
IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE
FINANCIAL MARKETS TRIBUNAL (FMT)
Case: FMT 19006

B E T W E E N:

Dr Mubashir Ahmed Sheikh

Applicant

- and -

The Dubai Financial Services Authority (DFSA)

Respondent

- before -

His Honour Mr David Mackie CBE QC (President)

Mr Ali Al Hashimi

Mr Ali Al Aidarous

Day 4

Wednesday, 29 April 2020

Dr Mubashir Ahmed Sheikh appeared in person
Mr Farhaz Khan (of 3 Verulam Buildings) appeared on behalf
of the Respondent

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1

P R O C E E D I N G S

2 (10.58 am)

3 MR PRESIDENT: We are ready to start. Now we have had an
4 email overnight from you, Dr Sheikh, so as I understand
5 it, the position today is that you'll be the only person
6 giving evidence today; is that right?

7 DR SHEIKH: If that's all right with the tribunal, your
8 Honours, sir.

9 MR PRESIDENT: I think, Mr Khan, you are prepared for that,
10 were you?

11 MR KHAN: Yes.

12 MR PRESIDENT: We will proceed today, but since you'll be
13 the person giving evidence, we need to ensure that there
14 are regular breaks, because this is quite a tiring
15 process. So we will at all costs, finish at 2 pm,
16 rather than 3 pm, so you don't get too tired.

17 The position is that we will break after about two
18 hours for 15 minutes and then we'll have a longer break
19 in the middle of the day.

20 I say that simply because otherwise -- so you know.
21 If you begin to feel tired, Dr Sheikh, you should say so
22 and we'll then have a break. Is that clear?

23 DR SHEIKH: Thank you, your Honour. It's very clear.

24 MR PRESIDENT: Are you ready to give evidence now?

25 DR SHEIKH: Yes, your Honour.

1 11:00

MR MUBASHIR SHEIKH

2 MR PRESIDENT: You will be familiar with the process, you
3 have your statements. Would you like to take an oath or
4 would you prefer to affirm?

5 WITNESS: I prefer to affirm, your Honour.

6 MR PRESIDENT: Say after me. I do sincerely.

7 WITNESS: I do sincerely.

8 MR PRESIDENT: Affirm.

9 WITNESS: Affirm.

10 MR PRESIDENT: That the evidence that I shall give.

11 WITNESS: That the evidence that I shall give.

12 MR PRESIDENT: Shall be the truth.

13 WITNESS: Shall be the truth.

14 MR PRESIDENT: The whole truth.

15 WITNESS: The whole truth.

16 MR PRESIDENT: And nothing but the truth.

17 WITNESS: And nothing but the truth.

18 MR PRESIDENT: Thank you very much.

19 I think the position is you've produced various
20 witness statements in the course of this case.

21 WITNESS: Yes, your Honour.

22 MR PRESIDENT: You've produced those to the tribunal. You
23 appreciate that they are witness statements and that the
24 contents are true; is that right? Do you want to
25 qualify them?

1 11:01 WITNESS: Your Honour, I have seen multiple human errors,
2 specially in dates, in more or less all my statements,
3 so I'd like to qualify by bringing that to your kind
4 attentions.

5 MR PRESIDENT: You want to do that now?

6 WITNESS: When I say I want to do it now, for example,
7 I don't know the protocol, so I ask your goodselves the
8 question, that even the last statement which I had
9 presented to the tribunal, your Honours, even in that
10 statement, when I was reviewing it last night, I noticed
11 that the example on the SEO position of resignation,
12 I have noticed that in one instance, I give a month
13 of June in 2013, and another instance, I give a date
14 of April 2013.

15 And that yet again is an example that I have indeed
16 out of no other reason but human error, you will find
17 multiple evidence in more or less all my statements,
18 your Honours, where I may have, by virtue of human
19 errors, messed up on my reporting of dates. And
20 specially in the earlier part of the investigation,
21 where I was not privy to some of the important
22 documentations, which I was able to procure by way of
23 not only just requesting the DFSA to share, but some of
24 the documents that I was also able to find later on,
25 your Honour.

1 11:02 I felt it was important for me to bring your
2 Honours' kind attention to this reality, because
3 I notice that because of -- my statements will
4 certainly -- you will find mistakes and I'd like to just
5 bring it to your kind Honours.

6 MR PRESIDENT: Okay. Some of those may be unimportant,
7 others may be not, so let's just see how we go, but
8 thank you for making that clear.

9 Unless you want to say anything else at this point,
10 I'm going to invite Mr Khan to ask questions.

11 Cross-examination by MR KHAN

12 MR KHAN: Thank you, sir. Good morning, Dr Sheikh. Good
13 morning, tribunal.

14 A. Good morning, Mr Khan.

15 Q. Dr Sheikh, you were just referring to your various
16 statements and in the authority's skeleton argument, can
17 we just pull up G1, page 2.

18 If you just scroll down to "Witnesses called by
19 Dr Sheikh" -- thank you, Fatima, and good morning to you
20 as well -- you see there, Dr Sheikh, that we have set
21 out all of the witness statements that you rely upon,
22 but there are two actually missing from that list.

23 One is Mr Wasif, which is in evidence, and we don't
24 need to cross-examine, and the other is Mr Ahmed, who
25 was produced on I believe 20 April, so didn't quite make

1 11:04 it into the skeleton argument.

2 But what I'm interested in is just to confirm that
3 what I've referred to as Sheikh 1, 2 and 3 are the three
4 witness statements that you rely upon in these
5 proceedings; is that correct?

6 A. I'm sorry, sir. Would you kindly ask the question,
7 because I'm not sure I understood your question, sir.

8 Q. Do you see under your name, Dr Sheikh, there's
9 a reference to three documents?

10 A. Yes, that's July 2016, October 2018 and February 2020.

11 Q. Yes. Just pausing there, those are your statements that
12 you rely upon; correct?

13 A. These are the statements that I rely upon in addition to
14 multiple other informations that I have submitted to
15 DFSA and to the tribunal during the course of this
16 investigation, sir.

17 Q. These are the only witness statements. I'm just trying
18 to ensure that we're on the same page.

19 A. I appreciate that --

20 Q. These are the only witness statements; is that correct?

21 A. I appreciate that. May I take just a moment to think
22 through, if that's okay, sir?

23 Q. Of course.

24 A. Thank you.

25 So the July 2016 is the submission that I had done

1 11:06 from one lawyers Simmons & Simmons. October 2018 is the
2 one that I did with KBH Kaanun. And then February 2020
3 is the one that I am, by the grace of God, did it
4 myself.

5 So these are indeed the three submissions.

6 That's right, yes, sir. I certainly confirmed that
7 the submissions are these. In addition to, I say this,
8 that if my memory serves me well, in November, I presume
9 14th, if I'm not mistaken, in 2020, I had also submitted
10 a statement to the tribunal members, to your Honours,
11 and that was as a result of a response to the push back,
12 if I can use that -- I apologise for that poor
13 expression, for lack of better expression -- when my
14 appeal that I had submitted, there was a response from
15 the DFSA, on which I had the opportunity to respond and
16 which I did respond. And that was in November, and if
17 my memory serves me well, it was 14 November.

18 I say this, that I'm not sure if such documentation
19 and information and evidence would also constitute of my
20 reliance, because I indeed rely on not only just these
21 three statements, sir, but I also relied on the
22 information that I have submitted to the DFSA and to the
23 tribunal, albeit that the earlier submissions in 2015,
24 16, 17, 18, and even 19, which is prior to the tribunal,
25 that I had approached the tribunal in those statements,

1 11:08 you will find, sir, multiple inconsistencies and
2 multiple errors.

3 Some of the errors are related to simply human
4 errors of lack of recollection. Some of the errors are
5 related to inability to have access to the actual
6 documentations, which then ultimately represented the
7 correct information, as I just earlier explained.

8 So I wanted, in the spirit of totality and fullness,
9 to offer these few remarks, so that your goodself,

10 Mr Khan --

11 MR PRESIDENT: I'm sorry to interrupt, but could you just,
12 for the moment, would you just listen to the question
13 and then just answer it.

14 A. Yes, your Honour. I beg your pardon.

15 MR PRESIDENT: Not a criticism. I know you're doing your
16 best to assist us, but if you could just listen to the
17 question, answer the question and once it's all over, if
18 there are still things you want to say, it will be our
19 pleasure to listen to you. Okay?

20 A. Thank you, your Honour. Yes.

21 So --

22 MR KHAN: Dr Sheikh --

23 A. Mr Khan, please.

24 Q. I think the answer to my question was "yes", those are
25 the witness statements, but you've amplified your answer

1 11:09 to say that there are multiple other submission
2 documents, both you and your lawyers have presented, and
3 you've helpfully identified that there may be some
4 inconsistencies in what you've said throughout the four
5 years of this investigation and these proceedings. And
6 we will, in the fullness of time today, look at some of
7 those.

8 A. Yes, sir.

9 Q. You said in your opening on Sunday that the decisions
10 you made in 2015 were driven by stress and not always
11 the most logical.

12 A. Forgive me, I didn't understand the word you used, the
13 word "definitive". I apologise, please can you repeat.

14 Q. The decisions you made in 2015 were driven by stress and
15 not always the most logical. That's what you said in
16 your opening about your conduct in 2015. That's
17 correct, isn't it?

18 A. That's correct, sir.

19 Q. And you said that at times, mistakes were made. You
20 said that, didn't you?

21 A. That's right, sir.

22 Q. And you said that stress, stress on you personally,
23 affected your memory and also, at times, there was
24 a lack of information available to you, which also
25 contributed to you making mistakes. That's right, isn't

1 11:11 it?

2 A. That's correct, sir.

3 Q. The mistakes you're referring to, I'm going to put to
4 you, can also be regarded as inconsistencies between
5 your present case, the case you're presenting now to the
6 tribunal, and things you have stated previously in
7 submissions and witness statements. That's correct,
8 isn't it?

9 A. I'm afraid that I will not be able to respond
10 intelligently, because you've alluded to a blanket "yes"
11 and "no" answer. I would rather be able to precisely
12 highlight which of those inconsistencies are alluded to
13 stress and which of the inconsistencies, I beg your
14 pardon, is alluded towards lack of information. So I'm
15 afraid I find it awfully challenging to give you
16 a blanket "yes" and "no" to a very broad range of
17 subjects without having me to be clearly identified,
18 sir.

19 Q. I'd like to move on and ask you about the SEO role and
20 Mr Anish Bhatia. That's going to be the first topic of
21 questions.

22 A. Yes, sir.

23 Q. Your latest case is that Anish Bhatia was fully
24 functional in his role of SEO until 27 May 2015. That's
25 your case, isn't it?

1 11:12 A. That's indeed correct, sir.

2 Q. And you have accepted in your skeleton that that is
3 inconsistent with prior statements made by you. That's
4 right, isn't it?

5 A. That's right, sir.

6 Q. And you refer to the Simmons & Simmons document dated
7 21 June 2017, don't you?

8 A. Among other documents, yes, sir.

9 Q. Fatima, can we please pull up a document at C, tab 62,
10 page 425.

11 If you can scroll down to the middle of that email.

12 Dr Sheikh, you'll recall this email you sent to
13 Mr Jensen on 25 August 2015. It was your first,
14 I believe, one of your first communications with the
15 authority shortly after the events in place. Do you
16 recall sending this?

17 A. Yes, sir, but may I draw your kind attention to when you
18 were instructing the young lady, Fatima, I understood
19 that you referred to a statement from Simmons & Simmons
20 and I just wanted to kindly put in perspective that this
21 is not the Simmons & Simmons submission, but it is
22 indeed an email that I had written to Mr Jensen, as per
23 earlier alluded to.

24 MR PRESIDENT: We understand that, Dr Sheikh.

25 A. Right. Sorry --

1 11:15 MR KHAN: In this email -- sorry.

2 A. Forgive me, Mr Khan.

3 Your Honours, I just want to understand that if

4 I need to --

5 MR PRESIDENT: Dr Sheikh, all you've got to do is listen.

6 Listen carefully to the question and then give an answer
7 to the question.

8 A. Yes, sir.

9 MR PRESIDENT: We are not at the moment interested in
10 anything you have to say at all, except in answer to
11 questions from Mr Khan. Is that clear?

12 A. Yes, your Honour. I beg your pardon.

13 MR PRESIDENT: You can give answers at length, you don't
14 have to give "yes" and "no" answers, and if Mr Khan
15 chooses to ask you a long question, he can't be terribly
16 surprised if you give him a long answer. Please just
17 keep your eye and your ear on the questions.

18 A. Yes, your Honour.

19 MR PRESIDENT: Apart from anything else, if you start
20 talking about other things, it means it's difficult for
21 us to concentrate on your real evidence. Okay?

22 A. Thank you for the guidance.

23 MR PRESIDENT: Just listen to Mr Khan, give an answer and
24 for the final time, I'm telling you, if there are other
25 things you want to say, you can say them at the end of

1 11:16 your evidence. All right?

2 A. Thank you for your guidance, your Honour.

3 Please, Mr Khan.

4 MR KHAN: Thank you, Dr Sheikh.

5 You say in the middle of that email:

6 "I met DFSA approximately around the third week of
7 April indicating them that I need an extension on the
8 audit deadline as I intend to assume the position of SEO
9 and need to understand the actual situation of the
10 company as it has been more than two years when I had
11 resigned from the SEO of this company."

12 I have two questions for you. The first is: when
13 you met the DFSA, in April, Mr Bhatia did not attend
14 with you, did he?

15 A. To best of my recollection, I don't think he attend, but
16 that is out of -- to best of my recollection, sir.

17 Q. I understand.

18 Isn't the best interpretation of this email that you
19 were saying that you intended to assume the position of
20 SEO at that time?

21 A. No, sir.

22 Q. Fatima, can we please pull up the email at C64-437. Can
23 you slowly scroll down so Dr Sheikh can remind himself
24 what this is.

25 Dr Sheikh, this is an email sent, I believe, on your

1 11:18 behalf by a lawyer in Pakistan to Mr Jensen, providing
2 responses to an article 80 notice sent by the authority.

3 You see there all the documents that you provided. Do
4 you see that?

5 A. Just bear with me for a second. Could you remind me the
6 date of this email, sir?

7 Q. Fatima, can you just scroll back to the top of the
8 document and just pause there.

9 A. Yes. Thank you. Can I read one more time the body of
10 the email, sir?

11 Q. Yes, of course.

12 Scroll down, Fatima.

13 A. Yes, sir.

14 Q. You see document number 1 attached to the email is
15 a cover statement from Dr Mubashir Sheikh; correct?

16 A. That's right, sir.

17 Q. Fatima, can you please go to C65-473.

18 This is the beginning of the statement that you
19 provide to the authority.

20 A. Yes, sir.

21 Q. For the tribunal's reference, this is Sheikh 1 that's
22 referred to in my skeleton argument, the first statement
23 Dr Sheikh provides in these proceedings.

24 If I can then scroll through to page 475, you say
25 there in the second paragraph:

1 11:20 "You should not forget that I had to step in April
2 of 2015 to assume control of the company as Board has
3 authorised me to do what I deem necessary for the
4 greater good of the company ..."

5 So I'm going to put to you that this is a reference
6 to you becoming the interim CEO or SEO of the company
7 in April 2015. Is that correct?

8 A. Would you give me a second? I want to read it bit
9 carefully, the sentence, sir.

10 All right. Sir. Please ask me your question, sir.

11 Q. Is this a reference to you saying that you had to step
12 in to run the company in April 2015, as interim SEO?

13 A. No, sir.

14 Q. Can we go to document A101-1680.

15 This is your witness statement dated
16 10 October 2018, I understand presented or prepared for
17 the purposes of the DMC proceeding. I have called this
18 Sheikh 2.

19 Fatima, can we please go to page 1688. Can you
20 please scroll down to paragraph (d). Can you please
21 read to yourself, Dr Sheikh, paragraph (d).

22 A. Very well, sir.

23 Q. That's correct, isn't it, that statement by you?

24 A. No, sir.

25 Q. As you've seen, the passages I've taken you to all

1 11:24 reflect your statement and understanding that you were
2 acting SEO from either April or possibly March 2015 at
3 the latest. All those statements reflect the true
4 position, don't they?

5 A. No, sir.

6 Q. You've only changed your case since you've made those
7 statements, because it's no longer convenient or
8 consistent with the case you want to present to the
9 tribunal?

10 A. No, sir. And I'd like, with your permission, to give
11 you the answer in little bit more detail, if you allow
12 me.

13 Q. Of course.

14 A. Thank you. The position which is the accurate and the
15 truthful position is the following, that I was not able
16 to identify or find set of emails which highlighted the
17 facts that when Anish Bhatia, the SEO, had resigned,
18 I was not able to find the emails which are the facts
19 that represented when Anish Bhatia's formal notice
20 period was completed. I was not able to find the emails
21 which demonstrated that Anish Bhatia has responded to
22 the entire MAS team in or around 26 or 27 May 2015,
23 advising the colleagues, wishing them farewell and
24 confirming to the team that today is his last day.

25 In absence of those documents, the two or the three

1 11:26 statements, sir, that you have highlighted are simply
2 out of memory, and indeed they are misrepresented, but
3 not with any other intention, but just out of poor
4 memory.

5 That being said, I'd like to draw your kind
6 attention to the email or the notice response that you
7 had highlighted to me, when you referred that the board
8 has entrusted me with the responsibility since April, if
9 you remember, just two or three questions ago. And I'd
10 like to also further, just for a moment, elaborate, that
11 the board has entrusted me with the responsibility in
12 the month of April, on 26 April 2015, to determine the
13 state of the future --

14 Q. Dr Sheikh, I hesitate to interrupt. We will come to the
15 events of April and May. Trust me on that. For present
16 purposes, so we can make progress, I'm happy for you to
17 elaborate, I don't want to cut you off in giving your
18 evidence, but we are talking about whether or not you
19 were interim SEO, not what you did with any powers that
20 you may have been given.

21 Please forgive me, but I'd like to stick to this
22 issue.

23 A. I beg your pardon. Please continue.

24 Q. The emails you rely upon show that in April, Mr Bhatia
25 formally tendered his resignation. And in May, he

1 11:27 notified his former colleagues that he was officially
2 leaving that day. That's correct, isn't it?

3 A. When you use the word "officially", I'm not sure
4 I follow your expression, sir.

5 Q. Do you want to go to the emails and I can show you what
6 he says?

7 A. If you will.

8 Q. Can we please go to B10-140.

9 Dr Sheikh, while we wait for it to come up, this is
10 an email that you rely upon heavily in your skeleton
11 argument and referred to in your opening, so you are
12 obviously very familiar with it.

13 Can you just pause there, second line. Can you read
14 that to yourself and remind yourself what it says.

15 A. You're referring to the first paragraph, which starts
16 with, "I wish"?

17 Q. No, Dr Sheikh. I'm referring to the line that says:
18 "Today is officially my last day in this
19 organisation."

20 A. Okay, yes, please go ahead.

21 Q. You asked me to just show you this document to remind
22 you what it says.

23 A. Yes.

24 Q. You accept that it says, he says he's officially leaving
25 that day, doesn't it?

1 11:30 A. This is what it reads, yes, sir.

2 Q. We can put that away now, Fatima.

3 These emails are a red herring, aren't they,

4 Dr Sheikh? The reality is that you knew full well that

5 you had taken control of the company and were acting SEO

6 at the latest, in April 2015. That's correct, isn't it?

7 A. No, sir.

8 Q. Fatima, can we please go to the December board meeting

9 at --

10 MR PRESIDENT: Since we have got a lot of material to be

11 going through, I'm not sure I quite understood -- may

12 I just ask a question?

13 MR KHAN: Yes, of course.

14 MR PRESIDENT: I'm sorry to interrupt.

15 Dr Sheikh, I think what my colleagues and I are keen

16 to understand from those exchanges, are this. You're

17 saying in that document:

18 "From on or around March 2015, I was effectively the

19 acting SEO and had day-to-day responsibility, with

20 others ... for its operations."

21 I didn't understand from your answers referring to

22 the emails how you came to say that, if it wasn't true.

23 Because presumably, you either remember being

24 effectively the acting SEO or you don't remember. Could

25 you just clarify that for us?

1 11:32 A. With pleasures, your Honour.

2 As I mentioned, that when I wrote those emails or
3 when I directed those statements, which I signed, which
4 were submitted, as presented by Mr Khan, I state that
5 I was operating out of recollection of my memory and
6 based on the recollection of my memory, you notice that
7 I have highlighted a couple of different dates on
8 different occasions.

9 And then, your Honour, I want to highlight the fact
10 that when I started getting information from the DFSA
11 and I also started being able to more intelligently go
12 deep into the set of information and I realised the
13 actual reality in terms of the dates.

14 So the dates highlighted to me the fact that
15 I assumed the interim SEO position after Mr Bhatia had
16 resigned. And prior to that, in the assumption of the
17 board meeting on 26 April alluded to, which is what
18 I wanted to say, but Mr Khan suggested that we will come
19 back to that question, is that I took control of that
20 business, based on the authority entrusted to me by the
21 board and that was a very narrow authority to foresee or
22 to take the decisions towards the future of the company.
23 And in that line of reasoning, it does not, by any
24 standards, infer that I was directed by the board
25 members to assume the interim SEO position.

1 11:34 That's my position, your Honour.

