IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(I) 6

Originating Application No 3 of 2023

Between

Renault SAS

… *Claimant*

And

Liberty Engineering Group Pte Ltd

… *Defendant*

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]

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Renault SAS
v
Liberty Engineering Group Pte Ltd and another matter

[2024] SGHC(I) 6

Singapore International Commercial Court — Originating Applications Nos 3 and 9 of 2023
Roger Giles IJ
18 December 2023

14 February 2024 Judgment reserved.

Roger Giles IJ:

Introduction

1 In earlier proceedings, commenced in the High Court and becoming SIC/S 1/2022 ("Suit 1") in the Singapore International Commercial Court ("the SICC"), the claimant claimed €7 million and statutory interest from the defendant under a Deed of Guarantee dated 5 January 2018 ("the Guarantee"). The proceedings were dismissed: *Renault SAS v Liberty Engineering Group Pte Ltd* [2023] 4 SLR 152 ("the Suit 1 Judgment").

2 This judgment is given in two further proceedings, commenced in the SICC, in which the claimant again claims under the Guarantee. SIC/OA 3/2023 ("OA 3") was commenced before the decision in Suit 1, and SIC/OA 9/2023 ("OA 9") was commenced after that decision. In each proceeding the claimant

claims from the defendant €5,250,025.61 (the one amount, not twice over), the balance of the previous €7 million after a part payment, plus interest.

3 As will be explained, the three proceedings are because the claimant has sought to rely on successive events as grounds for its claim under the Guarantee, each of the later events occurring after the commencement of the previous proceedings. And the proceedings have evolved. In particular, the present proceedings have come to include as the central question whether the putative principal debtor has any liability to the claimant, and in that connection to raise a pleading issue.

4 OA 3 and OA 9 have been heard together, with the evidence in one the evidence in the other. For the reasons which follow, the claim in OA 9 should succeed, while OA 3 should be dismissed.

Financial support in the purchase of a business

5 AR Industries, a French-incorporated company, was a manufacturer of wheels for the automobile industry. On 16 January 2018 it was placed under *redressment judiciare*, a form of receivership or judicial restructuring, by the Commercial Court of Orleans. Administrators were appointed. The Court authorised the continuation of the business of AR Industries for a period, and the administrators advertised the business for sale.

6 The claimant, Renault SAS ("Renault"), a French incorporated company and well-known automobile manufacturer, was the main customer of AR Industries. The defendant, Liberty Engineering Group Pte Ltd ("LEG"), a Singapore-incorporated company within the Liberty Group, was willing to acquire the operations and assets of AR Industries, but with financial support from Renault, and the two companies engaged in negotiations to that end. In

early May 2018 LEG submitted a "takeover offer" to the administrators in the form of what was referred to as a "sale plan", by which it or a subsidiary to be incorporated by it purchased the business of AR Industries, the sale plan including that financial support would be provided by Renault. The negotiations then arrived at a Financial Services Agreement dated 28 May 2018 made between Renault and LEG ("the FSA") by which, amongst other things, Renault agreed to provide financial support to the purchaser of the business. On 29 May 2018 the Court adopted the sale plan and made orders to give effect to it.

7 The sale plan as submitted or approved was not in evidence, but two of its features relevant for present purposes can be seen in the Court's reasons and orders.

8 The first feature is the FSA. I will come to its terms more fully, but in relation to the provision of financial support it recorded an agreement between Renault and LEG that Renault would provide financial support to LEG or to an entity of LEG's group controlled by LEG, whichever purchased the business. The FSA was noted by the Court in three places. It recorded that LEG had entered into an agreement on 25 May 2018 (sic: I think an error for 28 May 2018) "providing for … the provision of financing". It recorded as "comments" by Renault, represented at a hearing at which the takeover offer was considered, that "RENAULT-NISSAN state that, after lengthy negotiations, an agreement was signed with LIBERTY ENGINEERING on 28 May 2018 at the end of the day, allowing it to support its takeover project". And the orders included that the Court "[a]cknowledges the memorandum of understanding dated 28 May 2018 between LIBERTY ENGINEERING and RENAULT-NISSAN concerning the following issues production volume commitments and financing arrangements [sic]".

9 The other feature is that, as indicated above, the purchase of the business was to be by LEG or a yet-to-be incorporated subsidiary of LEG; more accurately, that LEG could be "substituted" as purchaser by its subsidiary. The Court's reasons recorded this, and its orders made provision for it. The reasons included that "[t]he offer is presented by the Singaporean company LIBERTY ENGINEERING with a full substitution clause for the benefit of a subsidiary to be established, SAS LIBERTY WHEELS France…", and the orders included, after the adoption of the sale plan:

> Orders the transfer of the assets of the Company AR INDUSTRIES SAS … for the benefit of the company under Singaporean law LIBERTY ENGINEERING … with the option of substitution according to the terms provided for in the offer, the additional offer and the information provided at the hearing…
>
> …
>
> Authorises the full replacement, in accordance with Article L.642–9 of the French Commercial Code and the terms and conditions set out in the offer, of LIBERTY ENGINEERING by LIBERTY WHEELS FRANCE, which is in the process of being incorporated,
>
> LIBERTY ENGINEERING shall remain jointly and severally liable for the performance of the commitments it has entered into …

The Financial Services Agreement

10 The FSA was in English. It said in its opening that it:

> … acts the terms and conditions agreed between Liberty Group and Renault within the frame of the sale of the activity and assets (the "***Sale Plan***") of AR Industries (under *"redressment judiciare"*) to Liberty Engineering [ie LEG] or to any entity of Liberty Engineering's Group ("Newco") which might be substituted to Liberty Engineering in the benefit of the Sale Plan (the "***Purchaser***").
>
> [bold italics in original]

11 The parties to the FSA were expressed in Article 1 to be Renault, said to be thereafter referred to as "Renault" or "the Car Manufacturer"; LEG, said to

be thereafter referred to as "Liberty Engineering" or "the Guarantor 2"; and Liberty House Group Pte Ltd ("LHG"), described elsewhere in the agreement as "the mother Company of the Liberty Engineering Group" and said to be thereafter referred to as "Liberty House" or "the Guarantor 1". However, the Article added, "The Car Manufacturer, the Purchaser and the Guarantors 1 and 2 being hereafter referred to, collectively, as '***the Parties***' and individually as '***a Party***'. [bold italics in original]

12 Article 3 of the FSA described its purpose as being to specify "the respective and reciprocal commitments of the Parties within the frame of the acquisition, by the Purchaser, of the operations and assets of AR Industries". In Article 4 it was provided that:

> The terms and conditions of the Agreement have been agreed in consideration of an acquisition of the operation 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.

13 Article 5 dealt with the provision of funds by Renault and the repayment of the funds. It began:

> 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***") …
>
> [bold italics in original]

14 In summary as to the provision of funds, Renault agreed to provide the financial support by payments of €1,500,000 on 1 July and 30 October 2018, €2,500,000 on 1 July 2019, and €1,500,000 on 1 July 2020. All payments were subject to the Purchaser complying with its commitments under the FSA, and

the 2019 and 2020 payments were subject to provision of a guarantee by Aluminium Dunkerque, a company which the Liberty Group was in the process of acquiring, or agreement on an "alternative first demand guarantee of equivalent efficiency".

