a cash balance of the unused drawn-down funds, recallable distributions and any undistributed proceeds of investment sales. An internal email on 5 June 2016 read: *"Although we have talked about the issue, but as a reminder, APEF IV year end is 30 June and AH is projected to owe c.\$316m to APEF IV at 30 June 2016. We will be able to adjust c.\$122m of distribution payable with the AH balance leaving a balance of c.\$195m to be funded by AH on or before 30 June 2016."* The options proposed to address this problem were to increase the existing bank credit facility and get an additional facility, or to source third party financing.
136. On 6 June 2016, AIML decided to obtain short-term funding from a third party unrelated to the Abraaj Group, Company X, but acknowledged that Company X would require that it be *"put it into an account which has their [i.e. Company X] people as signatories but in the name of say ABOF4?"*. The same email chain also set out the lending structure and cash flow required to ensure that the liability for the USD 195m would not appear in AIML or APEF IV financial statements, namely:

"[Company X] to MCMHL (we have recently open a bank account with [Bank])"

MCMHL to AIML

AIML to APEF IV (as funds should flow from AH/AIML to APEF IV)"

MCMHL is Menasa Capital Management Holdings Limited, an entity partly owned and controlled by members of AIML senior management, but which did not form part of the Abraaj Group for accounting consolidation purposes.

137. On or about 15 June 2016, MCMHL, Company X, AIML, Abraaj General Partner VIII Limited (i.e. the GP for APEF IV) and a member of AIML senior management entered into a four page agreement for a USD 195m short-term loan.
138. Pursuant to the agreement, on or about 22 June 2016 the amount of USD 195m was transferred from Company X to APEF IV via MCMHL and AIML.
139. This enabled APEF IV to obtain a bank confirmation addressed to the auditors that APEF IV's account, as at 30 June 2016, held the amount of USD 195m as expected by the APEF IV LPs and auditors.
140. The total cash balance reported in the 2016 APEF IV financial statements was approximately USD 195.7m, with approximately USD 0.7m held in another APEF IV account.
141. The agreement stated that the loan would be repaid on or before 15 July 2016 and a flat fee of USD 4.9m would be charged by Company X for making the loan. Therefore:
 - a. on 5 July 2016 (i.e. 13 days after taking the loan and only five days after the year-end), the principal amount of USD 195m was repaid to Company X; and
 - b. on 20 July 2016, AIML transferred USD 4.9m to Company X (equating to an annual interest rate of approximately 71%).
142. The APEF IV financial statements did not disclose that almost the entire cash balance reported was transferred out of APEF IV five days after the year-end. The LPs were not informed of these transfers in and out of the APEF IV account at the June 2016 year-end. On review of the financial statements, the LPs would only have seen that the unused drawdowns were being held as bank deposits in the name of APEF IV. Also, the financial statements did not disclose that the cash balance consisted of a loan to a third party that needed to be repaid by the APEF IV GP and which was repaid using the cash balance reported in the APEF IV financial statements.

Delays in GP Reports and LP distributions

143. In June 2016, several of the APEF IV LPs made requests for the 2016 Quarter 1 GP report. As set out in paragraph 133, APEF IV had not fully distributed the exit proceeds

from the sale of Network International and Saham and, therefore, the release of the GP Reports would have raised questions by the LPs as to the whereabouts of the distributions due to them.

144. As at 20 June 2016, approximately USD 122m of the APEF IV LP distributions remained unpaid. A reworked schedule of payments was attached to an email stating *"I have color coded the attached; ask [REDACTED] as well ti [sic] opine on who is making noise."* The colouring ranked the LPs as to when distributions should be made to them, ranging from end of June to end of August 2016, based on their "noise" level. However, as set out below, the distributions continued to be delayed well past August 2016.
145. On 21 June 2016, an internal email suggested that *"we release the reports to all the LP who have been paid NI and Saham Distribution"* or, in other words, continue to withhold the GP Reports from those LPs who have not been paid their distributions with the cautionary note that *"There will be ramifications if investors speak to each other."*
146. On 23 October 2016, an internal email entitled *"List of investors with whom GP Reports have not been shared"* stated *"APEF IV and ASAS Q1 & Q2 2016 reports have not been shared with the investors who are yet to receive the distributions"*.
147. In October and November 2016, AIML faced increasing pressure from a number of LPs to explain the delays in distributions and the absence of GP Reports. AIML decided to concoct a false explanation that the delays were due to IT issues (which was not true) and such deliberately false explanations were given to LPs who raised the issue.

Misleading investors over the receipt of interest income

148. From May 2012, APEF IV provided a USD 50m convertible loan to Company Y at an interest rate of 8% to 10.5% per annum through a SPV controlled and managed by AIML. AIML disclosed this convertible loan to investors but represented that the interest income would be paid at the end of 2017. This corresponded with the terms of the loan agreement but in practice interest was paid periodically.
149. By 31 December 2017, the principal amount of the loan was still outstanding and the total interest earned on the loan was approximately USD 27m.
150. Between May 2012 and December 2017, Company Y periodically paid the interest totalling USD 27m to the SPV. AIML did not transfer the interest payments to APEF IV to be distributed to the LPs but, instead, transferred the monies to an AIML bank account where it was used for various non-APEF IV purposes. For example, an internal email in

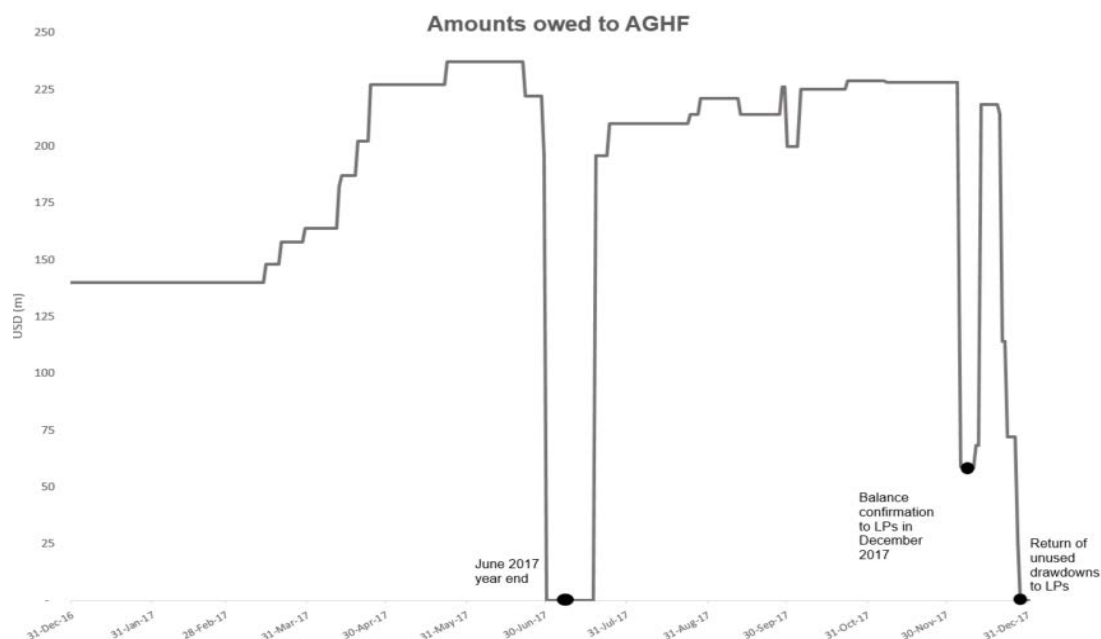
December 2015 discussing cash receipts into AIML reads: “*Will receive \$1.5m from APEF IV and \$2.7m from [Company Y] – but keeping it for [Bank] MTM*”, where MTM refers to Mark to Market relating to an IGCF investment.

151. In particular, from 21 August 2014 (the date that Article 41B came into force) to 31 December 2017, APEF IV earned USD 17.9m in interest from Company Y, all of which was received by the SPV and transferred to AIML. During this time, AIML misled the LPs through APEF IV audited financial statements and the GP Reports by not reporting the receipt of this interest income.
152. AIML distributed APEF IV audited financial statements for the years ending June 2015 and June 2016 to the LPs. The financial statements reported the cumulative interest receivable from the SPV but failed to disclose that the SPV had actually already received the interest from Company Y and that the monies had been transferred to AIML. Further, over this period, AIML provided the LPs with 14 quarterly GP Reports that also failed to disclose that interest had been received from Company Y and the monies had been transferred to AIML.