2 MR PRESIDENT: I'm so sorry, but what I'm trying to
3 understand is this. You either -- you appear to
4 remember being effectively the acting SEO, and generally
5 that is quite an important role, and one might have
6 thought that you would remember it or not remember it.
7 It wouldn't depend upon looking at emails to recall
8 whether you were in charge of a business or you weren't.
9 That's what I couldn't understand.

10 A. And I submit that to you with a lot of respect, your
11 Honour, that when we talk about running a business,
12 unfortunately, I have an overwhelming personality, if
13 I can say that word, and in my mind, the position of
14 interim SEO is when I assumed when Mr Bhatia has left.
15 And I am on record, your Honour, during one of these
16 exchanges, which Mr Khan has highlighted, that I have
17 categorically highlighted that I will assume the
18 responsibility of the interim SEO after Mr Bhatia has
19 left.

20 MR PRESIDENT: I hear what you say. I am sorry to Mr Khan
21 to interrupt.

22 MR KHAN: No, sir, that's perfectly fine. And I would
23 encourage the tribunal if they have questions to
24 interject as is their right.

25 I'm not going to take you to the board minute

1 11:35 meetings, because the tribunal has seen them, you have
2 given evidence, you have heard my opening and our
3 submissions on that.

4 But what I would like to ask you is whether you
5 accept Mr Pritchard's evidence that at one of those
6 board meetings, we say probably the one in December, you
7 presented, as a fait accompli -- that's his language --
8 that Mr Bhatia was no longer SEO?

9 A. That is a misrepresentation of the facts, sir, so
10 I answer to you as "no".

11 Q. I'm going to actually move on to look at some of the
12 evidence, the factual evidence, which supports my
13 contention that you, not Mr Bhatia, was the SEO from at
14 the latest, April 2015.

15 The first piece of evidence is that he wasn't at
16 the April board meeting, was he, and you presented the
17 SEO's report to the board? That's correct, isn't it?

18 A. You're referring to the April 2015 board meeting, sir?

19 Q. Yes.

20 A. Mr Bhatia was not present, because Mr Bhatia had
21 announced to the company's secretary, prior to the board
22 meeting, his inability to participate and it is on
23 a factual document based on an email exchange that DFSA
24 has recently shared by way of the bundle of information
25 that I have received. So the answer to your question is

1 11:37 no, sir.

2 Q. Sorry, my question was, is it factually correct that he
3 was not at the April board meeting and you presented the
4 SEO report to the board?

5 A. That's correct, sir.

6 Q. That's just a fact I'm putting to you, because I rely
7 upon it as supporting the contention I put to you
8 already.

9 The second piece of evidence is, we've already seen
10 a reference to this, he did not attend the meeting with
11 the DFSA, did he?

12 A. You're referring to the meeting that I had along with
13 Mr Ali, with Madam Katrina, the supervisor, in March --

14 Q. Yes, April.

15 A. April, I beg your pardon. Yes, to the best of my
16 recollection, he did not participate in that meeting.
17 I don't know the reason for that, sir.

18 Q. What do you mean you don't know the reason? You're the
19 chairman of the company and he, on your case, is still
20 an active SEO. You have an important meeting with your
21 regulator --

22 A. Yes.

23 Q. -- which you attend and he doesn't attend. So you must
24 know why he didn't attend.

25 A. No, sir. And I will explain that a little bit, if you

1 11:38 permit me.

2 Q. Yes, go ahead.

3 A. Mr Bhatia was absent on the date that Mr Awais and I, to
4 best of my recollection, had a meeting with the DFSA
5 supervision. The reason for Mr Bhatia to not be present
6 on that day is I am not privy to, I don't remember, or
7 I don't know and I think this would be the appropriate
8 question to ask from Mr Bhatia. But as far as I am
9 concerned, I don't know the reason. And the only
10 reason -- and I repeat to you, sir, the only reason he
11 was not participating in that meeting was because he was
12 not available in the office that day, sir.

13 Q. It's also true that he wasn't at the December board
14 meeting, was he?

15 A. That is correct, sir. And he had given an explanation
16 for not being able to present in the December board
17 meeting as well, sir.

18 Q. It's also true that he wasn't involved in any of the
19 meetings or negotiations with Mr Akbar or Mr Yer, which
20 is part of your case. That's correct, isn't it?

21 A. The meetings with Mr Akbar and Yer were meetings
22 organised by Mr Ul-Hayee and there was nobody else --
23 and I repeat, there was nobody else present in those
24 meetings and those were meetings had nothing to do with
25 interim SEO position or the SEO position at all, sir.

1 11:40 In fact, if I --

2 Q. If you're negotiating the sale of the company, your
3 shareholding, a majority shareholding, wouldn't one
4 expect the SEO of the company to be there?

5 A. No, sir. And I can explain that if you allow me to for
6 a minute.

7 Q. Of course.

8 A. Thank you, sir. The negotiations with the investor was
9 being conducted as for me the owner of MAS ClearSight,
10 because that is how I was being introduced to Mr Akbar
11 and Yer. Mr Atta Ul-Hayee has asked or proposed to
12 Mr Akbar and Mr Yer that he can arrange the meeting with
13 the owner of the business. And in that capacity, I took
14 that meeting and not in the capacity of SEO, because
15 I was not the SEO, I was the owner and chairman of the
16 business, sir.

17 Q. But on 20 and 25 April, MAS ClearSight -- not you, not
18 MAS holders -- MAS ClearSight entered into these
19 purported agreements with Mr Akbar and Mr Yer. So I put
20 it to you, if Mr Bhatia was still in his de facto SEO
21 role, he would have been involved in that, would he not?

22 A. Not necessary, sir.

23 I draw your kind attention to your Honours that from
24 time to time, you may realise that I am touching my neck
25 left side, because I'm trying to pay attention and

1 11:41 I have a little bit of a sciatic, or I don't know what
2 pain, so please ignore my movement here.

3 MR PRESIDENT: I'm sure we haven't noticed your movements.

4 Please just don't worry about that. Just keep your mind
5 on the questions and answers. Please don't worry.

6 A. Thank you, sir.

7 MR KHAN: I'm putting it to you, Dr Sheikh, that throughout
8 the events in 2015, certainly until the end of April,
9 Mr Bhatia is just not present, is he, from either the
10 documents or even your own version of events?

11 A. That's not correct, sir.

12 Q. The only time he enters the story is in your witness
13 statement at C98-1323 -- if we can please pull that up.
14 If you can just scroll down, Fatima, to
15 paragraph 42.

16 This is your February 2020 witness statement, what
17 I have called Sheikh 3, the third statement you've
18 presented in the investigation and proceedings.

19 At paragraph 42 onwards, you explain, for the first
20 time, that you told Mr Bhatia about the investors
21 shortly after your meeting with Mr Yer. That's correct,
22 isn't it?

23 A. Would you allow me to let me read the paragraph 42 for
24 a second, sir?

25 Q. Of course.

1 11:44 A. Thank you.

2 Q. Do please read 43 as well.

3 A. Very well, sir.

4 Thank you, sir. I have read both 42 and

5 43 paragraphs.

6 Q. You just told me in answer to my previous question that
7 it's not necessary for the SEO of the company to be
8 involved in a negotiation in which the company is
9 effectively sold to an investor and borrowed money from
10 a further investor. So why is it necessary for you to
11 go straight to the SEO to tell him that you needed to
12 withdraw money?

13 A. Sure. Sir, I spotted two questions in your statement.

14 Would you allow me to answer both the questions one by
15 one?

16 Q. Of course.

17 A. Thank you. The first question that I spotted in your
18 series of questions is the following, that I negotiated
19 the sale of the company, and I say this with a lot of
20 humility to you, sir, that as a majority shareholder,
21 when I entered the discussions to have -- to raise the
22 investor prior -- I repeat, prior to the board meeting
23 of 26 April, I entered in the discussion to consider
24 selling part of my ownership of equity in the company.

25 And I wanted to first understand and see if there is

1 11:46 a possibility or a potentially ready, willing and able
2 investor, or in this example, a buyer of my equity,
3 which is owned by me, as Mubashir, as the owner of the
4 company. Therefore, I did not see the need for an
5 executive member of the team, which is in this case
6 Mr Bhatia, as the SEO, to be present.

7 So that was the answer to your first question, sir.

8 Q. Dr Sheikh, if I can stop you there, that wasn't the
9 question. That was a proposition and you have just
10 provided the answer on a second occasion.

11 I had a single question. If it wasn't necessary for
12 him to be involved in the negotiation, why is it
13 necessary for you to rush straight to him to tell him
14 about this money that you needed to withdraw?

15 A. Very well, sir. I will answer this question.

16 The second action, the second question that you had
17 asked was extremely important, because SEO is the
18 responsible for the day-to-day running of the company.
19 SEO carries the responsibility of ensuring the
20 governance and fulfilling the obligations of the
21 business.

22 And when I went for me to be able to withdraw the
23 money from the account, I was under duty to report or
24 advise or inform the SEO, whose ultimate responsibility
25 is for the governance of the company. And that is the

1 11:48 reason that I had gone to the SEO, in my mind, the most
2 appropriate approach to be able to bring the SEO into
3 the information flow, sir.

4 Q. So let's ignore for a moment the sale of the company by
5 you to Mr Akbar. Let's put that to one side.

6 A. Okay.

7 Q. In the Yer agreement, the company was borrowing
8 \$600,000, so why is that not part of the governance role
9 that an SEO would oversee?

10 A. Thank you for your question. The answer is, it was not,
11 and I tell you the reason why, sir.

12 Mr Yer's agreement was executed on 27 April and on
13 26 April, I was privileged and was awarded a carte
14 blanche authority by the board to take the direction of
15 the company in terms of being able to sell the company
16 or be able to raise capital in any way I deem
17 appropriate, sir.

18 Did I answer your question or I beg your pardon,
19 I did not answer your question?

20 Q. No, you didn't. My question is --

21 A. Repeat, please.

22 Q. -- if you needed to tell the SEO that you were
23 withdrawing money from the account, why was it not
24 necessary to involve the SEO when you had agreed to
25 receive money into the bank account in relation to

1 11:49 Mr Yer's agreement?

2 A. I say this to you, sir, that when I was engaged with
3 Mr Yer, I had the privilege of the board authority to
4 direct the future of the company. And in that spirit,
5 receiving the money is enhancing and strengthening the
6 capital structure of the business and I didn't feel the
7 need for it, because there was no obligation from either
8 governance perspective or from a perspective which would
9 go against the board's will, which they had entrusted in
10 me to unilaterally -- and I repeat the word
11 "unilaterally" -- take any and all decisions towards the
12 future direction, in terms of the survival of the
13 company. So whether to be able to sell the company,
14 close the company, partially sell the company and so on
15 and so forth.

16 So the answer to your question is this is the reason
17 that it was not, in my mind, needed for me to approach
18 the SEO.

19 Equally importantly for your kind self, sir,
20 I highlight the fact that when I highlighted to
21 Mr Bhatia, as you alluded to earlier, that I could
22 clearly see that he has his attention, which is his
23 personal choice, to not pay so much attention to the
24 business, which is unfortunate, but that's his own
25 decision and I believe he would be a better person to

1 11:51 respond on his behalf. I can't speak on his behalf,
2 sir.

3 Q. I think you're alluding there, Dr Sheikh, to your
4 complaint throughout these proceedings that the DFSA
5 ought to have interviewed Mr Bhatia; is that correct?

6 Is that what you're alluding to?

7 A. No, sir. All I'm saying to you is answering your
8 question, that the question that you had put me and I'm
9 here sitting in the spirit of a witness, is not
10 a question for me. I think this is a question for
11 Mr Bhatia, sir.

12 Q. Can we please pull up Dr Sheikh's skeleton at G2,
13 page 49.

14 I'm now going to leave behind the SEO issue. You
15 understand my case, I hope.

16 I'm going to move on to look at the question of what
17 was done with the money that you withdrew in May
18 and June.

19 A. Sir, I understood that you had asked me a question.
20 Would you allow me to respond to your question, sir?
21 Just now you said that before changing, you said that
22 "I hope that you have understood that your position
23 regarding SEO", and would you give me the opportunity to
24 respond to this comment or question?

25 Q. Yeah, of course.

1 11:52 A. Sir, I understand very well the reasoning of your
2 question, but I submit this to you with a lot of
3 humility, that your understanding and your analysis in
4 my humble opinion are wrong and I do not agree with
5 them, sir.

6 Please continue.

7 Q. Can we scroll down page 49.

8 This is in the introduction of your skeleton
9 argument. You summarise your case as to what you did
10 with the \$600,000 that were withdrawn by you from the
11 MAS bank accounts in May and June. And you refer at
12 paragraph 1 to Mr Zeman and at paragraph 2 to Mr Ahmed.
13 Do you see that?

14 A. Yes, sir.

15 Q. It seems that accounts for all of the \$600,000 that were
16 withdrawn; is that correct?

17 A. I'm not sure I follow your question, sir. You said that
18 all the \$600,000 which were withdrawn?

19 Q. Yes.

20 A. But, sir, when you say all \$600,000 -- if my
21 recollection is right -- and I may be off, so please
22 forgive me for that -- the money which was withdrawn was
23 close to something like 500 and some thousand dollars.
24 And unfortunately, I don't have my notes, nor I have
25 information, so I'm not sure when you refer to

1 11:54 \$600,000 withdrawn, I need certain clarity on your
2 question, sir.

3 Q. Okay. All of the money that you withdrew was given to
4 Mr Zeman and Mr Ahmed. That's your case, isn't it?

5 A. Just give me a second to think this through, sir,
6 please.

7 Okay. Sir, your question, if I understood well, is
8 all the money that I withdrew was given to Mr Zeman and
9 Mr Ahmed. Is that right? Did I understand your
10 question well, sir?

11 Q. Yes.

12 A. The answer is no, sir.

13 Q. What I'm trying to understand, then, is what do you mean
14 by the paragraph I have just drawn your attention to?

15 It says:

16 "Before we even begin with addressing the
17 allegations one by one, I will list what was done with
18 the USD 600,000 that the DFSA claims I have pocketed ...

19 1. USD 350,000 was given to Peter Zeman in the month
20 of August ...

21 2. USD 250,000 was given to Khalil Ahmed in the
22 month of July ..."

23 Then you explain why.

24 Is that inaccurate?

25 A. Sir, I present you the following, to answer your

1 11:56 question.

2 Once again -- and I draw your kind attention to the
3 accusations that DFSA has accused me of removing the
4 capital from the MAS account and to best of my
5 recollection, the amount of withdrawal is not 600,000.

6 And for that reason, and that reason alone, I responded,
7 "No, sir".

8 But the correction -- but the fact that
9 \$600,000 were indeed given in the same -- if I can use
10 the word -- two different payments, yes. 350 to
11 Mr Zeman is correct and \$250,000 to Mr Ahmed is correct.

12 So I hope that I have presented more clarity and
13 precision in terms of trying to answer your question,
14 sir.

15 Q. Was all the money that you withdrew in May and June 2015
16 used to pay Mr Zeman and Mr Ahmed? "Yes" or "no"?

17 A. No, sir.

18 Q. I'm going to deal with Mr Zeman first. Can we please go
19 to document C95-1299. This is Mr Zeman's witness
20 statement.

21 This is Mr Zeman's witness statement presented on
22 10 February 2019 or thereabouts.

23 Can we scroll down, Fatima.

24 This is a reference to the consulting agreement
25 dated 6 August 2011, correct, that you say MAS entered

1 11:59 into with Mr Zeman?

2 A. That's correct, sir.

3 Q. Can we please go to that document, Fatima, which is
4 exhibited to Mr Zeman's witness statement. It starts at
5 page 1302. If you scroll through to 1308. We see there
6 it's agreed by you on behalf of MAS and Mr Zeman on
7 behalf of himself.

8 The next page, 1309, just pause there so Dr Sheikh
9 and the tribunal can read that.

10 This is effectively a confirmation receipt of the
11 payment of money.

12 A. That's correct, sir.

13 Q. Can we please now go to A116, page 1776.

14 This is a list of supporting documents, isn't it,
15 that you produced, or your lawyers?

16 A. Okay.

17 Q. Annex E, one sees reference to these documents?

18 A. Would you like me to read annex E?

19 Q. Yeah, just remind yourself what you say in relation to
20 annexure E.

21 A. Okay.

22 Q. Have you read that?

23 A. Are you referring to reading the section (v) of annexure
24 E, sir?

25 Q. Yes, just to remind yourself what documents you refer

1 12:03 to. The consultancy agreement and the receipt; correct?

2 A. Yes, I have read this section (v) or subsection (v),
3 yes, sir.

4 Q. And just confirm for me that the consultancy agreement
5 and the receipt are the two documents that I just showed
6 you a moment ago?

7 A. The consulting agreement, yes, and the receipt, yes,
8 sir.

9 Q. Fatima, can you scroll back to page 1775, A115.

10 This is the agenda for the oral DMC hearing that
11 took place on 13 March 2019; do you recall that?

12 A. Okay.

13 Q. It's right, isn't it, that you presented the documents,
14 including those listed as annex E, to the DMC on the
15 morning of 13 March? Correct, isn't it?

16 A. Sir, may I take the liberty to answer your question?

17 Q. Is it "yes" or "no"? And then you can elaborate, if you
18 need to.

19 A. Well, DMC was sent those documents prior -- and
20 I repeat, prior to this meeting, but the DMC people or
21 I should say the lady Iliana(?), if my memory serves me
22 well, claim that she had not received these documents.

23 And then while in this representation, my legal
24 representative, Mr Asim, was also participant and then
25 I requested him to resend those documents to the DMC.

1 12:06 So the answer is like this, sir.

2 Q. On your case, were those documents emailed shortly
3 before the hearing on 13 March?

4 A. I'm terribly sorry, but I can't recall, sir. Unless if
5 I don't see some factual evidence, I'm hesitant to
6 confirm or not confirm without having to see the
7 documents or out of my memory, I choose not to
8 speculate, sir.

12 A. The definition of "shortly", if you mean one day before,
13 the answer is no. If you mean --

14 Q. In March?

15 A. Yes, sir. I believe that those documents were sent
16 in March, sir.

17 Q. It's right that this is the first time you presented
18 these documents? That's correct, isn't it?

19 A. That's correct, sir.

20 Q. I'd like to go, if I may, to Sheikh 3, as I call it.
21 That's your 2020 statement at C98-1331

22 You explain at paragraph 85 --

23 A Would you kindly remind me what do

24 at together?

Q. It's your witness statement.

1 12:09 A. Witness statement as of the latest witness statement?

2 Q. Yes.

3 A. The one to the tribunal; correct?

4 Q. Yes.

5 A. Thank you, sir.

6 Q. So you say:

7 "I present the following timeline of events to
8 demonstrate how difficult it was for me to acquire this
9 document ..."

10 Referring to the consultancy agreement with

11 Mr Zeman.

12 A. I'm not sure. Would you kindly let me see little bit
13 above so I can be sure to confirm your question,
14 because --

15 Q. Why don't you just read paragraph 85? It's perfectly
16 apparent we're dealing with this agreement.

17 A. Just bear with me for a second, sir.

18 Q. Once you have read 85(a) to (c), let Fatima know and
19 she'll scroll down to the next page.

20 A. Fatima, please continue to scroll down, if you will.

21 Would you scroll down a little bit more so I can
22 read section (h), which is still not complete, Fatima.

23 Fatima, may I request you to scroll up a little bit?
24 Because I want to read a paragraph one more time.

25 Scroll down a little bit more, please.

1 12:14 Yes, sir, please continue with your question,

2 Mr Khan.

3 Q. This is just not true, is it, Dr Sheikh?

4 A. I don't follow. What do you mean by "this is not true",
5 sir?

6 Q. It's false. You've made it up.

7 A. Absolutely wrong, sir. This is indeed true and I submit
8 this to you with little bit more explanation, if you
9 allow me to.

10 Q. Of course.

11 A. Thank you, sir.

12 You know when you read this, and that's why
13 I requested Fatima to go little bit up and down, when
14 you read the point (g), it says:

15 "I intended to go to Pakistan to go through my
16 personal files to see if I could achieve this
17 objective."

18 So here I am referring to my intentions of doing
19 that, sir. Okay?

20 Now, in principle, I was not able to go, so I had
21 asked one of my colleagues in Pakistan office to go to
22 Mr Atta's home in Islamabad. And every time that you
23 see in the paragraph (h) when I'm saying "I", "I", "I",
24 what I'm alluding to here is on my instructions, my
25 colleague -- and his name is Ziauddin, who is the

1 12:15 director of finance in my -- used to be in my MAS
2 Pakistan Islamabad office, and Atta used to live in
3 Islamabad with his father, and on my request, as I said,
4 that Mr Ziauddin had gone to collect this box and then
5 Mr Ziauddin had opened and Mr Ziauddin has then
6 submitted.

7 So I submit this to you, sir. While you may see
8 that the word "I", "I", "I" may give you the illusion
9 that I physically travelled to Pakistan for this, and
10 I want to clarify that it was not that I physically
11 travelled, but I had my colleague, who had gone on my
12 behalf to collect this box, and then on my request, he
13 opened the box. And that's how he was showing me, by
14 way of the Skype call, and that's when I was able to
15 identify the agreement.