15 As to repayment of the funds, the Article provided:

> 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.

16 It will be recalled that LHG was entitled Guarantor 1 and LEG was entitled Guarantor 2. From Article 10 next referred to dealing with the provision of guarantees, Aluminium Dunkerque was Guarantor 3.

17 Article 10 of the FSA was lengthy. It began:

> In case of the opening of bankruptcy proceedings towards the Purchaser (*sauvegarde, redressment judiciare* or *liquidation judiciare*) and/or if the Purchaser fails to reimburse the Financial Support in due time (as referred to in Article 5) for any reason whatsoever, Liberty House Group, as Guarantor 1, commits to reimburse to Renault the Financial Support paid to the Purchaser, on first demand, in place of the Purchaser, within the same schedule. For the sake of clarity, it is specified that in case the amount of the Financial Support already paid becomes immediately refundable by the Purchaser, it will also become immediately refundable by the Guarantor 1.
>
> Moreover, in case i) the Purchaser is an entity of Liberty Engineering's Group substituted to Liberty Engineering in the benefit of the Sale Plan, and ii) a bankruptcy proceedings is opened towards the Purchaser (*sauvegarde, redressment judiciare* or *liquidation judiciare*) and/or iii) the Purchaser fails to reimburse the Financial Support in due time (as referred to in Article 5) for any reason whatsoever, Liberty Engineering, as Guarantor 2, commits to reimburse to Renault the Financial

> Support paid to the Purchaser, on first demand, in place of the Purchaser, within the same schedule. For the sake of clarity, it is specified that in case the amount of the Financial Support already paid becomes immediately refundable by the Purchaser, it will also become immediately refundable by the Guarantor 2.
>
> To this end, Liberty House Group and Liberty Engineering, each as far as it is concerned, commit to provide Renault, within 10 business days, following the signing of the Agreement, with (i) a first demand guarantee duly approved by their competent corporate bodies, and (ii) a legal opinion from a Singapore leading law firm, attesting that these two guarantees were regularly issued in particular as regards their corporate interest and that they will be efficiently enforceable (together, the "**First Demand Guarantees 1 and 2**").
>
> …
>
> [bold italics in original]

18 The Article went on to deal with the provision by Aluminium Dunkerque, as Guarantor 3, of a First Demand Guarantee 3 in like terms to the First Demand Guarantees 1 and 2, following its acquisition by LHG. It included a guarantee by LEG and LHG that Aluminium Dunkerque would give the guarantee.

19 The Article concluded:

> Renault will be allowed to call the First Demand Guarantees 1 and 2 simultaneously or one after the other, in any order, at Renault's option, until full repayment of the Financial Support paid to the Purchaser. The First Demand Guarantee 3 will be enforceable by Renault if the Purchaser and/or the Guarantors 1 and 2 failed to perform their obligations within 10 business days after Renault's demand.
>
> As an exception to the above, the First Demand Guarantees 1, 2 and 3 will be enforceable simultaneously, in any order, at Renault's option, until full repayment of the Financial Support paid to the Purchaser, in case the amount of the Financial Support already paid becomes immediately refundable by the Purchaser and the Guarantors.

20 Other Articles, the detail of which does not matter, included forecasts for volumes of wheels to be ordered by Renault over 2019, 2020 and 2021, and prices for the wheels, with many qualifications as to both, including that the volume forecasts "do not entail any firm commitment from Renault in terms of effective volumes to be ordered to the Purchaser nor in terms of effective turnover to be achieved with the Purchaser" (in Article 6) and that without prejudice to the commitment to discuss in good faith neither the Purchaser nor any entity of its Group, or their managers and/or shareholders, would have any "recourse/claim of any kind against Renault … as regards … the level of volumes ordered by Renault from 2018 onwards …" (in Article 14). Article 6 included, however, a commitment by the Parties to negotiate in good faith towards compensation if the level of the volume forecasts was not achieved.

21 Article 13 stated a number of commitments of the Purchaser "[a]s a counterpart of Renault's commitments". Some were administrative (for example, to provide annual accounts) or aspirational (for example, to make best efforts to become fully competitive within three years, and to develop a relationship of trust with Renault). Others had potential significance, such as to maintain a level of performance in terms *inter alia* of quality, logistics, process, costs, engineering and lead times in order to meet Renault's purchasing terms and conditions, and "to ensure deliveries to [Renault] in accordance with the volumes ordered, and delivery lead times".

22 The FSA was expressed to be "governed by French law".

23 As is apparent from the opening and Article 3, the Purchaser was not a certain entity but could be either LEG, the takeover offeror under the sale plan, or if there were a substitution under the sale plan an entity controlled by it. In this respect the FSA reflected the substitution clause in the sale plan, although

(as later discussed) not by some equivalent form of substitution clause but by defining the Purchaser as LEG or, if there were a substitution, the entity controlled by it. The potential subsidiary did not yet exist, and of course was not a signatory to the FSA: the signatories were Renault, LEG and LHG. But Article 1 included that the Purchaser was within the description of a Party or the Parties, and the FSA included many commitments (the term generally used) of the Purchaser (Article 5 as to repayment and Article 13 being some, but there were more) and commitments of the Parties: so that, if the Purchaser turned out to be the entity controlled by LEG, as it did, the FSA purported to impose obligations on a non-existent non-signatory to the FSA. This was at the root of the question of the putative principal debtor's liability.

Liberty Wheels is the Purchaser

24 LibertyWheels France ("Liberty Wheels") was created on 1 June 2018, and on 11 June 2018 was registered in the Trade and Companies Register of France and therefore incorporated. It was a wholly owned subsidiary of LEG.

25 The substitution authorised by the Commercial Court of Orleans took place, and the purchaser of the business became Liberty Wheels in place of LEG (although in accordance with the Court's order, it seems that LEG would have remained as joint and several obligor for the commitments it had entered into under the sale plan). The evidence did not reveal what formality, if any, gave effect to or recorded the substitution, but as it later appears, it must have taken place prior to the execution of the Guarantee.

26 Consequently, the Purchaser under the FSA was Liberty Wheels, purportedly liable to repay the financial support to be provided by Renault and to fulfil the other commitments of the Purchaser under the FSA.

The Guarantee

27 The Guarantee was dated 5 July 2018. It was common ground that it was given by LEG as First Demand Guarantee 2 pursuant to the agreement to do so in Article 10 of the FSA.

28 The parties to the Guarantee were LEG, entitled and defined as Guarantor, and Renault, entitled and defined as Financial Support Provider. Their identification was followed by a "Summary", clearly distinct from the subsequent operative provisions, which included that the "Guaranteed obligations" were:

> 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 redressment judiciare) 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.