Misuse of AGHF investor monies

153. The LPA for AGHF was similar to that for APEF IV, but it also permitted “*Temporary Investments*”. Clause 6.5(j) of the AGHF LPA stated: “...*pending the application of amounts drawn down pursuant to this Agreement or received by the Partnership (as the case may be), to place such amount in deposit accounts or invest them in Temporary Investments.*”.

154. The chart below shows the amounts owed by the Abraaj Group to AGHF from 31 December 2016 to 31 December 2017.



155. In December 2016, AIML issued the second Drawdown Notice for AGHF for a total of approximately USD 414m.

156. From the monies received from the LPs in response to the second Drawdown Notice, a total of USD 140m was transferred from AGHF to AIML (which received USD 40m on 21 December 2016) and AH (which received USD 100m on 22 December 2016).

157. Of the USD 100m transferred to AH on 22 December 2016, USD 73m was transferred back to AGHF on the same day as AH's GP share of the second drawdown (17.6% of USD 414m). The USD 73m transfer from AH to AGHF gave the impression to the LPs through the GP Reports that AH had contributed its share to the Fund, whereas in fact the source for this payment was monies already drawn-down from the LPs, effectively double-counting the same monies. From the remaining balance of USD 27m, AH transferred approximately USD 26m to an AIML bank account on 10 January 2017.

158. Throughout 2017, AGHF became a major source of cash to resolve liquidity problems in the Abraaj Group, with the amount owed by the Abraaj Group to AGHF increasing from USD 140m to over USD 230m. AIML sought to conceal the transfer of monies from APEF IV and AGHF to AIML as set out below.

AGHF and APEF IV June 2017 Financial year-end – misleading cash position

159. As the 2017 financial year-end (i.e., 30 June 2017) for AH, AIML, AGHF and APEF IV approached, the liquidity position had worsened to the extent that Abraaj Group was struggling to find monies to pay employee wages.

160. On 20 May 2017, an internal email providing a cash update stated

“Please note that we will have no funds available to pay for June salaries of the Group and any other critical payment such as payment for AGHF”.

161. The shortfall owed to APEF IV had grown from USD 195m in June 2016 to USD 201m in June 2017. In addition to this balance, Abraaj Group now also owed AGHF USD 225m. As a consequence, the combined amount owed by the Abraaj Group in June 2017 to APEF IV and AGHF was USD 426m.

162. A series of internal emails in early June 2017 discussed the challenges of having the same year-end for AH, APEF IV and AGHF, its impact on the monies required for audit purposes, and possible solutions.

163. On 3 June 2017, an internal email stated:

“This year we are faced with additional challenge in the form of AGHF. AGHF also has June year end, which makes us to deal with AH, APEF IV and AGHF.

Even if we change AH year end, we still have to arrange for cash for APEF IV and AGHF audit.

Please find below a summary of potential audit issues for year ended 30 June 2017....

- We expect the balance payable to AGHF as at 30 June 2017 to be \$ 225m. As AGHF also has the same year end, we will have to arrange cash to settle this payable before the year end as AGHF year end is also 30 June.*
- Payable balance to APEF IV at 30 June 2017 will be \$ 201m. As APEF IV also has a June year end, we will have to settle this balance.”*

164. In the same email chain, it was suggested changing the year-end of APEF IV from 30 June 2017 to 31 December 2017, because then AIML would not need to borrow to cover up the APEF IV shortfall at the same time as borrowing to cover up the AGHF shortfall.

165. Also on 3 June 2017, an internal email set out that the shortfall in the funds would be covered up by borrowing from Company X, the same company that lent AIML USD 195m to cover up the shortfall in APEF IV at the time of the June 2016 audit.
166. On 12 June 2017, AIML decided to go ahead and change APEF IV's audit year-end to December 2017. As a result, AIML only had to borrow sufficient funds to cover the shortfall in AGHF for the June 2017 audit.
167. Based on the drawdowns and the investments, as reported in the AGHF GP Reports, the investors would have expected to see a cash balance of USD 225.9m as at 30 June 2017. However, the balance in the AGHF accounts was only USD 14.8m as at 21 June 2017. On 22 June 2017, AIML transferred approximately USD 15.1m to AGHF, leaving a shortfall of USD 196m.
168. On or about 21 June 2017, Company X, the Abraaj Growth Markets Health Fund General Partner Limited and an AIML senior management member entered into an agreement for a short-term loan of USD 196m from Company X to AGHF to be repaid on or before 19 July 2017.
169. Pursuant to this agreement, on 24 June 2017, Company X transferred approximately USD 196m to AGHF.
170. This brought the AGHF account balance to USD 225.9m on 28 June 2017. Of this amount, USD 224m was placed on a short-term term deposit with the same bank.
171. This enabled AGHF to obtain a bank confirmation addressed to its auditors that, as at 30 June 2017, AGHF's account held USD 225.9m.
172. As a consequence, the notes to AGHF's financial statements, which were provided to the LPs, stated in respect of cash that:
- "This balance represents cash held in the bank account of Abraaj Healthcare Group Limited. The cash balance constitutes capital drawn down from limited partners of the Partnership, based on investment deployment schedule, net of amounts deployed in investment in financial assets".*
173. On 19 July 2017, the USD 224m held in a short-term deposit was paid back into the AGHF bank account. On the same day, pursuant to the terms of the short term loan agreement, approximately USD 196m was repaid from AGHF's bank account to Company X.

174. On 20 July 2017, AH transferred USD 7m as a flat fee to Company X for the USD 196m loan (equating to an annual interest rate of approximately 50%).
175. On 24 July 2017, USD 14m was transferred from AGHF to AIML.
176. The transfers from and to Company X were not disclosed to the LPs. Rather, these transfers were carried out in order to conceal the monies transferred from AGHF to AIML and AH during the reporting period. As set out in paragraph 142 in relation to the June 2016 APEF IV financial statements, AIML carried out these transfers to mislead the users of financial statements, and in particular the AGHF LPs, as to the financial position of AGHF.

Misleading responses to investor queries

Queries from the LPs over use of AGHF monies

177. As shown in the chart at paragraph 154, between 20 July 2017 and 4 December 2017 the amount owed by the Abraaj Group to AGHF was between USD 196m and USD 229m.
178. AIML did not inform the LPs that their unused drawdowns had been transferred to the Abraaj Group to be used for non-AGHF related purposes.
179. As set out below, when the LPs' questioning became more persistent, AIML deliberately misled the LPs to give the impression that unused drawn-down monies were held in an AGHF bank account. AIML attempted to stifle this questioning by complaining to more senior staff at the LP about the questions being asked by the relevant LP staff member(s).
180. In September 2017, one of the LPs raised concerns about the *"disconnect between the capital drawn down and the capital actually invested. There seems to be an extraordinary amount of money sitting in the fund for quite an extended period of time."* The LP asked for bank account information as to where the funds were sitting.
181. AIML internally discussed this query in the following way:

"....[REDACTED] has been querying what has happened to the cash that should be sitting with us given that we have drawn down funds but haven't been able to deploy. In the past we have explained to him that the money sits in a bank account and we don't invest it in any products given that the money is meant to be invested in deals and projects.... Apparently, he has been asking for some proof for quite some time. Further [REDACTED]"

mentioned that its best we try and isolate him otherwise he could ask the question at the October LPAC in Kenya and then other LP's start asking the question. I have reflected on this and my suggestion is that we share the attached bank confirmation that ■ sent ■ as part of their audit procedures, it shows a balance of \$225.9m as at 30 June 2017. I will get ■ to share it with ■ and also express our unhappiness of being questioned in this way and that us sharing this with him is not to create a precedent. I think that this will resolve the matter both internally and externally."

182. A member of AIML senior management subsequently sent an email on 22 September 2017 to a senior staff member at the LP raising the query:

"We were asked once by ■ a month or two ago for proof of funds in that we had the funds unused in a bank account; despite being embarrassed at the request (one that we had not experienced before), we provided a bank audit certificate, as part of our audit procedures. To ask for it again one or two months later when there has been no change is frankly demeaning, especially after an LPAC meeting in which we transparently explained the reasons for delays etc."

Queries from an LP about use of APEF IV funds

183. In late September 2017, an unknown person sent an email to one of the APEF IV LPs highlighting a number of concerns (including unrealised gain valuations, problems with certain existing investments, the misuse of LP drawdowns and exit proceeds).
184. The LP raised these issues with AIML but, in line with its response to queries from AGHF investors, AIML strongly resisted any request from LPs for access to bank statements, knowing they would show the transfers of monies to AIML.

