IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA(I) 7

Court of Appeal / Civil Appeal No 2 of 2024

Between

Liberty Engineering Group Pte Ltd

… *Appellant*

And

Renault SAS

… *Respondent*

In the matter of Originating Application No 9 of 2023

Between

Renault SAS

… *Claimant*

And

Liberty Engineering Group Pte Ltd

… *Defendant*

JUDGMENT

[Civil Procedure — Pleadings]
[Contract — Contractual terms]

[Credit and Security — Guarantees and indemnities]
[Foreign Law — France]

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Liberty Engineering Group Pte Ltd
v
Renault SAS

[2024] SGCA(I) 7

Court of Appeal — Civil Appeal No 2 of 2024
Steven Chong JCA, Belinda Ang Saw Ean JCA and Bernard Rix IJ
30 July 2024

8 October 2024 Judgment reserved.

Belinda Ang Saw Ean JCA (delivering the judgment of the court):

Introduction

1 The appellant guarantor is Liberty Engineering Group Pte Ltd ("LEG") and the respondent lender is Renault SAS ("Renault"). CA/CAS 2/2024 ("CA 2") is an appeal against the decision of the judge of the Singapore International Commercial Court (the "Judge") in SIC/OA 9/2023 ("OA 9"). OA 9 proceeded on undisputed material facts that are set out in the parties' agreed statement of facts (the "Agreed Statement of Facts"). It did not involve any factual witness evidence and was heard and determined on documents and legal submissions by both parties' Singaporean and French lawyers. Singapore law was submitted by Mr Liu Zhao Xiang ("Mr Liu") for Renault and Mr Chew Kei-Jin ("Mr Chew") for LEG. French law was submitted by Mr Laurent Assaya ("Mr Assaya") for Renault and Mr Gilles Podeur ("Mr Podeur") for LEG. The counsels appearing in the appeal are the same as those below save that Mr Lionel

Leo ("Mr Leo") submits for Renault on issues of Singapore law. The Judge's decision in *Renault SAS v Liberty Engineering Group Pte Ltd* [2024] SGHC(I) 6 (the "Judgment") was published on 14 February 2024.

2 We introduce here in broad terms the disputes in the appeal. Renault had provided financial support by way of a loan totalling €7m to Alvance Aluminium Wheels ("Alvance") on expectation of full reimbursement by Alvance, but a sum of €5,250,025.61 remains unpaid (hereafter referred to as the "Alvance debt"). Alvance is now insolvent, which led Renault to sue on the guarantee provided by Alvance's parent company, LEG. LEG concedes that Renault had indeed provided financing to Alvance who, in turn, had received a total sum of €7m, but argues that the Alvance debt does not fall within the scope of the guarantee furnished by LEG to Renault. In this regard, LEG's main contention is that as Alvance owed no contractual obligation to reimburse Renault under the Financial Support Agreement dated 28 May 2018 (the "FSA"), which is the principal document giving effect to the provision for financial support to Alvance and its repayment obligations, LEG has no corresponding obligation to Renault under the guarantee. We will explain this basic submission in further detail. A key issue to be resolved in this appeal is whether Alvance owed contractual obligations to Renault under the FSA. The Judge held that Alvance was not a party to the FSA. However, the Judge held that Alvance was a party to a separate and parallel contract that mirrored the terms of the FSA thereby rendering LEG liable under the guarantee to pay the Alvance debt. LEG disagrees with the Judge's finding of a separate contract and appeals against the Judgment. Renault, on the other hand, submits that as a matter of French law, Alvance is a party to the FSA and the Judge's decision ought to be upheld on this ground. In the alternative, Renault supports the

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Judge's finding that there was a separate and parallel contract between Alvance and Renault that mirrored the terms of the FSA.

3 For reasons we will come to, we dismiss CA 2 albeit on different grounds relative to the decision of the Judge.

Facts

Parties to OA 9

4 In OA 9, Renault claimed payment from LEG for the sum of €5,250,025.61 (*ie*, the Alvance debt) with interest under a deed of guarantee dated 5 July 2018 (the "Guarantee"). This Guarantee was furnished to Renault by LEG pursuant to Article 10 of the FSA. Article 1 of the FSA identified LEG as "Guarantor 2". LEG, as Guarantor 2, agreed in Article 10 of the FSA to guarantee the liabilities of the "Purchaser" who is identified as Liberty Wheels France in cl 1.1 of the Guarantee. Alvance was previously known as "Liberty Wheels France" and some documents including contemporaneous correspondence between the parties use the name "Liberty Wheels France", but there is no dispute that these two names refer to the same entity. More details of the Guarantee are narrated at [10] below.

The FSA and the events leading to OA 9

5 The underlying transaction in the FSA was the intended purchase of a French company known as "AR Industries" by the corporate group that LEG is a member of (the "Liberty Group"). AR Industries had been placed under judicial restructuring and its business operations and assets were to be sold by the Commercial Court of Orléans. Renault had been AR Industries' main client and Renault was willing to provide financial support in the event the purchase

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of AR Industries was approved by the Commercial Court of Orléans. The FSA was the contractual framework within which the "respective and reciprocal commitments" of those involved (whether directly or indirectly) in the takeover of AR Industries and its viability after takeover were structured. There were three signatories to the FSA – Renault, LEG and Liberty House Group Pte Ltd ("LHG") – as at 28 May 2018. Article 10 of the FSA described LHG as the "mother Company" of LEG. Parties are agreed that the FSA is governed by French law.

6 Article 4 provided that the terms and conditions of the FSA had been agreed in consideration of an acquisition of the operations and assets of AR Industries. The FSA envisaged that the purchase of AR Industries was to be under a "Sale Plan". This "Sale Plan" refers to the "sale of the activity and assets of AR Industries (under '*redressement judiciaire*')". The opening paragraph of the FSA provided for the sale of AR Industries to "Liberty Engineering or to any entity of Liberty Engineering's Group ('Newco') which might be substituted [for] Liberty Engineering in the benefit of the Sale Plan". It is not disputed that the "Newco" is Alvance. Paragraph 7 of the Agreed Statement of Facts confirms that Alvance was substituted for LEG in the benefit of the sale plan. From the outset, the FSA contemplated that the purchaser of AR Industries would be either LEG or Alvance.

7 Renault agreed that it would (amongst other things) provide financial support by way of a loan of €7m to a "Purchaser" under the FSA. That, amongst other things, was Renault's commitment to "the Parties" defined in Article 1 of the FSA.

8 Article 1 defined "the Parties" collectively as the "Car Manufacturer, the Purchaser and the Guarantors 1 and 2", and these entities were each individually

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referred to as "a Party". In the same Article 1, Renault SAS was identified as "Renault" or "a Car Manufacturer"; Liberty Engineering Group Pte Ltd was identified as "Liberty Engineering" or "the Guarantor 2"; and Liberty House Group Pte Ltd was identified as "Liberty House" or "the Guarantor 1". By this collective definition of "Parties", the FSA contemplated that there would be three initial parties identified by their names (*ie,* Renault, LEG and LHG), but with the possibility that an additional party might be added, to end up with four entities who were identified by their roles in the FSA (*ie,* the Car Manufacturer, Purchaser, Guarantor 1 and Guarantor 2).

9 Alvance (a wholly owned subsidiary of LEG) was incorporated on 11 June 2018 (under its former name "Liberty Wheels France") and it was the entity that was "substituted [for LEG] in the benefit of the Sale Plan". Alvance was never a signatory to the FSA which was signed on 28 May 2018. On 13 July 2018, 30 October 2018, 31 May 2019 and 17 June 2020, Renault advanced sums totalling up to €7m to Alvance in accordance with the payment schedule specified in Article 5 of the FSA. Under Article 5 of the FSA, the "Purchaser" was obliged to totally reimburse the financial support provided by Renault over four years, from 2022 to 2025, in accordance with a payment schedule. Article 5 provides:

> Upon special request of the Purchaser and of AR Industries' Receivers (*Administrateurs Judiciaires*) to which the present Agreement has been communicated, the Car Manufacturer commits to support the acquisition of the activities and assets of AR Industries by the Purchaser through a financial support of 7.000.000 € granted to the Purchaser according to the following payment schedule (the "**Financial Support**") :
>
> - 2018: 3.000.000 €
> - 2019: 2.500.000 €
> - 2020: 1.500.000 €

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> Specific calendar to be determined, taking into account the following:
>
> The Financial Support for 2018 (year 1) will begin in June 2018 with a payment of € 1,500,000 at completion. An additional € 1,500,000 will be paid by Renault on October 30th 2018. The 2019 and 2020 payments will take place on June 1st of each year, upon provision by Alumimium Dunkerque of the First Demand Guarantee 3 referred to in Article 10 …
>
> …
>
> The Financial Support offered by Renault will be totally reimbursed by the Purchaser to Renault over 4 years, as of 2022 (year 1) to 2025 (year 4), through a cash payment of 1.750.000 € per year made by the Purchaser to Renault on June 1st of each year (i.e. for the first time on June 1st, 2022), except if the Purchaser fails to comply with any of the repayment terms, in which case the amount of the Financial Support already paid will become immediately refundable by the Purchaser and the Guarantors 1, 2 and 3.