29 The definitions included that Purchaser meant Liberty Wheels: hence the substitution must have taken place. Other definitions were:

> **Bankruptcy Event** means the taking of any corporate action, legal proceedings or other procedure or step in relation to the opening of any bankruptcy proceedings (sauvegarde, sauvegarde financiere acceleree, sauvegarde acceleree, redressment judiciare or liquidation judiciare) towards the Purchaser.
>
> **Financial Support Document** means 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 scope of the sale of the activity and assets of AR Industries (under "redressment judiciare") 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 (as defined in the Financial Support Document)"

> **Obligations** means all money and liabilities (including debts) owing or incurred to the Financial Support Provider by the Purchaser under or in relation with [sic] the provisions of the Financial Support Document relating to the Financial Support (as such term is defined in the Financial Support Document), and in any capacity irrespective of whether such moneys or liabilities: (i) are present or future, (ii) are actual, contingent or otherwise, (iii) are at any time ascertained or unascertained, (iv) are owed, incurred by or on account of the Purchaser alone, or severally or jointly with any other person, (v) are owed or incurred as principal, interests, fees, charges, taxes, duties or other imposts, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account, or (vi) comprise any combination of the above.

30 As the key operative clause, the Guarantee provided in cll 2.1 and 2.2, under the heading "Guarantee and Indemnity", in the terms:

> 2.1 Subject to clause 2.2, the Guarantor irrevocably and unconditionally:
>
> (a) guarantees to the Financial Support Provider the due and punctual performance, observance and discharge by the Purchaser of any and all the Obligations;
>
> (b) undertakes that (i) whenever the Purchaser does not pay any amount when due under or in connection with the Financial Support Document or (ii) upon the occurrence of a Bankruptcy Event, the Guarantor shall immediately on demand by the Financial Support Provider pay that amount to the Financial Support Provider as if it was the Purchaser; and
>
> (c) agrees that the Guarantor shall, as principal obligor and as a separate, primary and independent obligation, indemnify and keep indemnified the Financial Support Provider in full and immediately on demand against any cost, loss, liability, damages, claims, demands and expenses suffered or incurred by the Financial Support Provider as a result of any of the Obligations being or becoming void, voidable, unenforceable, invalid, illegal or ineffective against the Financial Support Provider for any reason whatsoever, whether or not known by the Financial Support Provider. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this clause 2 if the amount claimed had been recoverable on the basis of a guarantee.
>
> 2.2 Although this guarantee shall be construed and take effect as a guarantee of the whole and every part of the Obligations,

> the total amount recoverable under this guarantee shall be limited to €7,000,000.

31 The Guarantee continued for a number of pages with many more clauses, most of the kind commonly found in such a document essentially protective of the beneficiary of a guarantee such as waiver of defences and not proving in competition with the beneficiary. The collection of clauses was generous, and included (cl 7.1):

> The Rights created by this Deed are in addition to any other Rights of the Financial Support Provider against the Guarantor under any other documentation, the general law or otherwise. They will not merge with or limit those other Rights, and are not limited by them.

32 The Guarantee was expressed to be governed by and construed in accordance with Singapore law.

33 The FSA called for a legal opinion that First Demand Guarantees 1 and 2 were regularly issued and "efficiently enforceable" (see [17] above). A legal opinion dated 5 July 2018 was provided. In describing the "Background" to the opinion, it was said that it was given in relation to the Singapore law aspects of a "Transaction" by which Renault "has made available financial support by way of short-term loans of up to €7,000,000 to Liberty Wheels France (the **Purchaser**)" [bold in original] and that "certain affiliate companies of the Purchaser… have entered into guarantees for the purpose of securing repayment of that financial support"; although, strangely, the FSA was not amongst the documents which it was said the lawyers had examined relating to the Transaction. The opinion was hedged around with many qualifications, and perhaps less than direct when it said that neither of the guarantees was "void, voidable, unenforceable, ineffective, or otherwise capable of being affected as a result of any vitiating matter (such as mistake, misrepresentation, duress,

undue influence, fraud, or breach of directors' duties) that is not clear from the terms of the Guarantees".

Funds are advanced to Liberty Wheels

34 The first two payments totalling €3 million were made by payment to Liberty Wheels of €1.5m on 13 July 2018 and €1.5m on 30 October 2018. There was no evidence of any communications in relation to the payments.

35 The third payment of €2.5 million was made on 31 May 2019. Apparently after an informal communication, on 15 May 2019 Mr Pot of Renault asked Mr Douziech of Liberty Wheels to "please send me an e-mail today formalising your request for payment in cash on 1 June in accordance with the memorandum of understanding", saying that it would be "used as justification in our payment workflow". Mr Douziech responded with an email:

> Liberty Wheels France hereby requests Renault to pay customer support amounting to €2.5 million 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.

36 The fourth payment of €1.5 million was made on 17 June 2020. On 18 May 2020 Mr Avelli of Liberty Wheels emailed Mr Caiazzo of Renault:

> Under the bilateral agreement between Renault and Liberty Wheels France, the final instalment of the €1.5 million 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.

37 There was no further evidence of communications concerning payment of the financial support.

Liberty Wheels (now Alvance) goes into liquidation

38 At some point Liberty Wheels became Alvance Aluminium Wheels ("Alvance"). For convenience, from here on in these reasons I will refer to it as Alvance even in relation to events prior to the change of name, unless the context or a quotation requires otherwise.

39 In circumstances unexplained in the evidence, on 23 April 2021, Alvance was placed under *redressment judiciare* by the Paris Commercial Court.

40 On 6 July 2021, Renault filed a proof of claim with Alvance's court-appointed creditors' representatives. It provided, amongst other documents, a copy of the FSA and proof of the payments to Alvance and claimed €7 million as a "Debt resulting from the Financing Agreement" with the description, "Under Article 5 of the Financing Agreement, a prior claim to fall due for a total amount of **seven million Euros (€7,000,000)** corresponding to the Advance". [bold in original]

41 On 1 February 2022 the Paris Commercial Court approved a plan to sell the operations and assets of Alvance to a third party. On 2 February 2022, by a judgment of the Court the *redressment judiciare* was converted into *liquidation judiciare*, whereby Alvance went into liquidation.

42 By a "Notification of Admitted Claims" dated 28 March 2022, the proof of claim filed by Renault on 6 July 2021 for €7 million was "approved" and entered on the list of claims concerning Alvance.

The evolving proceedings

43 I will come to the issues at the hearing, but it is appropriate to see how they came about.

Suit 1

44 The first repayment of €1,750,000 was due on 1 June 2022. Well before that date, on 20 May 2021, Renault issued a letter of demand for payment by LEG of the sum of €7 million on the basis that the opening of the *redressment judiciare* proceedings for the benefit of Alvance was a Bankruptcy Event as described in the Guarantee and the full sum was payable to it pursuant to cl 2.1 of the Guarantee.

45 Renault commenced Suit 1 in the High Court on 31 May 2021, claiming the €7 million on that basis. Prior to the hearing, on the due date of 1 June 2022, it received payment of €1,749,974.39 from Liberty Financial Management (LIG) Ltd ("LFG"), a related company of LEG: the minor discrepancy in amount has been ignored in all proceedings, and this has been treated as full payment of the first repayment. Thus when Suit 1 was heard, as well as when it was commenced, there had not been a failure in repayment on the due date so as to trigger repayment of the full amount of the financial support.

46 In Suit 1, Renault relied on cl 2.1(b) of the Guarantee. It did not say that the Bankruptcy Event made the full amount of the financial support immediately repayable by the Purchaser – it was common ground that under Article 5 of the FSA, that was the result only of failure by the Purchaser to comply with the repayment terms, that is, to make one of the 1 June payments. It said that under cl 2.1(b) of the Guarantee, upon the Bankruptcy Event, LEG had a primary

liability, independent of any liability of the Purchaser, to pay the full amount of the financial support.