16 So that is just for clarity purpose. But please go
17 ahead. The answer to your question is that what I have
18 said with this further clarification is true and if your
19 question was that whether this is false or made up, the
20 answer is no, sir.

21 Q. Can I please turn up document C50-338. This is
22 Mr Jensen's witness statement, which you cross-examined
23 him on earlier this week.

24 If you scroll down to paragraphs 74 and 75.

25 A. Would you like me to read this, sir.

1 12:18 Q. Yes, and if you scroll down to 75, please, Fatima.

2 A. Forgive me, I haven't read 74 and my question is would
3 you like me to read this, sir?

4 Q. Yes.

5 A. Okay, so please bear with me for a second.

6 Q. When you're done, Dr Sheikh, do tell us and we'll scroll
7 down to 75.

8 A. I will, but I beg your pardon, I'm still halfway
9 through, so please bear with me if you will kindly.

10 Fatima, please, you can scroll down to the next
11 point 75, I suppose.

12 Could you scroll down, Fatima, if there is further
13 continuation.

14 Very well. Yes, I have read. Thank you for your
15 patience.

16 Q. Thank you. Given you didn't challenge Mr Jensen on this
17 earlier this week, can we take that as agreed?

18 A. Not at all, sir.

19 Would you like me to answer a little bit further, if
20 it's okay for you, sir?

21 This --

22 Q. No, I don't need you to, but I'll leave it to the
23 tribunal, if they'd like to.

24 MR PRESIDENT: No, if you just -- Dr Sheikh, it's not
25 helpful for you to explain things that are not in answer

1 12:22 to a question.

2 A. Understood.

3 So the answer is --

4 MR PRESIDENT: No, let us have the question and you give the
5 answer. All right?

6 A. Sir, I beg your pardon. Please continue.

7 MR KHAN: There's no explanation that you've provided, is
8 there, of what you were paying consultancy fees to
9 Mr Zeman for?

10 A. Forgive me, I don't follow your question, sir.

11 Q. There's no explanation given by you in any of your
12 statements as to why you were paying Mr Zeman \$350,000?

13 A. I believe that your assessment is wrong, sir.

14 Q. Have you provided an explanation or not? I'm not asking
15 you for an explanation, I'm asking you if you have
16 provided one?

17 A. I have, sir.

18 Q. Which document?

19 A. Thank you. That's where now I was going to answer that,
20 but since you asked the question, so I imagine now it is
21 okay for me to answer your question.

22 Sir, because I don't have any documents on me,
23 understandably --

24 Q. Dr Sheikh, just a moment. Just to be clear, I'm putting
25 to you the proposition that you have to date provided no

1 12:24 explanation for why you were paying Mr Zeman, in the
2 end, \$350,000. You just need to either confirm that
3 "yes" or "no".

4 A. Okay. So the answer is I have provided, sir.

5 Q. Where is the answer? Provide a reference, please.

6 I may have missed it.

7 A. If you kindly look at the consulting agreement contract,
8 principally which was done between MAS and Mr Zeman, the
9 explanation is inside the contract.

10 Q. No, the contract anticipates that consultancy work may
11 be done, but what I'm asking you for is an explanation
12 that you have already provided of what work was actually
13 done between 2011 and 2015. Have you explained that in
14 any of your statements? "Yes" or "no"?

15 A. Yes, sir, I have. I can now give you a reference for
16 that, sir. The reference that I'm about to share with
17 you is twofold.

18 One reference is, sir, that I am on record and it is
19 in my statement, the final statement that I produced to
20 the tribunal, and if you noticed that outside the
21 statement, there is a long list of attachments
22 associated with my statement, sir. In that long list of
23 attachments, there is a presentation on Batumi
24 International Financial Centre, which is also part of
25 the evidence in my statement attachments, sir.

1 12:26 One of the -- the word I'm looking for is one of the
2 introductions that Mr Zeman had provided to MAS
3 ClearSight was an introduction to the governor of Ajara,
4 which is an autonomous independent state of Georgia, and
5 Batumi is its capital, I suppose, and there was an
6 opportunity for MAS to partner with the government of
7 Ajara to do a project like DIFC in Batumi. And we were
8 blessed to have the opportunity to own 50 per cent of
9 that project which would --

10 Q. Dr Sheikh, forgive me, I'm going to stop you.

11 A. I beg your pardon.

12 Q. Fatima, can we please go to document C98-1313.

13 That's your last witness statement in these
14 proceedings, which I believe you just referred to.

15 If we go to page 1332, paragraph 87.

16 This is where you explain how the MAS capital was
17 used and you explain what occurred with Mr Zeman.

18 Would you scroll through to the next page.

19 A. Forgive me, would you like me to read this or if you
20 want me to answer something here, sir?

21 Q. I'll ask a question in a moment.

22 If you scroll through, Fatima. This is your
23 statement, Dr Sheikh.

24 A. Yes, sir.

25 Q. Scroll down to 92.

1 12:28 This is where you principally deal with Mr Zeman.

2 You don't provide any explanation of why you were paying
3 him \$350,000, do you?

4 A. Is that your question, sir?

5 Q. Yes.

6 A. I'm not dealing here with the explanation of why. I'm
7 dealing here with the explanation of how much. There is
8 a separate answer which I have submitted. And I must
9 admit that unless I don't see the entire statement or my
10 skeleton arguments, I would not be able to intelligently
11 direct your kind attention to the place where I have
12 given details in terms of the work provided or the
13 services provided by Mr Zeman to MAS ClearSight, sir.

14 Q. The only other reference to Mr Zeman -- and we'll go
15 there -- is 1331 in the same document, in C98.

16 We have looked at this, paragraphs 82 and 83,
17 I believe. If not, we'll look at it now.

18 A. May I read, if you like?

19 Q. Yes, please do so, as quickly as you can, Dr Sheikh. It
20 is your statement.

21 A. You're kind. I'll just take a moment to read, sir.

22 Thank you.

23 Very well. Thank you for your patience, sir.

24 I have indeed read paragraphs 82 and 83.

25 I beg your pardon, sir, you're on mute.

1 12:33 Q. Paragraph 82, you say that MAS had a substantial
2 consulting fee liability for work that he had done. But
3 I put it to you, you provided no explanation in your
4 evidence of what work he did and why there was
5 a liability to pay the fees that you eventually say you
6 pay. That's correct, isn't it?

7 A. No, sir. And I draw your kind attention to the answer,
8 if you please, look at the skeleton arguments that
9 I have presented, I am sure of it, that you will find
10 the answer. And if you kindly take a moment of your
11 valuable time and go on to the skeleton argument, you
12 will find --

13 MR PRESIDENT: Dr Sheikh, let's look at it in this way. For
14 the moment, perhaps you could let us know from your
15 memory what work Mr Zeman did in order for this
16 liability to be run up.

17 Then when we have a break, and a break will be
18 around about 10 o'clock, you will have an opportunity to
19 go through your skeleton argument and refresh your
20 memory, if you can't remember now what it was that
21 Mr Zeman did in order to give rise to the consulting fee
22 liability.

23 DR SHEIKH: Thank you, your Honour. Thank you for your
24 guidance.

25 Mr Khan, I present this to you, that as his Honour

1 12:34 has suggested, I want to request you to table this
2 question till after the break, so that I'm able --

3 MR PRESIDENT: No, Dr Sheikh. That is not what I said.

4 I said you can do that over the break, but for the
5 moment, you'll have to rely upon your memory and let us
6 know what you can remember, what it was Mr Zeman did to
7 give rise to that liability.

8 A. With pleasure, your Honour.

9 So I will now bring to your kind attention, your
10 Honours, and Mr Khan, sir, that there were multiple
11 high-level introductions that Mr Zeman had done for MAS
12 and among those multiples, from the top of my memory,
13 I'm going to share at least two or three of them as we
14 speak now, sir.

15 First of all, was the one that he had introduced us
16 to the ex-vice president of Russia and his son, where
17 I had the pleasure of meeting them in Georgia. And
18 these gentlemen provided us with an incredibly
19 impressive business opportunity by virtue of Mr Zeman's
20 introduction, that we were introduced to the governor of
21 Ajara, which is an autonomous state in Georgia, which is
22 one of the ex-Russian or USSR countries.

23 What he did for us there, sir, that he made that
24 introduction and he stayed throughout that introduction
25 to be able to see through that MAS ClearSight was

1 12:36 privileged to earn the opportunity to become partners
2 with the government of Ajara, to launch a project of
3 a magnitude of 80 acres of land on the Black Sea in
4 Batumi, which is to build Batumi International Financial
5 Centre.

6 The value, Mr Khan, of that project was north of
7 US\$60 million. And the president of Georgia,
8 Mr Saakashvili, at that time, had made a public
9 announcement in the public domain, highlighting that
10 Georgia will be building a financial centre like the
11 DIFC centre in Batumi. And hence, it was referred as
12 Batumi International Financial Centre.

13 I further put to you, sir, that that project was
14 prepared and was presented and was approved, and was
15 presented in the cabinet of the Georgia government. And
16 one of your witnesses, sir, that I present, Mr Faheem
17 Aziz, has alluded to this project, where he has also
18 worked with MAS ClearSight and was instrumental in
19 putting that.

20 And this is one example that I present to you.

21 Another example that I present to you for the work
22 that Mr Zeman has done is that there is, as you know
23 very well, in Montenegro, which is a small country
24 within Eastern Europe, we were introduced to the
25 minister of aviation by virtue of them and there was an

1 12:37 opportunity for us to be able to identify a financing
2 package to help them launch an airline in Montenegro.

3 That is just two examples.

4 Now, I say this to your Honours and Mr Khan, that
5 the rest of the details, I will be able to look through
6 from my skeleton arguments and present it to you after
7 the break. If it is okay, sir?

8 MR KHAN: I appreciate that you have said, Dr Sheikh, that
9 you didn't have the Zeman agreement or the Zeman
10 receipt -- if I can call them that -- until Mr Ziauddin
11 on your behalf recovered it in Mr Ul-Hayee's house in
12 Islamabad; correct?

13 A. Sir, the agreement was recovered by Mr Ziauddin from the
14 house of Mr Atta Ul-Hayee in Islamabad. The receipt is
15 a completely different explanation. And if you like,
16 I'm happy to offer that, but it's for you to decide,
17 sir.

18 Q. Is it in your evidence the explanation that you propose
19 to give?

20 A. I would certainly imagine, sir. But I have to again
21 look at the whole details to be able to identify exactly
22 where, sir.

23 Q. Don't worry. I don't think it matters just yet.

24 Putting to one side the absence of the agreement or
25 the receipt, there's no explanation you've provided as

1 12:39 to why you did not mention the fact of a consultancy
2 agreement and the payment you made under it in any of
3 your statements prior to that DMC hearing?

4 A. Forgive me. Would you kindly repeat that, because
5 I didn't think I understood the first part of the
6 question, sir.

7 Q. There's no explanation that you have given as to why you
8 didn't mention the fact that there was an agreement and
9 the fact that you made a payment of \$350,000 to Mr Zeman
10 in any previous statements?

11 A. That's correct, sir.

12 Q. In fact, you say the payment was made -- certainly the
13 receipt is dated 15 August, isn't it?

14 A. That's correct, sir.

15 Q. On 25 August, 10 days' later, you sent an email to
16 Mr Jensen providing an explanation as to what you did
17 with the money you withdrew, didn't you?

18 A. Yes, and I present this to you, that that explanation is
19 inaccurate.

20 Q. Yes, so we're agreed. You refer to salaries and
21 vendors, didn't you?

22 A. Once again, I said that if you ask me -- to ask the
23 question to give you details, I'm happy to. But I want
24 to say this to you, that the voluntarily submission that
25 I present to Mr Jensen on, I think, 25 August, as you

1 12:41 alluded to, is materially wrong information. And that's
2 the answer, but I'm happy to explain, if you ask me.

3 Q. No, thank you.

4 What I'm going to put to you, that it is
5 inconceivable that 10 days after having received the
6 receipt that you had just paid \$350,000 of the money you
7 had withdrawn to Mr Zeman, just 10 days' later, you
8 don't explain that to the DFSA in the email of
9 25 August.

10 A. Can I respond to that, that it is not inconceivable and
11 I'm happy to give the explanation, if you allow me to,
12 sir.

13 Q. No, thank you.

14 If the tribunal would like to hear the answer,
15 then -- but it's not -- given the timing --

16 MR PRESIDENT: You, in effect, asked the witness, how come
17 this very large payment was made and that 10 days'
18 later, not even mentioned to the DFSA. That was what
19 I think you were saying and Dr Sheikh is entitled to
20 answer it. But if you would answer that briefly,
21 please.

22 A. Thank you, your Honour.

23 The payment was made, as I have highlighted, 10 days
24 prior to and Mr Zeman's representative had given
25 a sealed envelope to Mr Atta Ul-Hayee upon collecting

1 12:42 the payment, which Mr Atta Ul-Hayee had no idea what was
2 inside the sealed envelope.

3 And then Mr Atta Ul-Hayee, along with my personal
4 property documents in Arabian Ranches, which he sold, he
5 had put that envelope over there, and that envelope and
6 that file had travelled with him to Pakistan.

7 And then comes the time of 2018 -- I beg your
8 pardon, 2019, that's when I had asked Mr Ziauddin to go
9 and collect my personal items, effects in Pakistan, and
10 that's when I asked Mr Atta Ul-Hayee that if he would
11 kindly give me the documents, my property documents.

12 And then I had met Mr Atta Ul-Hayee towards the end
13 of January, if I'm not mistaken, and that the --

14 MR PRESIDENT: I have given you the opportunity to answer
15 briefly. You're now going into some detail, so we're
16 going to move on.

17 A. I conclude in 30 seconds, with your permission, sir,
18 that the receipt I was able to secure was in
19 Netherlands, where Mr Atta Ul-Hayee gave me the file,
20 and that is when I had the physical receipt in my hand.

21 And the answer to Mr Khan's question is this, that
22 I did not have the receipt 10 days' earlier.
23 I certainly knew that there was a payment done, but
24 I didn't have any evidence whatsoever for that point in
25 time. So I was advised, for lack of better expression,

1 12:44 that unless and until I have documentations, I should
2 only present what I can prove.

3 And that is the answer and I am sure --

4 MR PRESIDENT: That's more than 30 seconds, Dr Sheikh.

5 Thank you. Please now stop.

6 A. My apologies, your Honour.

7 MR KHAN: We're fortuitously on the section I wanted to go
8 back to, which is at paragraphs 82 and 83 of your
9 statement, which you have already read. It provides --
10 it states that you initiated the meeting with Mr Zeman
11 in London, in June; correct?

12 A. Just bear with me for a second, because you asked
13 another question, which I like to refresh my memory,
14 just briefly let me.

15 Q. If it helps, you say that:

16 "My efforts to raise capital did not pan out. At
17 this point in time, I turned to the people whom I knew
18 had shown an interest in becoming MAS shareholders. One
19 such person was Mr Peter Zeman ..."

20 A. Please ask me the question. I'm ready to answer your
21 question, sir.

22 Q. You initiated the meeting with Mr Zeman; is that right?

23 A. No, sir.

24 Q. What happened?

25 A. Mr Zeman had approached -- had called me and asked me

1 12:45 that, "I have heard that there are some difficulties in
2 MAS ClearSight in Pakistan" -- sorry, forgive me, in
3 UAE. And he asked me that he would like to understand
4 little bit, and he asked me and he reminded me that
5 there is a fee which is coming due to him in mid-August.
6 And this is when I was physically in London.

7 Then I alluded to him by saying that, yes, MAS
8 ClearSight has met some financial difficulties. And
9 then I alluded to him that, "I am very much mindful of
10 the reality that you have a consulting contract with
11 MAS, which gives you the option to retain a certain
12 percentage of the equity at the prevailing value or
13 a hefty fee of \$450,000." And he certainly
14 understandably requested that he would opt for a fee,
15 which is \$450,000. And leading to that conversation, we
16 had met in London and that is where the conversation
17 started.

18 So to conclude your question, sir, that Mr Zeman
19 approached me in June when I was in London and that was
20 after 11 June, for sure, because that's when I had
21 learned that, unfortunately, Mr Akbar's investment had
22 been reneged, sir.

23 Q. What your evidence says at paragraph 83 is that when you
24 met in London, you asked him if he had a copy of the
25 consulting agreement. That's right, isn't it?

1 12:47 A. Just bear with me for a second, please. Let me quickly
2 read through that.

3 That's right, sir, indeed.

4 Q. He said he didn't have a copy of the agreement?

5 A. As he informed me, as I have highlighted, that he has
6 evidently misplaced it in between his move.

7 Q. So how come he's initiating a meeting with you about
8 money he's owed under a 2011 consultancy agreement, that
9 he doesn't have a copy of?

10 A. The answer is this, that he knows that there is
11 a consulting agreement, he knows that he has done an
12 awful lot of work for four years with MAS and he knows
13 that there is money due to him. And when I, for lack of
14 better expression, asked that, "Do you still have the
15 consulting contract?", and he said that, "Dr Sheikh, by
16 way of moving, I may have misplaced it." And the
17 purpose for me was not to question or renege on this
18 commitment, was just to ask if he had the contract with
19 him and that's just it.

20 Q. The reasonable interpretation of your evidence at 82 and
21 83 is you initiated a meeting with Mr Zeman, because you
22 were looking for investors. You asked for the document
23 and he didn't have it. That's inconsistent, isn't it,
24 with what you're saying now and what's contained in
25 Mr Zeman's evidence?

4 MR PRESIDENT: Dr Sheikh, just a small point, but if you
5 look at 82, the second sentence, that says:

6 "At this point in time, I turned to the people whom
7 I knew had shown interest in becoming MAS shareholders."

8 A. That's right.

9 MR PRESIDENT: That would seem to suggest that you
10 approached Mr Zeman, not that he approached you; is that
11 correct?

12 A. No, your Honour. This is absolutely wrong and I'm happy
13 to explain further if you allow me to.

14 MR PRESIDENT: Well, no. But, first of all, I'm trying
15 to -- are you saying that paragraph 82 is wrong?

16 A. No, I'm saying that the assumption or the inference, as
17 you kindly and much appreciatedly pointed out, is not
18 that, because when I talked about when I'm thinking
19 about the equity investors for MAS, during the course of
20 the last three, four years, I had multiple conversations
21 with different people, who had at one point of time
22 shown some or little or more interest in equity. And
23 that is how I was referring to there, but when Mr Zeman
24 called me and it reminded me that he's also --

25 MB PRESIDENT: I'm sorry, it may be that it's a language

1 12:50 difficulty, but just look at 82, because I want to
2 understand this. You say:

3 "At this point in time, I turned to the people whom
4 I knew had shown an interest in becoming MAS
5 shareholders. One such person was Mr Peter Zeman."

6 A. That's right.

7 MR PRESIDENT: Certainly, I would read those sentences as
8 saying, "At this point in time, I turned to Mr Peter
9 Zeman, whom I knew had shown interest in becoming
10 a shareholder." Are you saying that that paragraph is
11 correct or are you saying it's incorrect or it's
12 a misunderstanding?

13 A. Your Honour, I would say that the English, the way
14 I have presented the English indeed may appear to your
15 goodself the way you have alluded to. But my intentions
16 that I want to show was that, at this point in time,
17 I made a general comment that I turn to people and when
18 I turn to people, among multiple people whom I contacted
19 during that timeframe, Mr Zeman contacted for
20 a different reason, and it reminded me that he's also
21 one of those people. And hence, I engaged the
22 conversation.

23 That is the true answer from my side, your Honour.

24 MR PRESIDENT: Mr Khan.

25 MR KHAN: Thank you, sir.

1 12:51 MR AL AIDAROUS: Mr Chairman, if you permit me just to ask.

2 MR PRESIDENT: Of course.

3 MR AL AIDAROUS: Following the same subject, I think it's
4 for the interest of the time, no need to come back again
5 and again for that one.

6 Just to clarification, Dr Sheikh. When you met
7 Mr Zeman in London, in early June?

8 A. It was post 11 June -- sorry, it was after 11 June and
9 before 30 June. And I do humbly apologise, I don't
10 remember the exact date, sir.

11 MR AL AIDAROUS: So after 11 June, so this date is very
12 significant for you, 11 June, because if I understand
13 you well, 11 June, this is the day when you became aware
14 that Yer did not transfer the \$600,000 to the account as
15 he promised. Am I right?

16 A. That's right, your Honour.

17 MR AL AIDAROUS: So when you met Mr Zeman, and I will not
18 ask you what is the purpose for the meeting, because you
19 have already covered, I will ask you, when you met him,
20 the issue of his dues and you are negotiating with him
21 how to reduce these dues to reach an agreement
22 US\$350,000. Am I right?

23 A. With a lot of respect to you, your Honour, I met
24 Mr Zeman with two-minded agenda or call it two
25 purpose --

1 12:53 MR AL AIDAROUS: Sorry for interruption. I understand the
2 purpose, but we just mention that during the meeting,
3 you have discussed with him his fees for his services in
4 the Batumi project and you reach an agreement with him
5 of -- and he selected to not take equity, you take fees
6 of US\$350,000. Am I right?

7 A. That was part of the negotiation, but not at the first
8 meeting or the first interaction with Mr Zeman in UK,
9 sir.

10 MR AL AIDAROUS: No, I understand, but that was the
11 understanding reached between both of you, and you and
12 Mr Zeman; am I right?