After the October 2017 AGHF LPAC meeting

185. Following an LPAC meeting on 12 October 2017, other LPs began making enquiries of AIML about the drawn-down funds that had not been used for investments, including asking specific questions about where the funds had been held and a timeline for investments or return of monies to the LPs.
186. In response to the enquiries, AIML decided not to share bank statements with the LPs. Rather, on 15 October 2017, they shared a bank confirmation for USD 225.9m as at 30 June 2017 (referred to in paragraph 171) with some of the LPs, stating *"This leaves an available cash balance of USD 225.9 M which is held with the [third party bank] under the entity Abraaj Healthcare Limited."*

187. Not satisfied with the response, the same LPs reiterated their questions and requested *“A confirmation from the bank of the cash available as of Oct 16th 2017”*.
188. On 24 October 2017, AIML sent emails to a number of AGHF LPs which included the statement *“The current cash balance is \$194.8 M and based on the above all these funds will be deployed by 31st Dec 2017... The funds sit in the [third party] bank account of The Abraaj Healthcare Group Limited”*. However, the actual balance in the Abraaj Healthcare Group Limited (**AHGL**) at 24 October 2017 was only USD 8.4m approximately.
189. On 30 November 2017, an email on behalf of four of the largest LPs continued to ask AIML to provide actual bank statements for AGHF showing all transactions in and out of the accounts.
190. In response, an internal email states *“We will deal with it. How much cash would we need to show on Tuesday?”*.

Another bank confirmation for AGHF

191. Between 1 and 3 December 2017, AIML calculated that the amount required to be shown in the AGHF bank account was approximately USD 185m, with the suggestion that part of the solution was, again, to borrow money temporarily from Company X.
192. On 6 December 2017, after a recalculation, the required amount was reduced to USD 169.9m. However, an internal email by a member of AIML senior management raised the issue of interest earned, noting that AGHF was entitled to an amount of USD 631k in interest for the period 1 July to 30 November 2017. This interest amount was calculated by reference to bank deposit interest rates of 0.75%, on the basis that investors would expect that the money would be kept in fixed deposits in line with clause 6.5(j) of the AGHF LPA (see paragraph 153) and that this is what one of the LPs had been told.
193. In early 2018, after the transfers between AGHF and the Abraaj Group became known to the AGHF LPs, AIML calculated a higher interest rate of 6.84% based on the AH-AIML agreement which states the interest on any borrowing will be paid *“at least 50bps higher than AH’s annual cost of funds”*.
194. Similar to the situation with APEF IV, prior to this point, accrued interest was not recorded in the Abraaj Group’s or AGHF’s accounting records on the money transferred from the Funds to AIML and AH.

195. In arranging the borrowing from Company X, AIML internally discussed the challenges in meeting some of the conditions set by Company X including providing '*irrevocable instructions*' to the third party bank which would mean that the bank would not provide a confirmation that the "*bank account is not subject to any third party interest, lien or charge*".
196. The balance on the AGHF account as at 4 December 2017 was USD 16,185.66.
197. On or about 4 December 2017, a loan agreement almost identical to the loan referred to in paragraph 168 was signed providing a loan of USD 140m from Company X to AGHF to be repaid on 12 December 2017. Company X agreed to provide this loan for a flat fee of USD 5.6m.
198. Pursuant to the agreement, on 5 December 2017, approximately USD 140m was transferred by Company X to AGHF's bank account.
199. On 5 December 2017 and 6 December 2017, a total of approximately USD 29.9m was transferred from AIML to AGHF.
200. This enabled AGHF to obtain a bank confirmation on 7 December 2017 to be shared with LPs, which showed that AGHF's current account held the amount of just less than USD 170m.
201. On 13 December 2017, prior to receiving this bank confirmation, the LPs reiterated their request for "*actual bank statements from all banks in which all of the contributed funds have been held from November 24, 2016 to November 30, 2017, showing all transactions*". AIML internally discussed other possible ideas to deal with this request, including whether the obtained confirmation would appease the LPs, finally stating "*We shall get through this; need some thinking though*".
202. On 11 December 2017 and 13 December 2017, a total of USD 20m was transferred from AGHF back to AIML. Further, pursuant to the loan agreement, on 13 December 2017, approximately USD 140m was repaid to Company X (8 days after AGHF received the loan), leaving a balance of approximately USD 10m in the AGHF account on 15 December 2017.
203. However, on 15 December 2017, AIML provided the LPs, who had asked to see bank statements, with the bank confirmation dated 7 December 2017 showing a balance of just less than USD 170m (see paragraph 200).

204. On 8 January 2018, the flat fee of USD 5.6m for the loan (as described in paragraph 197) was transferred from AIML to Company X (equating to an annual interest rate of approximately 183%).
205. AIML told the AGHF LPs that it would return any unused drawdowns by 31 December 2017 to the LPs, but it did not have sufficient monies to do this.

APEF IV December year-end Audit

206. As set out in paragraph 166, AIML decided in June 2017 to move the APEF IV year-end from June to December to avoid having to cover the shortfalls in APEF IV and AGHF at the same time. However, by the time of the APEF IV December 2017 audit, the APEF IV shortfall was approximately USD 150m. To cover this shortfall, and also make good on its promise to return the unused USD 142m AGHF drawdowns, AIML had to find approximately USD 292m. As a result, in late December 2017, AIML attempted to raise finance from a bank.
207. The bank only agreed to lend AIML USD 200m at rates and conditions which indicated that the bank considered the loan to be very high risk. A member of AIML senior management expressed his shock at the onerous conditions proposed, including a request for collateral of three times the value of the loan.
208. As a result, a member of the AIML senior management team turned to a wealthy individual, Individual Z, to obtain short-term loans totalling USD 350m to resolve the shortfall in the funds and cover Abraaj Group expenses. The amounts were received in three lots of USD 100m and one of USD 50m.
209. On 21 December 2017, USD 100m was transferred from Individual Z to AIML and subsequently transferred on by AIML to AGHF. On 23 December 2017, an additional USD 42m was transferred from AH to AGHF. To honour the commitment to return unused drawdowns plus interest to the LPs, this USD 142m was transferred from AGHF to the LPs between 26 December 2017 and 19 January 2018.
210. On 27 December 2017, two tranches of USD 100m each were transferred from Individual Z to AH.
211. On 28 December 2017, AH made two transfers totalling USD 199m, USD 75m to Company X to settle an AIML short-term loan and USD 124m to APEF IV.
212. On the same day, APEF IV also received USD 27m from IGCF. As a result of these transfers, the APEF IV cash balance increased from USD 7,735 to USD 151m.

213. This enabled APEF IV to report a cash balance of USD 151m in the draft financial statements for the year ending 31 December 2017.
214. After the year-end, APEF IV made the following transfers out:
- a. on 2 January 2018, USD 73m was transferred to AIML of which USD 50m was returned to Individual Z on 4 January 2018; and
 - b. on 11 January 2018, USD 75m was used to make APEF IV investments.
215. On 28 December 2017, USD 50m was transferred from Individual Z to AH where it was used to fund various payments, such as a USD 8m payment to AHGL to fund an approved AGHF investment.

LPs continue to pressure for answers on past activity

216. In early 2018, there was media interest in allegations of the Abraaj Group's mismanagement of LP monies. This, combined with a reluctance by AIML to be transparent over monies 'borrowed' from the Funds, led to increased scrutiny by the LPs.
217. An LP investor in both IGCF and APEF IV demanded *"A detailed summary of the quarterly change in the net current assets balance from beginning of period to end of period, highlighting any inflows or outflows of cash (effectively asking for quarterly statement of cash flows and changes in partnership funds)"*.
218. LPs also became suspicious that the misuse of drawn-down monies was not limited to the three major funds.
219. Prior to 2018, there is no evidence that, during its discussions on how to deal with LP questions about use of uninvested drawdowns, AIML considered telling the LPs that the LPA and AH-AIML Agreement permitted the use of fund money by AIML. Rather, AIML arranged for loans from a third party and incurred millions of dollars in fees and interest to produce bank balance confirmations to avoid revealing the true position and to mislead the LPs into thinking that the money remained in the Fund bank accounts. This suggests that AIML knew the LPs would not accept that the actual use of their monies was legitimate and were prepared to go to any lengths, as described above, to conceal the transfers from the Abraaj Funds to the Abraaj Group.