10 LEG was to act as a guarantor for the Purchaser's liabilities under Article 10 of the FSA and was obliged to reimburse Renault for the financial support provided by Renault. To this end, under Article 10, LEG had to provide Renault with a first demand guarantee and a legal opinion from a Singapore law firm that the guarantee was regularly issued and would be enforceable. LEG thus executed the Guarantee on 5 July 2018, under which it undertook "that (i) whenever the Purchaser [defined in cl 1.1 as Liberty Wheels France] does not pay any amount when due under or in connection with the Financial Support Document [defined in cl 1.1 as the FSA] or (ii) upon the occurrence of a Bankruptcy Event, the Guarantor [defined in cl 1.1 as LEG] shall immediately on demand by the Financial Support Provider [defined in cl 1.1 as Renault] pay that amount to the Financial Support Provider as if it was the Purchaser". Parties are agreed that the Guarantee is governed by Singapore law.

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11 On 23 April 2021, before the first repayment instalment was due, Alvance was placed under *redressement judiciaire* (judicial restructuring) in France.

12 Renault commenced three different proceedings against LEG in the Singapore International Commercial Court. In SIC/S 1/2022 ("SIC 1"), Renault claimed, *inter alia*, the sum of €7m from LEG on the basis that a Paris court opened *redressement judiciaire* proceedings against Alvance. On 19 May 2023, the Judge dismissed SIC 1 and held that the bankruptcy event did not enliven a liability in LEG to pay the €7m to Renault. In SIC/OA 3/2023 ("OA 3"), Renault claimed, *inter alia*, a sum of €5,250,025.61 from LEG on the basis that on 2 February 2022, the *redressement judiciaire* of Alvance was converted into a *liquidation judiciaire* (judicial liquidation) by a Paris court, and, according to Renault, French law provided that a judgment opening a *liquidation judiciaire* renders all unmatured debts due and payable. In OA 3, Renault only claimed the sum of €5,250,025.61 because on 1 June 2022, Renault received a sum of €1,749,974.39 from Liberty Finance Management (LIG) Ltd, a related company to LEG. On 14 February 2024, the Judge dismissed OA 3 because he took the view that even though there was *liquidation judiciaire*, under French law, the acceleration of the debts upon the *liquidation judiciaire* of a debtor was not enforceable against a guarantor, unless otherwise agreed between the parties. The Judge found that there was no such agreement for LEG's liability to be accelerated if Alvance's liability was accelerated. SIC 1 and OA 3 are not the subject of the present appeal.

13 Renault did not receive payment of the second instalment in the sum of €1.75m due from Alvance on 1 June 2023. On 12 July 2023, Renault commenced OA 9 for immediate and full repayment from LEG under the

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Guarantee of outstanding sums that had been paid out by Renault to Alvance, and OA 9 is the subject of the present appeal.

Summary of Arguments Below

14 In OA 9, Renault as claimant argued that Alvance's non-payment of the second instalment of €1.75m, which was due on 1 June 2023, was a breach of the repayment terms set out in Article 5 of the FSA. The entire outstanding amount of €5,250,025.61 had been rendered immediately due and payable by Alvance under an acceleration clause in the FSA and consequently, LEG was liable under the Guarantee.

15 LEG's defence was that Alvance was never a party to the FSA and therefore owed no obligation to Renault under the FSA. Under the Guarantee, LEG had only promised to pay the amounts payable by Alvance under or in connection with the FSA. Since Alvance had no obligation to make any payment under or in connection with the FSA, no corresponding obligation could have arisen on LEG's part under the Guarantee.

Decision Below

16 We first provide an overview of the Judge's decision, before turning to the key portions of the Judge's analysis which impact on the resolution of this appeal.

Overview

17 First, the Judge held that Alvance did not become a party to the FSA under the principle of *consensualisme* in French law (see below at [48]) as there was no evidence of a meeting of the wills of all the relevant parties including Alvance (Judgment at [80]). The Judge also found that Alvance did not become

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a party to the FSA by way of substitution under French law (Judgment at [91]). The Judge found that the FSA simply recorded an agreement that the Purchaser would be whichever of LEG or its substituted entity that ended up as the purchaser of the business of AR Industries (Judgment at [90]). The Judge's analysis of the evidence that led to his rejection of Mr Assaya's submissions is set out in more detail at [21]–[25] below.

18 Second, the Judge held on the evidence that there was a separate contract on terms corresponding to those in the FSA (the "Separate Contract"). The Separate Contract was entered into between Alvance and Renault. There was an implicit offer and acceptance and demonstration of the will of Renault and Alvance to be bound to a contract for the receipt and performance of the respective rights and obligations of Renault and the Purchaser as set out in the FSA, with liability to repay the financial support in accordance with Article 5 (Judgment at [94]–[96]). Applying this contractual arrangement to the Guarantee given by LEG to Renault, the Judge held that when the financial support was paid by Renault to Alvance as Purchaser, this was done in fulfilment of the FSA, and the financial support was to be repaid as contemplated in the FSA. The Judge found that the corresponding repayment obligation under the Separate Contract made between Renault and Alvance had a clear relationship with the provisions of the FSA or was in connection with the FSA (Judgment at [129]).

19 Related to the Judge's finding on the existence of the Separate Contract is the Judge's conclusion on a pleading point. The Judge accepted that Renault had sufficiently pleaded Alvance's liability under a separate contract in its pleaded reply. The Judge was of the view that the pleadings made it abundantly clear that Renault alleged that, if Alvance was not a party to the FSA, it was otherwise liable to repay the financial support, and identified the conduct relied

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on and the essential ingredients of the Separate Contract. Renault could develop the legal conclusion that there existed a Separate Contract, and LEG could not be said to have been taken by surprise (Judgment at [104] and [105]).

20 Finally, on the question of whether the acceleration of Alvance's debt upon the *liquidation judiciaire* also accelerated the obligation of LEG as guarantor, the Judge held that none of the provisions of the FSA or the Guarantee on which Renault relied, nor the signing of the Guarantee with knowledge of the FSA, constituted an agreement that upon Alvance's *liquidation judiciaire* the acceleration of its debts was enforceable against a guarantor (Judgment at [107], [114], [119] and [122]). We note, as an aside, that the Judge's decision on this point was in respect of OA 3, and is not the subject of this appeal. In OA 9, Renault argued that Alvance's non-payment of the second instalment of €1.75m, which was due on 1 June 2023, was a breach of the repayment terms set out in Article 5 of the FSA, pursuant to which the entire outstanding amount had been rendered immediately due and payable by Alvance under an acceleration clause in the FSA. In short, the acceleration was founded on *contract* and not *insolvency law*.

Whether Alvance was a party to the FSA

21 We return to the Judge's conclusion as described in [17] above. The Judge considered Mr Assaya's submissions that Alvance was a party to the FSA on one or other of two bases in French law: (a) the principle of *consensualisme*; or (b) substitution (Judgment at [74]).

22 The Judge did not accept Mr Assaya's invocation of the *consensualisme* principle (Judgment at [78]). In the Judge's view, Alvance's request for funds from Renault and its receipt of the funds would fall under a contract separate

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from the FSA (Judgment at [78]). The Judge placed weight on the fact that the FSA was entered into between Renault, LEG and LHG before Alvance existed (Judgment at [78] and [80]).

23 The Judge considered the *Doctors' Decision* (see [57] below) and, on his interpretation of that decision, took the view that the French court found that the successor doctors to a partnership were bound by a practice agreement that was newly formed by their conduct as members of the partnership, and that this newly formed agreement was *distinct from the contract entered into by their predecessors* (Judgment at [79]). We pause here to mention that we disagree with the Judge's interpretation of the *Doctors' Decision*, as we do not read the French court as finding the existence of a distinct contract (see [57] and [59] below).

24 Ultimately, the Judge's analysis that Alvance could not be a party to the FSA under the principle of *consensualisme* turned on the emphasis he gave to the fact that Alvance did not exist at the time the FSA was entered into (Judgment at [80]). In the Judge's view, given Alvance's non-existence on 28 May 2018 when the FSA was signed by Renault, LEG and LHG, what was required thereafter for Alvance to become a party to the FSA was a meeting of the wills of Renault, LEG, LHG and Alvance. The Judge took the view that the evidence was insufficient for him to come to that finding (Judgment at [80]).

25 The Judge then turned to the concept of substitution under French law. The Judge noted that under French law, it is possible for a contracting party to be replaced by a third party in the contractual relationship, whereby the third party becomes a party to the contract and can request performance of the contract for its benefit (Judgment at [81]). The Judge referred to Article 1216 of the French Civil Code on assignment of contracts (Judgment at [86]; and see

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[55] below). The Judge noted that there appears to be uncertainty in French law concerning whether Article 1216 means that a substitution by way of the substitution doctrine should be regarded as an assignment under French law that is subject to the formal requirement of writing (Judgment at [89]). The Judge also expressed difficulty with Renault's argument that the consequence of a lack of writing on an assignment was not nullity of the assignment, but instead that the assignment would be effective until a competent court held that it was void (Judgment at [88]–[89]). The Judge ultimately accepted that the substitution doctrine did not reflect the factual realities of what happened under the FSA (Judgment at [90]). The Judge accepted that under the substitution doctrine, the substituted person remains a party to the contract (Judgment at [90]). According to the Judge, this does not reflect how the FSA operates, as no one suggested that LEG was the Purchaser, was replaced by Alvance, but remained directly liable to repay the financial support under the FSA (Judgment at [90]). In the Judge's view, the FSA did not have any clause that provided for the substitution of a LEG entity as Purchaser in place of LEG (Judgment at [90]). Thus, the Judge concluded that Alvance did not become a party to the FSA by the process of substitution (Judgment at [91]).