13 A. Yes, your Honour, you're absolutely right.

14 MR AL AIDAROUS: Good. So at that time, you are willing to
15 pay him this \$350,000 under your belief, where you were
16 believing that there is a \$600,000 has arrived in the
17 account of MAS ClearSight; yes?

18 A. No, no, your Honour, I beg your pardon. Let me answer.

19 The answer is "no" to your question, sir, because I was

20 already aware that, on 11 June, the money has not

21 arrived. So, unfortunately, the sky had already fallen

22 on me. When I met Mr Zeman, the sky had already fallen

23 on me and my reason to meet Mr Zeman was not only to

24 talk about his consulting fee, but my primary motivation

25 was to --

8 A. That's correct, your Honour.

9 MR AL AIDAROUS: At that time, you are always under
10 impression that the \$600,000 was already arrived in the
11 MAS account from Mr Yer; yes?

12 A. No, your Honour.

13 MR AL AIDAROUS: Because only on 11 June, you became aware
14 that this money is not coming, so still in this case --
15 I'll ask my question. I'll change my question. 11 June
16 you became aware that there is Mr Yer negated his
17 investment, he did not transfer the \$600,000 he has
18 promised. Okay?

19 A. Yes.

20 MR AL AIDAROUS: Let me complete the question. Yet, you
21 have discussed subsequent to 11 June, you discussed with
22 Mr Zeman that you are happy or MAS ClearSight were going
23 to pay him \$350,000. Am I right?

24 A. You're right, sir. After 11 June, you're right, sir.

25 MR AL AIDAROUS: Exactly. Okay. But since how you are

1 12:55 going to pay him \$350,000 when you became aware that
2 Mr Yer did not transfer the money? At that time, you
3 believe that you have enough sufficient fund in the
4 company to pay him this amount.

5 A. Yes, your Honour. I had access of more than
6 \$600,000 with Atta in Dubai for me, sir.

7 MR AL AIDAROUS: However you have paid him, when you
8 became -- when you realise that in fact the company's
9 financial position is so bad and there is no more
10 \$600,000 in the account of the company, or more
11 precisely, the minimum requirement for the cash
12 requirement is not there? When you became aware of this
13 fact?

14 A. On 11 June, I became aware of this fact. And on
15 12 June, I instructed the people to declare a breach,
16 sir.

17 MR AL AIDAROUS: But when you have paid actually to
18 Mr Zeman?

19 A. On 15 August, sir.

20 MR AL AIDAROUS: So that means how come you paying them at
21 that time you became already aware that the company is
22 insolvent and you have proposed for voluntary insolvency
23 of the company? Could you please explain?

24 A. Forgive me. Can you please kindly ask the question
25 again?

1 12:57 MR AL AIDAROUS: 11 June, you became aware that Mr Yer did
2 not transfer the money, but you have said that you were
3 aware that there was sufficient fund in the company,
4 more than \$600,000 at least. \$600,000 is available in
5 the company's account.

6 Maybe you are considering to pay Mr Zeman from this
7 amount you have available in the company, but I'm not
8 sure which date you have voluntarily proposed for
9 insolvency of the company to declare or to suspend the
10 licence of the company.

11 That was your recommendation at least. When you
12 made this recommendation?

13 A. Thank you, sir. So I will answer this question. When
14 I made that recommendation, when I had the meeting --
15 not a meeting, actually, it was a conference call, and
16 it was a brief conference call on, I think,
17 12 June 2015.

18 And in that conversation, I, first of all, informed
19 the local management in Dubai, essentially Mr Awais and
20 Mr Salman Haider, and if I'm not mistaken, Mr Faheem
21 Aziz was also on the call, that gentleman.

22 Unfortunately, the company has already breached and
23 there is no money on MAS ClearSight account.

24 MR AL AIDAROUS: That was some time in 12 June?

25 A. That's to best of my recollection, yes, your Honour.

1 12:58 MR AL AIDAROUS: Then this is my question. If you have came
2 to conclusion that the company is need to be declared
3 insolvent and in fact you are recommending to seeking
4 voluntary ceasing the licence of the company, of DIFC
5 licence, on 12 June, how come you paid Mr Zeman of his
6 claimed fees in August 15? That means after almost two
7 months.

8 A. May I, with your permission, make a small correction in
9 your statement, which I understood and hence the answer.

10 Sir, the conversation on 12 June was with pure focus
11 to highlight two objectives. One, that unfortunately,
12 gentlemen, the company is in a breach. And second,
13 there is no money on the account.

14 That was not the time anything was discussed about
15 the liquidation or the voluntarily withdrawal of the
16 licence. And those conversations started under
17 consideration later, not on 12 June --

18 MR AL AIDAROUS: When? When?

19 A. I would imagine, I think maybe 15th or 16th or 14th.

20 Please don't hold me on the date, but just --

21 MR AL AIDAROUS: Which month, please?

22 A. June, sir.

23 MR AL AIDAROUS: So that means -- you make a very long
24 answer, but the bottom line, you became aware the
25 company's financial position is so bad, you are

1 13:00 considering to declare the company bankrupt or insolvent
2 in middle of June, but you pay to Mr Zeman his claim
3 fees after two months? That was my question.

4 A. Very good. I will answer that question, with your
5 permission, sir.

6 MR AL AIDAROUS: Brief one, because I think already we get
7 your answer, but briefly.

8 A. So the money was not in the company account, but money
9 was under my direction held with Mr Atta in Dubai, sir.

10 When the conversation started to go towards the -- first
11 of all, the conversation went not for the bankruptcy or
12 liquidation, the conversation went towards voluntarily
13 surrendering the licence back to DFSA.

14 Then the discussion for liquidation started much
15 later towards the tail end of June, sir. That
16 discussion was not a decision, but we were brainstorming
17 all different objectives and ideas. And while we were
18 discussing that, in parallel, I was and I requested a
19 couple of people in Dubai, to actively, with head over
20 heels, start looking for an alternate investor.

21 The purpose or the objective was the following --

22 MR AL AIDAROUS: Understood. Sorry, Mr Khan, I became
23 longer than I anticipated, but just small question,
24 comment here, is the bottom line, you became aware that,
25 you just mentioned to me that not the company's account

1 13:01 was -- there's no \$600,000 in the company's account, but
2 this company account, it was held with you. That is the
3 company's account, money. Am I right?

4 A. The money from the company's account is physically under
5 my direction in control with Mr Atta. That's right.

6 MR AL AIDAROUS: The money you have withdrawn in cash and
7 this is Mr Atta was holding for you, am I right, or for
8 the MAS?

9 A. That's right, sir.

10 MR AL AIDAROUS: How much this amount was around \$600,000?

11 A. No, Atta was holding 2.4 million dirhams on my --

12 MR AL AIDAROUS: Which is equivalent to \$600,000
13 approximately?

14 A. Sorry, I think it is slightly more, close to 650 or 675.

15 MR AL AIDAROUS: Whatever. But, at this time, you still
16 believe, in mid-June, that this fund available whether
17 in the company's account or held in cash with you or
18 through Mr Atta Ul-Hayee, is not sufficient to carry out
19 the business of the company and you are recommending for
20 voluntary surrendering the licence; yes?

21 A. The answer to your question --

22 MR AL AIDAROUS: I assume you paid \$350,000, after two
23 months, from the moment you became fully aware or
24 conscious that the company cannot survive with \$600,000,
25 you have in your -- under your personal control, not in

1 13:03 the company's account?

2 A. The answer is this, that, yes, at that point in time,
3 I had started the discussions simply because I wanted to
4 ensure that I could find a replacement investor. And
5 the conversation with Mr Zeman had already started in
6 the month of June, before the liquidation conversation
7 started. And that is when I knew that the money in my
8 mind was to be allocated towards these two payments.

9 And that is the reason, sir, for me to try --

10 MR AL AIDAROUS: Thank you. I'm so sorry, Mr Khan. Please
11 carry on.

12 MR KHAN: No, not at all, sir.

13 MR PRESIDENT: It's now 5 minutes past 11 in London. We
14 will have a break of 15 minutes now.

15 MR AL AIDAROUS: Could you please, may I consider maybe
16 a little bit longer 20 minutes, because we need to go to
17 the chamber together.

18 MR PRESIDENT: Of course. Certainly. We will have a break
19 of 20 minutes now and then after a further two hours, we
20 will have another longer break.

21 So we will meet again at 10.25 UK time, which I take
22 it is 1.25 Dubai time.

23 MR AL AIDAROUS: We will go together in our private room,
24 please.

25 (1.04 pm)

1 13:04 (Short break)

2 (1.27 pm)

3 MR PRESIDENT: I think we're all now back, so we'll start.

Over to you, Mr Khan.

5 MR KHAN: Thank you, sir.

6 Fatima, can we please bring up document A --

7 MR AL AIDAROUS: Sorry, Mr Khan.

8 Mr Chairman, may I just make small comment, because

I understand Dr Sheikh made a very important statement

10 to us. And I think Mr Khan were going through very

11 serious set of questions. For example, today, you

whether he has some role, active role as SEO of the

13 company, and then you move to the payment of Mr Zeman

14 consultancy fees.

15 So may I suggest

16 chairman, so before moving, we hate to interrupt

17 during your cross-examination, when you finish a sub-

18 and you want to move to the next subject, let us know.

so maybe we have very few questions at that time, so no

²⁰ need to pull out the paper and document again

²¹ I will leave it for the chairman, if he finds it necessary, to make a statement.

²² sensible approach.

MR. PRESIDENT: I entirely agree, because there are several

²⁴ subjects being discussed and I don't think it would be

²⁵ fair to Dr Sheikh at the very end of his

1 13:29 cross-examination, to have then a long series of
2 questions from the panel about a variety of different
3 subjects.

4 So I think when we move on, we'll have a pause to
5 see whether the tribunal have any questions before you
6 move on to a new subject area, Mr Khan.

7 MR KHAN: Thank you.

8 A. Your Honour, may I make a brief remark?

9 MR PRESIDENT: Yes.

10 A. As you had kindly advised me, I am ready to give you the
11 reference for the consulting contract details, which is
12 in my witness statement, dated --

13 MR PRESIDENT: I'm not sure it was the consulting agreement
14 details. Mr Khan, what was it?

15 MR KHAN: It was the actual work done --

16 A. Exactly, yes.

17 MR PRESIDENT: The document for the work done, yes?

18 A. Indeed, my apologies.

19 MR PRESIDENT: That's all right. If you would like to give
20 us the references now, thank you.

21 A. Thank you, your Honour. I submit to you the reference
22 A132, which is bundle 132, page 2059. And this is
23 referring to my witness statement dated 17 April 2019.
24 Your Honours, and Mr Khan, you will find in this
25 section, the work which was conducted by Mr Zeman.

1 13:30 In the same breath, there was also one more -- I was
2 asked to present, the receipt of the payment, the
3 explanation is in the skeleton argument, your Honours
4 and Mr Khan, it is on page 85, paragraph 4. Thank you
5 very much.

6 MR PRESIDENT: Thank you very much.

7 MR KHAN: Thank you.

8 Just to be clear, my submissions will be based upon
9 the three witness statements that I have referred to in
10 my skeleton argument, which are in most cases signed and
11 dated as witness statements. This is headed at
12 page 2046 as a draft response to DFSA comments, dated
13 2 April 2019.

14 I believe it's submissions to the DMC, not a witness
15 statement.

16 A. But Mr Khan, you are able to find A132, reference
17 page 2059. Is that right, sir?

18 Q. No, my only point is this document isn't a witness
19 statement.

20 A. Please forgive me. I stand corrected, if I made that
21 mistake, but I'm specifically referring to the document
22 labelled A132, page 2059, sir.

23 MR PRESIDENT: Thank you. I think we'll resume questioning,
24 when Mr Khan is ready.

25 MR KHAN: Thank you sir.

1 13:32 Fatima, can we please turn to document A86-1347.

2 If you can please slowly scroll down so that

3 Dr Sheikh and the tribunal may see what this document

4 is. It's a winding-up petition for MAS.

5 Thank you, Fatima. If you just pause there.

6 You recall, Dr Sheikh, the process by which MAS was

7 wound up?

8 A. Forgive me, please ask me the question again,

9 I apologise.

10 Q. You recall the process by which MAS was wound up;

11 correct?

12 A. Yes, sir.

13 Q. You've already told us, just to recap, that some time

14 in June 2015, you agreed to pay Mr Zeman \$350,000 for

15 his consultancy work. Correct, isn't it?

16 A. Sir, I said that I discussed that with Mr Zeman in June,

17 but I paid him in August.

18 Q. When did you agree the \$350,000 settlement, if you like,

19 for his outstanding fees?

20 A. We discussed the outstanding fee during the month

21 of June, sir. And the final payment was done in or

22 around 15 August, to best of my memory, sir.

23 Q. When did you agree the revised fee payment?

24 A. I'm terribly sorry, but I don't think I would be able to

25 remember the exact date or time, sir.

1 13:36 Q. Can we go to the next document starting at page 1349.

2 You see there the date is 6 August 2015?

3 A. That's right.

4 Q. Scroll down slowly.

5 This is your witness statement, as chairman and
6 director of MAS, signed witness statement to the court
7 in support of the winding-up petition. That's correct,
8 isn't it?

9 A. That's correct, sir.

10 Q. Can we agree that it's in all probability, the case that
11 you had agreed to pay Mr Zeman his fees prior to
12 6 August 2015?

13 A. I don't think we can agree to that, sir.

14 Q. No, I didn't think so.

15 Can we please go to page 1352. If we just scroll
16 down to paragraph 13, section C of this witness
17 statement. Pause there so that Dr Sheikh and the
18 tribunal can read that, down to paragraph 15.

19 Please let me know when you have read that,

20 Dr Sheikh.

21 A. Very well, sir.

22 Q. Paragraph 15.2 is inaccurate, isn't it?

23 A. Just give me a second to think this through, sir.

24 It is accurate, sir.

25 Q. The reason it's inaccurate is because you had access to

1 13:40 the money that you had withdrawn from the MAS bank
2 account. That was MAS money, wasn't it?

3 A. I said that this statement is accurate, which means that
4 what it says here, that:

5 "The only other potential source of assets are its
6 receivables. The company rents office space [and so on]
7 ... owns no properties."

8 I said that this statement is accurate. Now please
9 ask me your question again, sir.

10 Q. Isn't the cash that you and/or Mr Ul-Hayee held
11 a potential source of company asset?

12 A. The answer is -- would you remind me the date of this
13 petition? May I kindly ask you for that, sir?

14 Q. 6 August.

15 MR PRESIDENT: You can just answer the question, please.

16 A. The answer is no, because that money has been allocated
17 in my mind.

18 MR KHAN: Sorry, it's been allocated in your mind?

19 A. Because the money, the capital money, part of it has
20 already been paid to Mr Ahmed and part of the money
21 I had held allocated, in my mind, to pay Mr Zeman, with
22 hopes to find an investor to revive the company under
23 the authority given to me by the board of directors,
24 sir.

25 Q. Dr Sheikh, with respect, that answer makes no sense

1 13:41 whatsoever. I'll put it to you again.

2 A. Please.

3 Q. You held at least some of the money you had withdrawn
4 in May and June 2015, from MAS' bank account, either
5 yourself or with Mr Ul-Hayee. And that is another
6 potential source of assets, isn't it, at the date you
7 wrote this statement?

8 A. Well, I present to you, sir, that that money, in my
9 mind, had already had commitment to be paid on
10 15 August. So, to my mind, that money was already
11 assigned for, in my mind, sir. That's why --

12 Q. What was it? A liability?

13 A. Forgive me, sir?

14 Q. What was it? A liability?

15 A. That money was the liability of the company, along with
16 a whole host of liabilities of the company, sir.

17 Q. Let's look at that. Can we go to page 1353, please.

18 Just slowly, these are the current assets of the
19 company. Just pausing there. These are the accounts
20 receivable.

21 A. Okay.

22 Q. Then scrolling down to paragraph 19 is the company's
23 current liabilities.

24 It says, salaries, rent, repayment of loan, vendor
25 payments. No reference to consultancy fees, are there?

1 13:43 A. This list of liabilities is inaccurate, sir.

2 Q. Dr Sheikh, there's only one of two possibilities.

3 Either this is inaccurate, because there is no reference
4 to Mr Zeman, or it's accurate and the liability to
5 Dr Zeman just did not exist at the time. Which is it?

6 A. Sir, like I said, that this list is inaccurate.

7 Q. What should it say to make it accurate?

8 A. I don't have the information on -- handy or with me or
9 the accuracy of the information at this point to answer
10 your question, sir.

11 Q. You get the point I'm making, though, don't you,
12 Dr Sheikh? I'm focusing on Mr Zeman's agreement and the
13 fees you say you paid to him or had allocated, in your
14 mind, to him.

15 A. Sir, I get your point, but with respect, I disagree,
16 because the question you asked me was what other things
17 are required to complete this list? And my answer is
18 I don't have the information. If you would ask me the
19 question, and forgive me, I don't mean to pry, but if
20 you ask me, was the consulting fee missing, the answer
21 is yes.

22 Q. Isn't the better explanation that the consultancy fees
23 just did not exist?

24 A. May I answer this question -- it will take me maybe just
25 one and a half, two minutes. Is that okay, sir?

1 13:45 Q. Of course.

2 MR PRESIDENT: Yes, go on.

3 A. Thank you. You have conceded by way of accepting
4 Mr Muhammad Wasif's statement, which is a witness that
5 I intended to present. And in that witness statement,
6 Mr Wasif has confirmed the presence of consulting
7 agreement.

8 Sir, I put it to you, with a lot of respect in
9 your --

10 MR PRESIDENT: No, Dr Sheikh, you are giving evidence.

11 A. I beg your pardon.

12 MR PRESIDENT: It's not for you to put things or make
13 arguments.

14 A. My apologies.

15 MR PRESIDENT: What you are being -- there is a document on
16 the screen with which you will be familiar, because as
17 I understand it, it's a witness statement made by you.

18 A. Sir.

19 MR PRESIDENT: You are being asked questions about it. What
20 some other witness might have said or what the DFSA may
21 have conceded has nothing to do with it.

22 Please, I'm telling you repeatedly, just listen to
23 the question, answer the question. We're not interested
24 in you making speeches at this moment. Okay?

25 A. Yes, sir. I apologise for that, sir.

1 13:47 MR PRESIDENT: On we go.

2 MR KHAN: Can we please now go to document C48-313.

3 If we can scroll up to 312, we'll just see the
4 beginning of this email.

5 We see this is an email dated 19 June 2015, from
6 Mr Pritchard to Mr Kamath and to you, amongst other
7 people. It's addressed to Mr Kamath. If we go back to
8 313, we just read the email, he's asking, "What's
9 happened to the money?"

10 A. Okay, sir.

11 Q. You see that? He's asking -- he's found out about the
12 fact that the money has gone from the bank account and
13 he wants to know names of payee and the purpose of the
14 transaction.

15 Then if we can please go to page 311, so forward in
16 time, but backwards in the bundle, it's an email sent on
17 Sunday, 21 June, from Mr Pritchard, and this is
18 addressed to you and Mr Awais. If you just read the
19 first substantive paragraph, starting:

20 "Following on from my email from last week to
21 Prabhakar ..."

22 A. Would you like me to read the second paragraph as well,
23 sir?

24 Q. No.

25 A. Okay. I'm okay, sir. Please.

1 13:51 Q. You have read that, thank you. So you'd accept that
2 he's seeking information about:

3 "... payments from the company's bank account
4 during May, including supporting documentation, such as
5 purchase invoices etc, to enable him to identify the
6 nature of the payments and, therefore, to be able to
7 prepare an accurate set of management accounts ..."'

8 Do you see that?

9 A. Yes, sir.

10 Q. So you'd accept the gist of this query from an NED is
11 "What's happened to the money?"

12 A. You said from who? From NED?

13 Q. From Mr Pritchard. The question from Mr Pritchard, in
14 summary, in this email, is, "What has happened to the
15 money?"

16 A. That's right.

17 Q. Then we have your response to him, but also other
18 directors, starting on page C48-306. Scroll down slowly
19 so that Dr Sheikh can remind himself of what he says
20 here.

21 A. Okay. Fatima, please scroll down a little bit more.

22 Q. If we can just pause there as we go, I'll let you read
23 on in a moment, but you say:

24 "Additionally I have made payments from my personal
25 account to some employees and creditors during the month

1 13:53 of May 2015. Which are in access of USO 250,000 ..."'

2 Please scroll down, Fatima. You then set out
3 salaries, that you say you personally paid in May 2015.
4 You provide the detail.

5 If we scroll down to the next page, 307, pausing
6 there, you have paid around \$100,000 in salaries. You
7 also say you paid in addition a creditor \$150,000.

8 Correct me if I'm wrong, but I believe that's to
9 a Mr Sheharyar Ali; is that correct?

10 A. That's correct, sir.

11 Q. Total payment in May from your personal account is
12 \$250,000 or thereabouts. That's correct, isn't it?

13 A. This answer needs little explanation. Would you allow
14 me to offer you a brief explanation, sir?

15 Q. I will let you in a moment, if I may, I just want to
16 confirm what's in the email.

17 Then you go on to say:

18 "Adding the two ..."