Not disclosing to the LPs that Fund assets were held as collateral by the bank

220. Between May 2014 and June 2017, 275 million shares in Company X held by IGCF were gradually pledged as collateral to a bank through a number of TRS arrangements. The proceeds received from the bank under the TRS agreements, totalling approximately USD 90m, were used by AIML to meet Abraaj Group and IGCF's liabilities.
221. IGCF's GP Reports disclosed the TRS agreements entered into in 2014. However, the GP Reports did not disclose further agreements entered into between 2015 and 2017, or that all of IGCF's shares in Company X had been pledged as collateral through TRS arrangements. IGCF's audited financial statements for the years ending 31 December 2015 and 31 December 2016, provided by AIML to the LPs, also did not disclose that all of IGCF's shares in Company X had been pledged as collateral to a bank, nor did they reflect the significance of IGCF's contingent liability under the TRS.
222. In and around mid-2018, the bank began to sell the shares it held as collateral to settle amounts owed to it. The IGCF 2017 Q4 GP Report valued the holding in Company X at USD 91.2m. However, the full amount was written off by the time AIML shared the IGCF Q1 2018 GP Report with the LPs. The IGCF Q1 2018 GP Report stated *"From c2015 it appears that the fund entered into a number of TRS facilities with [REDACTED] bank, using the [Company X] shares as collateral. Due to events of default in Q2'18 [REDACTED] bank called in their collateral and sold the shares to settle the facilities. It currently appears that AIML benefitted from the initial proceeds of the TRS facilities.... the shares are no longer owned by the fund"*.

Summary

223. For the reasons given in paragraphs 106 to 222, the DFSA considers that, over the period from 21 August 2014 until the JPLs were appointed in June 2018, AIML engaged in misleading and deceptive conduct in a variety of ways, including by:
- a. concealing from investors the fact that their monies had been transferred from Funds to meet shortfalls in other parts of the Abraaj Group or to cover operating expenses;
 - b. providing financial statements and quarterly GP Reports to investors that were misleading or deceptive, in that they failed to disclose the transfer of Fund monies to AH and AIML;
 - c. providing misleading responses to investor enquires;

- d. transferring interest income to an AIML operating bank account, which was then used for non-Fund related purposes, instead of it being distributed to LPs;
- e. misleading LPs by failing to disclose the true position regarding the interest in the Fund's audited financial statements or GP Reports; and
- f. using Fund assets as collateral for Abraaj Group borrowing.

224. The DFSA considers that, since 21 August 2014, AIML contravened Article 41B of the Regulatory Law. This is because AIML's conduct, as set out above, was:

- a. Misleading and deceptive; and
- b. Carried out in or from the DIFC; and
- c. Related to a Financial Service, namely Managing a Collective Investment Scheme, or Managing Assets.

CONTRAVENTIONS

225. Having regard to the facts and matters set out in this Notice, the DFSA considers that AIML committed the contraventions set out below.

Unauthorised Activity

226. Article 41(1) of the Regulatory Law prohibits a person from carrying on a Financial Service in or from the DIFC, unless under Article 42(3) the person is an Authorised Firm whose licence authorises it to carry on the relevant Financial Services, an External Fund Manager managing a Domestic Fund, or an Authorised Market Institution whose licence authorises it to carry on the relevant Financial Service.

227. Under GEN Rule 2.2.1 an activity constitutes a Financial Service if it is an activity specified in GEN Rule 2.2.2 and the activity is carried on by way of business in the manner described in GEN section 2.3. Under GEN Rule 2.2.2, the activities specified include "Managing Assets" (GEN Rule 2.2.2(g)) and "Managing a Collective Investment Fund" (GEN Rule 2.2.2(i)).

228. "Managing Assets" is defined in GEN Rule 2.10.1 as "... managing on a discretionary basis assets belonging to another Person if the assets include any Investment or rights under a contract of Long-Term Insurance, not being a contract of reinsurance."

229. "Managing a Collective Investment Fund" is defined in GEN Rule 2.12.1 as:

- a. being legally accountable to the Unitholders in the Fund for the management of the property held for or within the Fund under the Fund's Constitution; and
 - b. establishing, managing or otherwise operating or winding up a Collective Investment Fund.
230. By reason of the facts set out in paragraphs 99 to 103, AIML was carrying on the Financial Service of Managing Assets in or from the DIFC.
231. Further, by reason of the facts set out at paragraphs 52 to 98, AIML was carrying on the Financial Service of Managing a Collective Investment Fund in or from the DIFC. To the extent that AIML's activities which amount to Managing a Collective Investment Fund constitutes Managing Assets, that activity is taken to be incorporated in Managing a Collective Investment Fund.
232. The DFSA, therefore, considers that, in the period from April 2007 to January 2018, AIML contravened Article 41(1) of the Regulatory Law as it carried on this Financial Service when it was not an Authorised Firm with a Licence authorising it to do so.

Misleading and deceptive conduct

233. Article 41B of the Regulatory Law (in force from 21 August 2014 onwards) prohibits a person from, in or from the DIFC, engaging in conduct in connection with a Financial Product or a Financial Service that is misleading or deceptive or likely to mislead or deceive.
234. For the purposes of Article 41B, Financial Service includes the activities listed in GEN Rule 2.2.2. As stated in paragraph 227, these activities include Managing a Collective Investment Fund and Managing Assets.
235. At all material times since 21 August 2014, AIML was the Manager for the majority of the Abraaj Group Funds. As the appointed Manager, AIML used monies from Abraaj Funds for purposes other than for approved Fund investments.
236. AIML failed to disclose to the LPs that the Fund's monies were being used for non-Fund purposes and also took steps to conceal this unauthorised use of funds from the LPs.
237. By reason of the conduct described in paragraphs 52 to 103, AIML carried on the Financial Service of Managing Assets and/or Managing a Collective Investment Fund in relation to those Abraaj Funds for which it was appointed as "Manager". Not only did AIML's conduct contravene the Financial Services Prohibition in Article 41 of the

Regulatory Law but AIML's conduct set out in paragraphs 106 to 224 also contravened the General prohibition against misconduct. In particular, after 21 August 2014, AIML engaged in conduct in connection with a Financial Product or a Financial Service that was misleading or deceptive, or likely to mislead or deceive. In so doing, AIML contravened Article 41B of the Regulatory Law.

ACTION

238. In deciding to take the action set out in this Notice, the DFSA has taken into account the factors and considerations set out in sections 6-2 and 6-3 of the DFSA's Regulatory Policy and Process Sourcebook (**RPP**).

239. The DFSA considers the following factors to be of particular relevance in this matter:

- a. the DFSA's objectives, in particular to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC, through appropriate means including the imposition of sanctions (Article 8(3)(d));
- b. the nature, seriousness and impact on investors of the contraventions, including in particular that:
 - i. investors were misled as to their investments in Abraaj Group Funds; and
 - ii. the three main entities in the Abraaj Group are all in provisional liquidation. This is likely to have an adverse effect on investors' ability to recover any losses they may have suffered as a result of AIML's misconduct;
- c. the importance of ensuring that users of the financial services industry in the DIFC are not deceived or misled by persons carrying on activities here; and
- d. the deterrent effect of the action and the importance of deterring AIML and others from committing further or similar contraventions.

240. The DFSA has considered the sanctions and other options available to it and has concluded that a fine is the most appropriate action given the circumstances of this matter.

Determination of the Fine

241. In determining the appropriate level of financial penalty to impose in this matter, the DFSA has taken into account the factors and considerations set out in sections 6-4 and 6-5 of the RPP as follows.
242. Further, the nature, scale and seriousness of AIML's misconduct is unprecedented in the DIFC. Accordingly, the DFSA considers it appropriate to take into consideration:
- a. the Management Fees earned by AIML in relation to the Abraaj Funds that it managed and which were the subject of its contravention of Article 41(1) of the Regulatory Law; and
 - b. the size of the shortfall in the Abraaj Funds caused by its misuse of investor funds and which form the basis for its contravention of Article 41B of the Regulatory Law.

Step 1 – Disgorgement

243. The penalty should take account of the economic benefit gained by AIML as a result of the contraventions, but only where it is practicable to quantify this benefit. On the evidence, the DFSA is not satisfied that the economic benefit derived by AIML from its unauthorised activities and misleading and deceptive conduct can be properly quantified for the purpose of requiring disgorgement. However, the DFSA considers such benefit to be relevant in determining the seriousness of the contraventions. Accordingly, in respect of disgorgement no financial penalty is considered appropriate and this step is not considered to be relevant.