26 We note that in the appeal before us, Renault did not attempt to revive their arguments before the Judge concerning the substitution doctrine and the legal consequences that accompanied a purported assignment that was not in writing. Instead, as noted at [34]–[37] below, Renault focused on the *adherence* doctrine as the basis for arguing that Alvance was a party to the FSA.

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Parties' Cases on appeal

The Appellant's Case

27 LEG appeals against the Judge's findings that (a) a Separate Contract identical to the FSA had arisen between Alvance and Renault and allowing Renault's claim on that basis; and (b) cl 2.1(b) of the Guarantee extended to obligations arising out of a separate contract outside of the FSA.

28 Mr Chew raises a preliminary point on the pleadings. He argues that Renault had failed to plead the Separate Contract or any separate contract at all. Mr Chew asserts that Renault only pleaded that its claim against LEG under the Guarantee was based on Alvance's obligations arising under the FSA and not a Separate Contract. LEG claims that it is prejudiced by the Judge's findings on an allegedly unpleaded case because it did not have the opportunity to respond and meet this case against it. LEG claims that, had Renault properly pleaded the Separate Contract, LEG would have pleaded a response in its defence and would have sought leave for evidence to be led on this issue, including on whether Renault and LEG had considered themselves to be performing the FSA or another contract identical to the FSA, which would have an impact on the legal consequences therefrom. LEG also argues that the issue of whether French law applies to the Separate Contract and whether the requirements of French law for the formation of a contract were satisfied would have arisen at the outset and been properly argued at the hearing.

29 Mr Podeur submits that the Judge had erred, as a matter of French law, in inferring that Alvance and Renault, in acting in accordance with the FSA, had impliedly intended to be bound by a separate contract. LEG asserts that there is nothing that indicates the parties had in mind that they were to be bound by a separate contract. LEG argues that the conditions for an agreement to exist

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under French law were not fulfilled, as no written agreement was entered into by Renault and Alvance to materialise a contract between them, and there is also no evidence of a declaration or unequivocal behaviour of Alvance out of which the existence of a separate contract can be deduced. LEG also argues that French case law acknowledges the possibility for the borrower under a loan agreement to give instructions to the lender to remit the funds to a third-party, which does not result in the subrogation of such third party into the obligations of the borrower. LEG further submits that under French case law, whenever the parties to a contract provide that a third party will benefit from said contract, there is no obligation for the third-party to perform any obligations pursuant to the contract unless it has specifically agreed to do so. Even if it is assumed that a separate contract arose when the funds were remitted by Renault to Alvance, there is no unequivocal evidence to conclude that Alvance considered itself bound by terms identical to those of the FSA for the repayment of those funds to Renault.

30 In relation to sub-issue (b) in [27] above, LEG's case is that Renault had not pleaded that the Guarantee extended to obligations arising out of a separate contract outside of the FSA. Furthermore, LEG argues that the Judge erred in taking an overly broad interpretation of the Guarantee which (a) contradicts the express wording of cl 2.1(b) of the Guarantee; (b) is inconsistent with the context in which the Guarantee was given and inconsistent with the law on guarantees; and (c) leads to a conclusion that may expose guarantors to inadvertently wide exposure to claims by beneficiaries of guarantees. LEG submits that there is no basis to interpret the Guarantee, given by LEG solely in the context of the FSA, as extending to any other contract apart from the FSA. LEG further makes the point that cl 2.1(b) of the Guarantee requires LEG to pay "whenever the Purchaser does not pay any amount when due under or in

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connection with the [FSA]", but, according to LEG, any amount due under the Separate Contract would not be due "under" or "in connection with" the FSA. LEG submits that the Judge erred in construing the Guarantee in a manner that contradicts the principle that guarantees should be strictly construed and the Judge's interpretation of the Guarantee as extending to an implied agreement outside of the FSA impermissibly exposes LEG to unintended liability not covered by the terms of the Guarantee and not envisaged by the parties, which is a commercially unreasonable result.

The Respondent's Case

31 Renault's case is that the Judge is correct to have allowed its claim in OA 9. Renault's primary case in this appeal is that contrary to the Judge's finding at [80] of the Judgment, Alvance is a party to the FSA. However, Renault also seeks to defend the Judge's finding of a Separate Contract as an alternative submission.

32 First, Mr Leo argues that LEG had made admissions demonstrating its acceptance that Renault had advanced funds to Alvance pursuant to the terms of the FSA. Renault points to LEG's pleadings in SIC 1 where LEG had apparently admitted to the fact that Alvance was the "Purchaser" under the FSA. Renault submits that LEG admitted that the funds advanced were not intended to be a gift, and there was, in any case, no argument or evidence to suggest that the funds were intended to be a gift. Renault points to LEG's pleadings in SIC 1 where LEG had apparently accepted that there are sums owing by Alvance to Renault under Article 5 of the FSA. Thus, according to Renault, the conclusion must be that Alvance owes Renault the funds advanced.

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33 In Mr Leo's view, LEG's Guarantee obligations extend to amounts due "under or in relation with" the FSA, and such language is wide enough to cover the debt owed by Alvance because the debt it owed to Renault arose "in relation with" the FSA, and Renault had advanced funds to Alvance "[u]nder the Financial Support Agreement". Renault further notes that "Purchaser" is defined in cl 1.1 of the Guarantee as meaning only "Liberty Wheels France" (the entity which was subsequently renamed to Alvance), and "Financial Support Document" is also defined in cl 1.1 as "the agreement signed by [Renault], [LEG] as Guarantor 2 and [LHG] as Guarantor 1 on 28 May 2018". Renault argues that given that the "Financial Support Document" is defined in the Guarantee as a document to which Alvance is not a signatory, the "Obligations" of the "Purchaser" to be guaranteed "in relation with the provisions of the Financial Support Document" must be extendable to the debt incurred by Alvance even if it is not a party to the FSA. Thus, according to Renault, there is no need for Renault to have pleaded a separate contract in relation to the debt owed by Alvance because the existence of the debt itself (regardless of the underlying basis) has been admitted by LEG, and Renault's pleading that LEG is bound to guarantee Alvance's debt regardless of whether Alvance is a party to the FSA flowed naturally from LEG's admissions. Moreover, Renault argues that LEG had, through its pleadings in SIC 1, admitted that LEG's obligations under the Guarantee extend to Alvance's repayment obligations regardless of whether Alvance is a party to the FSA, and LEG had expressly admitted that it would be required to reimburse Renault if Alvance failed to make an instalment payment to Renault. Renault also refers to legal advice given by Norton Rose Fulbright (Asia) LLP (*ie,* the lawyers that acted for LEG and LHG in connection with the FSA) in connection with the execution of the Guarantee, which advice Renault asserts supports its interpretation of the Guarantee. Thus, on Renault's case, the funding provided

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by Renault to Alvance was "in relation with the provisions of the Financial Support Document", and its repayment is guaranteed by LEG regardless of whether Alvance is a signatory/party to the FSA.

34 Second, Renault argues that as a matter of French law, Alvance became a party to the FSA (contrary to the findings of the Judge), and the Judge's decision ought to be upheld on this ground. Renault highlights the principle of *consensualisme* in French contract law, which, in Renault's view, holds that a contract is generally formed by the mere meeting of wills, independent of any formality. Renault also highlights the French law doctrine of adherence, which refers to the acceptance of a third party to be a party to an existing contract, which, in Renault's view, can be tacit and inferred from the circumstances of the case, in particular conduct. According to Renault, adherence of a third party to an existing contract may result from the performance of the contract by a third party if the contract provides for the possibility of a third party adhering to the contract or if the parties to the existing agreement do not object to the performance of the contract by the third party. Renault submits that the context and the terms of the FSA make it clear that the parties to the FSA have intended that a third party may be substituted for LEG in the Sale Plan, and become party to the FSA by adherence. In this regard, Renault notes that the FSA expressly defines "Purchaser" as "LEG or any entity of the Liberty Engineering's Group ('Newco') which might be substituted [for] LEG in the benefit of the Sale Plan" and that it is not disputed in this case that Alvance was the entity that was incorporated and was the Purchaser under the FSA. Renault points out that in the French court proceedings for the restructuring of AR Industries, the French court had expressly authorised the substitution of Alvance (then known as Liberty Wheels France) in the benefit of the Sale Plan. Renault also points out that Article 1 of the FSA provides that the "Purchaser" is a party to the FSA.

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Thus, according to Renault, it was contemplated and agreed from the start by the initial parties to the FSA that a third party (*ie,* any entity of LEG's group which might be substituted for LEG in the benefit of the Sale Plan) may adhere to the FSA and thus a new meeting of the wills of the initial parties to the FSA is not required for the designated third party to become a party to the FSA, as the consent of the initial parties to the FSA had already been given in advance. Renault submits that Alvance accepted adherence to the FSA, and, in particular, the payment schedule of the €7m in financial support provided for in Article 5 of the FSA, by requesting and obtaining performance of the FSA in accordance with its terms. Renault argues that this was the reason why Alvance did not challenge the proof of claim of €7m filed by Renault in Alvance's insolvency proceedings, which proof of claim expressly referred to the obligation to reimburse the financial support under Article 5 of the FSA.