19 You made some small payments as well that you refer
20 to. Then you say:

21 "Adding the two my loan as of End of April and
22 payments I have made from personal accounts amounts to
23 USD647,000 versus the capital which I withdrew in May
24 600K (due to me as detailed above)."

25 Do you see that?

1 13:55 A. Yes, sir.

2 Q. My question to you is, given Mr Pritchard has asked you
3 to explain what's happened to the money, why did you not
4 in this email tell him about Mr Zeman?

5 A. This email was sent some time in the month of June and
6 in that month of June --

7 Q. 22 June.

8 A. Sorry. 22 June, right. In this email, while I was
9 responding to the email, answers the question, as you
10 rightly alluded to, I was under a tremendous stress and
11 shock because of what has happened in MAS. And the
12 information that I have provided is for a different
13 reason in my mind at that point in time. And indeed, it
14 does not correspond to the actual information which
15 I was able to put together and recollect at a later
16 stage, sir.

17 Q. By the date of this email, you had met Mr Zeman in
18 London, hadn't you?

19 A. I'm trying to recollect and I'm hesitant to answer the
20 question, because I don't remember it was a meeting
21 before or after that date, but it certainly was in the
22 month of June, sir.

23 Q. It's also right to say, isn't it, that according to your
24 case, and the evidence we heard from Mr Ahmed, Mr Khalil
25 Ahmed, that you had been discussing repayment of his

1 13:57 alleged loan to MAS, hadn't you, by the date of this
2 email?

3 A. Discussing the repayment of his alleged loan? Yes, of
4 course.

5 Q. You say, "Of course", but there's no reference to that
6 loan in this email, is there?

7 A. That's correct, sir.

8 Q. If we can go on to page 758.

9 Sorry, I apologise. If we can go back, Fatima,
10 I apologise, Dr Sheikh, I have missed a paragraph
11 I would like to take you to.

12 You say, if you move back up to the paragraph
13 starting, "I had arranged", can you just remind yourself
14 what you say there.

15 A. Very good, sir.

16 Q. So what I understand that to be saying is that you had
17 arranged to borrow personally \$600,000. That's what you
18 say in that paragraph, isn't it?

19 A. It says, "I had arranged for additional funds ..."

20 Q. Yes, "... on my personal account"

21 A. That's correct, sir.

22 Q. To be clear, are we agreed this is not a reference to
23 Mr Yer's loan to MAS?

24 A. Absolutely. This is not --
25 -- (Overspeaking) --

1 13:59 Q. -- given it's a reference to money you're borrowing?

2 A. But this has nothing to do with Mr Yer. To answer you,
3 this is nothing to do with Mr Yer, sir.

4 Q. Yes. Sorry, we're agreed, then. Thank you.

5 If we can move to page 308, the next page.

6 You say:

7 "So in conclusion I am authorised to direct payments
8 or withdraw funds for the greater interest of the
9 company as I have detailed above. Last but not least
10 don't forget that I am to best of my knowledge have
11 ownership of more than 80% of this company to say the
12 least."

13 That was your belief at the time, wasn't it?

14 A. Let me think for a second, sir.

15 The information in that paragraph is absolutely
16 correct, sir.

17 Q. Yes. So I'm going to put two sets of questions to you,
18 if I may.

19 First of all, the absence of any reference to
20 Mr Zeman, and while we're here, Mr Ahmed as well, from
21 that, we draw the inference, the authority, that those
22 agreements to pay those gentlemen money never existed
23 and no payments were made. Would you like to respond to
24 that?

25 A. Your inference and the assumptions of the authority's,

1 14:01 with respect, is absolutely wrong, sir.

2 Q. Can you please explain why if those payments that either
3 have been made or anticipated to be made, why you didn't
4 explain that in this email?

5 A. With pleasure. As I have highlighted, that this email
6 was written under an extreme emotional duress and in
7 purpose of this email was not -- the purpose of this
8 information -- sorry, let me restate myself. Give me
9 a second, if you will, please.

10 Q. Of course.

11 A. The information in this email is incomplete, number 1.
12 The information in this email was intended for
13 a specific reason, at a point in time, based on my state
14 of mind, which on hindsight looking at it from a fresh
15 set of eyes and not under duress, certainly may give an
16 illusion. But, as a matter of fact, I respond to your
17 question that my answer is no, because that was not all
18 what was intended here, sir.

19 Q. In this email, you go into some detail to explain and
20 justify the withdrawal of \$600,000 or thereabouts from
21 the MAS bank account; correct?

22 A. Correct, sir.

23 Q. So why does it not refer to Mr Zeman or Mr Ahmed?

24 A. Like I said, that the underlying motivation, intention
25 and the state of mind that I had, was to be able to

1 14:03 write in response to at that point in time the
2 information which I thought or which I was thinking in
3 my head to address. And in response to your question,
4 that I was a total emotional wreck and in that line of
5 reasoning, this information is incomplete, inconclusive
6 and it was written under emotional duress, sir.

7 Q. I'm going to put it to you that it wasn't incorrect or
8 inconclusive. It is probably, in our case, we don't
9 know, but it's probably the best explanation of why you
10 withdrew the money. And that we find in paragraph 308,
11 because you say you're authorised and you're the
12 majority shareholder. So you have a right to withdraw
13 the money and keep it?

14 A. May I respond to your question, sir?

15 Q. Of course.

16 A. I understand the reasoning which you are coming with and
17 I on record state that, in my humble professional
18 opinion, that your reasoning is inaccurate.

19 Now let me explain to you the reasons why I make
20 that statement.

21 Sir, I put it to you or I don't know if I should
22 even say that, but your Honour, can I respond to this
23 question?

24 Q. Of course.

25 A. May I respond to this question, your Honour?

1 14:05 MR PRESIDENT: As long as you answer the question, yes, of
2 course, you can. Please just answer the question.

3 A. Your Honour, Mr Khan, that in the month of May, I have
4 used my personal resources from my personal account to
5 pay the salaries of MAS staff. I also present you that
6 in month of June, I have paid to the junior staff some
7 salaries by way of cash through an envelope circulated
8 through Mr Atta Ul-Hayee. And I also present to you,
9 sir, that in the month of June, I have paid an interest
10 to Mr Ahmed of close to \$37,000 from my personal
11 accounts.

12 In that line of logic, as one or two and three set
13 of evidence, I'd like to state that the money that
14 I have withdrawn, based on the assumption that you have
15 is, in my humble professional opinion, absolutely
16 inaccurate. Thank you, sir.

17 MR KHAN: Sir, tribunal, I was going to leave this email,
18 but it isn't, we say, an important one, so it may be
19 that the tribunal members, if they have questions about
20 it, to avoid coming back to it, now might be
21 a convenient moment. Otherwise, I'll move on.

22 MR AL AIDAROUS: I have one, if the chairman permit me.

23 Dr Sheikh, your consultancy agreement with Mr Peter
24 Zeman, was it confidential?

25 A. Not to my knowledge, your Honour. Or not to my

1 14:07 recollection.

2 MR AL AIDAROUS: So it was not confidential. So this is as
3 opposed to your agreement with Mr Akbar was
4 confidential, as you have stated. Am I right?

5 A. Indeed, your Honour.

6 MR AL AIDAROUS: What is the implication of an agreement
7 signed by you on behalf of MAS is confidential and from
8 the other one was not confidential? What's the
9 difference, practical difference?

10 A. Thank you for asking the question, your Honour. I will
11 first address the agreement with Mr Akbar, with your
12 permission.

13 Sir, when I had negotiated the terms of the --

14 MR AL AIDAROUS: Sir, I'm not going back to Mr Akbar. I
15 just want to, for comparison, you say this agreement
16 with Mr Zeman is not confidential, as opposed to your
17 agreement with Akbar was confidential.

18 My simple question is: what is the implication,
19 what's the consequence or what's the difference of being
20 an agreement signed -- you have signed on behalf of MAS,
21 confidential, as opposed to the other one is not
22 confidential? Practically speaking, is there any
23 difference between them?

24 A. Yes, your Honour. There is a difference and the
25 difference with Mr Akbar is that I and Mr Akbar agreed

1 14:08 together that the transaction will remain confidential
2 and with my limited skills, I tried to showcase in that
3 agreement. But with Mr Zeman agreement, it is
4 a standard agreement whereby the information can be
5 shared within the MAS team.

6 And I, once again, with your permission, would
7 like -- because I haven't seen the actual agreement,
8 consulting agreement with Mr Zeman. If you allow me, if
9 the template of Mr Zeman's agreement reads somewhere
10 "confidential", which I'm not able to recollect on top
11 of my memory, then indeed that agreement is
12 confidential, but not confidential to the MAS employees,
13 sir.

14 MR AL AIDAROUS: Fair enough. What you mean by
15 "confidential", this is confidential from -- to be
16 disclosed to a third party, not to the officers and the
17 board of MAS. Am I correct to conclude that?

18 A. Yes, that is correct to conclude, regarding the Peter
19 Zeman agreement. But Mr Akbar agreement, it had an
20 additional element of personal agreement, which was very
21 clearly communicated between both of us, that we will
22 keep -- Mr Akbar wanted for this transaction to remain
23 absolutely --

24 MR AL AIDAROUS: I understand. This agreement with Mr Akbar
25 you have signed on behalf of MAS or in your personal

1 14:10 capacity?

2 A. Just give me a second to reflect on it, sir.

3 Just give me one more second, one or two more

4 minutes. I want to really think about it before

5 I answer, sir.

6 MR PRESIDENT: You either know or you don't know.

7 A. The agreement that I signed was on behalf of MAS

8 ClearSight, sir.

9 MR AL AIDAROUS: In this case, what one is talking
10 confidential, it means you cannot disclose the content
11 of this agreement to third party, but not to the
12 officers and of MAS. Am I right?

13 A. Sir, with a lot of respect, no, because the intent for
14 confidentiality with Mr Akbar was a verbal, where he
15 said that, "Dr Sheikh, that you need to keep this
16 transaction private between you and me", sir.

17 MR AL AIDAROUS: Thank you. I'm finished. I have nothing
18 further.

19 MR PRESIDENT: I have no questions. Thank you.

20 MR KHAN: Just to conclude what the authority's case is on
21 Mr Zeman, so you can be clear and you can at the end of
22 this have a chance to respond, Dr Sheikh. First of all
23 and crucially, we say there was no payment to Mr Zeman
24 in August 2015 or at all. And certainly no payment from
25 the money you withdrew in May and June. That's our

1 14:11 first point.

2 We say, on that basis, we essentially prove this
3 aspect of the case.

4 But we go further and we say that there's no cogent
5 or reliable evidence of a meeting in London, in June,
6 between you and Mr Zeman.

7 But even if we're wrong about that, and we say it
8 doesn't really matter, there's no discussion about
9 paying any money under a consultancy agreement and as to
10 the agreement, again, we say it doesn't matter whether
11 it existed or not, but we say there's no cogent evidence
12 of such an agreement existing at the time. It probably
13 didn't exist.

14 We say that for three reasons.

15 One, your evidence is wholly unreliable, I will
16 submit, I'm afraid.

17 Two, Mr Zeman has not given evidence and so no
18 weight should be given to his statement.

19 Three, on a close reading of Mr Wasif's evidence and
20 his exhibits, there's no cogent evidence supporting the
21 existence of an agreement.

22 In any event, Mr Wasif says nothing about a meeting
23 or any payments.

24 Now, that's our case and you can respond now, and
25 obviously, when you make submissions, you can respond as

1 14:13 well.

2 A. I can respond now by --

3 MR PRESIDENT: Just one second. If Dr Sheikh wishes to
4 respond now, he's welcome to do so.

5 A. Thank you, your Honour.

6 I want to start by stating that, sir, your
7 understanding and your case, in my humble professional
8 opinion, is absolutely wrong. Now, I'm not sure if it
9 is appropriate for me to go into a quasi-speech to give
10 answers at this point or later. I leave your Honour
11 guidance from your goodself.

12 MR PRESIDENT: I think we know from your various documents
13 and things what your position is. You may prefer to
14 think about it and put your response to us in some way,
15 perhaps in writing, we'll talk about that later. But we
16 understand that you totally disagree with that. That
17 being the case, we can just move on, I think.

18 A. Very well, your Honour. Thank you.

19 MR PRESIDENT: You will have a chance to answer all that.

20 A. Very well, your Honour. Thank you for your guidance.

21 MR PRESIDENT: Because it would be difficult, I think, for
22 you to answer that whole series of different
23 propositions without some thought.

24 So let's move on. Thank you, Mr Khan.

25 MR KHAN: Thank you, sir.

1 14:14 May I just make one observation to the tribunal.

2 It's been brought to my attention by those instructing
3 me that Lloyd Michaux, who are providing the reporting
4 services, have asked if the sessions can be limited to
5 one and a half hours. I think that's for technical
6 recording reasons.

7 Sir, you had indicated that we might go two hours in
8 this session, which would have been absolutely fine for
9 my part, but it may be for technical reasons, we have to
10 limit it to one and a half hours, this and future
11 sessions.

12 MR PRESIDENT: Okay. If that's the technical realities,
13 then we should go with that. That's fine.

14 MR KHAN: Thank you, sir.

15 I'm now going to move on to deal briefly, if I can,
16 with Mr Ahmed, if I may. I'm moving away from Mr Zeman.
17 You were present, obviously, when Mr Ahmed gave
18 evidence yesterday. We will submit that his evidence
19 was wholly unsatisfactory and should not be believed.

20 But what I'd like to ask you about is the way in
21 which Mr Ahmed, as part of your present case, has come
22 to be an actor in this.

23 Can I please take you and the tribunal to
24 a document, bundle B, tab 6, 111.

25 I'm sorry, Fatima, can we go back to B6-90 to

1 14:17 explain the context for this.

2 Just to confirm that you agree, this is your reply
3 to the authority's answer to your reference in these
4 proceedings. Do you agree with that?

5 A. Sorry, forgive me. Say that again? This is my reply
6 for what again?

7 Q. Your reply to our answer to your reference.

8 A. That's right, sir.

9 Q. If we go, please, then to 111 in the same document. If
10 we go to the bottom of that page, if you just read (d),
11 and when you have read to the bottom of this page,
12 please notify Fatima and Fatima can then take you to
13 page 112, where it carries on.

14 A. Fatima, you can kindly scroll down a bit, please.

15 Very well, sir.

16 Q. Thank you. It's right, isn't it, you'd agree with me,
17 that Mr Ahmed's loan only became part of your case at
18 this stage in proceedings?

19 A. No, sir.

20 Q. When did it become part of your case?

21 A. I'm not sure I understand your question, sir.

22 Q. What I'm putting to you is -- and I apologise if I have
23 missed it, but I understand this to be the first time
24 you've referred to an agreement between Mr Ahmed and MAS
25 as part of your case?

1 14:20 A. That is correct, sir.

2 Q. Just to make that good, when you referred the decision
3 to the tribunal, if I might take you to B2-53.

4 This is your reference to the tribunal, isn't it?

5 A. Okay.

6 Q. Just to be clear, by this stage in proceedings, this is
7 the beginning of the tribunal proceedings, but prior to
8 that, you had presented multiple submissions and
9 evidence to the DFSA, to explain your case. That's
10 correct, isn't it?

11 A. That's correct, sir.

12 Q. If we can go, then, to page 55, by this very early stage
13 in these proceedings, but very late in the stage, we
14 say, if we take into account the process involving the
15 DFSA, you explain the utilisation of capital withdrawn
16 by you and set out on this page.

17 If we can just slowly scroll down, and read, a, b
18 and c, please.

19 A. Fatima, could you please scroll little bit down. Thank
20 you.

21 Very well, sir.

22 Q. Thank you.

23 Just to confirm, the \$100,524 under a, that
24 corresponds to what you said in your 22 June email,
25 isn't it, that you paid salaries, using the money?

1 14:24 A. Yes.

2 Q. And at b, you refer to the \$150,000, which you used to
3 pay Mr Ali, the creditor; correct?

4 A. Yes.

5 Q. But in the email, you said that was paid from your
6 personal money in May; correct?

7 A. The answer to this question will be difficult to say
8 "yes" or "no". It needs a little explanation, which I'm
9 happy to give, if you ask me, sir.

10 Q. All I'm asking you is, these two figures and payments
11 correspond to the figures and payments you refer to in
12 that 22 June email?

13 A. That is correct, sir.

14 Q. Except here you're now saying that you paid those out of
15 the money you withdrew from the MAS bank account?

16 A. Like I said, that it requires little explanation. I'm
17 happy to offer, if you ask the question, sir.

18 Q. What I'm asking you is, those were the same payments
19 you're referring to, isn't it?

20 A. The comparison -- I'm saying this to better understand
21 your question. Is that all right for me to ask, sir?

22 Q. Let me ask the question again one more time. Hopefully,
23 I'll make it as clear as possible.

24 A. Thank you.

25 Q. Let's take a, which refers to salaries paid. \$100,524;

1 14:26 correct?

2 A. Yes, sir.

3 Q. In this reference to the tribunal, you are saying that
4 you paid that from the money you withdrew from the MAS
5 bank account; correct?

6 A. Just bear with me for a second, please.

7 Q. Fatima, if you scroll up and look at the line just
8 before subparagraph a. Thank you.

9 A. Just bear with me for a minute. I want to read this and
10 think about this for a quick second, if it's okay, sir?

11 Yes, sir.

12 Q. Is your answer "yes"?

13 A. The question, once again, kindly if you would be so kind
14 to repeat so I can just now respond properly, sir.

15 Q. The \$100,000 payment you refer to here of salaries, you
16 say was paid from the money you withdrew from the MAS
17 bank account; correct?

18 A. The answer to this question is as follows, that the
19 assumption of having this money withdrawn from the
20 capital is correct, sir.

21 Q. That figure and that explanation is the same as the one
22 you gave in your 22 June email, except in that email,
23 you say you paid it from your personal account. That's
24 correct, isn't it?

25 A. So, in that email, I made that statement, yes. And

1 14:29 I also highlighted to you that the information in that
2 email is inaccurate, sir. As I explained --

3 Q. If we look at the same question about Mr Ali, in the
4 email which you sent on 22 June 2015, so several years
5 ago now, you said that you made this payment from your
6 personal money and then four years later, in this
7 reference, you say that actually you paid that from
8 money you withdrew from MAS?

9 A. I think it would be appropriate for me to respond at
10 this stage with your kind permission and it may take me
11 two or three minutes, but if that's appropriate.

12 Q. I'm happy for you to do that, but as long as you just
13 first answer my question, which I think is a first "yes"
14 or "no"?

15 A. No, I'm sorry, it is not a simple answer, sir. And
16 that's why I'm asking for your permission to respond.
17 It will take me two to three minutes, if you permit me,
18 sir.

19 Q. Of course.

20 MR PRESIDENT: Well, we will permit you, but it has to be an
21 answer to the question, which seems to be a relatively
22 straightforward question. So let's, before we go any
23 further, Mr Khan, just ask the question again.

24 MR KHAN: In this reference, you are saying that you used
25 the cash you withdrew from MAS in part to pay Mr Ali

1 14:30 \$150,000; correct?

2 MR PRESIDENT: That is the question. Now if you need two or
3 three minutes to answer that question, and it genuinely
4 is to answer that question, you may take it. But that
5 is the question. It does sound a relatively
6 straightforward question.

7 A. Sure, your Honour. Just give me a minute, once again.

8 Very well. So answer to your question is that while
9 it reads that this money was used from the capital of
10 the account, and I want to present by stating that this
11 money was taken from my personal account to pay the
12 salaries, and the figure of 100,000 is also inaccurate,
13 which I corrected later.

14 That's my answer to you, sir.

15 MR KHAN: So if this is inaccurate, can we then effectively
16 strike through a and b as part of your case?

17 A. Not at all. Not at all. Are we still referring to the
18 same document which is a document of my initial appeal
19 to the tribunal, sir?

20 Q. The one in front of you, yes.

21 A. So this is the first document that was presented to the
22 tribunal, yes?

23 Q. Yes.

24 A. Thank you, sir.

25 So this information is information, which during the

1 14:32 course of the appeal process, I have -- I want to make
2 sure that I choose my words carefully, because it is
3 important. Hence, I once again request and appreciate
4 your patience, sir.

5 Answer to your question is the following, sir. That
6 the reference in section a, there is a misinterpretation
7 on my part, which I stand corrected, but the reference
8 in section b is absolutely correct, sir.

9 Q. Okay, but can you just explain what the
10 mischaracterisation by you is in a?

11 A. Thank you, sir. The salary payment in the month of May
12 was indeed paid and they were paid from my personal
13 account, sir.

14 As you read, and rightfully so, and hence, I make
15 the correction here, that if this money is being
16 presented as the money used as part of the capital,
17 which I have highlighted, I stand corrected, sir.

18 MR KHAN: Sir, is that a convenient moment?

19 MR PRESIDENT: The position -- well, I think no, because
20 I thought the idea was that we would sit for an hour and
21 a half.

22 MR KHAN: Yes, sorry, I've made a --

23 MR PRESIDENT: That would take us through until 11.55.

24 MR KHAN: Thank you.

25 MR PRESIDENT: While we're on, when we get to 11.55, we will

1 14:35 have a break and I'd like the parties to be thinking
2 about how long a break they want at that point. After
3 that, there will be one more session limited to one and
4 a half hours. I say that, because once we have had that
5 one and a half hours, we will have been sitting for five
6 hours and five minutes, which is longer than
7 a conventional English court hearing day and with one
8 witness giving evidence all day, I don't think it's fair
9 for us to be sitting, requiring Dr Sheikh to give
10 evidence for a day longer than five hours.