Step 2 – The seriousness of the contraventions

244. The DFSA considers AIML's contraventions to be particularly serious for the following reasons:
- a. it demonstrated a fundamental business model which, at its core, involved the provision of unauthorised activities in or from the DIFC;
 - b. the DIFC regulatory regime and requirements for authorisation exist to ensure that the activities of persons carrying on regulated business in the DIFC are properly supervised. This promotes confidence in the DIFC, in that users of the financial services industry can expect firms carrying on activities to comply with relevant requirements and for there to be adequate safeguards in place to

protect investors and mitigate the risks of non-compliant behaviour. AIML's conduct seriously undermines that confidence and has damaged the reputation and integrity of the DIFC;

- c. the association of the "Abraaj Group" with Dubai had a significant and detrimental impact on confidence in, and the reputation of, the financial services industry in the DIFC;
- d. AIML's unauthorised activity and misleading and deceptive conduct involved a deliberate and intentional course of conduct;
- e. this deliberate and intentional course of conduct involved the direct knowledge or participation of some members of AIML's senior management, who were directly involved in the breaches (and those of its subsidiary, ACLD) and in concealing the true position regarding AIML's activities from the DFSA and from third parties;
- f. over a period of almost 11 years, AIML carried on Financial Services in or from the DIFC without authorisation and exercised control over its subsidiary, ACLD, to give the appearance that all relevant activities were being carried on by an Authorised Firm; and
- g. the scale of AIML's misleading and deceptive conduct grew over time resulting in an overall shortfall of USD 476m across AGHF, APEF IV and IGCF by 20 December 2017 (i.e. prior to the receipt of monies from Individual Z). This shortfall was reduced to USD 183.9m as at 31 March 2018 (see paragraph 245b).

245. Given the two distinct types of conduct which are the subject of this Notice, the DFSA considers it appropriate to determine two amounts under this step which appropriately reflect the seriousness of AIML's contraventions. Therefore:

- a. in respect of AIML's 'Unauthorised Activity', contrary to Article 41 of the Regulatory Law, the DFSA considers that the figure of USD 115.4m appropriately reflects the seriousness of AIML's misconduct. This figure is based on 20% of AIML's Management fees from April 2007 to January 2018; and
- b. in respect of AIML's misleading and deceptive conduct since 21 August 2014, contrary to Article 41B of the Regulatory Law, the DFSA considers that the

figure of USD 183.9m appropriately reflects the seriousness of AIML's misconduct. This figure is based on 100% of the approximate shortfall of USD 183.9m in the APEF IV and IGCF Funds as at 31 March 2018.

246. In deciding to impose a fine of USD 115.4 for AIML's "Unauthorised Activity", the DFSA has had regard to its policy in RPP 6-5 and, in particular, the four categories of factors indicating the seriousness of the contraventions in RPP 6-5-2. The DFSA has also had regard to the fact that AIML earned approximately USD 577m in Management Fees in the period from April 2007 to January 2018; being the duration of its Unauthorised Activity which is the subject of this Notice. Although it is possible under Step 1 above to disgorge economic benefit gained as a result of contraventions, the DFSA does not consider it possible to quantify with sufficient certainty whether the entirety of the Management Fees was earned as a result of AIML's Unauthorised Activities. Accordingly, the DFSA considers it more appropriate to use that figure for the purposes of determining the seriousness of AIML's contraventions.
247. For the reasons given in paragraph 244, the DFSA considers AIML's contraventions to be particularly serious. The DFSA also considers it appropriate to impose a fine of an amount which adequately reflects the seriousness of those contraventions. In determining the amount of the fine under this limb of AIML's misconduct, the DFSA has taken into consideration the approach taken by other regulators with comparable regimes to that of the DFSA for determining financial penalties. In so doing, the DFSA has concluded that a figure based on 20% of AIML's Management Fees during the relevant period is appropriate in the circumstances.
248. In deciding to impose a fine of USD 183.9m for AIML's misleading and deceptive conduct, the DFSA has had regard to the nature and impact of AIML's contraventions. In particular, as at 31 March 2018, the APEF IV and IGCF Funds have suffered shortfalls of approximately USD 183.9m. Given AIML's misconduct over the period since 21 August 2014, and the resultant shortfalls in the APEF IV and IGCF Funds, the DFSA considers the whole of those amounts to be the most appropriate indicator of the seriousness of AIML's misleading and deceptive conduct. The DFSA, therefore, considers it appropriate to impose a fine of that amount in respect of AIML's misleading and deceptive conduct as that represents the consequences of AIML's misconduct under this limb.
249. Accordingly, taking the above factors and figures into account, the DFSA considers the figure after Step 2 should be USD 299,300,000, being the combination of USD 115.4m under paragraph 245a and USD 183.9m under paragraph 245b.

Step 3 – Mitigating and aggravating factors

250. In considering the appropriate level of the financial penalty, the DFSA had regard to the circumstances of this matter and the factors set out in RPP 6-5-8. The DFSA has taken into consideration the following aggravating factors in determining the appropriate level of Fine to impose on AIML:

- a. the contraventions only came to light following an anonymous complaint and after the DFSA commenced a formal investigation;
- b. AIML's (and ACLD's) senior management were directly involved in the conduct giving rise to the contraventions and failed to take remedial action to stop the contraventions. Rather, they were actively engaged in the conduct causing it to continue; and
- c. on various occasions between 2009 and 2017, Abraaj Group Compliance raised concerns about AIML's activities and whether AIML was providing financial services in or from the DIFC. Those concerns were largely ignored until August 2017 when independent external legal advice was obtained, confirming Abraaj Group Compliance's concerns and recommending changes to the Abraaj Group regulatory and governance model.

251. In deciding to take the action set out in this Notice, the DFSA has also taken into account the fact that the senior management of AIML has been replaced by the JPLs and AIML has been in provisional liquidation since June 2018. The JPLs have been open and cooperative with the DFSA and have taken proactive steps to assist the DFSA with its investigation. While this does not mitigate AIML's contraventions, the DFSA has taken this into consideration in deciding to take the action in this Notice.

252. Accordingly, as the aggravating factors are balanced by the mitigating factors present in this matter, the DFSA has decided not to increase the figure after Step 2.

253. Accordingly, the figure after Step 3 is USD 299,300,000.

Step 4 – Adjustment for deterrence

254. Pursuant to RPP 6-5-9, if the DFSA considers that the level of the financial penalty which it has arrived at after Step 3 is insufficient to deter the firm who committed the contravention, or others, from committing further or similar contraventions, then the DFSA may increase it. RPP 6-5-9 sets out the circumstances where the DFSA may do this.

255. The DFSA considers that the figure after Step 3 is sufficient for the purposes of deterring AIML and others from committing further or similar contraventions. Accordingly, the DFSA does not consider it appropriate to adjust the amount of the fine arrived at after Step 3 for the purposes of deterrence

256. Accordingly, the figure after Step 4 is USD 299,300,000.

Step 5 – Settlement discount

257. Where the DFSA and the person on whom the financial penalty is to be imposed agree on the amount and other terms, RPP 6-5-10 provides that the amount of the financial penalty that might otherwise have been payable will be reduced to reflect the stage at which agreement is reached.

258. There has been no agreement with AIML in this matter. Accordingly, the DFSA has not applied any settlement discount at Step 5.

The level of the Fine imposed

259. Given the factors and considerations set out in paragraphs 241 to 258 and the circumstances of this matter, the DFSA has determined that it is proportionate and appropriate in the circumstances to impose on AIML a financial penalty of USD 299,300,000.

260. In deciding the amount of the Fine, the DFSA has taken into consideration its policy on serious financial hardship in RPP section 6-7.

261. The DFSA has taken into account the fact that the senior management of AIML has been replaced by the JPLs and the firm has been in provisional liquidation since June 2018. Although AIML is in provisional liquidation and the imposition of the Fine will cause further financial detriment to AIML, the DFSA considers AIML's contraventions to be so serious that it is not appropriate to reduce the financial penalty. Further, the DFSA considers it appropriate to impose the Fine in order to deter others from committing further or similar contraventions to those committed by AIML.

PROCEDURAL MATTERS

Decision Making Committee

262. The decision which gave rise to the obligation to give this Notice was made by the Decision Making Committee of the DFSA.

263. This Notice is given to AIML under paragraph 4(4) of Schedule 3 to the Regulatory Law.
264. Under paragraph 4(1) of Schedule 3 to the Regulatory Law, AIML has the right to make representations to the DFSA in person and in writing concerning the decision the DFSA proposes to take.
265. AIML was given the opportunity to make representations before the DFSA decided to take the action in this Notice. AIML did not make any representations.

Manner and time for payment

266. The Fine must be paid no later than 28 days from the date on which this Notice is given to AIML.
267. If all or any part of the Fine remains outstanding on the date by which it must be paid, the DFSA may recover the outstanding amount as a debt owed by AIML and due to the DFSA. Before taking any action to recover any outstanding amount, the DFSA will consider AIML's circumstances at that time and the corresponding implications of enforcing the Fine for AIML's creditors.

Evidence and other material considered

268. Annex B sets out extracts from some statutory and regulatory provisions and guidance relevant to this Notice.
269. In accordance with paragraph 5(2) of Schedule 3 to the Regulatory Law 2004, the DFSA provided AIML a copy, or access to a copy, of the relevant materials that were considered in making the decisions in this Notice.