35 Alternatively, Renault submits that there is a separate and parallel contract between Alvance and Renault mirroring the terms of the FSA, and in this regard, Renault had sufficiently pleaded the material facts for the Judge to draw the legal conclusion that there is a separate contract. Renault argues that, in addition to pleading that Alvance is a party to the FSA, it has, in reliance on the same material facts, pleaded that Alvance may owe obligations to Renault in respect of the financial support extended to Alvance, even if Alvance is not a party to the FSA. Renault argues that it is thus open to Renault to advance the alternative legal conclusion, based on the same material facts, that there is a separate contract between Alvance and Renault, even if Alvance is not a party to the FSA. Furthermore, no prejudice has been caused to LEG, as LEG has had ample opportunity to respond to Renault's case as Renault has pleaded all the material facts and it also raised the alternative legal conclusion of a separate,

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parallel and identical contract in its written submissions, which LEG had ample opportunity to respond to.

36 Renault submits that under French law, contracts may contain stipulations to the benefit of third parties (*stipulation pour autrui*). The benefit that a third party can receive may be the right to enter into a contract with the promisor. Thus, Renault submits that under the terms of the FSA, LEG obtained from Renault a promise that Renault would enter into a contract with the Purchaser, on the same terms as those of the FSA regarding the rights and obligations of Renault and the Purchaser. Renault submits that Alvance's behaviour evidenced that it accepted the pre-defined contract promised by Renault to the Purchaser, as is clear from e-mails sent by Alvance to Renault to request the payment of the last two instalments of Renault's promised financial support and Alvance's acceptance of the proof of claim filed by Renault for the sum of €7m with reference to the terms of the FSA.

37 Renault argues that even if the FSA is not construed as entailing a stipulation of a contract for a third party, applying the *consensualisme* principle, the request for payment of instalments in accordance with the FSA and the unconditional performance of the required payments demonstrates an implicit offer and acceptance, and demonstrates Alvance's and Renault's will to be bound by a contract subject to the same rights and obligations of Renault and the Purchaser set out in the FSA. Renault submits that the terms of the Guarantee evince the parties' intention to cover Alvance's obligations in relation to the financial support extended by Renault, even if Alvance is not a signatory to the FSA, so the obligations of Alvance under the separate, parallel contract arising out of the financial support extended by Renault are guaranteed by LEG under the Guarantee.

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The Appellant's reply to the Respondent's Case

38 LEG's various responses to Renault's arguments in this appeal are as follows.

39 First, on Renault's argument that LEG had made admissions in pleadings filed in earlier proceedings demonstrating its acceptance that Renault had advanced funds to Alvance pursuant to the terms of the FSA (see [32] above), LEG contends that it never admitted to any debt between Alvance and Renault arising in relation to the FSA. LEG also attempts to explain away Alvance's failure to challenge Renault's proof of claim of €7m in Alvance's insolvency by arguing that there could be various reasons why Alvance did not challenge the claim: for example, it may have considered that it was not worth initiating a costly litigation, given that such unsecured claims are very unlikely to be reimbursed.

40 Second, LEG complains that Renault had included, in its Respondent's Case, submissions based on a new legal opinion by Professor Julie Klein ("Professor Klein") dated 15 May 2024. LEG submits that Professor Klein's opinion does not cohere with the various provisions in the Singapore International Commercial Court Rules 2021 ("SICC Rules 2021") for adducing legal material either as submissions or evidence and should be disregarded.

41 Third, as to Renault's argument that Alvance is a party to the FSA (contrary to the findings of the Judge) (see [34] above), LEG argues that Alvance was never a party to the FSA because substitution of Alvance to make it a party to the FSA requires a *written* assignment under French law, and it is not disputed that no such written assignment occurred. LEG argues that the French law doctrine of adherence cannot assist Renault either because Alvance

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did not exist at the time the FSA was entered into, and the FSA does not provide for the possibility of a third party adhering to it and becoming an *additional* "Purchaser", alongside LEG, under the FSA. LEG contends that a fundamental difficulty with Renault's argument that Alvance became a party to the FSA is that there is no evidence showing that Alvance consented to becoming an additional "Purchaser" under the FSA.

42 Fourth, as to Renault's arguments defending the Judge's finding of a separate and parallel contract between Alvance and Renault mirroring the terms of the FSA on the basis of a *stipulation pour autrui* (*ie,* contractual stipulations to the benefit of third parties) (see [36] above), LEG argues that there is no such contractual provision in the FSA containing such stipulations. Moreover, LEG argues that the *stipulation pour autrui* doctrine is intended to confer benefits on a third party, and not burdens.

43 Finally, as to Renault's argument that the French law principle of *consensualisme* would cause Alvance and Renault to be bound by a contract subject to the same rights and obligations of Renault and the Purchaser set out in the FSA (see [37] above), LEG argues that Renault has not shown credible evidence of Alvance's and Renault's consent to enter into a separate (purely oral) contract. Instead, either or both of Alvance and Renault had simply wrongfully believed that Alvance was a party to the FSA and Renault made payments to Alvance on the basis of this wrongful assumption.

Issues before this court

44 The main issue to consider in this appeal is whether the financial support in the form of a loan advanced by Renault to Alvance was disbursed on the basis of a valid contract cognisable in French law that is binding on Alvance, such

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that the sums that remain due and unpaid are repayable by Alvance "under or in connection with" the FSA, *per* the terms of cl 2.1(b)(i) of the Guarantee. Essentially, we will examine (a) whether under French law, Alvance is liable to Renault either under the FSA or under the Separate Contract as found by the Judge; and (b) whether the Guarantee answers to that liability as determined in issue (a).

45 It is not disputed that if it is determined that Alvance is or became a party to the FSA under French law, the Guarantee would be engaged, and LEG is liable for the Alvance debt. At the hearing, Mr Chew rightly conceded that if the court takes the view that Alvance is a party to the FSA and is liable under French law to repay Renault, then the obligations of LEG as guarantor would be engaged and be valid and enforceable against LEG. Therefore, this court is not required to deal with this issue.

46 However, if the Judge's finding of a Separate Contract is upheld, a sub-issue that arises for determination is whether the Guarantee, in particular cl 2.1(b)(i) of the Guarantee, is engaged under Singapore law.

Issue 1: Basis for Alvance's liability to Renault under French law

47 The first issue concerns Alvance's liability, if any, to Renault under French law. As stated, French law was canvassed based on the submissions made by Mr Assaya for Renault and Mr Podeur for LEG. Renault's last-minute attempt to introduce Professor Klein's opinion dated 15 May 2024 in this appeal is plainly improper and we have not considered her opinion. Professor Klein is not authorised to submit on French law. Her name does not appear in the Judge's orders made under O 16 r 8(1) of the SICC Rules 2021. The Judge's orders

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specifically named Mr Assaya and Mr Podeur as the persons who may submit on behalf of Renault and LEG respectively on questions on French law.

French Law

48 We start from the principle of *consensualisme* in French contract law, which can be found at Article 1172 of the French Civil Code:

> In principle, contracts are consensual.
>
> By way of exception, the validity of solemn contracts is subject to the observance of forms determined by law, failing which the contract is null and void, unless it can be regularized.
>
> In addition, the law makes the formation of certain contracts conditional on the delivery of a thing.

49 Article 1172 provides, as a general proposition, that contracts can be formed without formalities. This is reinforced by Article 1113 of the French Civil Code, which provides that contract formation simply requires a meeting of the wills of the contracting parties, and this meeting of the wills can be demonstrated by conduct:

> A contract is formed by the meeting of an offer and an acceptance, by which the parties manifest their will to commit themselves.
>
> This willingness may result from a declaration or unequivocal conduct on the part of its author.

50 The key point here is that under French contract law, the formation of contracts generally requires no formalities; what is essential is a meeting of an offer and an acceptance between promisor and promisee, and acceptance can be manifested tacitly.

51 French law academic commentary has noted that the conduct that is needed to demonstrate a meeting of the wills of the contracting parties can be

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tacit, such as where the acceptor commences performance of the contract or requests for performance by the counterparty. This is made clear in Marc Mignot, *JurisClasseur Notarial Repertoire* (LexisNexis SA, 2019) at ch Fasc. 20: SALE. - Nature and form. - Contract formation:

> § 68 Express or tacit acceptance
>
> In principle, acceptance is a matter of consensualism ... Acceptance is therefore not subject to any particular formal requirement ... It can be express or tacit (*Eadem vis est taciti atque expressi consensus*). [Acceptance] is express when it is the result of a formal written or verbal expression of will …
>
> It is tacit when it is not formalized but materialized by a sign or behavior, i.e. when it is material. The commencement of performance of the contract by the debtor or the request for performance by the creditor shall be deemed to be tacit acceptance of the contract ... The execution of an agreement implies acceptance of its content, without it being necessary for the contracting party to have signed the instrument. Nevertheless, it may happen that the commencement of performance cannot be construed as tacit acceptance of the contract if the person in a position to accept the contract manifests his wish not to consider himself bound …
>
> Tacit acceptance can result from custom. When the addressee of a proposal to sell logs by the cubic meter initials each log, there is tacit acceptance of the sale in accordance with local custom ...
>
> [footnotes omitted]

52 Similarly, the contributors to François Terré *et al*, *Droit civil, Les obligations* (Dalloz, 13th Ed, 2022) at para 185 make the point that acceptance of a contract may be tacit, as follows:

> … Like an offer, an acceptance may be *express* or *tacit*. The solution is found in article 1113 of the Civil Code, which covers both offer and acceptance ... It is tacit when it results from conduct from which it is reasonable to infer the will to contract. This is the case where the offeree performs the contract proposed to him. Thus, by sending the goods ordered, the seller tacitly accepts the offer to buy which he has received.