47 LEG admitted the Bankruptcy Event. But it said that as a matter of construction of the Guarantee it (LEG) was only liable to pay Renault if the Purchaser failed to adhere to the payment terms in Article 5 of the FSA; since the Bankruptcy Event had not accelerated repayment by the Purchaser, the Purchaser had not so failed. As of 31 May 2021, it said, nothing was payable by Alvance to Renault, so nothing was payable by LEG to Renault.

48 After transfer to the SICC, Suit 1 was heard on 25 April 2023, and judgment was given on 19 May 2023. In short, it was held that in cl 2.1(b) of the Guarantee LEG's promise to pay if there was a Bankruptcy Event was to pay "that amount"; that this referred back to "any amount when due under or in connection with the Financial Support Document", that is, an amount due under or in connection with the FSA which the Purchaser had not paid; and so "that amount" had to be an amount which had become payable by the Purchaser. The full amount of the financial support had not become payable by the Purchaser, so it was not payable by LEG. The proceedings were dismissed.

Renault brings OA 3

49 Having first issued a further letter of demand for payment by LEG, Renault commenced OA 3 in the SICC on 30 March 2023. In the Statement of Case, it claimed €5,250,025.61, being the full amount of the financial support less the payment received on 1 June 2022. It pleaded the provision of the financial support pursuant to the terms of the FSA, specifically cll 5 and 10 of the FSA, and the *redressment judiciare* proceedings as a Bankruptcy Event making the €7 million immediately payable pursuant to cl 2.1 of the Guarantee. It was then alleged that the conversion of the *redressment judiciare* proceedings

into *liquidation judiciare* on 2 February 2022, a liquidation without any continuation of business by Alvance, by French law rendered all unmatured debts of Alvance due and payable; therefore, the €7 million had in February 2022 become due and payable by the Purchaser to Renault "under the Financial Support Agreement" and was unpaid "under the Financial Support Agreement".

50 The pleading is puzzling. The essence was the making of unmatured debts immediately payable. The Bankruptcy Event may have made the guarantor liable (although in Suit 1 it was held that it did not), but that would have been LEG's debt, not the Purchaser's. The reference to the Bankruptcy Event appears to have been surplusage, and it was meant that the debt of Alvance as the Purchaser, under cl 5 of the FSA payable on 1 June of future years, was made immediately payable: LEG did not appear to take it otherwise. I have quoted the terms of the pleading, namely "under the Financial Support Agreement"; as will shortly be explained, that it was alleged that the money was payable and unpaid by the Purchaser "under the Financial Support Agreement" had some significance.

51 It is perhaps odd that OA 3 was brought on the new basis when the claim in Suit 1 was yet to be heard. By agreement, the progress of OA 3 was paused to await the result in Suit 1.

A question of Alvance's liability is raised

52 The Suit 1 Judgment issued on 19 May 2023 included:

> 51. The Purchaser in this case was not LEG, but Alvance, an entity controlled by LEG and not a signatory to the FSA. As mentioned above … whether by French law Alvance would be bound under the FSA to make repayment according to its terms was raised in the course of the hearing. Mr Leo [leading counsel for Renault] was inclined to submit that it was not, in aid of LEG's liability being a primary liability because there was no

> liability of Alvance to which it could be secondary. Mr Chew [leading counsel for LEG] submitted that it was, referring to the Purchaser's description and treatment as a Party in the FSA.
>
> 52. It was evident that the question came to counsel unanticipated, neither spoke with the benefit of French law, and the question did not receive real consideration. It could arise in SIC/OA 3/2023, and unless it is necessary to answer it, it should be left unanswered in these proceedings. … I do not think it matters, in the present task of construction, whether in cl 2.1(b) the Purchaser's failure to pay any amount when due is failure in an obligation to pay or simply failure in the fact of timely payment, or more generally whether there can ever be an amount payable by it as the Purchaser. Even assuming in Renault's favour that Alvance was not bound under the FSA to make repayment according to its terms, labelling LEG's liability as a primary liability for that reason does not advanced Renault's position.

53 If LEG took up the point – which it in due course did – the question had significance for OA 3, and for the future OA 9. As previously noted, in OA 3 it was asserted that the €7 million was payable and unpaid *under* the FSA. The definition of Obligations, picked up in cl 2.1(a) of the Guarantee, referred to money or liabilities "owing or incurred to [Renault] by [Liberty Wheels] *under* or *in relation with* the provisions of the Financial Support Agreement", and cl 2.1(b) similarly referred to an "amount when due *under* or *in connection with* the Financial Support Document" [emphasis added]. If Alvance was not bound by the provisions of the FSA (and although it had not been in evidence in Suit 1, it is now known that Alvance did not even exist when the FSA was entered into), it seemed that it could not have a liability *under* the provisions of the FSA: in the event, in the proceedings that was the accepted position, with whether Alvance was bound by the provisions of the FSA being framed as whether it was a party to the FSA. So there was exposed whether Alvance might be liable to repay the financial support otherwise than *under* the FSA, but on a basis which was *in relation with* the provisions of the FSA or *in connection with* the FSA.

54 The question of Alvance's liability to Renault *under* the FSA, apparently triggered by the aside in the Suit 1 Judgment, came to loom large in OA 3 and OA 9. In those proceedings the parties took opposite positions to those tentatively taken in Suit 1. Renault's submissions included that Alvance was a party to the FSA and liable as Purchaser under it; LEG contended that it was not. But Renault also submitted that Alvance was liable to repay the financial support under a separate contract with Renault either on the same terms as the FSA, and from this came the pleading issue: whether Renault had sufficiently pleaded a separate contract bringing liability *in relation with* the provisions of the FSA or *in connection with* the FSA.

Renault amends OA 3

55 It appeared that Renault was alive to the significance of the point. At a Case Management Conference held on 28 June 2023 to progress OA 3, Renault's counsel proposed to amend OA 3 "to accord with the findings that have been made in the earlier proceedings concerning, for example, the parties to the Financial Support Agreement, and to restate our claim based on how obligations are defined in the Guarantee".

56 The relevant amendment, made on 12 July 2023, was that the €7 million had in February 2022 become due and payable by the Purchaser to Renault "under or in relation with" the FSA and was unpaid by it "under or in relation with" the FSA, and that the Guarantee caught the Purchaser's liabilities to Renault "under or in relation with" the FSA. But the pleading still left the FSA as the source of the unmatured debt which was said to become immediately repayable upon the *liquidation judiciare* and did not identify any other source of an obligation to pay "in relation with" the FSA (except, perhaps, that the French law which made unmatured debts immediately repayable was something

"in relation with" the FSA). The amendments were inadequate, and in the event, it was not submitted on behalf of Renault that they sufficed for a liability to repay the financial support on a basis which was not under the provisions of the FSA but in relation with the provisions of the FSA.

Renault brings OA 9

57 The payment of €1,750,000 due on 1 June 2023 was not made. Alvance was in liquidation. LEG did not step in, through LFG or otherwise, as it apparently had in the case of the payment due on 1 June 2022, perhaps emboldened by the question of Alvance's liability to Renault under the FSA.