Right of review by the Financial Markets Tribunal ("FMT")

270. Pursuant to Articles 29 and 90(5) of the Regulatory Law, AIML has the right to refer this matter to the FMT for review.
271. The FMT is operationally independent of the DFSA and may conduct a full merits review of the matter. After hearing the matter, the FMT has the power to make a new decision using the powers available to the DFSA. This could, amongst other things, involve:
- a. confirming the decision set out in this Notice;
 - b. substituting the DFSA decision with a new decision;
 - c. referring the matter back to the DFSA with a direction for the DFSA to make a new decision.

272. Should AIML wish to have this matter reviewed by the FMT, it must exercise that right within 30 days from the date when it is notified of this decision. Any reference made after this date would have to be approved by the FMT where it is satisfied that such approval is appropriate in the circumstances, pursuant to Article 29(3)(b) of the Regulatory Law.
273. The Rules of Procedure of the FMT, as well as a template Form FMT 1 and the Registrar's contact details can be found on the DFSA's website at:
- <https://www.dfsa.ae/en/About-Us/Our-Structure#Financial-Market-Tribunal>
274. Please note, under paragraph 26 of the FMT Rules of Procedure, AIML is required to send a copy of Form FMT 1 to the DFSA on the same date it is filed with the Registrar of the FMT.

Publicity

275. Under Article 116(2) of the Regulatory Law, the DFSA may publish, in such form and manner as it regards appropriate, information and statements relating to decisions of the DFSA and of the Court, censures, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC. The DFSA's policy on publicity is set out in RPP section 5-17.
276. The DFSA will publicise the action taken in this Notice and the reasons for that action in accordance with Article 116(2) of the Regulatory Law and the relevant parts of RPP 5-17. This may include publishing the Notice itself, in whole or in part.

DFSA contacts

277. For more information concerning this matter generally, please contact the Administrator to the DMC on +971 4362 1500 or by email at DMC@dfs.ae.

Signed:

.....
Peter Smith
On behalf of the Decision Making Committee of the DFSA

ANNEX A – DEFINITIONS

Term	Definition
Abraaj Group	Large group of related entities consisting of private equity Funds, their GPs, investment advisers and other entities, which includes AH, AIML and ACLD.
Abraaj Fund OR Abraaj Group Fund	One of the private equity or other Funds managed by the Abraaj Group, including: Abraaj BMA Pakistan Buyout Fund Abraaj Buyout Fund Abraaj Buyout Fund II Abraaj Growth Markets Health Fund (AGHF) Abraaj Private Equity Fund IV (APEF IV) (previously called the Abraaj Buyout Fund IV (ABOF IV)) Abraaj Private Equity Fund VI (APEF VI) Abraaj Real Estate Fund Abraaj Special Opportunities Fund II ASAS Fund The Infrastructure and Growth Fund (IGCF) MENASA Opportunity Fund I.
Abraaj General Partner VIII Limited	The GP for APEF IV.
Abraaj Group Offices	Offices in the DIFC leased by ACLD and utilised by ACLD and other Abraaj Group entities.
Abraaj Healthcare Group Limited (AGHL)	A company within the Abraaj Group.
ACLD (Abraaj Capital Limited)	A company established in the DIFC, regulated by the DFSA and part of the Abraaj Group.
AH (Abraaj Holdings)	A Cayman Islands exempted company and part of the Abraaj Group.
AH-AIML Agreement	The internal agreement between AH and AIML dated 1 November 2012 which set out the terms on which Abraaj Group entities would borrow from the Abraaj Funds.
AIML (Abraaj Investment)	A Cayman Islands exempted company and part of the Abraaj Group.

Term	Definition
Management Limited (In Provisional Liquidation)	
Arranging Deals in Investments	The Financial Service defined in GEN Rule 2.2.2(f) and section 2.9.
Authorised Firm	A Person, other than an Authorised Market Institution, who holds a Licence.
Authorised Market Institution	A Person who is Licensed by the DFSA in relation to the carrying on either or both of the Financial Services prescribed in GEN Rule 2.17.1 (Operating an Exchange) and 2.18.1 (Operating a Clearing House).
Body Corporate	Any body corporate, including limited liability partnership and a body corporate constituted under the law of a country or territory outside of the DIFC.
CIL	Means: 1. the Collective Investment Law 2010 (DIFC Law No. 2 of 2010), as amended; or 2. for matters occurring or arising before that 2010 law was in force, the equivalent part of its predecessor, the Collective Investment Law 2006 (DIFC Law No. 1 of 2006) (as amended) which, unless otherwise indicated, was identical in all material respects.
CIR	The Collective Investment Rules module of the DFSA Rulebook, versions 4 to 22 inclusive, as in force from time to time during the relevant period.
Collective Investment Fund (CIF)	An arrangement which amounts to a Fund under Article 11 of CIL and which is not excluded under the Rules made under Article 12 set out under CIR section 2.1.
Company X	A third party company unrelated to the Abraaj Group, from which AIML decided on 6 June 2016 to obtain short-term funding.
Company Y	A third party company to which APEF IV provided a USD 50m convertible loan from May 2012.
Compliance	Abraaj's compliance department.
Dealing in Investments as Agent	The Financial Service defined in GEN Rule 2.2.2(e) and section 2.8.
Dealing in Investments as Principle	The Financial Service defined in GEN Rule 2.2.2(d) and section 2.7.

Term	Definition
Deals Team	The team, within the Abraaj Group, which made recommendations for investments of the particular Abraaj Fund to senior management.
Decision Notice	A written notice given by the DFSA to a Person pursuant to paragraph 5 of Schedule 3 to the Regulatory Law 2004.
Deed of Adherence	A deed, provided for in the IASLA, between ACLD and AIML by which ACLD could provide services to other Abraaj Funds.
Delegation Agreements	Agreements which, along with the Services Agreement, were entered into between AIML and ACLD with respect to certain Abraaj Funds, setting out the contractual obligations between the two firms, including delegating a Fund's investment management and fund administration functions to ACLD.
Derivative	Has the same meaning as in GEN Rule A2.1.3, namely, an Option or a Future, each of which is defined in GEN section A2.3.
DIFC	Dubai International Financial Centre.
DFSA	Dubai Financial Services Authority.
DMC	The DFSA's Decision Making Committee in this matter.
Domestic Fund	Has the same meaning as in GLO, namely, a Fund established or domiciled in the DIFC.
Drawdown Notice	The notice issued to an Abraaj Fund's investors by the Manager of the Fund and signed by an authorised signatory of the GP for the Fund, providing instructions for capital to be drawn down prior to approved investments being made on behalf of the Fund.
External Fund Manager	Has the same meaning as in Article 20(5) of CIL, namely a person that: (a) is a body corporate; (b) manages a Domestic Fund: (i) which is not an External Fund; and (ii) which is excluded from the Financial Services Prohibition under Article 41(9) of the Regulatory Law 2004; and (c) manages the Fund in (b): (i) from a place of business in a Recognised Jurisdiction or a jurisdiction otherwise acceptable to the DFSA; and (ii) in accordance with any additional requirements prescribed by the DFSA for the purposes of this Article.

Term	Definition
FER	Fees Module of the DFSA Rulebook, versions 1 to 16 inclusive, as in force from time to time during the relevant period.
Financial Markets Tribunal (FMT)	The tribunal referred to in Article 26 of the Regulatory Law.
Financial Service	Has the same meaning as in GEN Rule 2.2.1, namely, an activity that is specified in GEN Rule 2.2.2 and is carried on by way of business in the manner described in GEN section 2.3.
Financial Services Prohibition	The prohibition in Article 41(1) of the Regulatory Law that, subject to Article 41(9) and Article 42(3), a person shall not carry on a Financial Service in or from the DIFC.
Fine	The fine of USD 299,300,000 imposed on AIML by the DFSA.
Foreign Fund	A Fund established or domiciled in a jurisdiction other than the DIFC.
Fund	A Collective Investment Fund.
Fund Administration Agreements (FAA)	The agreements under which AIML delegated some of its Fund Administrator duties to third party providers.
Fund Manager	The Person, described under Article 20(4) of the Collective Investment Law 2010, who is responsible for the management of the property held for or within a Fund and who otherwise operates the Fund and, in relation to a Domestic Fund, is authorised under a Licence granted by the DFSA to operate the Fund.
General Partner (GP)	In relation to an Abraaj Group private equity Fund set up as a Limited Partnership, the general partner under the relevant Limited Partnership Agreement which appointed the Manager (in most cases, AIML) of the Fund.
GEN	The General Module of the DFSA Rulebook, versions 13 to 40 inclusive, as in force from time to time during the relevant period.
GLO	The Glossary Module of the DFSA Rulebook, versions 13 to 38 inclusive, as in force from time to time during the relevant period.
GP Reports	Quarterly reports from the GP (generally AIML) to the LPs regarding Abraaj Funds.
Global Investment Committee (GIC)	The principal investment decision-making body for the Abraaj Group.
Individual Z	A wealthy individual to whom a member of the AIML senior management team turned, in December 2017, to obtain short-term loans to cover cash shortfalls.