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[footnote omitted]

53 Mr Assaya goes on to explain the French law doctrine of adherence, which refers to the acceptance of a third party to be a party to an existing contract. In Mr Assaya's view, acceptance can be tacit and inferred from the circumstances of the case, in particular conduct. According to Renault, adherence of a third party to an existing contract may result from the performance of the contract by a third party if the contract provides for the possibility of a third party adhering to an existing contract or if the parties to the existing agreement do not object to the performance of the contract by the third party.

54 Mr Assaya submits that under French law, there are different ways for a third party to become a party to a contract that has been executed. One way is by an assignment of the existing contract; another way, which is Renault's position, is by way of adherence. Renault's case is *not* that the FSA was *assigned* to Alvance; instead, Alvance had *adhered* to the FSA, which is a legal process that is *distinct* from assignment. The fundamental distinction between the two is that in a case of *assignment*, a party to a contract is *replaced* by another party. The assignor drops out of the contract, and is no longer a party to the contract, whilst the assignee takes the assignor's place in the contract. In contrast, in the case of *adherence*, the adhering party is *added* as an *additional party* to the contract, alongside the original parties to that contract.

55 Mr Assaya submits that Alvance through tacit acceptance became a party to the FSA by adherence. By adhering to the FSA, Alvance is an additional party to the FSA, there being now four parties in the FSA, namely Renault, LEG, LHG and Alvance. Mr Podeur's objection to Alvance's adherence to the FSA is that the FSA does not provide for the possibility of a third party adhering

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to it and becoming an *additional* "Purchaser", alongside LEG, under the FSA. According to Mr Podeur, there can only be one "Purchaser" under the FSA, which is LEG, since only LEG and not Alvance was in existence when the FSA was signed. Therefore it is not possible for Alvance to be an additional party to the FSA such that it becomes a second "Purchaser" in addition to LEG. LEG's further point is that a taking over by a new party as the "Purchaser" under the FSA is effected under French law by an assignment in writing and, in the absence of an assignment in writing, such a substitution of a party for another is void. In summary, LEG's position is that the only way for Alvance to replace LEG as a "Purchaser" under the FSA would be for LEG to assign the FSA to Alvance in writing. In this regard, Mr Podeur refers to amendments to the French Civil Code which came into force in 2016. The amendments enacted Article 1216 of the French Civil Code, which states:

> A contracting party, the assignor, may assign its status as party to the contract to a third party, the assignee, with the consent of its own contractual partner, the person subject to assignment.
>
> This consent may be given in advance, notably in a contract concluded between the future assignor and person subject to assignment, in which case the assignment takes effect as regards the person subject to assignment when the contract concluded between the assignor and assignee is notified to it or when it acknowledges it.
>
> An assignment must be established in writing, on pain of nullity.

56 Mr Assaya disagrees that Alvance can only take over from LEG if the FSA was assigned to Alvance. Mr Assaya refers to commentary from Professor Jean-Marc Moulin ("Professor Moulin"), first published on 16 February 2018 and last updated on 20 April 2023, in Jean-Marc Moulin, "Fasc. 1486: ANONYMOUS COMPANIES. - Shareholders' agreements", *JurisClasseur Commercial* (20 April 2023). Professor Moulin's view in 2023, long after the

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2016 amendments to the French Civil Code, is that the adherence doctrine remains available and is a useful tool in the corporate context to cause new shareholders of a company to take on obligations in a pre-existing shareholders' agreement through adherence to the said agreement.

57 Mr Assaya explains that the decision of the French Court of Cassation in Appeal no.: 92-18.981 heard on 15 November 1994 (the "*Doctors' Decision*") supports his submission on adherence. In the *Doctors' Decision*, four doctors had set up a partnership under French law. Concurrently, they entered into a joint professional practice agreement (the "Joint Contract"). The composition of the partnership changed over time. The *Doctors' Decision* was an appeal from a dispute between three doctors who were new members of the partnership (as successors to the original members of the partnership). Crucially, these three doctors did *not* expressly enter into the Joint Contract. The first instance court applied the Joint Contract and ordered two of the doctors to compensate the third pursuant to the Joint Contract. One of the doctors who was ordered to pay compensation appealed, arguing that none of the litigants were parties to the Joint Contract. The Court of Cassation dismissed the appeal, holding, *inter alia*, that the new partners in the partnership had performed in accordance with the Joint Contract for several years, and the court was able to deduce that "by the effect of the tacit consent of [the two defendant doctors]", "these two persons were bound by the stipulations of this agreement".

58 At this juncture, we pause to note that there is some dispute over whether the *Doctors' Decision* is still relevant today. Mr Podeur argues that after 2016, in the light of the enactment of Article 1216 of the French Civil Code, there is now a "requirement of a written agreement being entered into for an agreement to be assigned to a third party". Mr Assaya disagrees and points out that the 2016 reforms impacted the law on *assignment;* it did not affect the *Doctors'*

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Decision (which is not an assignment case) and the broader law on *adherence*. In this regard, Mr Assaya referred us to the commentary from Professor Moulin which we have referred to above at [56].

59 We are persuaded by Mr Assaya's analysis. We accept the distinction between the doctrines of *adherence* and *assignment* in French law. This explanation reconciles the overarching principle of *consensualisme* in French contract law, with its focus on the substance instead of the form of parties' words or conduct as a demonstration of their consent to be bound, with the more recently introduced Article 1216 of the French Civil Code concerning the *assignment* doctrine. The scenario discussed by Professor Moulin, namely adherence in the context of shareholders' agreements, does have strong parallels with the *Doctors' Decision* which was decided in the partnership context, where new partners were held to have adhered to a pre-existing professional practice agreement entered into by previous partners in the partnership. We are persuaded and accept that under French law, Renault has to show that Alvance has *adhered* to the FSA *via* acceptance manifested through conduct, and that the initial parties to the FSA consented to Alvance so joining as a party. In so doing, Alvance would become a party to the FSA and, as a party, owed contractual obligations to Renault to repay the loan advanced by Renault under the FSA.

Evidence of the consent of parties to Alvance's adherence to the FSA

60 Mr Assaya explains that, in order for Alvance to *adhere* to the FSA, two sets of consents must be shown: (a) the consent of the *pre-existing parties* to the FSA (*ie,* Renault, LEG and LHG) for Alvance to be added as a party; (b) the consent of *Alvance* to be added as a party to the FSA.

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Consent of the initial parties to the FSA (ie, Renault, LEG and LHG)

61 We first consider whether the *signatories* to the FSA, Renault, LEG and LHG (the "initial parties"), consented to the later addition of Alvance as a party to the FSA. We have no doubt that they so consented.

62 The Judge's reasoning which led him to his conclusion that there was insufficient evidence to come to a finding that there was a meeting of the wills of Renault, LEG, LHG and Alvance for Alvance to become a party to the FSA has been summarised at [17] and [21]–[25] above.

63 With respect, we do not agree with the Judge's analysis of the overall evidence. The evidence was analysed from a narrow prism that overlooked the consent of the initial parties that resided in the FSA which was for Alvance to become a party to the FSA. We accept Mr Assaya's submission that a new meeting of the wills of the *initial parties* to the FSA is not required for the designated third party to subsequently become a party to the FSA. We agree with Mr Assaya's submission that the consent of Renault, LEG and LHG can and was given at the very beginning in the contract. This view is borne out from an examination of the framework of the FSA and an analysis of the initial parties' implementation of their respective commitments agreed to in the FSA for Alvance to become a party to the FSA.

64 It is important to appreciate the context and circumstances surrounding the FSA. Whilst the FSA was signed on 28 May 2018 by Renault, LEG and LHG, it must have been clear to these initial parties to the FSA that the effective date of the FSA was not 28 May 2018. Article 16 of the FSA stipulates that the FSA "will come into force on the latest of the 4 following dates":

- Execution of the Agreement by all Parties,

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- Delivery to Renault of the First Demand Guarantees by the Guarantor 1 and 2,
- Delivery to Renault of the two legal opinions referring to the First Demand Guarantees 1 and 2, referred to in article 10,
- Judgment of the Commercial Court of Orleans approving the Sale Plan to the benefit of the Purchaser.

65 The reason for the time gap between the signing of the FSA on 28 May 2018 and the agreement's entry into force is the fulfilment of the underlying commercial transaction that the FSA was meant to facilitate. LEG and LHG are related companies and are part of the Liberty Group. As stated earlier, the Liberty Group wanted to purchase an insolvent wheel manufacturer, AR Industries, and Renault was willing to provide financial support to the Liberty Group to assist in the purchase. On 28 May 2018, the French court superintending the insolvency of AR Industries had not yet approved the sale of AR Industries and it was not yet clear which entity in the Liberty Group would be permitted to be the designated purchaser of AR Industries. The FSA was thus structured to allow for either "[LEG] *or* … any entity of [LEG's] Group ('Newco') which might be substituted [for LEG] in the benefit of the Sale Plan" [emphasis added] to be designated as the "Purchaser". It is not disputed that the "Newco" is Alvance. The Agreed Statement of Facts stated that the FSA was entered into on 28 May 2018 in the context of the "sale of the activity and assets of AR Industries (under '*redressement judiciaire*') (the '**Sale Plan**') to the Defendant [*ie,* LEG] or to the 'Purchaser' (being any entity of the Defendant's group substituted [for] the Defendant in the benefit of the Sale Plan)" [emphasis in original]. Paragraph 7 of the Agreed Statement of Facts confirms that Alvance was substituted for LEG in the benefit of the sale plan.