58 After another letter of demand for payment by Renault, on 12 July 2023, LEG commenced OA 9 in the SICC, again claiming €5,250,025.61 and now on the basis that the failure in payment on 1 June 2023 had made the whole of the balance of the financial support immediately repayable and caught by cl 2.1 of the Guarantee. It was pleaded that the Purchaser was obliged to make the 1 June payment "pursuant to Clause 5 of the Financial Support Agreement" but (in partial conformity with the amendments in OA 3) that it had failed to pay the €5,250,025.61 "under or in relation with the Financial Support Agreement". This again left the FSA as the source of the obligation to pay, and again in the event it was not submitted that the passing reference to failure to pay in relation with the FSA sufficed for a case of liability to repay the €5,250,025.61 on a basis which was not *under* the provisions of the FSA but *in relation with* the provisions of the FSA.

LEG's response

59 In Suit 1, LEG had not contested that it was liable to pay under the Guarantee if the Purchaser failed to adhere to the payment terms in Article 5 of

the FSA, and liable to pay as guarantor in accordance with those payment terms. It now took the point that Alvance had no liability to Renault under the FSA.

60 In OA 3, in its Defence first filed, LEG did not admit that a *liquidation judiciare* rendered all debts immediately payable. It denied that the €7 million had become payable by the Purchaser "under the terms of the Financial Support Agreement", because Alvance was not a party to the FSA and under French law there could not be a binding commitment by a person not a party to the contract. In what can be seen as a summary of this position, the Defence included:

> Pursuant to the matter pleaded in paragraphs 15(a) and 15(b) above, the Purchaser had no primary obligation to pay the sum of EUR 7,000,000 under the terms of the Financial Support Agreement. The Defendant avers therefore that as guarantor, it would have no obligation to pay the sum of EUR 5,250,025.61 as claimed by the Plaintiff.

61 As Renault's submissions were at pains to point out, this was a radical departure from LEG's position in Suit 1. For example, LEG's submissions in Suit 1 had included that "[Alvance's] obligation to make payment to Renault of the first instalment owed under the FSA had not arisen at the date it was placed under *redressment judiciare*", and that LEG was "only obliged, as a guarantor, to make payment in compliance with [Alvance's] contractual repayment schedule set out in the FSA". However, the point having been taken, the proceedings must be decided accordingly.

62 In an amendment to the Defence in OA 3, LEG added that under French law any acceleration of debts upon *liquidation judiciare* applied only to the debts of the debtor in judicial liquidation, and did not have the effect of accelerating any obligations of a guarantor.

63 LEG's response in OA 9 was the same in relation to the obligation of the Purchaser. It was said that the Purchaser did not have any obligations to Renault under the FSA, because it was not a party to the FSA and under French law there could not be a binding contractual commitment on a person not a party to the contract. Alvance had "no primary obligation to make payment under the terms of" the FSA, and it had no obligation to pay the €5,250,025.61 "under or in relation to the [FSA]" (the "or in relation to" reflecting the allegation in the Statement of Case); therefore, LEG had no obligation as guarantor.

An expansion in Renault's Replies

64 In its Reply in OA 3, Renault followed two lines in relation to the obligation of the Purchaser. One was that Alvance fell within the description of "Purchaser" in the FSA, having been substituted for LEG, and that as Purchaser it was a party to the FSA and was bound by its terms. The essence of the pleading in this respect was that by requesting and accepting payment under the FSA, Alvance had "by conduct accepted and submitted to" the FSA and was a party to it and bound by it. The other was that even if Alvance was not a party to the FSA, LEG was obliged to pay the €5,250,256.61 under the Guarantee because the €7 million was a liability "owing or incurred to [Renault] by [Alvance] **in relation with** the provisions of the Financial Support Agreement" or "due under **or in connection** the Financial Support Agreement" [bold in original]. I will return to the pleading in this respect in more detail later in these reasons (see [101]). In relation to the acceleration of debts only applying to the debts of the debtor in judicial liquidation, Renault accepted that the acceleration was not enforceable against a guarantor unless otherwise agreed between the parties; but, it said, from the terms of the FSA there had been such agreement by what was called a "waiver of the benefit of a specific term" clause.

65 The Reply in OA 9 followed the same two lines described above, although for some reason only describing the €7 million as a liability owing or incurred to Renault by Alvance "in relation with" the provisions of the FSA and omitting reference to it being due "in connection with" the FSA. Again, I will return to the pleading in more detail later in these reasons (see [102]).

The hearing

66 The proceedings were heard on 18 December 2023. As in Suit 1, the hearing was conducted on an agreed statement of facts and an agreed bundle of documents. There were questions of French law concerning the position of Alvance either as a party to the FSA or as otherwise obliged to repay the financial support, and in relation to the consequences of the *liquidation judiciare.* Permission had been given for questions of French law to be determined on the basis of submissions instead of proof. Mr Liu Zhao Xiang appeared as lead counsel for Renault, with the submissions on French law by Mr Laurent Assaya of the Paris Bar; Mr Chew Kei-Jin appeared as lead counsel for LEG, with the submissions on French law by Mr Gilles Podeur also of the Paris Bar.

The issues

67 The issues at the hearing were:

(a) whether Alvance was a party to the FSA, that is, liable thereunder to repay the financial support;

(b) if not, whether Alvance was liable to repay the financial support under a separate contract on terms corresponding to those in the FSA, or on what Mr Liu described as "a simple bare quantum meruit basis"; with which was linked;

(c) whether Renault had pleaded a liability to repay the financial support under a separate contract, that is, otherwise than as a party to the FSA; and

(d) whether the acceleration of Alvance's debts in the judicial liquidation also accelerated the obligation of LEG as guarantor.

68 Some further explanation is necessary. First, Mr Liu proposed a further issue of whether LEG "is obliged to pay Renault the sums outstanding that are owed by Alvance to Renault under the terms of the guarantee"; but, subject perhaps to the "in relation with/in connection with" question mentioned in the next paragraph, that was effectively consequential on the decision of the other issues and did not receive separate attention. Secondly, there was in addition some reference to particular recovery by Renault under cl 2.1(c) of the Guarantee, the indemnity clause: I will come to that separately (see [124]–[126]).

69 Matters not in issue at the hearing should be noted. I do not think that LEG disputed that, if Alvance was liable to repay the financial support as a party to the FSA, it had become obliged to repay the €5,250,025.61 because the payment of €1,750,000 due on 1 June 2023 was not made (that is, on the OA 9 basis), or that in that event it was liable for that sum as guarantor. Nor when the issues were discussed at the hearing did it raise that, if Alvance was liable to repay the financial support under a separate contract with similar repayment terms to those in the FSA, its liability was not "in relation with the provisions of" the FSA or "in connection with" the FSA; its written submissions had contested this, but from this the contest appeared to have been abandoned, and nothing was said of it by Mr Chew in oral submissions. In case I am wrong in this understanding, I will in any event explain why I do not accept LEG's

position as set out in the written submissions (see [128]), so that (assuming a sufficient pleading) in that case LEG would also be liable for the €5,250,025.61 as guarantor on the OA 9 basis. Finally, and conversely, and as will be seen including in relation to recovery under the indemnity clause, Mr Liu accepted that if he did not establish that Alvance was liable to repay the financial support, the claims against LEG would fail.