11 So we will continue with this session until our time
12 runs out at 5 to. We'll then have a break, the length
13 of which is to be determined, and we will have a final
14 session today of one and a half hours and that will be
15 it today.

16 MR KHAN: Thank you, sir. I'll carry on.

17 So, a is a mistake. We can strike through that. B
18 is money, you say, you paid to Mr Ali from the cash you
19 withdrew in May and June. That's your case, is it?

20 A. Again, it requires maybe less than a minute to answer,
21 but it's not a "yes" or "no" answer. Would you permit
22 me to do that?

23 Q. Before I do that, you'd accept that in your reference to
24 the tribunal, four years after the events in question,
25 multiple submissions and evidence that you have

1 14:36 submitted, there is still no reference to Mr Ahmed, is
2 there?

3 A. In this document, the one that I've presented, the
4 answer is there is no direct reference, but implied
5 reference. The answer is this way, sir.

6 Q. Where is the implied reference, please?

7 A. The \$150,000 is the part of the money which is being
8 used from the money that was loaned to MAS from
9 Mr Ahmed, sir.

10 Q. Why didn't you refer to it expressly?

11 A. At that point in time, while I was writing the appeal,
12 I was doing it myself, as you know very well. The
13 information that I wrote on my appeal, that was after
14 the decision was taken, was based on the information
15 that carried forward from the historical information
16 that I had. And I want to highlight the fact again that
17 there is an implied reference, but not direct reference,
18 and this is what it is, sir.

19 Q. I took you to your skeleton at the very outset of my
20 cross-examination, to show you that your case is, on the
21 use of money, based on two agreements.

22 Number 1, Mr Zeman, we have dealt with that. Number
23 2, the agreement with Mr Ahmed.

24 That is your exclusive case on the utilisation of
25 the money.

1 14:38 A. That's correct, sir.

2 Q. So I ask you again: by the time you drafted the
3 reference to the tribunal, why is there no reference to
4 Mr Ahmed's agreement?

8 Q. Dr Sheikh, the reason there's no reference to it is
9 because you hadn't invented that agreement with Mr Ahmed
10 as part of your story as of yet.

11 A. I disagree with your characterisation, sir.

12 Q. If we just look at the totality of the evidence, the
13 documentary evidence of this agreement existing between
14 MAS and Mr Ahmed, you would agree that there is no
15 agreement that we have located, is there?

16 A. I agree that there is no agreement that we have located,
17 but that does not mean that agreement does not exist.

18 Q. There's no record of any communications surrounding the
19 negotiation of the agreement or anything that happened
20 thereafter in relation to the agreement, is there?

21 A. Just bear with me for a second. Let me give it
22 a thought, sir.

23 Would you ask me your question again, sir?

24 Q. There's no evidence of communications which refer to
25 this agreement, are there?

1 14:40 A. When you use the word "no communication", kindly
2 elaborate. The communication between who, sir?

3 Q. Between you and Mr Ahmed, for example.

4 A. And you're saying that there is no written evidence for
5 that, sir? Is that right?

6 MR PRESIDENT: No, let me just help. You were asked,
7 I think, it was suggested to you that there is no
8 written record of any communications between you and the
9 gentleman about this transaction.

10 A. Thank you, your Honour.

11 The answer is there is no written evidence and that
12 is correct specific to this agreement, other than the
13 actual agreement that was signed.

14 MR KHAN: We don't have that either, do we?

15 A. As you have rightly pointed out, that the actual
16 agreement, we don't have it, because it has been -- like
17 I said, my copy has been somewhere in the MAS office,
18 which I don't know where, and Mr Ahmed gave his
19 explanation yesterday, sir.

20 Q. Turning to Mr Ahmed's evidence, you'll recall that he
21 suggested, at one stage, that there may have been
22 WhatsApp messages between you and him, which refer to
23 the agreement. Do you agree with that?

24 A. The answer to your question is after that, I went and
25 checked on my Dubai old phone and I didn't find any

1 14:42 WhatsApp messages. So I agree to the fact that there
2 are no WhatsApp messages between Mr Khalil and I on this
3 agreement, sir.

4 Q. If this agreement existed at the time, there would be
5 some record, some written record, of it existing,
6 wouldn't there?

7 A. The agreement itself would have been a sufficient
8 record, sir.

9 Q. But I'm talking about the lack of evidence, the absence
10 of evidence. Given the total absence of any written
11 evidence, I put it to you that the only inference to be
12 sensibly drawn is that the agreement didn't exist at the
13 time.

14 A. While I understand your position, but it's a wrong
15 position, in my opinion, and I disagree with your
16 characterisation, sir.

17 Q. Let's talk about the evidence, Dr Sheikh, generally.
18 Other than the Zeman agreement, the Akbar agreement
19 and the Yer agreement and the two cheques that go with
20 it, there is no written record of a communication
21 between you and any other relevant person about these
22 agreements at the relevant time. That's extraordinary,
23 isn't it, if they existed?

24 A. Sir, it's absolutely not extraordinary and I'm happy to
25 give you answers specifically to all the three separate

1 14:44 agreements, if you wish for me to do that.

2 Q. Yes, please.

3 A. Could you start by highlighting which is the first
4 agreement that you would like to discuss?

5 Q. Mr Zeman's agreement.

6 A. Mr Zeman's agreement existed. Mr Zeman's agreement was
7 signed. Mr Zeman's agreement has a representation of
8 a fee which was generated. I've cited you a reference
9 at the beginning of this session. And you can
10 appreciate that in the witness agreement -- sorry, not
11 agreement, witness statement, that your goodself
12 representing DFSA has acknowledged, that Mr Wasif's
13 statement is correct, and the Wasif statement highlights
14 consulting contract. So, consulting contract
15 highlighted in Mr Wasif's statement represents your
16 position that you agree that the agreement existed.

17 So --

18 MR PRESIDENT: Dr Sheikh, I think you're being asked about
19 documents at the time of the transaction.

20 A. Forgive me.

21 MR PRESIDENT: I think what Mr Khan is asking you about is
22 documents coming into existence around about the time of
23 the transaction and relating to it. He's asking you
24 first about Mr Zeman.

25 A. Thank you for your question and thank you, Mr Khan, for

1 14:45 your question, but I'm still struggling to understand
2 and maybe a little bit more elaboration. Would you
3 consider to elaborate a little further, Mr Khan --

4 MR PRESIDENT: Mr Khan was asking you questions and he was
5 suggesting to you that it is very odd that there are no
6 documents at the time of these three transactions, other
7 than what you say existed with the agreements
8 themselves.

9 He's suggesting that there is no contemporaneous
10 correspondence, emails, drafts and things of that kind.
11 I think he asked you first about Mr Zeman and I think he
12 was inviting you to identify contemporaneous documents.
13 We're not really concerned with witness statements that
14 came into existence much later.

15 So can you just turn your mind to what
16 contemporaneous documents there were and if there
17 weren't any, why there weren't any. I think that's what
18 he's after.

19 A. Okay. Thank you, your Honour.

20 So the definition of contemporaneous evidence, if
21 I understand well, your Honour, and thank you for
22 explaining that, is --

23 MR PRESIDENT: No, I'm sorry to use that word, things that
24 came into existence at the time when the transaction was
25 being discussed, entered into, completed and

1 14:47 implemented.

2 A. Very well. Thank you, your Honour.

3 Mr Khan, specifically, regarding Mr Zeman's
4 agreement, other than the witness agreement and the
5 documents that I have submitted, you're indeed
6 absolutely right that there is no additional
7 agreement -- or not agreement, any additional
8 contemporaneous evidence as you alluded to. So that's
9 Mr Zeman.

10 Please continue with the second agreement you
11 alluded to.

12 MR KHAN: Before we move on, why is there no contemporaneous
13 evidence?

14 A. An excellent question. Mr Zeman, as you have seen or as
15 you may have been aware of, that has a long working
16 relationship with MAS whereby there are north of 200,
17 maybe I'm understating, 200 emails, communications with
18 Mr Zeman and with MAS. Those emails are representing
19 a very deep and very serious working relationship with
20 Mr Zeman and with MAS.

21 So I present that as one very -- a contemporaneous
22 evidence, albeit not related to this consulting
23 contract, but establishing the working relationship.

24 Second, sir, that Mr Zeman has worked and the
25 agreement that has signed, which you say that there is

1 14:48 no consulting agreement, because the consulting
2 agreement was brought to bear where there was already an
3 existing -- where there was already an existing working
4 relationship with Mr Zeman. So it wasn't that it was
5 for the first time two counterparties were coming into
6 making an agreement.

7 Number 3, that the working relationship with
8 Mr Zeman, based on that contract that you kindly alluded
9 to, as you can appreciate, that if you see the bank
10 account statements of MAS, you would not find, to best
11 of my recollection, any payment made to Mr Zeman.

12 And then I can appreciate -- I hope that you can
13 appreciate the fact that for a consultant to work for
14 over four years with a company with significant amount
15 of work to show for, and a significant amount of time to
16 show for by way of --

17 MR PRESIDENT: I'm sorry, Dr Sheikh, I'm sorry to interrupt,
18 but we're talking about documents.

19 A. I beg your pardon.

20 So thank you, your Honour. I sincerely apologise,
21 if I'm not able to hit the answer right on the nail and
22 then I ask for your forgiveness, but I was trying to
23 explain the reasons why Mr Khan had asked the question
24 that, "Dr Sheikh, that why such physical evidence does
25 not exist?" And my response was to qualify the reasons

1 14:50 why that document or the contemporaneous evidence does
2 not exist. I apologise if I was out of --

3 MR PRESIDENT: That's all right. Understood, but I think
4 you probably finished your answer and we can move on.

5 A. Very well, so let's go to the second document, Mr Khan,
6 you alluded to.

7 MR KHAN: Mr Ahmed's agreement.

8 A. Very well, sir. Mr Ahmed, once again, you will find if
9 you do a similar kind of email search like you have or
10 the DFSA has done with Mr Zeman, that you will find --
11 I say this with a lot of caution -- umpteen email
12 communication with Mr Ahmed and MAS ClearSight. And
13 that relationship was initiated, as Mr Ahmed has alluded
14 to in his witness statement yesterday, albeit that there
15 was probably some hearing issues or there was some
16 connection issues, so that may not have come out right.

17 But nonetheless, that working relationship with
18 Mr Ahmed and with MAS existed as per the evidence
19 submitted, and contemporary evidence, as I present to
20 your goodself, if the DFSA was to do a similar search
21 like with Mr Zeman, they will find an awful lot of
22 communication.

23 Q. Pausing there, Dr Sheikh, none of it refers to an
24 agreement between MAS and Mr Ahmed, does it?

25 A. Indeed, sir, and the reason --

1 14:51 Q. That's what I'm concerned with.

2 A. I appreciate that, sir. The reason I highlight it is
3 it's the same logic that you asked regarding Mr Zeman,
4 and the answer is that this was an existing
5 relationship. And yes, indeed, when that specific
6 agreement was being discussed, it was being discussed
7 and agreed upon between two counterparties who had an
8 incredibly -- maybe I'm using the wrong word, who had an
9 impressive working relationship that existed north of
10 multiple months to say the least, sir. That's the
11 reason for that.

12 Would you address the third agreement that you
13 referred to, sir?

14 Q. I'm going to come to Akbar and Yer later, if I may.
15 Let's just hold that thought, shall we?

16 A. With pleasure, sir.

17 MR PRESIDENT: We have a couple of minutes, have you got --
18 MR KHAN: Yes, one more question, if I may, about the
19 payment to Mr Ul-Hayee -- sorry, the payment by
20 Mr Ul-Hayee to Mr Ahmed, \$150,000.

21 A. Very well.

22 Q. You understand our case that we say none of those
23 payments were made. What I'd like to ask you is you
24 left Dubai at the very beginning of June 2015. Correct?
25 You left for London?

1 14:53 A. That's correct, sir.

Q. Between 5 and 13 May, you have withdrawn over

3 \$500,000 of the money from the MAS bank account;

4 correct?

5 A. I imagine that if you're using this information from the
6 bank statement, it would certainly be correct.

7 Q. Yes. I think that's uncontroversial.

When you left, I think the reason you give is that
your mother was not very well?

10 A. Which is in fact the truth, sir.

11 Q. Yes. Presumably, it was anticipated by you to be
12 a short trip to London?

13 A. Absolutely right, sir.

14 Q. You intended to return to Dubai?

15 A. Absolutely right, sir.

Q. Am I right in thinking that you took the money with you?

17 A. Absolutely wrong, sir.

Q. Your case is that you left it with Mr Ul-Hayee?

19 A. Absolutely right, sir.

Q. But if you intended to return to Dubai, why not arr

21 to pay Mr Ahmed yourse

22 A. Oh, very good question, sir. Look, I had gone to London

23 towards a scenario where I had an ailing mother. I knew
24 that Mr Akbar and Mr Yer, who had already identified
25 that they will be coming back towards the beginning

1 14:55 of June, and that is where there was going to be an
2 exchange of the money and the execution of the contract
3 that Mr Akbar had signed.

4 While I was going there, I was mindful of the
5 reality that when Mr Akbar and Mr Yer comes, then it
6 would be convenient for me for all the cash that I had
7 indeed withdrawn from the MAS account and was sitting
8 with Mr -- sorry, Mr Atta Ul-Hayee, to physically
9 deliver to Mr Akbar and get the investment agreement
10 successfully executed. And that is the reason, sir,
11 that I had left the cash with Mr Atta.

12 Was that your question or did I misunderstood your
13 question, sir?

14 Q. No, that is an answer to my question. So, my final
15 follow-up question is: where is the evidence for that in
16 your various statements? I haven't found any
17 explanation for why you left the money with
18 Mr Ul-Hayee -- all of the money.

19 A. Because I trust him, sir.

20 Q. Yes, but I haven't seen you provide that explanation
21 anywhere, about leaving the money with Mr Ul-Hayee.

22 A. I have indeed, sir. If you wish, I'll be happy to
23 scroll through my various submissions, and should your
24 Honours and your goodself permit, I would do my
25 research, it will take me maybe few minutes, but I will

1 14:56 give you the reference where I have highlighted this,
2 sir.

3 Q. Okay. Final question. I'm putting it to you that there
4 was no agreement with Mr Ahmed and there was no payment
5 under that agreement.

6 A. While I respect your opinion, I think your assessment is
7 absolutely wrong, sir.

8 MR PRESIDENT: Thank you. We're going to break at this
9 point. I'm going to ask my colleagues how long they
10 would like. Yesterday, I suggested a break of one hour,
11 but I think my colleagues preferred a shorter break and
12 maybe Dr Sheikh does too? Could I ask my colleagues
13 first what their wishes are?

14 MR AL AIDAROUS: 45 minutes okay for you, Dr Sheikh?

15 A. With pleasure, I'm at your pleasure, your Honours.

16 MR PRESIDENT: Okay. Shall we say 45 minutes? Is that all
17 right with you, Mr Khan?

18 MR KHAN: Yes, sir.

19 MR PRESIDENT: I know you'll be getting tired, but you're
20 even younger than I am, so that should be okay.

21 MR KHAN: Understood.

22 MR LAKE: Sorry, gentlemen, to interrupt. I am trying to
23 convey a message to Mr Khan, but he may not have
24 received it. The message that came through earlier on
25 around the court reporter requiring a break is related

1 14:58 to the physical strain that can take its toll from
2 stenography equipment.

3 MR PRESIDENT: Absolutely.

4 MR LAKE: I think it's conventional for the reporter to have
5 an hour's break normally, so I don't know if it's
6 possible for the reporter to perhaps share their view on
7 whether 45 minutes is sufficient, but I wanted to bring
8 that to your attention.

9 MR PRESIDENT: Absolutely.

10 MR LAKE: Sorry to interrupt.

11 MR PRESIDENT: Why doesn't the shorthand writer tell us what
12 he or she would prefer.

13 MS MISSO: Sir, this is Nicky, the court reporter. I'm
14 happy to have a 45-minute lunch break today.

15 MR PRESIDENT: Are you sure about that?

16 MS MISSO: Yes, it's okay. Thanks for the consideration.

17 MR PRESIDENT: If in the course of the proceedings, you feel
18 tired at any time or you want a break or we forget,
19 please let us know. You can interrupt. It's quite
20 okay.

21 MS MISSO: Thank you, sir.

22 MR AL HASHIMI: May I add one point of reminder to Dr Sheikh
23 as a witness. He needs not to discuss anything of his
24 witness statement or consult anyone during the break or
25 at any time, because he's on oath for a witness.

1 14:59 MR PRESIDENT: Yes, you understand that, Dr Sheikh? You
2 shouldn't be talking to anyone about your evidence
3 during the break.

4 WITNESS: A question for me, sir?

5 MR PRESIDENT: Yes.

6 WITNESS: Indeed, absolutely, sir.

7 MR PRESIDENT: Yes. Good.

8 All right. Thank you all very much. It is now
9 12 o'clock in England, 3 o'clock in Dubai and we will
10 re-meet at 12.45 and 3.45. Thank you.

11 (3.01 pm)

12 (Lunch break)

13 (3.45 pm)

14 MR PRESIDENT: Mr Khan, when you're ready.

15 MR KHAN: Thank you, sir.

16 I've dealt with Mr Zeman and Mr Ahmed in the main
17 and now I'm going to move on to the issue of capital
18 adequacy, the liquid asset requirements of MAS at the
19 time.

20 I'd like to take you, first, to April financial
21 report that was submitted to the DFSA and that's at
22 A7-174, please, Fatima.

23 If we just go to the top of that email, Dr Sheikh,
24 this is an email from Mr Kamath to Ms Hackett, amongst
25 others, at the DFSA, copies Mr Awais and Mr Salman

1 15:46 Haider, dated 7 May. And it's a cover email in relation
2 to the DFSA report.

3 Do you see that? I appreciate you're not copied to
4 this, at this stage.

5 If we can just please scroll down, the report starts
6 at 175 and if you just slowly scroll down until you get
7 to 177, please. Scroll to the bottom of that page,
8 please.

9 You'll recall, Dr Sheikh, I took the tribunal to
10 this in my opening. This is the April example of
11 a report to the DFSA that was required monthly, wasn't
12 it, and has been since 2013; is that correct?

13 A. I would imagine, yes, sir.

14 Q. Were you aware of that?

15 A. I know that MAS was doing monthly reporting. I wasn't
16 sure since when, so I was reluctant to confirm that.

17 Q. Would you have seen this document at the time?

18 A. You mean have I seen this document in April?

19 Q. Yes.

20 A. No, sir.

21 Q. You see there that the available liquid assets is said
22 to include 627,781 of cash on current account?

23 A. Yes, I see that, sir.

24 Q. So the answer to the question, does the firm have liquid
25 assets in excess of the EBCM, the answer is yes?

1 15:49 A. That's right, sir.

2 Q. But it was incredibly tight, wasn't it?

3 A. That's right, sir.

4 Q. With only \$28,000 or so above the minimum requirement?

5 A. That's right, sir.

6 Q. It had been tight for some time, hadn't it?

7 A. I think you're right, sir.

8 Q. On your own case, without the money being lent by Mr Yer

9 coming into the MAS bank account, MAS would have been in

10 breach of its liquid asset requirements when you made

11 your first withdrawal in May 2015. That's correct,

12 isn't it?

13 A. So you're saying that when I made the first withdrawal,

14 the business would have been in breach, if Mr Yer's

15 money would not have come?

16 Q. Yes.

17 A. This is April. But, sir -- okay, so this is April,

18 which means I did that, of course.

19 I don't remember the first cheque which was -- look,

20 had my cheque of 2.2 million dirham been cleared, and

21 that's a had, it certainly would have breached. And

22 then the first withdrawal that I did, I don't know if my

23 memory serves me well, but it's probably above 100,000

24 dirhams. I don't have the exact number handy on me,

25 sir.

1 15:51 Q. Let me read them to you. I'll show you them in a few
2 questions' time, but for present purposes, I'll tell you
3 and you can confirm or deny. But the withdrawals on
4 5 May 2015 were by cheques 65, 66 and 68 and they were
5 for 410,000 dirhams.

6 A. Sure, sir.

7 Q. On 6 May, cheque numbers 67, 73, 74 and 75, you withdrew
8 647,000 dirhams.

9 A. Okay, sir.

10 Q. Then between 7 and 13 May, cheques 70, 89, 90, 93 and
11 94, you withdrew 640,000 dirhams. I think that's
12 uncontroversial, but does that sound about right to you?

13 A. Well, I don't have the numbers, but if you're stating,
14 I'm sure that's right, sir.

15 Q. Yes. So if I'm right about that, let's assume, and I'll
16 make it good later, but upon the first set of
17 withdrawals, on 5 May, of 410,000 dirhams, unless Mr Yer
18 made the payment that you anticipated, there would be
19 a breach?

20 A. That's correct, sir.

21 Q. As I say, the first time that you introduced these
22 agreements with Mr Akbar and Mr Yer, was in July 2016,
23 and I took you to your statement that you presented to
24 the DFSA. You remember that?