66 We repeat here that Article 1 identified Renault SAS as "Renault" or "a Car Manufacturer"; Liberty Engineering Group Pte Ltd was identified as

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"Liberty Engineering" or "Guarantor 2"; and Liberty House Group Pte Ltd was identified as "Liberty House" or "Guarantor 1". Article 1 defined "*the Parties*" collectively as "[t]he Car Manufacturer, the Purchaser and the Guarantors 1 and 2" and individually as "*a Party*" [emphasis in original]. It appears to us that the "Purchaser" here in this sentence refers to the "Newco" as may be substituted for LEG in the benefit of the Sale Plan as mentioned above at [65]. This stems from the separate and distinct reference to "Guarantor 2" which is listed alongside and separate from the "Purchaser" as one of "the Parties" to the FSA. This is a fair and reasonable interpretation since LEG cannot legally guarantee its own indebtedness to the Car Manufacturer (*ie,* Renault). In other words, once a Liberty Group company separate from LEG itself becomes identified as the Purchaser, the FSA contemplates ultimately four entities as parties.

67 The notion that the initial parties to the FSA contemplated the possible addition of a party as "Purchaser" at a later stage is further confirmed by Article 4 of the FSA, which bears the label "[i]ntuitu personae". This provision specifies that:

> The terms and conditions of the Agreement have been agreed in consideration of an acquisition of the operations and assets by the Purchaser, which will carry out the activity within its Group.
>
> The Purchaser shall be Liberty Engineering *or any entity of Liberty Engineering's Group controlled by Liberty Engineering.*
>
> [emphasis added]

As explained by Mr Podeur, the "[i]ntuitu personae" label for this particular clause of the FSA conveys that the FSA was entered into "in consideration of the personality of the parties, and therefore, it cannot be transferred to a third party without the consent of all the parties". It is significant that this clause in the FSA, which clearly establishes the parties to the agreement, allows for the

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"Purchaser" to be LEG *or* "any entity of [LEG's] Group controlled by [LEG]". It is also significant that, in the FSA, there are substantive rights and obligations framed as rights and obligations of the "Purchaser" and not "Liberty Engineering" or "Guarantor 2". Equally, there are substantive rights and obligations framed as rights and obligations of "Liberty Engineering" or "Guarantor 2" in the FSA. Clearly, Alvance, which is LEG's wholly owned subsidiary, would fall within the strictures of all the relevant Articles in the FSA which variously set out the definition of a "Purchaser" and which confer rights and imposes obligations on the "Purchaser".

68 One day after the FSA was signed, on 29 May 2018, the Commercial Court of Orléans approved the Sale Plan. At this point in time, it became clear that the purchaser of AR Industries was to be Alvance, which, as stated in the Agreed Statement of Facts, is the entity of LEG's group that was substituted for LEG in the benefit of the Sale Plan. This is because, in its 29 May 2018 decision, the Commercial Court of Orléans authorised the "full replacement" of LEG by Alvance (then in the process of being incorporated under its former name of Liberty Wheels France) in the takeover of AR Industries. The decision of the Commercial Court of Orléans noted that the "scope of the takeover" includes "[a]ll tangible and intangible assets belonging to [AR Industries] under the terms and conditions described in the offer" and "[a]ll stocks". The takeover would also involve the buyer of AR Industries taking over 347 out of its 376 employees. The Commercial Court of Orléans, in its decision, further noted the support provided by Renault for the takeover project *via* the FSA. In essence, what was happening here was that Alvance, as the wholly owned subsidiary of LEG, was being used by Liberty Group as a vehicle to buy over AR Industries, an insolvent wheel manufacturing business, with support from Renault, to "create[e] a 'wheels' division within the Group, of which the AR industries

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plant will be one of the main pillars". The decision of the Commercial Court of Orléans is dated 29 May 2018. The acquisition of the assets was done and publicly announced on 15 June 2018 with retroactive effect as of 1 June 2018. The act of takeover so to speak took place on 15 June and it was by Alvance and not LEG as authorised by the Commercial Court of Orléans. It is important to note in this regard that the Commercial Court of Orléans made its decision after hearing from representatives of *both* LEG (whose parent company is LHG) and Renault, who were present in the court proceedings. The Liberty Group and Renault were thus represented and involved at all material times, and knew the basis of the transaction that Alvance was entering into.

69 The sale order in favour of Liberty Wheels France (*ie,* Alvance) was publicly announced. Mr Assaya confirmed that the announcement was dated 15 June 2018. The sale order was to take effect from 1 June 2018.

70 Referring to Article 16 of the FSA (see [64] above), the conditions precedent of the delivery to Renault of the First Demand Guarantees and the legal opinions on said guarantees were still outstanding. The first demand guarantee provided by "Guarantor 1", *ie*, LHG, was dated 5 July 2018. The first demand guarantee provided by "Guarantor 2", *ie*, LEG, was dated 5 July 2018. Under cover of a letter also dated 5 July 2018, Norton Rose Fulbright (Asia) LLP sent to Renault its legal opinion referring to the guarantees provided by LHG and LEG. Hence, the earliest possible date for the FSA to come into force is 5 July 2018 when all four conditions precedent in Article 16 had been satisfied.

71 Alvance was incorporated on 11 June 2018. As of 5 July 2018 when the FSA came into force, all of the initial parties to the FSA were acting on the footing that Alvance would be acting as the Purchaser under the FSA and under

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the Guarantee. This is precisely the reason why the guarantees provided to Renault by LEG and LHG (*ie,* the original parties to the FSA), at cl 1.1, expressly define "Purchaser" as Alvance (using its former name Liberty Wheels France) and define the "Financial Support Document" as the FSA. The guarantees both contain a "summary" section which states that the "[g]uaranteed obligations" refer to:

> all liabilities of the Purchaser relating to the Financial Support stated in the agreement signed by Renault SAS, Liberty Engineering Group Pte. Ltd. as Guarantor 2 and Liberty House Group Pte. Ltd. as Guarantor 1 on 28 May 2018 within the frame of the sale of the activity and assets of AR Industries (under "*redressement judiciaire*") to Liberty Engineering or to any entity of Liberty Engineering's Group which might be substituted to Liberty Engineering in the benefit of the Sale Plan

72 By extension, as of 5 July 2018 when the FSA came into force, LEG, whilst remaining a party to the FSA, was not the Purchaser under the FSA; the Purchaser was Alvance, which had by then been "substituted [for LEG] in the benefit of the Sale Plan" *per* the opening text to the FSA. This text makes clear that the "Purchaser" is to be LEG *or* the "Newco" substituted for LEG in the benefit of the Sale Plan. In other words, there is one "Purchaser" contemplated in the FSA. As things panned out, the "Purchaser" is Alvance. Contrary to Mr Podeur's submission, LEG did *not* drop out of the FSA as "Purchaser" and was *not* replaced by Alvance. LEG was always a party to the FSA because it had obligations in its capacity as "Guarantor 2" (as defined in Article 1 of the FSA) and in provisions that refer to "Liberty Engineering". We disagree with LEG's contention that the FSA did not provide for the possibility of a third party adhering to it and becoming an *additional* party, alongside LEG. Under Article 10 of the FSA, if the Purchaser is an entity of LEG's Group substituted for LEG in the benefit of the Sale Plan and bankruptcy proceedings are opened in respect of the Purchaser and/or the Purchaser fails to reimburse Renault within the

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timeline stipulated in Article 5 for the financial support that Renault had provided, LEG commits to reimbursing Renault in place of the Purchaser within the same schedule. As stated, Article 1 of the FSA is drafted in a manner that contemplates LEG remaining in the contract in a separate capacity as a guarantor even if it is not the "Purchaser". Besides provisions setting out obligations taken on by LEG in its capacity as "Guarantor 2", there are provisions in the FSA that point to obligations of "Liberty Engineering" interspersed with obligations of the "Purchaser". An example is Article 6. There is also Article 13 on the commitments of the Purchaser or Newco to Renault, which includes a commitment to "…ensure a reimbursement warranty from Liberty House Group, *Liberty Engineering* and Aluminium Dunkerque or other agreed entities offering a 3rd Guarantee" [emphasis added]. In this regard, therefore, we agree with Mr Assaya (see [54] above) that the proper analysis for the present situation is *not* assignment (where the assignor drops out of the contract, and is no longer a party to the contract) but instead *adherence* (where the adhering party is *added* as an *additional party* to the contract, alongside the original parties to that contract).

73 Our analysis in this section also shows that Mr Podeur's submission – that Alvance could not have *adhered* to the FSA because there can only be one "Purchaser" under the FSA which must be LEG since only LEG and not Alvance was in existence when the FSA was signed (see [55] above) – is misguided. The surrounding circumstances showed that Alvance was the actual "Purchaser" and the only "Purchaser" on and after 15 June 2018. The FSA is not the takeover document. The FSA envisages only one "Purchaser" who is to be either LEG *or* the "Newco". The term "Purchaser" in the FSA is a descriptive term to refer to the entity that will undertake the purchase of AR Industries. We agree with Mr Assaya that the consent of Renault, LEG and LHG to this

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arrangement as the signatories to the FSA was given at the very outset in the contract.