Term	Definition
Integrated Diagnostics Holdings (IDH)	A business in which IGCF invested.
Investment Advisory Service Level Agreement (IASLA)	The agreement between AH and ACLD in October 2011 purported to supersede the Delegation Agreements, appointing ACLD as Investment Advisor to all Abraaj Funds.
Investment	Has the same meaning as in GEN section A2.1, namely, a Security or a Derivative. Prior to January 2009, the definition of Investment in GEN included each relevant product type (including an Option and a Future) but it did not first divide them into either a Security or a Derivative.
Investment Committee	The committee through which each Abraaj Fund made decisions to invest or make loans.
Investment Management Agreements or Management Deeds	Agreements between GPs and AIML appointing AIML to manage Funds.
Joint Provisional Liquidators (JPLs)	The Joint Provisional Liquidators for AIML, Mr Stuart Keith Sybersma (Deloitte & Touche, Grand Cayman) and Mr David Soden (Deloitte LLP).
Licence	A licence granted by the DFSA under Chapter 2 of Part 3 of the Regulatory Law, authorising a person to carry on one or more Financial Services in or from the DIFC.
Limited Liability Partnership	A partnership incorporated under the Limited Liability Partnership Law 2004 or under the law of a country or territory outside the DIFC.
Limited Partner (LP)	In relation to an Abraaj Group private equity Fund set up as a Limited Partnership, the entity under a Limited Partnership Agreement which was to invest in the Fund.
Limited Partnership	A limited partnership that included Abraaj Funds' GP and LPs established outside the DIFC under a Limited Partnership Agreement.
Limited Partners Advisory Committee (LPAC)	The committee which included LPs in Abraaj Funds.
Limited Partnership Agreement (LPA)	The agreement between Abraaj Funds' LPs and GPs setting up the Funds.
Long-Term Insurance	Has the same meaning as in GLO.

Term	Definition
Manager	The entity responsible for the management and operations of the Abraaj Funds, including making investments and divestments, which the GP usually appointed as AIML.
Management Fees	The fees received by AIML for managing the Abraaj Funds.
Managing Assets	The Financial Service defined in GEN section 2.10.
Managing a Collective Investment Fund	The Financial Service defined in GEN section 2.12. Prior to January 2009, the definition of Investment in GEN included each relevant product type (including an Option and a Future) but it did not first divide them into either a Security or a Derivative.
Mark to Market (MTM)	A system of valuing ("marking") assets by referring to the most recent market price.
Menasa Capital Management Holdings (MCMHL)	An entity partly owned and controlled by members of AIML senior management but which did not form part of the Abraaj Group for accounting consolidation purposes.
Network International (NI)	A business in which APEF IV invested.
Notice	This notice.
Partnership	Any partnership, including a partnership constituted under the law of a country or territory outside the DIFC, but not including a Limited Liability Partnership.
Person	Any natural person, Body Corporate or body unincorporated, including a legal person, company, Partnership, unincorporated association, government or state.
Private Placement Memoranda (PPM)	The private placement memoranda, regarding Abraaj Funds, made and distributed by AIML.
Providing Custody	The Financial Service defined in GEN Rule 2.2.2(j) and section 2.13.
Providing Fund Administration	The Financial Service defined in GEN Rule 2.2.2(u) and section 2.24.
Recognised Jurisdiction	A jurisdiction which has been recognised by the DFSA under Article 55 of the Collective Investment Law 2010 or, pursuant to Article 1(b) of that law, under Article 20 of the Collective Investment Law 2006.
Regulatory Law	Regulatory Law 2004 (DIFC Law No. 1 of 2004), as amended.
RPP	The Regulatory Policy and Process module of the DFSA Sourcebook.

Term	Definition
Saham Finances (Saham)	A business in which APEF IV invested.
Security	Has the same meaning as in GEN Rule A2.1.2, namely, a Share, a Debenture, a Warrant, a Certificate, a Unit or a Structured Product, each of which are defined in GEN section A2.2.
Services Agreement	The agreement which, along with a Delegation Agreement, was entered into between AIML and ACLD with respect to an Abraaj Fund, which specified the particular activities and services ACLD would undertake on behalf of AIML.
Special Purpose Vehicle (SPV)	A Body Corporate whose sole purpose, either generally or when acting in a particular capacity, is to carry out one or more of the following functions: (a) issuing Investments; (b) redeeming or terminating or repurchasing, whether with a view to re-issue or to cancellation, an issue, in whole or part, of Investments; or (c) entering into transactions or terminating transactions involving Investments in connection with the issue, redemption, termination or re-purchase of Investments; and has been explicitly established for the purpose of: (d) securitising assets; or (e) investing in Real Property and, in the case of (d), has been assessed by a rating agency.
Unauthorised Activity	The unauthorised activity of AIML.
Unit	Has the same meaning as in GEN Rule A2.2.1(e), namely, a unit in or a share representing the rights or interests of a Unitholder in a Fund.
Unitholder	In relation to a Fund, any holder of a Unit in the Fund or of any right or interest in such a Unit, and whose name is entered on the Fund's register in relation to that Unit.

1. RELEVANT LEGISLATION

Regulatory Law No. 1 of 2004 (Regulatory Law)

8. The Powers, Functions and Objectives of the DFSA

(...)

- (3) *In performing its functions and exercising its powers, the DFSA shall pursue the following objectives:*

(...)

- (b) *to foster and maintain confidence in the financial services industry in the DIFC;*

(...)

- (d) *to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC, through appropriate means including the imposition of sanctions;*

- (e) *to protect direct and indirect users and prospective users of the financial services industry in the DIFC;*

(...)

41. The Financial Services Prohibition

- (1) *Subject to Article 41(9) and Article 42(3), a person shall not carry on a Financial Service in or from the DIFC.*

- (2) *The DFSA shall make Rules prescribing the activities which constitute a Financial Service.*

- (3) *The prohibition in Article 41(1) is referred to in the Law as the "Financial Services Prohibition".*

- (4) *The DFSA may make Rules adding to, removing activities from, or otherwise modifying the list of Financial Services made under Article 41(2).*

- (5) *A person shall, in engaging in activity constituting a Financial Service, or in engaging in any like activity that may constitute a Financial Service except for the form and manner in which the activity is carried out, comply with Federal Law to the extent that such law applies in the DIFC.*

- (6) *DELETED*

- (7) *DELETED*

- (8) *DELETED*

- (9) *A Fund is exempt from the Financial Services Prohibition with respect to any Financial Service which is carried on for the purposes of, or in connection with, the Fund if the Fund has a Fund Manager or External Fund Manager that falls within Article 42(3) (a) or (b). This exemption applies to a Fund even where it does not have legal personality.*

41B. General prohibition against misconduct

- (1) *A person must not, in or from the DIFC, engage in conduct in connection with a Financial Product or a Financial Service that is:*
- (a) *misleading or deceptive or likely to mislead or deceive;*
 - (b) *fraudulent; or*
 - (c) *dishonest.*

90. Sanctions and directions

- (1) *Where the DFSA considers that a person has contravened a provision of any legislation administered by the DFSA, other than in relation to Article 32, the DFSA may exercise one or more of the powers in Article 90(2) in respect of that person.*
- (2) *For the purposes of Article 90(1) the DFSA may:*
- (a) *fine the person such amount as it considers appropriate in respect of the contravention;*
 - (b) *censure the person in respect of the contravention;*
 - (c) *make a direction requiring the person to effect restitution or compensate any other person in respect of the contravention within such period and on such terms as the DFSA may direct;*
 - (d) *make a direction requiring the person to account for, in such form and on such terms as the DFSA may direct, such amounts as the DFSA determines to be profits or unjust enrichment arising from the contravention;*
 - (e) *make a direction requiring the person to cease and desist from such activity constituting or connected to the contravention as the DFSA may stipulate;*
 - (f) *make a direction requiring the person to do an act or thing to remedy the contravention or matters arising from the contravention; or*
 - (g) *make a direction prohibiting the person from holding office in or being an employee of any Authorised Person, DNFBP, Reporting Entity or Domestic Fund.*
- (...)
- (5) *If the DFSA decides to exercise its power under this Article in relation to a*

person, the person may refer the matter to the FMT for review.