25 A. That's right.

1 15:53 Q. I'm now going to take you to the answers to specific
2 questions you provided to the DFSA. That starts at C,
3 document 66, page 477.

4 Fatima, if you could kindly pull that up.

Do you remember submitting this document, Dr Sheikh?

6 A. Yes, sir.

7 Q. I'd like to first take you to your entry to answer B.6,
8 which is at page 479, so two pages on.

9 If you just pause there, while we're on this
10 document, so we can avoid coming back to it, I'm just
11 going to take you to a number of answers you give and
12 just confirm that it's still your case.

13 If, at any point, you come across an answer that you
14 think, "Actually that's wrong now", or it's not
15 consistent with your case, then please tell us,
16 Dr Sheikh. But otherwise, I'll assume that you still
17 agree with what you said here.

18 You see the question there from the DFSA?

19 A. Question number 6, sir?

20 Q. Yes.

21 A. Would you like me to read to myself the answer so I can
22 confirm?

23 Q. Yes, please.

24 A. Sure.

1 15:56 Q. Does that remain an accurate answer?

2 A. Indeed, it remains an accurate answer, sir.

3 Q. You are alluding there to the Akbar agreement, are you
4 not? When you say "investment agreement", you mean the
5 Akbar agreement?

6 A. You're talking about \$2 million -- just bear with me.

7 Let me just read it from the perspective you have just
8 alluded to.

9 Yes, indeed, sir.

10 Q. Under the Akbar agreement, which I'm sure we're all very
11 familiar with now, you agreed on behalf of MAS that it
12 would pay \$2 million -- sorry, that he would receive
13 \$2 million -- sorry, let me start that again.

14 Under the Akbar agreement, it was agreed that MAS
15 would receive \$2 million; correct?

16 A. That's right, sir.

17 Q. And that it was agreed also that MAS would pay
18 \$600,000 by way of upfront interest; correct?

19 A. That's right, sir.

20 Q. Why did you need to transfer money from the US dollar
21 account to the dirham account to be ready to execute the
22 agreement?

23 A. Because I would imagine it would have been easier,
24 simpler, to write a cheque in dirham compared to
25 a dollar cheque, I imagine. I suppose that's probably

1 15:58 what was going in my mind at that time, sir.

2 Q. But why didn't the agreement stipulate dirhams if that
3 was what was anticipated?

7 Q. Of course.

14 So, yes, I should have been a bit more careful, to
15 be very precise, but the idea behind was that the
16 agreement was worth \$2 million and it was to be
17 transferred. And I transferred in AED cheque thinking
18 in my mind that with the AED chequebook, it will be
19 easier, I suppose.

20 Q. You say you suppose it would be easier, but Mr Akbar
21 resides in Pakistan; correct?

22 A. That's right, sir.

Q. The agreement with him stipulates US dollars; correct?

24 A. That's right, sir.

Q. I put it to you again, it makes no sense for you to

1 15:59 transfer money from the US dollar account to the dirham
2 account.

3 A. I understand it may not make sense to you, but for me
4 and to Mr Akbar, it made absolute sense, sir.

5 Q. Can you explain how that is so?

6 A. With pleasure. You see, Mr Akbar in the agreement has
7 highlighted that when he would like to receive the
8 advance interest. And in that line of logic, he had
9 given the coordinates and so I had assumed that I have
10 to make that payment, which is what you saw that the
11 payment of 2.2 million dirhams, if my memory serves me
12 well, that I took the initiative to make, probably on
13 3rd or 4th, my memory is not very precise on that, which
14 unfortunately and understandably, got returned, which
15 I didn't realise at that point, that I would have
16 limitations per transaction per day, I suppose, sir.

17 Q. That's your answer, is it?

18 A. That's indeed right, sir.

19 Q. So to that extent, can we agree that that's a mistake in
20 the agreement to refer to US dollar payments?

21 A. Well, the expression of using US dollar is an expression
22 which you would refer to as an inadvertent, because the
23 conversation happened in dollars and the execution of
24 the interest that you just have alluded to is in the
25 same line of logic.

1 16:01 So purely from the eye of whether the agreement
2 means in dollars, should have been in dollars, yes,
3 I suppose you're right, but that was not the spirit or
4 the reality of the agreement between the two
5 counterparties, which represented -- which is
6 represented by this agreement, sir.

7 Q. If we can go to the next page -- sorry, if we scroll
8 down to question 7 at the bottom there, and let
9 Dr Sheikh just read that.

10 When you have read that, Dr Sheikh, do let Fatima
11 know and we'll scroll to page 480.

12 A. Sure. Fatima, would you be so kind to kindly scroll
13 down, please.

14 Q. Pausing there, read your answers.

15 Have you read that, Dr Sheikh?

16 A. Yes, I have. I beg your pardon. I was just curious to
17 read my own answer in this third line. But, yes, the
18 answer is, yes, I have. Forgive me, please.

19 Q. I'll take the online banking part of your answer first.

20 A. Okay.

21 Q. You cross-examined Mr Salahuddin earlier this week.

22 A. That's right.

23 Q. His evidence is adopted as part of our case and he
24 confirmed that you gave him the instruction to stop
25 accessing the online banking system. I understand your

1 16:04 case is that you did not issue any such instruction;
2 correct?

3 A. That's right, sir.

4 Q. You understand our case?

5 A. I do understand your case, but I disagree with your
6 assessment and I believe that Mr Salahuddin has
7 misrepresented his position under oath, sir.

8 Q. So moving on to the issue of the chequebook, you say you
9 asked him to hand over the chequebook, so you could
10 honour the company's obligations to the investor:

11 "This action was motivated by a strategic decision
12 so the management of the company should continue their
13 efforts to find investors and not only rely on the
14 investor I was able to secure."

15 I have to say, I don't really understand that second
16 sentence.

17 A. And I --

18 Q. Can you please explain?

19 A. Sure, I totally respect your point of view and now
20 reading this, I also don't understand that. And I don't
21 even remember at this point, this is so long ago, that
22 what was going on in my mind, but with the fresh set of
23 eyes that I see, the second sentence makes also very
24 little sense to me, sir.

25 Q. So if we're agreed that we can ignore that second

1 16:06 sentence for the time being, for the purposes of these
2 questions, and then return to the anchor sentence, where
3 you agree that you asked Hassan to hand over the
4 chequebook to honour the company's obligations to the
5 investor.

6 A. Sir, if I may, when you said that ignore the second
7 statement, the second statement has two elements. The
8 first element, I can understand. The second element
9 I don't understand. Just for clarity purpose, sir.

10 Q. Just explain as much as you can as to what that second
11 sentence means.

12 A. The second sentence, the first part was:

13 "This action was motivated by a strategic decision
14 so the management of the company should continue their
15 efforts ..."

16 No, I beg your pardon. Forgive me:
17 "... the chequebook so I could honour the company's
18 obligations to the investor."

19 I stand corrected. My apologies, the second
20 sentence also indeed does not make sense. So I agree
21 with you.

22 Q. But the first sentence is consistent with your own case
23 that you took control of the chequebook; correct?

24 A. That's right, sir.

25 Q. Given the Akbar agreement, which we'll come to in a bit,

1 16:07 but we're all familiar with it, I don't want to jump
2 around too much, given the forum we're in.

3 A. Sure.

4 Q. Given that the Akbar agreement provides MAS' bank
5 account details and given that we say it's anticipated
6 electronic transfers of money, why do you need
7 a chequebook?

8 A. You said that the Akbar agreement presents electronic
9 transfer instructions? Is that right, sir?

10 Q. Yes, for any payment by Mr Akbar to you.

11 A. Payment from Akbar to MAS; is that right, sir?

12 Q. Yes.

13 A. So you see, the payment from Akbar to MAS, because
14 I wrote or if I can use the word author of that
15 investment agreement, which is partly used from an old
16 agreement, probably to a template or whatever, the point
17 is that it was my expectations that the money of
18 \$2 million, had that investment gone through, would be
19 transferred in -- by transferred in, into the MAS
20 account.

21 The reason for me to ask for the chequebook was
22 simply to be able to have the ability to pay the
23 2.2 million or 600,000 equivalence dirham advance
24 interest payment as per the spirit of the contract that
25 Mr Akbar and I agreed together, sir.

1 16:09 Q. If we can go to the next page, which is 481, I think
2 it's probably sensible for you to read the question 8,
3 which is on 480, and then the answer at 481.

4 Thank you, Fatima. My fault.

5 Then scroll down and read all the way through to
6 482, please.

7 A. Just bear with me.

8 Q. Yes, of course. Just let Fatima know when you have read
9 it.

10 A. Will do.

11 Okay, go ahead, Fatima, could you kindly scroll down
12 to the answer, please.

13 Very well. I have read the answer.

14 Q. Thank you. That all still remains part of your case,
15 does it?

16 A. Indeed, sir.

17 Q. Then just scrolling down to confirm the answer to
18 question 9, in relation to the cheque that bounced.

19 A. All right, sir.

20 Q. Then question 10 relates to the first set of cheques
21 that you cashed personally on 5 May 2015.

22 Once you have read that, let Fatima know and we'll
23 go to 482.

24 A. Will do.

25 Fatima, would you kindly scroll down, please.

1 16:13 Very well, sir.

2 Q. That's all still correct; yes?

3 A. That's right, sir.

4 Q. It's obviously a very important document, we say. I may
5 come back to it on one more occasion, but letting you
6 and the tribunal know that obviously we rely very
7 heavily on this. Thank you for confirming that those
8 entries are accurate, Dr Sheikh.

9 A. Would you just give me a quick second, just real
10 quickly.

11 Yeah, of course. Please continue. Forgive me.

12 Q. Now, the issue of what I'm going to refer to as the very
13 tight capital adequacy of MAS was something that was
14 discussed by the board, wasn't it?

15 A. That's right, sir.

16 Q. If we can please first go to 1 December 2014 board
17 minute, starting at page A1-2.

18 There are two sections I'd like to take you to, to
19 remind you what was discussed at this meeting. Firstly,
20 if we may, go to page A1-4.

21 If I can ask you to read the main body of that
22 paragraph in the middle of the screen, starting, "Rizwan
23 enquired ...", that's Mr Khan.

24 If you can then let Fatima know when you have read
25 that and read the next dash, starting, "Rizwan

1 16:17 enquired ..."

2 A. Fatima, kindly could you scroll down, please.

3 Very well, sir.

4 Q. It's right to say, isn't it, that certainly in
5 December 2014, MAS ClearSight's principal counterparty,
6 in terms of receivables, is MAS Pakistan; correct?

7 A. That's right, sir.

8 Q. You're the director of MAS Pakistan; correct?

9 A. That's right, sir.

10 Q. You've said that you expect to receive money from MAS
11 Pakistan soon?

12 A. That's right, sir.

13 Q. Thank you.

14 I'd like to next go to page A1-8, which is the
15 finance update, section 7.

16 If you can just read what's there on the screen,
17 please.

18 A. Sure, sir.

19 Fatima, could you slowly scroll up, please. Sorry,
20 could you scroll down -- no, I meant scroll down, I beg
21 your pardon.

22 Q. Once you've read that, Dr Sheikh, if we can just go to
23 the next paragraph, starting, "A significant
24 portion ..."

25 A. Sure, sir. Just bear with me for a second, please.

1 16:23 Q. Of course, of course.

2 A. Very well. Fatima, would you like to scroll down
3 a little, please.

4 Q. I have two questions for you on this.

5 A. Yes, sir.

6 Q. First of all, you would accept that the financial health
7 of the company was what might be described as difficult
8 or challenging?

9 A. That's right, sir.

10 Q. If we just go up a little bit to where it says,
11 "Operating Costs", it confirms that operating costs had
12 been \$4.3 million of which 3.7 million would account for
13 losses and it said that salaries and allowances account
14 for almost 59 per cent of that amount. Salaries and
15 allowances; do you see that?

16 A. Yes, sir.

17 Q. Then if we go down to where it says, "A significant
18 portion ..." just pause there. It says:

19 "A significant portion of the amounts due to related
20 parties relates to amounts of Dr Mubashir Sheikh (salary
21 and loans) and a short loan ..."

22 A. Okay, sir.

23 Q. What does that mean?

24 A. "A significant portion of the amounts due to related
25 parties relates to amounts of Dr Mubashir Sheikh (salary

1 16:26 and loans) ..."'

2 What this means, in my opinion, sir, that I have
3 waived several salaries for the greater interest of the
4 company capital structure. I have lent a significant
5 amount of money into the company for its ongoing
6 running, in order to ensure that the company remains
7 functional and viable.

8 Q. The money that MAS ClearSight Pakistan owed to MAS
9 ClearSight in the DIFC, what was that for?

10 A. You have to specify that which timeframe are you
11 referring to, sir.

12 Q. I'm referring specifically to the \$4.7 million of gross
13 receivables from MAS ClearSight Pakistan Holding to MAS
14 ClearSight.

15 A. Part of this money was due because of the services
16 rendered. Part of the money, if my memory serves me
17 well, was to do with a trade of employees and their
18 benefits in the business that was sold to MAS Pakistan.

19 But to be really precise, I would not be able to
20 give you a concrete answer in the absence of the
21 information, because as you can appreciate, this is
22 already a few years old and I hate to speculate or give
23 you wrong information, sir.

24 Q. Of course. When you say employee benefit, do you
25 include yourself?

1 16:28 A. I know for a fact that part of the transaction where
2 I was initially or later, and that is I'm not confirm or
3 sure, but I was also -- the word I should be looking for
4 was part of the package deal that was brought by MAS
5 Pakistan and then me, along with handful of people, were
6 seconded back to MAS Dubai entity, sir, to best of my
7 recollection.

8 Q. I think the answer is, yes, it probably did include
9 payment to you.

10 A. When you say payment to me, no, no. Look, if
11 I understand well, when you say "payment" -- can you
12 scroll up a little? Because I will highlight to you.
13 This is a receivable, which means an asset, asset
14 including people, and their business pipeline was sold
15 to -- from MAS DIFC to MAS Pakistan, by --

16 Q. Did that include you, a salary or allowance?

17 A. Forgive me.

18 Q. Yes.

19 A. Could you repeat that? I didn't hear you well, sir.

20 Q. Does that include payment of salaries and allowances to
21 you?

22 A. No, but when you use the word "payment of salaries and
23 allowances", I don't quite follow what do you mean by
24 that, sir.

25 Q. I'm just taking the words from the board minutes here.

1 16:30 If we scroll up, Fatima, it refers to salaries and
2 allowances under "Operating Costs".

3 A. Just hang on a second.

4 You know, go ahead, please ask me the question, see
5 if I can try to answer this intelligently. Please
6 continue, sir.

7 Q. What I'm getting at is, MAS Pakistan owed MAS ClearSight
8 4.7 million?

9 A. That's right, sir.

10 Q. I think you've answered to a previous question in saying
11 that that included payment for employees who were doing
12 work for MAS in DIFC; is that correct?

13 A. Payment for work -- partly, that's right, sir. You're
14 right, indeed, partly, but I would not have --

15 Q. Does that include you? My only question is, does that
16 include you?

17 A. I really don't know. I don't remember. The only way
18 I'll be able to qualify your question is if I have some
19 concrete information, which unfortunately, I don't. So
20 I'm afraid that I may not be able to answer your
21 question at this point, sir.

22 Q. Okay, let's move on.

23 In the middle of the page that we just see there,
24 third dash down:

25 "On the balance sheet side, cashflow management

1 16:32 continues to be challenging in light of the DFSA rules
2 which require us to hold its EBCM (600k) in liquid
3 assets at all times. This has been achieved through the
4 year but needs constant monitoring and management. It
5 stood at US\$661k for the period."

6 My question is: is that also your recollection?

7 A. Indeed, sir.

8 Q. If we can now move to document A5-156, this is the
9 26 April 2015 board minute.

10 Before we go, Fatima, the tribunal, I don't think
11 I'm going to come back to that December board meeting
12 minute. So if there are any questions you have and are
13 ready to ask, then now might be a convenient moment,
14 sir.

15 MR PRESIDENT: Thank you. I have no questions.

16 MR AL AIDAROUS: I don't have a question.

17 A. Yes, your Honour.

18 MR AL HASHIMI: I don't have any questions.

19 MR KHAN: Thank you. Fatima, if we can please go to A5-156.
20 So these are the minutes held on 26 April 2015. The
21 next immediate board meeting after the one that I've
22 just taken you to.

23 A. That's right.

24 Q. What I'm interested in is page 168.

25 If you read from the top of the page down.

1 16:35 A. Very well, sir.

2 Q. So you see from there that there's a discussion captured
3 in that second dash, second paragraph, about reporting
4 to the DFSA and that includes reporting capital
5 adequacy; do you see that?

6 A. You mean the bottom paragraph?

7 Q. The second paragraph.

8 A. Very well, sir.

9 Q. I'm going to put to you that as at 26 April, just before
10 you make the cash withdrawals beginning on 5 May, you
11 are well aware that capital adequacy will be reported to
12 the DFSA a month later.

13 A. Absolutely, indeed, sir.

14 Q. I'm now going to move on, Dr Sheikh, and tribunal, to
15 look at the cash withdrawals themselves.

16 Can we first go to document A12-273. This is a US
17 dollar bank statement. You see there it starts at 273.
18 You see there it refers to a then active US dollar
19 account dated 13 June 2015?

20 A. I beg your pardon. The statement represents 2014.

21 I imagine --

22 Q. No, if you go to the top, right-hand corner, the date at
23 which the snapshot of the account is at 13/6/2015.

24 A. Indeed, yes, sir.

25 Q. Do you see that?

1 16:39 A. I do.

2 Q. As at that date, the balance is just over \$1,000, 1,199;
3 do you see that? The right-hand side.

4 A. 13,000?

5 Q. No, if you look above that.

6 A. Fatima, could you kindly scroll --

7 Q. No, don't scroll. If you're looking at the 13,000, look
8 immediately above that, there's a 1,199 figure.

9 A. Yes, it is. Indeed, I see that, sir.

10 Q. That's the account status date as at 13 June 2015. Then
11 what we have is a statement starting on
12 10 September 2014. And we see that as at
13 26 September 2014, the fourth line down, the balance is
14 about \$626,000. Do you see that?

15 A. Yes, sir.

16 Q. If you scroll down to page 276, as we go you'll see that
17 we progressed through the chronology of this bank
18 statement, through 2014 into 2015. You see there on
19 that page, we have the dates relevant to this case. You
20 see there on the 3 May 2015 entry, there's a debit of
21 around \$600,000. Do you see that, fourth line down?

22 A. I'm terribly sorry to struggle with this. Fatima, would
23 you be so kind to zoom this a little bit?

24 Debit of 600 --

25 Q. \$600,042.43.

1 16:42 A. That's right, I see that. Thank you.

2 Q. You instructed Mr Salahuddin to make that transfer from
3 this account and must be into the dirham account.

4 That's correct, isn't it?

5 A. This is on 3 May 2015. Absolutely right, sir.

6 Q. We may come back to this a bit later. The next page,
7 page 277, this is the dirham account; yes?

8 A. Yes, sir.

9 O. "AED" at the top.

10 A. Yes, sir.

Q. You'll see that it says from -- it's hand annotated.

I believe it's accurate. It says this is from

13 statements dated January 2014 to August 2015. Do you

14 see that?

15 A. Yes, sir.

16 Q. It says that there's nothing in the account as at
17 27 July 2015. Do you see that on the right-hand side?

18 A. I do, sir.

19 Q. Thank you. Now I'd like to take you, if I may, on a few
20 pages to page 285. If you could just scroll down so we
21 can see the full statement, Fatima. Don't worry about
22 the heading.

23 First of all, if you look at the column stated
24 "Particulars", do you see that column?

25 A. Yes, sir.

1 16:44 Q. If you go down to the entry that says, "Inward clearing
2 cheque no. 64", do you see that?

3 A. Yes, sir.

4 Q. That relates to one of the India Focus Cardinal cheques,
5 doesn't it?

6 A. Indeed, sir.

7 Q. But it was returned. We see the next line, don't we?

8 A. That's right, sir.

9 Q. That was an attempt to pay India Focus Cardinal
10 virtually all the money in the account; yes?

11 A. That's right, sir.

Q. When that fails, we see that there are four cash withdrawals on 5 May. Do you see that?

14 A. Yes, sir.

15 Q. They relate to -- the instruction number relates to the
16 cheques 65, 68, 66, and 67.

17 A. Sure, sir.

18 Q. For your and the tribunal's assistance, these are the
19 entries that I've related in my skeleton argument for
20 the amounts taken at given dates, but I'm just making
21 that good and confirming this is your understanding as
22 well.

23 Then if we can please go -- before we do that, just
24 repeating the question I asked earlier, with the benefit
25 of this statement in front of you, those withdrawals on

1 16:46 5 May caused a breach of MAS's liquid asset
2 requirements, didn't they?

3 A. On this statement, indeed, this is correct, sir.

4 Q. I'm going to put it to you that that would have been
5 blindingly obvious to you when you made those
6 withdrawals.

7 A. Absolutely not, sir.

8 Q. Why not?

9 A. Because I didn't check the credit of Mr Yer's
10 \$600,000 that I was under the impression would have been
11 credited on 28 or 29 April. And on that, I'd like to
12 make a brief remark, that I should have checked and it's
13 a mistake on my behalf, sir.