74 Mr Podeur points to the first date in Article 16 which provides that the FSA "will come into force on the latest of the 4 following dates", with one of the dates being pegged to the "[e]xecution of the Agreement by all Parties". According to Mr Podeur, the reference to "all Parties", read with the definition of parties in Article 1 (see [8] above), means that the "Purchaser" would have to sign the FSA. Mr Podeur contends that because Alvance never signed the FSA, the logical implication is that the "Purchaser" can only be LEG from the very beginning.

75 We do not accept Mr Podeur's suggestion that for the FSA to come into effect, Alvance must sign the FSA. LEG did not plead any point suggesting that the FSA did not come into force because Alvance did not sign it. More fundamentally, we disagree with his reading of Articles 1 and 16 of the FSA. We are of the view that the condition in Article 16 for "[e]xecution of the Agreement by all Parties" does not refer to a requirement for a *prospective*, *potentially-adhering* party to sign the FSA before it comes into force. When the FSA was drawn up and signed by the initial parties (*ie,* Renault, LHG and LEG) on 28 May 2018, they had no idea whether AR Industries would be purchased by LEG or the Newco. The Commercial Court of Orléans had not, at this point in time, issued its decision to authorise the sale of the assets and operations of AR Industries. As of 28 May 2018, there was no authorisation by the Commercial Court of Orléans for the "full replacement" of LEG by Alvance in the takeover of AR Industries (see [68] above). We think it highly unlikely that the initial parties to the FSA intended that a *prospective*, *potentially-adhering* party would also have to sign the agreement for it to come into force. This explains why the execution page of the FSA did not provide for Alvance's

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signature; the execution page only had space for Renault, LEG and LHG to sign. There is no requirement in the FSA for LEG to execute the agreement as Purchaser. LEG executed the contract as "Liberty Engineering". We further note that it would make no sense for the parties to require the signature of a *prospective*, *potentially-adhering* party because such an imposition of a formality requirement of signing is inconsistent with the overarching principle which permeates the adherence doctrine – that no formality is required for contracts to be effective under the principle of *consensualisme*. This is consistent with the *Doctors' Decision*, where the parties held to have adhered to the pre-existing Joint Contract (which was undoubtedly in force and effective) did not sign it. Thus, we are of the view that the condition in Article 16 for "[e]xecution of the Agreement by all Parties" refers to the *named* initial parties to the FSA as explained at [8] above and not a subsequent-adhering Purchaser. There is no barrier in this regard to Alvance's subsequent adherence to the FSA. Moreover, after execution of the FSA, the adherence of Alvance was in fact, whether actually or prospectively, recognised and formalised by the judgment of the Commercial Court of Orléans (see [68] above).

Consent of the party adhering to the FSA (ie, Alvance)

76 We now consider whether Alvance demonstrated consent to be added as a party to the FSA. In our view, Alvance certainly did. It is clear that by 5 July 2018 (the effective date of the FSA), Alvance had been incorporated. Renault's case is that adherence took place no later than Alvance's receipt of the first payment from Renault on 13 July 2018 (see paragraph 9(a) of the Agreed Statement of Facts). Mr Assaya further suggests that adherence could have been much earlier, perhaps even as early as the date of the public announcement of the sale of AR Industries to Liberty Wheels France on 15 June 2018.

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77 The Judge's treatment of the evidence concerning Alvance's request and receipt of the loan in instalments has been summarised at [22] and [24] above. With respect, we disagree with his analysis.

78 In this regard, we refer to the commentary reproduced at [51] and [52] above, where it is noted that consent may be demonstrated by the commencement of performance of the contract by the consenting party, or by the consenting party's request to the counterparty for performance of the contract. There is in evidence e-mail communications between Alvance and Renault documenting Alvance's request to Renault for Renault's performance of its obligations under Article 5 of the FSA, which text has been reproduced at [9] above.

79 There is, firstly, an exchange between Alvance and Renault on 15 May 2019, as follows:

(a) On 15 May 2019 at 3.20pm, an officer from Renault sent the following e-mail to an officer from Alvance:

> Could you please send me an e-mail today formalising your request for payment in cash on 1 June in accordance with the memorandum of understanding?
>
> There is no specific format, but this will be used as justification in our payment workflow.

(b) On 15 May 2019 at 9.53pm, the Alvance officer replied:

> Liberty Wheels France hereby requests Renault to pay customer support amounting to € 2.5m, in accordance with the protocol signed between the 2 parties at the time of the takeover of AR Industries. We remind you that this amount is due no later than 1 June.
>
> For ease of reference, the bank details for our account are attached.
>
> Thanks in advance for your confirmation.

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80 There is, secondly, an e-mail sent from an Alvance officer to a Renault officer on 18 May 2020, as follows:

> Under the bilateral agreement between Renault and Liberty Wheels France, the final instalment of the €1.5m financial support is due to be paid on 1 June 2020.
>
> I would be grateful if you could assure us that this sum will be paid on time. A bank details form is attached for your convenience.

81 Based on paras 8–9 of the Agreed Statement of Facts, there is no dispute that following these e-mails between Alvance and Renault, Renault provided financial support to Alvance in accordance with the terms (quantum and timelines) of Article 5 of the FSA. We note, for completeness, that Renault had made two earlier advances of €1.5m each on 13 July 2018 and 30 October 2018 to Alvance. The e-mail correspondence (if any) associated with these two payments are not in evidence but we note that these two payments are consistent with the terms (quantum and timelines) of Article 5 of the FSA, and that the parties have accepted this position in paragraph 9 of the Agreed Statement of Facts.

82 We also note that parties are agreed, *per* para 20 of the Agreed Statement of Facts, that Liberty Finance Management (LIG) Ltd, a related company to LEG, paid €1,749,974.39 to Renault. Parties are agreed that the "Defendant [*ie,* LEG] has stated that the Claimant [*ie,* Renault] received this sum as payment of the first instalment due to be paid to the Claimant on 1 June 2022 under the Financial Support Agreement". In other words, there is evidence of Alvance's related company (bearing in mind that Alvance is LEG's wholly owned subsidiary) assisting Alvance to carry out part of its repayment obligations in accordance with the terms (quantum and timelines) of Article 5 of the FSA.

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83 There is further evidence that Alvance accepted that it owed repayment obligations to Renault under Article 5 of the FSA. At para 15 of the Agreed Statement of Facts, parties have stated that by a notification titled "Notification of Admitted Claims" dated 28 March 2022, the proof of claims filed by Renault on 6 July 2021 for the sum of €7m under the FSA was "approved" and entered on the list of claims concerning Alvance. In this regard, we note that there is in evidence Renault's proof of claim filed in Alvance's insolvency on 6 July 2021, referring its claim to the provisions of the FSA. There is also in evidence records from a French court stating that a bankruptcy judge had approved Renault's €7m claim against Alvance in a decision rendered on 1 February 2022. The French court record further states that the €7m was payable in arrears and that the rejected amount was €0. LEG had sought to argue that there could be various other reasons why Alvance did not challenge this claim (other than acceptance of the claim as valid) (see [39] above). This contention is unpersuasive. Alvance is a subsidiary wholly owned by LEG. If Alvance had a good reason to acknowledge the €7m claim by Renault other than as an acceptance of the obligation to pay under the FSA, it is incumbent on LEG to present evidence or at least concrete details of these other reasons, instead of submitting blandly that Alvance might have other reasons to acknowledge Renault's claim.

84 Therefore, in our view, Alvance demonstrated consent to be added as a party to the FSA as the Purchaser. With respect, we are unable to agree with the Judge's conclusion that Alvance could not be a party to the FSA under the principle of *consensualisme* because: (a) Alvance did not exist at the time the FSA was entered into and (b) there is insufficient evidence to reach the finding that there was a meeting of the wills of Renault, LEG, LHG and Alvance for Alvance to become a party to the FSA (Judgment at [80]). Alvance's non-existence on 28 May 2018 when the FSA was signed did not preclude its later

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adherence because the initial parties to the FSA – Renault, LHG and LEG – expressly agreed in the FSA to allow for a fourth party, a "Newco", to be added as a party to the contract. As noted, the FSA contemplated that the Purchaser would be either LEG *or* Alvance. It is understandable that as of 28 May 2018, LEG may have been the Purchaser because it was not known then whether the French insolvency court would approve the sale of AR Industries to LEG or whether LEG's nominee would be acceptable to the French insolvency court. Be that as it may, very soon thereafter Alvance became the actual Purchaser. When the FSA came into force on 5 July 2018, Alvance had been incorporated, and it had taken over the assets and operations of AR Industries pursuant to the decision of the Commercial Court of Orléans dated 29 May 2018. Article 13 of the FSA contains obligations that are specifically undertaken by Alvance. In addition, Alvance was named in the Guarantee as the Purchaser under the FSA. All these facts are pieces of evidence that are connected to Alvance's request and receipt of financial support from Renault under the FSA. We agree with Mr Assaya that the latest date on which Alvance had first adhered to the FSA was 13 July 2018. There is, contrary to the Judge's conclusion, a meeting of the wills of Renault, LEG, LHG and Alvance for Alvance to become a party to the FSA.