Is OA 3 redundant?

70 If it is held that Alvance is liable to repay the financial support, whether as a party to the FSA or under a separate contract, Renault will recover the €5,250,025.61 in OA9. If Renault fails in OA 9, the issue of a separate contract including the pleading point being the same in OA 3, that will be the end of OA 3 as well as OA 9: there can be no debt to accelerate. Is there any point in OA 3, and in deciding issue (d)?

71 At a Case Management Conference in August 2023, after the commencement of OA 9, Mr Liu foreshadowed discontinuing OA 3 on the basis that "OA 9 itself, is sufficient based on what the defendant has pleaded". That did not happen, as I understand it from correspondence to the Court because there could not be agreement over costs attendant upon a discontinuance. OA 3 continued, without any explanation of why it should.

72 Nonetheless, there could be a point in OA 3. The demand in that case was made on 3 February 2023. In OA 9, the demand was made on 9 June 2023. Interest was claimed in both cases. While interest is discretionary (see *eg*, *Grains and Industrial Products Trading Pte Limited v the Bank of India and another* [2016] 3 SLR 1308 at [138]), interest may and ordinarily will run from the date of accrual of the cause of action, and in OA 3 the interest could be a little greater.

73 The overlap in the proceedings may arise in relation to costs, which is a matter for the future. It is appropriate to decide issue (d) and OA 3.

Issue (a): liability of Alvance as a party to the FSA

74 It was common ground that this issue was governed by French law. Mr Assaya submitted that Alvance was a party to the FSA on one or other of two bases: first, under the principle of *consensualisme* in French contract law; or secondly, by way of substitution in accordance with French law.

Consensualisme

75 The term takes up Article 1172 of the French Civil Code (the "Code"), which provides:

> Contracts are consensual in principle.
>
> 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 is possible to regularise it.
>
> In addition, the law makes the formation of certain contracts conditional on the delivery of something.

76 However, Article 1172 is under the heading of the form of contracts, and (as Mr Assaya acknowledged) it is necessary to go to the provisions of the Code concerning the formation of contracts. Relevantly, they are:

> Article 1113: The contract is formed by the meeting of an offer and an acceptance by which the parties demonstrate their willingness to commit themselves.
>
> This intention may be the result of a statement or an unequivocal contact on the part of its author.
>
> Article 1114: The offer, whether made to a specific or unspecified person, includes the essential elements of the contract envisaged and expresses the will of its author to be bound in case of acceptance. Otherwise, there is only an invitation to enter into negotiations.

> …
>
> Article 1118: Acceptance is the expression of the author's intention to be bound under the terms of the offer …

77 Mr Assaya submitted that under the principle of *consensualisme*, the will of the parties was the only element that mattered (unless there was a formal requirement, which there was not in this case); and that no particular form was required for the meeting of the will of the parties, and the acceptance of the terms of a contract could be tacit and could be inferred from the circumstances of the case including conduct. The essence of his submissions then was that in this case it should be found that by requesting and receiving payment of the funds advanced by Renault, as shown by the correspondence in May 2019 and May 2020 as money payable "in accordance with the protocol, signed between the two parties [Liberty Wheels and Renault]…" and "[u]nder the bilateral agreement between Renault and Liberty Wheels France", Alvance had by its conduct agreed to be bound by the FSA. In the written submissions, it was said that Alvance "tacitly accepted to be a party to the FSA and to be bound by its terms", and in oral submissions Mr Assaya described this as "adherence", that Alvance "chose to adhere to be a party to the FSA".

78 I do not accept the submission. The submissions made by Mr Assaya for the *consensualisme* argument were taken up in relation to issue (b), and I discuss them more fully in that connection. But any contract found from the request for and receipt of the funds on the terms in the correspondence in May 2019 and May 2020 would be a contract separate from the FSA. I do not think that Mr Assaya explained how under French law there was thereafter adherence in the sense of it becoming a party to the FSA, as distinct from the formation of a separate contract. That was essentially Mr Podeur's point: that the FSA was an existing agreement entered into between Renault, LEG, and LHG before Alvance existed, that the question was not its validity but whether Alvance

became a party to it, and that Alvance and LEG could not be parties as Purchaser at the same time.

79 In answer to a question concerning adherence, meaning becoming a party to the FSA, Mr Assaya referred to a decision of the Court of Cassation dated 15 November 1994, First Civil Chamber, No 92-18.981. He described it as a decision that doctors who had succeeded others as members of a doctor's partnership should be considered as parties to the professional practice agreement entered into by their predecessors with other members of the partnership, because they had been performing the agreement, although they had not signed it or initially been parties to it. I do not think that is a correct description: the doctors were bound by the practice agreement, but the decision did not go further than a contract, distinct from the contract entered into by their predecessors, formed by their conduct as members of the partnership.

80 I do not think that this case assists Mr Assaya's submission. It must be remembered that Alvance did not exist at the time the FSA was entered into, and what could happen thereafter whereby it became a party to the FSA would require a meeting of the wills of all of Renault, LEG, and LHG together with Alvance; the evidence is insufficient to come to that finding. I am not persuaded that Alvance became a party to the FSA under the principle of *consensualisme.*

Substitution

81 In general terms, 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. One of the circumstances in which that can be done is illustrated by the purchase of the business of AR Industries, where the agreement approved by the Court was for the purchase of the business by LEG

with the ability to substitute Alvance as the purchaser. That circumstance is particularly regulated by Article L.642-9 of the French Commercial Code:

> Any substitution of transferee must be authorised by the court in the judgment adopting the sale plan, without prejudice to the implementation of the provisions of Article L.642–6. The bidder of the bid selected by the court remains jointly and severally liable for the performance of the commitments he/she/it has undertaken.

82 However, subject to the submission of Mr Podeur concerning assignment discussed at [87] below, the Code does not refer to substitution. The circumstances in which there may be substitution and the parameters of its operation must be found elsewhere. With respect, the submissions were not entirely helpful.

83 In Mr Assaya's submission, the FSA contained a substitution clause for the benefit of any entity in LEG's group, being the clause in its opening which for convenience I repeat, that it:

> … acts the terms and conditions agreed between Liberty Group and Renault within the frame of the sale of the activity and assets (the "***Sale Plan***") of AR Industries (under *"redressment judiciare"*) to Liberty Engineering [ie LEG] or to any entity of Liberty Engineering's Group ("Newco") which might be substituted to Liberty Engineering in the benefit of the Sale Plan (the "***Purchaser***").
>
> [bold italics in original]

84 This was picked up in Article 4 of the FSA, stating that the Purchaser "shall be Liberty Engineering or any entity of Liberty Engineering Group controlled by Liberty Engineering". Mr Assaya submitted that unless otherwise stipulated in the contract, the enforcement of a substitution provision is not subject to any formal condition, referring to a decision of the Court of Cassation dated 21 June 2018, Third Civil Chamber, No 17-18.738; and that, the substitution option in the sale plan having been exercised by LEG, the

consequential substitution contemplated and provided for in the FSA was effected by Alvance exercising the Purchaser's rights under the FSA (by which I understand him to mean requesting, and receiving, the financial assistance as earlier described).