14 Q. Just to be clear, you could have checked when you went
15 to the bank, couldn't you?

16 A. That's right, sir.

17 Q. You were handing over the cheques, receiving money, you
18 could easily have said, "Can I check that there has been
19 a payment received?" You could have said that, couldn't
20 you, very easily?

21 A. You're right, I could have said that, sir.

22 Q. Given the circumstances of the company and its liquid
23 asset situation, which was very tight, you accept that,
24 don't you?

25 A. I do, sir.

4 A. Well, like I said, that it was indeed my mistake,
5 because I was quite overconfident, I must admit,
6 wrongfully so, on hindsight wisdom, that I had spoken to
7 Mr Yer once he had confirmed that he has sent the
8 transfer instructions to his bank. Then I followed up
9 a day after and he confirmed that his banker has
10 received and he's in the process of transferring it and
11 I had a security cheque in my hand.

12 So putting all those things together, I indeed got
13 blindsided to not check that. And for that, I indeed
14 accept that it was a mistake on my part, sir.

15 Q. Just so we're absolutely clear, I'm going to tell you
16 what I mean when I say "reckless", because we're going
17 to come back to this probably tomorrow and I want you to
18 be fully aware of what I mean by that.

19 A person acts recklessly with respect to a result --
20 in this case, an obvious breach we say of capital
21 adequacy requirements -- if he is aware of a risk --
22 pausing there, we say you were aware of the risk of
23 a breach of capital adequacy requirements, given what
24 was debated at the board meeting. You're aware of
25 a risk that it will occur and it is unreasonable to take

1 16:49 that risk having regard to the circumstances that you
2 knew or believed them to be.

3 It was incumbent upon you, we say, to check to see
4 if Mr Yer had made the transfer.

5 A. And I accept, and hence, I have already gone on record
6 stating that it is indeed my mistake, sir.

7 Q. Would you accept that it was more than just a mistake,
8 it was a reckless mistake?

9 A. I do not wish to qualify any further, but I have
10 accepted the fact that indeed it was a mistake on my
11 side.

12 Q. If we can scroll down to the next page, we have --
13 I believe this is uncontroversial, but I think it's so
14 central to the case that it's important for the tribunal
15 to see it and you to confirm that there's no
16 misunderstanding between us on this.

17 Cheque numbers 73, 74, 75 are all cheques that you
18 cashed on 6 May 2015; correct?

19 A. That's right, sir.

20 Q. If we go a bit further down into the 7 May entries,
21 there's a withdrawal in relation to cheque number 70; do
22 you see that?

23 A. Yes, I do, sir.

24 Q. And you personally made that withdrawal, didn't you?

25 A. One remark that I'd like to make, because I don't see

1 16:51 the withdrawals. Because, at the end of the day, I do,
2 if my memory serves me well, there were a couple of or
3 maybe a bit more, once again I don't remember, that
4 I had also, because of being busy in the office and
5 I don't remember if it was this specific or maybe
6 further down, that I had already given, on my behalf, to
7 Mr Atta Ul-Hayee to go and collect some money as well.
8 But I'm not sure which one of that was, but just for the
9 record, yes.

10 Q. Yes, I'm coming to those. Then we see on 9 May, cheques
11 number 90, 89 and 93, quite significant cash withdrawals
12 there of 150 and in one case 160,000 dirhams.

13 A. Indeed.

14 Q. Then a further cheque cash withdrawal on the same day,
15 number 94 of 80,000.

16 A. Yes.

17 Q. Then if we go to the next page, it would be good to
18 complete this before 2 pm. We're now into June --
19 sorry, before getting to June, on 26 May 2015 -- sorry,
20 I beg your pardon. On 11 and 13 May, we have two
21 further cheques as part of the May withdrawals.

22 I believe that's the last May withdrawal on 13 May?

23 A. Yes, indeed, I see that, sir.

24 Q. You see what happens there is that you depleted by your
25 withdrawals, the dirham account, to around 31,000

1 16:53 dirhams?

2 A. That's right, sir.

3 Q. So several thousand dollars. I don't know what the
4 exchange rate would have been, but it would have been
5 low thousands of dollars; correct? Maybe 6 or \$7,000?

6 A. Forgive me, you're asking for what, sir, now? What 6,
7 \$7,000 are you referring to, sir?

8 Q. On 13 May, there was just over 31,000 dirhams left in
9 the account after your final May withdrawal; correct?

10 A. That's right, sir.

11 Q. How many dollars would that be?

12 A. I can do that for you.

13 About 8,435 approximately, sir.

14 Q. So in the grand scheme of things, virtually nothing left
15 in the account; correct?

16 A. Absolutely right, sir.

17 Q. Then there are no more withdrawals, are there, in May?

18 A. So it would appear, that's right, sir.

19 Q. Just pausing there, the May withdrawals came to
20 \$462,000. Assume I'm right about that.

21 A. Forgive me, I'm not sure I follow. What's the question
22 referring to, sir?

23 Q. The totality of the May withdrawals is \$462,000?

24 A. I don't have the math in front of me, but if you're
25 saying it, I'm sure it's right and the answer would be

1 16:55 yes.

2 Q. You needed around \$600,000; correct?

3 A. Right.

4 Q. Why didn't you keep making withdrawals?

5 A. Why did I or why did I not?

6 Q. Why did you stop making withdrawals?

7 A. Since which date onwards, sir?

8 Q. 13 May.

9 A. 13 May?

10 Q. Yes.

11 A. Fatima, could you zoom a little bit so that it's easier
12 for me to see, because I'm struggling to see.

13 You're saying 13 May till --

14 Q. That was the last withdrawal you made in May, cheque
15 number 81.

16 A. Yes, it's 120,000 dirhams.

17 Q. Yes.

18 A. So what is your question, sir?

19 Q. My question is: given that you needed to withdraw
20 \$600,000, do you accept that?

21 A. Sorry, there's a little bit of a challenge on the screen
22 here.

23 Okay. Your question to me is that on 13 May, once
24 the 120,000 dirhams were withdrawn, you're saying that
25 why was other withdrawals were not happened? Is that

1 16:56 your question, sir?

2 Q. Yes. You had withdrawn with that final withdrawal
3 in May, a total of \$462,000, which you have accepted as
4 being right, for present purposes.

5 A. Okay, sir.

6 Q. You needed \$600,000, didn't you?

7 A. Okay, sir.

8 Q. Why didn't you keep trying to withdraw money? Why did
9 you stop on 13 May?

10 A. Because after 13 May, unless if I'm not reading this
11 right, but there are withdrawals, right? There's one in
12 55, 85, 85. Do you see that, sir, on 14th?

13 Q. Yes, that's a month later.

14 A. Is it in June, is it?

15 Q. Yes.

16 A. So it would appear that after that, there would have
17 been no or little, very little money left in the account
18 of MAS. Correct, sir?

19 Q. Yes.

20 A. The answer to your question is if there was no money
21 left in the account and I flew out of Dubai, I don't
22 know, end of May, beginning of June, whatever I have
23 submitted those details, that the money that I had
24 withdrawn was all the cash that I would have been able
25 to, before I had travelled out.

1 16:58 And indeed, I have on my own personal accounts and
2 liquidity, that I had also left with Mr Atta Ul-Hayee,
3 which is, if my memory serves me well, we discussed
4 that, I think yesterday, was in his statement,
5 2.4 million dirhams.

6 So, yeah, I had left ample money with Atta to ensure
7 that at the appropriate time --

8 Q. Dr Sheikh, stop there.

9 A. Sorry. Forgive me.

10 Q. My question is a very simple one.

11 A. Okay.

12 Q. Are you confirming that you stopped making withdrawals
13 in May, on the 13th, because you checked the bank
14 account and you knew there was no more money to
15 withdraw?

16 A. I would imagine, absolutely, sir, because when I was
17 withdrawing money, I was seeing the dirham account
18 depletion, indeed.

19 Q. So you must have known by 13 May that Mr Yer had not
20 made a transfer?

21 A. No, because I had not checked, because the money was
22 supposed to come in dollar account and, like I have
23 said, that it has been a mistake on my side.

24 Q. Hang on a minute. Earlier, I asked you about the
25 agreement being in dollars and you said, "That's

1 16:59 a mistake, because I was going to pay Mr Akbar in
2 dirhams." Are you now saying that actually, Mr Yer was
3 going to pay in dollars, not dirhams?

4 A. Sorry, look, if I can understand you well, you're
5 talking about two separate matters. So, let me
6 reinstate once again for the ease of clarity, sir, that
7 the investment which was expected from Mr Akbar was in
8 dollars of 2 million. The expected of \$600,000 loan
9 from Mr Yer was also in US dollars. The payment that
10 I was supposed to make for Mr Akbar was in dirhams.

11 Did I answer your question or did I miss that, sir?

12 Q. Is your answer that you checked the dirham account so
13 that you could make sure you cleaned it out --

14 A. That's right.

15 Q. -- but you didn't bother to check the dollar account to
16 see if Mr Yer had made the payment?

17 A. That's right, sir. And I have accepted that as
18 a mistake on my part, sir.

19 Q. Let's just finish this, if I may.

20 Sir, I have gone just over 2, but I'm --

21 MR PRESIDENT: No, I think you may have misunderstood me or
22 I didn't make it clear. The idea was that we would
23 continue for one hour and a half after we resume, so we
24 were not due to finish until 2.15.

25 MR KHAN: Thank you, sir.

1 17:01 You make no more withdrawals after 13 May and on
2 13 June, the bank account is replenished with 73,000
3 dirhams credit and then 81,000 dirhams credit. Do you
4 see that?

5 A. Yes, I do, sir.

6 Q. Those transfers were from the dollar account, weren't
7 they?

8 A. I would not be able to confirm that to you, sir.

9 Q. I'll just take you there, so we can check. Just
10 a moment.

11 We can go back, Fatima, to 276.

12 I believe, if you see, if we scroll down to the
13 bottom, 13 June, which we are dealing with, you see it
14 says, "Transfer to 101 ..." et cetera.

15 A. Yes.

16 Q. Then if we go back -- by the way, that depletes, you
17 see, the US dollar account to again virtually nothing.
18 Do you see that?

19 A. Yes.

20 Q. \$1.76 there. If we go back to where we were, page 287,
21 those are the two entries we see on 13/6. The
22 corresponding transfers from 0514, which is the US
23 dollar account.

24 A. Okay, yes.

25 Q. Then immediately both on that day and then the following

1 17:04 day, there are cash withdrawals. So on the 13th, the
2 very same day, 55,000 dirhams is withdrawn; do you see
3 that?

4 A. Yes, I do.

5 Q. Then the next day, there are two further cheques, 97 and
6 96.

7 A. Yes.

8 Q. Of 65,000 dirhams each and those are, we believe,
9 withdrawals made by Mr Ul-Hayee.

10 A. Right.

11 Q. Again, depletes the account immediately to virtually
12 nothing, 418 dirhams. Do you see that?

13 A. That's right, sir.

14 Q. I am wondering who made the transfer on 13 June from the
15 US dollar to the dirham account, so that you could make
16 those withdrawals?

17 A. I have absolutely no idea, sir.

18 Q. But it's correct, isn't it, that you left Mr Ul-Hayee
19 with blank cheques.

20 A. That's right.

21 Q. So that he could make cash withdrawals; yes?

22 A. That's right.

23 Q. Then he's been instructed, presumably by you, to
24 withdraw the amounts identified there on 13 and 14 June;
25 correct?

1 17:05 A. That's right, sir.

2 Q. It rather presupposes that you knew how much was in the
3 dirham account, so that he could withdraw it?

4 A. Absolutely not, sir.

5 Q. So, what? Did he just guess --

6 A. No, not at all. I instructed him on the telephone to
7 kindly withdraw 65 and then subsequently probably the
8 same day or few hours later, I asked him to withdraw
9 another 65,000.

Q. We say you must have known how much was in the accounts, because that took the account down to 418 dirhams.

19 Q. Yes, so I'm wondering if you had someone else's log-in
20 details to allow you to access the online account.

21 A. Absolutely not, sir.

22 Q. But you had access to someone who could check the bank
23 account for you; correct?

24 A. Once again, I did not have someone else to check, but I
25 know for a fact that I would have been advised that

1 17:07 there is 65,000. And if I'm not mistaken, this
2 information would have come to me and that is why
3 I would have directed. But if I had the online access,
4 the answer is no.

5 If I knew someone else in the business who had the
6 online access, of course, there were two, three people
7 who had the online access, but I'm not able to speculate
8 whether this information that I got was based on someone
9 having online access.

10 What I would be very keen to understand, that where
11 is the --

12 Q. Dr Sheikh, I don't have long left. I'm going to ask you
13 some very direct questions.

14 A. With pleasure, with pleasure.

15 Q. You can provide any submissions you like later on.

16 A. With pleasure.

17 Q. I'm not asking you to speculate.

18 A. I understand.

19 Q. Who did you ask to check the online bank account
20 balance?

21 A. I did not ask anyone to check and I don't even recall
22 that I asked -- this information would have come to me
23 and I don't remember how or who, but it certainly is
24 that someone would have told me. My assumption --

25 Q. You accept someone would have told you?

1 17:08 A. That's absolutely right, sir.

2 Q. Going back to the US dollar account, page 276, same
3 question, but in relation to the US dollar account.

4 A. Right.

5 Q. There was just prior to the transfers to the dirham
6 account, on 13 June, there was just over \$42,000 in the
7 account.

8 A. That's right.

9 Q. Then somebody has transferred 20,000 and then
10 immediately \$22,270 to the dirham account.

11 A. Right. What is your question?

12 Q. Did you do that or did you instruct someone to do it?

13 A. Not at all. I did not do that or neither I instructed
14 someone to do that, sir.

15 Q. What's the explanation for that given the money was
16 immediately withdrawn that day --

17 A. Like I said, that I had received this information and
18 I'm struggling to remember who gave me the information.

19 But whoever gave that information, I instructed Mr Atta
20 Ul-Hayee to use the blank cheques that I had left with
21 him to withdraw the money.

22 Q. I understand the bit where you instructed him to
23 withdraw a specific amount of money to clear out that
24 bank account.

25 A. Yes.

4 A. And I don't know the answer to that, sir.

5 Q. How did you know to send him to the bank on 13 June?

6 A. Because someone -- look, the more I think about it, it
7 makes it more clear, that either Mr Atta Ul-Hayee would
8 have this information, which he would have given to me,
9 because that is the most plausible logic and reason that
10 I can think of. But I don't remember. But I'm saying
11 the most plausible reason for me would be that Mr Atta
12 Ul-Hayee would have given me this information, sir.

13 Q. So that presumes that Mr Atta Ul-Hayee had access to the
14 US dollar bank account?

15 A. I would not know that. I can't speculate that, sir.
16 Because there were people in the office, not one, but
17 two, three people at least who had online access
18 throughout, including the month of June, sir.

19 Q. But what reason would they have to transfer money to the
20 dirham account so you could take it out?

21 A. Like I said, that I would have received the information
22 and once I received the information, I would have done
23 so.

Now, to put things more in perspective, the information that I would have received, to best of my

1 17:11 memory, if Atta is the one who has informed me, which is
2 most likely the case, then Atta would have informed me
3 that, "Dr Sheikh, there is money on the account of
4 dollar X, 20,000 and 22,000", and I'm speculating,
5 albeit.

6 And then if that was the case, then I would have
7 said that, look, if there is money on the account,
8 transfer the money or instruct the money or give this
9 information to whoever had done the transfer into dirham
10 and then withdraw the money.

11 And that's absolutely right, that the instruction
12 would have come from me, that is for sure. But I am
13 struggling to understand that how did I get this
14 information, and my speculation or reasonable
15 guesstimate is that it would have been Mr Atta Ul-Hayee
16 who would have informed me of that information, sir.

17 Q. I think we've taken that as far as we can.

18 A. Very well.

19 Q. Final question for today, I suspect. Your case is that
20 you withdrew the money in May, under the misapprehension
21 that Mr Yer had sent \$600,000 to the US dollar account;
22 correct?

23 A. That's right, sir.

24 Q. But then on or around 11 June, you realised, because you
25 are told, that he's pulled out of the deal; correct?

1 17:12 A. That's right, sir.

2 Q. Why on 13 and 14 June are you emptying out the bank
3 account?

4 A. Say that again? Why am I emptying out?

5 Q. The bank account on 13 and 14 June?

6 A. There were couple of payments that had to be done.

7 Q. But you said in answer to an earlier question that

8 Mr Ul-Hayee had the money you withdrew in May and some
9 personal money and that made up the 2.4 million dirhams
10 that you left with him?

11 A. Absolutely.

12 Q. Why are you taking this money out?

13 A. Like I said, that I needed to make some payment, so
14 I instructed Mr Atta Ul-Hayee to withdraw this money as
15 well.

16 Q. What payments were they?

17 A. I don't remember right now, but there certainly would
18 have been payments. I am on record to state that
19 I instructed Mr Atta Ul-Hayee to withdraw the money.

Q. You're on record as saying all sorts of things, but I'm
going to hold you to your latest case.

25 A. This is what document, sir?

1 17:14 Q. This is your skeleton argument.

2 A. Right. Thank you.

3 Q. This is the last word you've had on what you did with
4 the money that you withdrew from the bank account.

5 A. I understand.

6 Q. You say you paid Mr Zeman and Mr Ahmed. You've just
7 told us that you left 2.4 million dirhams with Mr Atta
8 Ul-Hayee when you left for London at the beginning
9 of June.

10 A. That's right, sir.

11 Q. So I ask you again, why were you emptying out the dirham
12 bank account on 13 and 14 June?

13 A. I instructed Mr Atta Ul-Hayee to withdraw that money and
14 I asked him to put that money, because I had directed
15 him to give that money to someone, which I forgot and
16 I don't recall.

17 But the question that you have is why am
18 I instructing? The payment needed to be made and that
19 2.4 million that you're referring to, I had a different
20 calculation in my mind. And it's just that simple, sir.

21 MR KHAN: Thank you, Dr Sheikh.

22 Sir, tribunal, does that bring us to the end of our
23 one and a half hours?

24 MR PRESIDENT: Yes, it does.

25 MR KHAN: Thank you, sir. I think certainly for me that's

1 17:16 a convenient place.

2 MR PRESIDENT: We'll stop at this point.

3 I simply don't think it's fair to the witness to
4 carry on any longer, bearing in mind he's been giving
5 evidence for over five hours.

6 Dr Sheikh, tomorrow, you're going to continue to
7 give evidence, but we're going to hear, I think, from
8 one more witness of yours?

9 DR SHEIKH: Indeed, your Honour. May I take the liberty to
10 ask a question from Mr Khan, if that's appropriate?

11 MR PRESIDENT: Well, no, you can ask me. What's the
12 question?

13 DR SHEIKH: I beg the pardon. It would be helpful for me to
14 understand what is an estimated timeframe for tomorrow
15 for my questioning, so I can ensure that I can advise
16 Mr Yer for his --

17 MR PRESIDENT: Yes, yes. By all means.

18 MR KHAN: Dr Sheikh, just a moment.

19 Certainly not less than two hours, but hopefully, no
20 more than three. Closer to two than to three,
21 Dr Sheikh. I think that's the best estimate I can give.

22 DR SHEIKH: Very good. I thank you very much for that, sir.

23 MR PRESIDENT: Can we then, Mr Khan, can I be clear, can my
24 colleagues be clear, where you think you've got to, in
25 the broadest sense, so that we can ensure that tomorrow,

1 17:17 which is our last day, is used in the most productive
2 way possible? How much longer do you think you're going
3 to be with Dr Sheikh?

4 MR KHAN: With Dr Sheikh, I believe I'll be around two,
5 probably around two to two and a half hours.

6 MR PRESIDENT: It looks as though between them, the two
7 witnesses will pretty much fill out tomorrow, with
8 a little bit of time at the end, perhaps.

9 MR KHAN: Yes, sir, comfortably, I would have thought.

10 MR PRESIDENT: Thank you very much for that.

11 I would ask my colleagues to join me in a moment on
12 our private link. But subject to that, thank you all
13 very much for your help and I look forward to meeting
14 with you again tomorrow morning at 8 am London time, and
15 11 am Dubai time.

16 MR KHAN: Sir, may I raise just one more point of
17 clarification?

18 MR PRESIDENT: Yes, please do.

19 MR KHAN: I apologise, sir. Am I right in thinking that
20 Mr Akbar is not going to appear tomorrow?

21 DR SHEIKH: Well, I would have more clarity later on in the
22 evening and I would inform your good selves and your
23 Honours, if that's okay?

24 MR PRESIDENT: Yes, but I think you need to make it as soon
25 as possible, because one of the things Mr Khan has to do

1 17:18 is to prepare questions and he needs time.

2 DR SHEIKH: I respect that.

3 MR PRESIDENT: At the moment, do you think he's likely to
4 come or not?

5 DR SHEIKH: Well, your Honour, my hope is that he could
6 come, but at the end of the day, it's 3.20 right now for
7 me, I would make a concerted effort immediately after
8 the call to try --

9 MR PRESIDENT: Dr Sheikh, I'm sure you'll do your best. So
10 that's fine. Okay. Thank you very much.

11 (5.19 pm)

12 (The hearing adjourned until 11.00 am
13 on the following day)

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MR MUBASHIR SHEIKH 3

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Cross-examination by MR KHAN 5

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