Collective Investment Law - DIFC Law No. 2 of 2010 (Collective Investment Law 2010)

PART 2: DEFINITIONS

Chapter 1: Collective Investment Funds

11. Arrangements constituting a Collective Investment Fund

- (1) A Collective Investment Fund ("Fund") is, subject to Article 12, any arrangements with respect to property of any description, including money, where:
- (a) the purpose or effect of the arrangements is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;
 - (b) the arrangements must be such that the persons who are to participate ("Unitholders") in the arrangements do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions; and
 - (c) the arrangements have either or both of the following characteristics:
 - (i) the contributions of the Unitholders and the profits or income out of which payments are to be made to them are pooled; or
 - (ii) the property is managed as a whole by or on behalf of the Fund Manager.
- (2) If the arrangements provide for such pooling as is mentioned in Article 11(1)(c)(i) in relation to separate parts of the property, the arrangement is not to be regarded as constituting a single Fund unless the Unitholders are entitled to exchange rights in one part for rights in another.

12. Arrangements not constituting a Collective Investment Fund

The DFSA may, by Rules, specify when arrangements or types of arrangements that meet the definition of a Fund in Article 11(1) do not constitute a Fund.

Chapter 2: Types of Funds and relevant criteria

13. Domestic and Foreign Funds

- (1) A Fund is either a Domestic Fund or a Foreign Fund.
- (2) A Fund is a Domestic Fund if it is either:
- (a) established or domiciled in the DIFC; or

- (b) *an External Fund as defined in Article 14(1).*
- (3) *A Fund that does not meet the Domestic Fund criteria in Article 13(2) is a Foreign Fund.*

14. An External Fund

- (1) *An External Fund is a Fund which is:*
 - (a) *established or domiciled in a jurisdiction other than the DIFC; and*
 - (b) *managed by a Fund Manager which is an Authorised Firm.*
- (2) *The requirements relating to Domestic Funds do not apply to an External Fund except to the extent otherwise provided in this Law or the Rules.*

PART 3: ROLES AND FUNCTIONS OF THE FUND MANAGER AND TRUSTEE

Chapter 1: General prohibitions

20. Fund Manager

- (1) *A person shall not manage a Domestic Fund unless:*
 - (a) *that person:*
 - (i) *is a body corporate;*
 - (ii) *is an Authorised Firm whose Licence authorises it to act as the Fund Manager of the particular type or specialist class of the Fund; and*
 - (iii) *meets any additional criteria, requirements or conditions that may be prescribed in the Rules;*
 - or*
 - (b) *the person is an External Fund Manager.*
- (2) *For the purposes of this Law, any other DFSA administered law and any rules made for the purposes of those laws, the person who “manages” a Fund, subject to Article 20(3), is the person who:*
 - (a) *is legally accountable to the Unitholders in the Fund for the management of the Fund, including the property held for or within the Fund (“Fund Property”); and*
 - (b) *establishes, manages or otherwise operates or winds up the Fund.*
- (3) *The DFSA may, by Rules, prescribe when a person who engages in any of the activities specified in Article 20(2) is not managing a Fund.*
- (4) *A person referred to in Article 20(1)(a) or (b) is a “Fund Manager” and a reference to a “Fund Manager” in this Law or in any other DIFC Law or any*

legislation made for the purposes of such laws includes both persons, unless otherwise provided.

- (5) *A person is an External Fund Manager if that person:*
- (a) *is a body corporate;*
 - (b) *manages a Domestic Fund:*
 - (i) *which is not an External Fund; and*
 - (ii) *which is excluded from the Financial Services Prohibition under Article 41(9) of the Regulatory Law 2004; and*
 - (c) *manages the Fund in (b):*
 - (i) *from a place of business in a Recognised Jurisdiction or a jurisdiction otherwise acceptable to the DFSA; and*
 - (ii) *in accordance with any additional requirements prescribed by the DFSA for the purposes of this Article.*

2. RELEVANT DFSA RULEBOOK PROVISIONS

General Module (GEN)

2.2 Financial Service Activities

2.2.1 *An activity constitutes a Financial Service under the Regulatory Law and these Rules where:*

- (a) *it is an activity specified in Rule 2.2.2; and*
- (b) *such activity is carried on by way of business in the manner described in section 2.3.*

2.2.2 *The following activities are specified for the purposes of Rule 2.2.1:*

- (a) *Accepting Deposits;*
- (b) *Providing Credit;*
- (c) *Providing Money Services*
- (d) *Dealing in Investments as Principal;*
- (e) *Dealing in Investments as Agent;*
- (f) *Arranging Deals in Investments;*
- (g) *Managing Assets;*
- (h) *Advising on Financial Products;*
- (i) *Managing a Collective Investment Fund;*

- (j) *Providing Custody;*
- (k) *Arranging Custody;*
- (l) *Effecting Contracts of Insurance;*
- (m) *Carrying Out Contracts of Insurance;*
- (n) *Operating an Exchange;*
- (o) *Operating a Clearing House;*
- (p) *Insurance Intermediation;*
- (q) *Insurance Management;*
- (r) *Managing a Profit Sharing Investment Account;*
- (s) *Operating an Alternative Trading System;*
- (t) *Providing Trust Services;*
- (u) *Providing Fund Administration;*
- (v) *Acting as the Trustee of a Fund;*
- (w) *Operating a Representative Office;*
- (x) *Operating a Credit Rating Agency;*
- (y) *Arranging Credit and Advising on Credit; and*
- (z) *Operating a Crowdfunding Platform.*

Guidance

Note that the ambit of these activities in Rule 2.2.2 may be restricted under COB, AMI or REP and may be fettered by the continuing operation of the Federal Law.

2.2.3 *Each activity specified in Rule 2.2.2:*

- (a) *is to be construed in the manner provided under these Rules; and*
- (b) *is subject to exclusions under these Rules which may apply to such an activity.*

2.3 ***By way of business***

2.3.1 *Subject to Rules 2.3.2 and 2.3.3, for the purpose of these Rules a Person carries on an activity by way of business if the Person:*

- (a) *engages in the activity in a manner which in itself constitutes the carrying on of a business;*
- (b) *holds himself out as willing and able to engage in that activity; or*

- (c) *regularly solicits other Persons to engage with him in transactions constituting that activity.*

2.10 Managing assets

2.10.1 *In Rule 2.2.2, Managing Assets means managing on a discretionary basis assets belonging to another Person if the assets include any Investment or rights under a contract of Long-Term Insurance, not being a contract of reinsurance.*

Exclusions

2.10.2 *A Person who is not an Authorised Firm or an Authorised Market Institution does not Manage Assets if:*

- (a) *he is a Person formally appointed in writing by the owner of the assets to manage the assets in question; and*
- (b) *all day-to-day decisions relating to the Investments which are included in those assets are taken by an Authorised Firm or a Regulated Financial Institution.*

Guidance

1. *A Person does not become a Fund Manager of a Fund merely by being appointed by a Fund Manager of a Fund to provide the Financial Service of Managing Assets to the Fund. This is because the Fund Manager remains legally accountable to the Unitholders of the Fund for the proper management of the Fund in accordance with its Constitution and Prospectus.*
2. *If an Authorised Firm has a discretionary portfolio mandate from a Client to manage assets on behalf of the Client, the firm controls those Client Assets as it can execute transactions relating to those assets, within the parameters set in the mandate (see also COB Rule 6.11.4(d)).*

2.12 Managing a collective investment fund

2.12.1 (1) *In Rule 2.2.2, Managing a Collective Investment Fund means:*

- (a) *being legally accountable to the Unitholders in the Fund for the management of the property held for or within a Fund under the Fund's Constitution; and*
 - (b) *establishing, managing or otherwise operating or winding up a Collective Investment Fund; and*
- (2) *To the extent that any activity under (1) constitutes Managing Assets, Providing Fund Administration, Dealing as Agent, Dealing as Principal, Arranging Deals in Investments, or Providing Custody, such a Financial Service is taken to be incorporated within Managing a Collective Investment Fund.*
- (3) *The Person referred to in (1) is a Fund Manager.*

3. OTHER RELEVANT REGULATORY PROVISIONS

The DFSA's policy in relation to its approach to enforcement is set out in Chapter 5 of the DFSA's Regulatory Policy and Process Rulebook (RPP) (February 2017 Edition)

Chapter 6 of RPP sets out the DFSA's approach to imposing a penalty, which includes a financial penalty, and the matters the DFSA will take into account when determining a penalty.