85 Mr Podeur's response was twofold: firstly, that since 2016 (and so at the time of the FSA) substitution had been governed by an article of the Code dealing with the contractual assignment of agreements which required that an assignment must be in writing, and that any substitution/assignment was ineffective for lack of writing; but secondly and more fundamentally, that the substitution in the sale plan was distinct from any question of substitution in the FSA, and the FSA did not provide for substitution at all.

86 I go first to substitution/assignment. The provisions of the Code relating to contracts were "amended and modernised" in 2016. Prior to the amendments, the Code did not contain any provisions dealing with the assignment of contracts. A new provision was introduced, Article 1216:

> 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.

87 It was submitted by Mr Podeur that the substitution for which Renault contended corresponded to the description of an assignment in Article 1216,

that the asserted substitution should now be treated as an assignment of the FSA from LEG to Alvance, and that in the absence of writing it was a nullity.

88 Mr Assaya replied that the distinction between substitution and assignment remained, and also that the consequence of lack of writing was not a nullity but that the assignment would be effective until a competent court held that it was void. For the distinction remaining he referred to a decision of the Court of Cassation dated 19 March 1997, Third Civil Chamber, No 95-12.47 (but, to be noted, prior to Article 1216), and to commentaries by Professors Charles Gijsbers and Phillipe le Torneau. Professor le Torneau's commentary includes:

> We take the view that the substitution of a person constitutes an autonomous sui generis institution, distinct from the assignment of a contract (and by no means confined to the mandate). It is a declaratory act, creating a direct link between the extreme parties to the contract (the original principal and the substitute third party), but without removing the substitute from the legal relationship (who remains the headmaster). … It was particularly highlighted by Professor E Jeuland. He gave a complete definition: 'The substitution of a person in a relationship of obligation is the act which allows a person, the substitute, to implement the obligation – considered in the sense of a right, duty, or potestative right – arising from a fundamental relationship between two persons, the substituted person and the unsubstituted person, without the substituted person disappearing entirely from the legal relationship and in such a way that the substitute and the unsubstituted person are directly linked to each other.

89 I have difficulty with the proposition that the consequence of lack of writing is not nullity but requires a court decree, which Mr Assaya did not support by reference to French writings. More widely, it appears from the debate in the course of submissions (and see, for example, the learned article by Professor Cecile Lisanti, "The substitution clause in preparatory contracts: assignment of contract clause?" Journal of Contract Obligations, No 39, 2017 at p 45 to which LEG referred) that the juridical basis for substitution, and

whether it is now to be regarded as assignment and accordingly governed by Article 1216, is unsettled and a matter of discussion amongst French scholars. With due respect to counsel, the submissions did not well equip me to come to a view with any confidence.

90 It is not necessary to do so, because I accept the other limb of Mr Podeur's submissions. According to Professor Le Torneau's description of substitution, the substituted person remains a party to the contract. This can be seen in the stipulation in the approval of the sale plan for AR Industries that LEG "shall remain jointly and severally liable for the performance of the commitment it has ended into". No one suggests that LEG was the Purchaser, was replaced by Alvance, but remains directly liable to repay the financial support, directly as distinct from as guarantor. The clause in the opening of the FSA is referring to the sale plan with its substitution clause and is not a substitution clause in the FSA. Nor does the FSA there or thereafter provide for the substitution of an LEG entity as Purchaser in place of LEG. It does not record an agreement that the Purchaser *is* LEG but if the LEG entity is substituted in the sale plan then that entity shall be substituted as Purchaser. Rather, it records an agreement that the Purchaser *will be whichever* of LEG or its entity that ends up as the purchaser of the business of AR Industries under the sale plan: see in particular Article 4, that the Purchaser to acquire the operations and assets of AR Industries shall be LEG or its entity.

91 Mr Podeur correctly says that Renault's submissions confuse the substitution of Alvance to LEG as purchaser of the activities and assets of AR Industries, and the assignment of the FSA (in his view) or alleged substitution of Alvance to LEG as party to the FSA. Alvance did not become a party to the FSA by the process of substitution.

Issues (b) and (c): liability of Alvance under a separate contract, including the pleading issue

92 Again, it was common ground that issue (b) was governed by French law. It is convenient to consider that issue first, being then better able to determine whether the liability as advanced by Renault has been sufficiently pleaded.

93 In the written submissions, Renault's case was encapsulated:

> Even if [Alvance] is not a party to the FSA, the request by [Alvance] for financial support from [Renault], the extension of the financial support by [Renault] to [Alvance], and the acceptance of the financial support by [Alvance] will nevertheless give rise to parallel and identical rights and obligations (by way of a separate contract) mirroring those in the FSA. These obligations are obligations arising in relation to and/or in connection with the FSA, and would necessarily be obligations guaranteed by [LEG] under the terms of the Guarantee.

94 The argument is effectively that put in support of liability of Alvance as party to the FSA, shorn of the addition that the contract is one of adherence to the FSA. The evidence is slim, but it is cogent.

95 First, from the FSA it is plain that it was intended that the Purchaser, whoever it was, would repay the financial support according to the timetable (including any advancement in the event of default) in its Article 5 – and, it should not be forgotten, would receive orders for and supply wheels and comply with other commitments of the Purchaser. This was the intention of all of Renault, LEG and LHG, even if their businessman's agreement did not pay sufficient heed to binding the yet-to-be-incorporated LEG entity to those obligations if it became the Purchaser. The financial support was not a gift.

96 Against that background, with the FSA plainly known to Alvance, Alvance requested that the instalments of the financial support be paid to it and received the instalments – it is true that the evidence of request is for the 2019 and 2020 instalments, and there is no evidence of request for the 2018 instalments, but it is hard to see payment of the 2018 instalments without request or at least willing acceptance. When it requested and/or received the instalments, Alvance could not have considered them a gift out of the blue; they were giving effect to the provision of financial support in the FSA. More than that, Alvance treated the payment of the 2019 and 2020 instalments as payments in accordance with the FSA as an agreement between it and Renault, referring albeit erroneously to the FSA as the protocol signed between them at the time of the takeover of AR Industries and as the bilateral agreement between them. When Renault paid, there is no evidence that it quibbled with that view – the inference is that it, albeit equally erroneously, also treated the payments as payments in accordance with the FSA as an agreement with Alvance. It is readily to be found in this 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, for present purposes with liability to repay the financial support in accordance with its Article 5.

97 I bear in mind that, as Mr Podeur submitted, there is no evidence of the performance of the other acts set out in the FSA, for example of Renault ordering and Alvance supplying wheels; but nor is there evidence of non-performance, and from the references in May 2019 and May 2020 to the protocol and the bilateral agreement the full extent of the respective obligations was accepted. I bear in mind also the lack of evidence of the circumstances of payment of the 2018 instalment. But LEG scarcely addressed this issue in submissions: Mr Podeur submitted that there was no evidence that Alvance

accepted all the Purchaser's obligations under the FSA, but LEG's primary complaint was the pleading issue. Notwithstanding that the evidence is slim, I am satisfied that the finding abovementioned should be made.