85 At the hearing, Mr Podeur and Mr Chew took the position that Alvance and Renault were *both* operating under some sort of common mistake when Alvance asked for and Renault paid financial support in accordance with the quantum and timelines under Article 5 of the FSA.

86 We are unable to accept this submission. If both Alvance and Renault had the same idea of the nature of their respective rights and obligations, it seems to us that this is more consistent with a meeting of the minds of parties (*ie,* there is conduct demonstrating consent) which feeds into the *adherence*

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analysis as discussed above at [48]–[59]. It would be a stretch to argue that the *consensus ad idem* of Alvance and Renault should be dismissed as a mistake.

87 To conclude, in our view, all the conditions for *adherence* of Alvance to the FSA are present, and Alvance is a party to the FSA and has assumed rights and obligations under the FSA. As noted above at [48]–[52], the formation of contracts under French contract law generally requires no formalities *per* Article 1172 of the French Civil Code; what is essential is a meeting of an offer and an acceptance between promisor and promisee *per* Article 1113, and acceptance can be manifested tacitly. Our analysis at [61]–[75] above demonstrates that the initial parties to the FSA – Renault, LEG and LHG – had not just *tacitly*, but in fact *expressly*, agreed to a contractual framework where a "Newco" can be added as a party to the FSA as a "Purchaser". Our analysis at [76]–[84] above shows that Alvance has, through its conduct, demonstrated consent to be added as a party to the FSA as the "Purchaser". This is sufficient for *adherence* to occur, and the writing requirement in Article 1216 has no role to play as the evidence before us did not involve *assignment* under French contract law.

The effect of Alvance's adherence to the FSA on the Guarantee

88 Mr Chew rightly conceded that if the court takes the view that Alvance is a party to the FSA and is liable under French law to repay Renault, then the obligations of LEG as guarantor would kick in and be valid and enforceable. The wording of cl 2.1(b)(i) of the Guarantee is clear. We need say no more about this.

89 Our conclusion on the first issue is determinative of the appeal. However, as our reasoning departs from that adopted by the Judge, we will

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proceed to consider whether the Judge is correct in finding that the Separate Contract existed as between Alvance and Renault.

Issue 2: Whether the Judge erred in finding that the Separate Contract existed as between Alvance and Renault

90 With respect, we disagree with the Judge's finding that a Separate Contract existed as between Alvance and Renault. On Mr Chew's preliminary objection, Mr Leo correctly conceded at the hearing of this appeal that Renault "didn't plead a separate contract vis-à-vis Alvance and Renault" and that Renault "didn't raise the argument of a separate contract until the legal submission was exchanged". We therefore agree with Mr Chew that since the Separate Contract was not pleaded, it was not open to the Judge to find that the Separate Contract existed.

91 For completeness, we note that, curiously, Renault's oral application during oral submissions before the Judge below to amend its pleadings for OA 9 to include the point on the Separate Contract was given short shrift by the Judge, who stated that it was "far far too late to make that application". We thus find it puzzling for the Judge to find for Renault on the basis that such a Separate Contract exists.

92 For these reasons, the Judge ought not to have found for Renault on the basis of the Separate Contract.

Other matters

93 For completeness, we address a further strand of analysis advanced by Renault in its case for this appeal, namely its contention that LEG's previous pleadings in SIC 1 amount to admissions demonstrating its acceptance that

Renault had advanced funds to Alvance pursuant to the terms of the FSA and that Alvance owes Renault the funds advanced (see [32] above). We are unpersuaded by this argument.

94 In SIC 1, Renault pleaded in its Statement of Claim (Amendment No 1) at para 4 that "[u]nder the Financial Support Agreement, the Plaintiff [*ie,* Renault] granted €7,000,000 in financial support to Alvance Aluminium Wheels (the '**Purchaser**')" [emphasis in original]. In LEG's Defence (Amendment No 1) filed in response, at para 4, LEG admitted to the aforementioned para 4 of Renault's statement of claim. LEG had further stated, at para 1 of its Defence (Amendment No 1), that unless otherwise indicated, it "adopts the same definitions and abbreviations used in the Statement of Claim (Amendment No. 1)". Renault submits that through these statements made in LEG's Defence (Amendment No 1), LEG had accepted that Alvance was the "Purchaser" under the FSA. LEG goes on to plead the following in its Defence (Amendment No 1):

> 10. The Purchaser's obligations to repay the financial support are set out in Article 5 of the Financial Support Agreement.
>
> …
>
> 12. This means that the financial support is to be repaid pursuant to a schedule of repayment comprising 4 tranches over 4 years beginning 1 June 2022. The financial support is to be refunded immediately by, *inter alia*, the Defendant as guarantor only if the Purchaser fails to comply with the said repayment terms.
>
> …
>
> 16. Therefore, on a plain reading of Articles 5 and 10 of the Financial Support Agreement (as set out above), the Defendant is only obliged to repay the Plaintiff in place of the Purchaser under Clause 2.1(b) of the Guarantee if the following conditions are satisfied:
>
> > 16.1. The Purchaser is an entity of the Defendant's Group substituted to the Defendant in the benefit of the

> Sale Plan (as defined in the Financial Support Agreement); and
>
> 16.2. A bankruptcy proceeding is opened towards the Purchaser (*sauvegarde*, *redressement judiciaire* or *liquidation judiciaire*); and / or
>
> 16.3. The Purchaser fails to comply with the repayment terms as set out in Article 5 of the Financial Support Agreement.
>
> 16A. The Defendant avers that under the terms of the Financial Support Agreement, there is no provision for the acceleration of the Purchaser's obligation to repay the sum of EUR 7,000,000 to the Plaintiff in the event of a bankruptcy proceeding opened towards the Purchaser as referred to in paragraph 16.2 above.
>
> …
>
> 20. As for any obligation on the part of the Defendant to immediately refund the Plaintiff the financial support in full, any such obligation would arise only if the Purchaser failed to comply with any of the repayment terms under Article 5 of the Financial Support Agreement. In the regard, the Defendant repeats paragraph 16A above.
>
> 21. However, the Purchaser has not failed to comply with any of the repayment terms under Article 5. The Purchaser is only required to make a cash payment of EUR 1,750,000 to the Plaintiff on 1 June of each year starting from 2022 and ending in 2025. Until and unless the Purchaser fails to pay the sum of EUR 1,750,000 to the Plaintiff on 1 June 2022, the sum of EUR 7,000,000 is not "immediately refundable" to the Plaintiff under the Financial Support Agreement.

95 Renault submits that these pleadings amount to an admission by LEG that Alvance owes repayment obligations to Renault "based on" Article 5 of the FSA and LEG's obligations under the Guarantee extend to these repayment obligations regardless of whether Alvance is a party to the FSA.

96 We are unable to agree. Shortly put, Renault does not provide any legal basis or authority to substantiate its assertion that the alleged admissions made in another action namely, SIC 1, should bind LEG or be dispositive for this

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appeal. There is no invocation of any doctrine of issue estoppel or any related concepts.

97 To the extent that LEG's pleadings in SIC 1 were phrased in a manner that implicitly assumed that Alvance owed repayment obligations under the FSA as Purchaser, this does not bar LEG from contending otherwise based on a revised appreciation of the law at a later point in time. In *Development Bank of Singapore Ltd v Bok Chee Seng Construction Pte Ltd* [2002] 2 SLR(R) 693 at [24], the Court of Appeal stated, citing *Karsales (Harrow) v Wallis* [1956] 1 WLR 936 at 941, that "… it is sufficient for a pleader to plead the material facts … [e]ven although he has stated the legal consequences inaccurately or incompletely, that does not shut him out from arguing points of law which arise on the facts pleaded" [emphasis omitted]. Thus, LEG should not be shut out from arguing points of law – in this case, points of contractual interpretation – which arise from the terms of the FSA and the Guarantee which have been clearly pleaded. There is no dispute that LEG's defence in OA 9 was clearly framed, and Renault has had full opportunity to address the merits of LEG's defence. Hence, in our view, Renault cannot succeed on the basis of LEG's previous pleadings in SIC 1.

98 Whilst we have concluded that, as a matter of *legal merit*, the arguments on LEG's previous pleadings in SIC 1 cannot be a freestanding ground for us to find in favour of Renault, we leave this point with a short observation that LEG's position in SIC 1 – that Alvance was the Purchaser under the FSA – is correct; it is exactly what we have determined in this appeal.

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Conclusion

99 We therefore dismiss the appeal, albeit for different reasons relative to those adopted by the Judge. The Judge's decision on quantum and interest as stated at [131] of the Judgment is to stand.

100 Turning to the issue of costs for OA 9, we award 50% of the costs here and below to Renault. As to the quantum of costs, the parties have indicated that they will attempt to agree on the quantum of costs or apply for an assessment by the court if they are unable to agree. We therefore grant liberty to the parties to apply for an assessment of costs if they are unable to agree. If the parties are able to agree on the quantum of costs of the appeal, the usual consequential orders will apply.

101 As for the costs of OA 3, the Judge below decided that the parties should attempt to agree, or else the court will decide. At our invitation, the parties have consented for this court to deal with the costs arising from the dismissal of OA 3 by the Judge. We see no reason why it should not follow the event and accordingly award costs in relation to OA 3 in favour of LEG to be assessed if not agreed.

Steven Chong Justice of the Court of Appeal	Belinda Ang Saw Ean Justice of the Court of Appeal

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Bernard Rix
International Judge

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