98 Mr Assaya's submissions included also that Alvance was bound to the terms of the FSA under a separate contract by virtue of French law concerning stipulations for the benefit of third parties. Summarising, by Article 1205 of the Code, a contract can stipulate a promise to perform an obligation for the benefit of a third party, and by Article 1206, the third party has a direct right to the benefit against the promisor, which cannot be revoked once the third party has accepted the stipulation. By Article 1208, the acceptance may be express or it may be tacit. Citing Professor Bertrand Fages, *Droit des Obligations* (12th Ed, 2022-2023) at para 253, it was said that the stipulation could confer on the third party the right to enter into a contract. It was submitted that LEG had obtained from Renault a promise to lend the financial support to the Purchaser, as it turned out Alvance; that Alvance had accepted the benefit of the promise by requesting and accepting the financial support; and that a loan contract for the financial support had thereby come into existence. The promise would have to go further than lending the financial support, the FSA containing many other commitments of both Renault and the Purchaser, but the difficulty with the submission is in seeing a promise by Renault not just to provide the financial support to the Purchaser and otherwise deal with it as the FSA contemplated, but to enter into a contract with it. In the view I have taken, a promise to enter into a contract is not necessary, there being the implicit offer; if a promise be seen, however, it is a clear form of offer which was accepted.

99 I go then to the pleading issue, returning to Renault's Replies. Mr Liu relied on them for a sufficient pleading of liability under a separate contract.

100 In the Reply in OA 3, under the heading "The Purchaser is party to and bound by the Financial Support Agreement", Renault first referred in para 4 to Alvance having become the purchaser under the sale plan and being the Purchaser as referred to in the FSA. It then averred in para 5 that Alvance was party to and bound by the FSA. The particulars to para 5 included that Alvance had requested from Renault and accepted payment of the financial support under the terms of the FSA, that the financial support had been paid to Alvance by Renault by the four instalments in 2018, 2019 and 2020, and:

> (d) By requesting and accepting payment under the Financial Support Agreement within the context set out at paragraph 4 above, [Alvance] has by conduct accepted and submitted to the Financial Support Agreement. In the circumstances, [Alvance] is party to and is bound by the Financial Support Agreement, and the Financial Support Agreement is enforceable against [Alvance].

101 This was a pleading of Alvance being a party to the FSA. Later in the Reply came the heading, "Defendant is obliged to make payment, regardless of whether [Alvance] is a party to the Financial Support Agreement". In para 12, Renault made that averment, and after reference to the Guarantee and its definition of "Obligations", the pleading ran:

> 15. As pleaded at paragraphs 4 to 5 above, [Renault] had extended EUR 7,000,000 in financial support to [Alvance]/the Purchaser under the terms of the Financial Support Agreement.
>
> 16. As pleaded at paragraphs 8 to 10A above, upon the opening of the judicial liquidation of [Alvance], the entire amount of EUR 7,000,000 of financial support extended by [Renault] to [Alvance] under the terms of the Financial Support Agreement was immediately due and payable by [Alvance] to [Renault] as of 2 February 2022.
>
> 17. Accordingly, even if [Alvance] is not a party to the Financial Support Agreement (which is denied), the EUR 7,000,000 of financial support owed by [Alvance] to [Renault] (whether under the Financial Support Agreement or otherwise) constitutes liabilities owing or incurred to [Renault] by [Alvance] **in relation with** the provisions of the Financial Support Agreement, which are guaranteed by [LEG] under Clause 2.1(a) of the Guarantee.

> 18. Further, even if [Alvance] is not a party to the Financial Support Agreement (which is denied), the EUR 7,000,000 of financial support owed by [Alvance] to [Renault] (whether under the Financial Support Agreement or otherwise) constitutes amounts due under **or in connection** with the Financial Support Agreement, which [LEG] is obliged to pay immediately on demand as if it was [Alvance] under Clause 2.1(b) of the Guarantee.
>
> [bold in original]

102 The Reply in OA 9, although slightly differently structured, was relevantly similar. There was first the pleading that Alvance as Purchaser was a party to the FSA and bound by its terms, the central particular to para 5 which made that averment being that it was party to and bound by the FSA because it had requested and accepted payment thereunder within the context in para 4. Then, although not under a heading that Alvance was obliged to make payment regardless of whether it was a party to the FSA, it was averred in para 10 that LEG was obliged to make payment under the Guarantee regardless of whether Alvance was a party to the FSA, and in the end:

> 13. As pleaded at paragraphs 4 to 5 above, [Renault] had extended EUR 7,000,000 in financial support to [Alvance]/the Purchaser under the terms of the Financial Support Agreement. Accordingly, even if [Alvance] is not a party to the Financial Support Agreement (which is denied), the EUR 7,000,000 of financial support owed by [Alvance] to [Renault] (whether under the Financial Support Agreement or otherwise) constitutes liabilities owing or incurred to [Renault] by [Alvance] **in relation with** the provisions of the Financial Support Agreement, which are guaranteed by [LEG] under Clause 2.1(a) of the Guarantee.
>
> [bold in original]

103 Model pleading this was not, but I have concluded that it is adequate to carry the case made by Renault for a separate contract.

104 I have explained the raising of whether Alvance was liable to repay the financial support *under* the FSA and the exposure of whether it might be liable to repay the financial support on a basis which was *in relation with* its provisions

or *in connection with* it. The pleadings made it abundantly clear that Renault alleged that, if it was not a party to the FSA, it was otherwise liable to repay the financial support. The basis for that was the extension of financial support as pleaded in the respective paras 4 and 5, from reference to those paragraphs being the request for and receipt of the financial support in the context of it being the Purchaser as referred to in the FSA. Those facts had been the basis for the allegation that Alvance was a party to the FSA but were taken up again as the basis for an alternative liability.

105 It is sufficient for the pleader to state the material facts, and the legal conclusion to be drawn from them need not be stated: *MK (Project Management) Ltd v Baker Marine Energy Pte Ltd* [1994] 3 SLR(R) 823 at [26]. As was said by Vinodh Coomaraswamy J in *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd (formerly known as CIMB Securities (Singapore) Pte Ltd)* [2023] 5 SLR 406 at [64]:

> … I accept the plaintiff's submission that a pleader's duty is to plead facts not law. Once the material facts have been pleaded, the pleader can develop the legal consequences of those facts in submissions. I would add only the proviso that the legal consequences which the pleader develops in submissions must not take the opposing party by surprise, so as to cause it prejudice which cannot be remedied.

Mr Chew submitted, referring to *Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 at [47], that there must be an identifiable agreement that is complete and certain, and that this could not be seen in the pleading. However, the essential ingredients of a contract are apparent. The parties are Renault and Alvance, the provider and recipient of the financial support; the contract arose from the conduct of requesting and receiving the financial support, in the particular context, and its terms correspond to those in the FSA. It was open to Renault to develop the legal

consequence of the separate contract. This could not be said to have taken LEG by surprise, nor was it prejudicial to it, when Renault relied on the same facts for Alvance having become a party to the FSA and LEG was able and to an extent did contest their consequences in terms of *consensualisme.*

Issue (d): acceleration of the obligation of LEG as guarantor

106 At the hearing LEG did not dispute that under Article L.643-1 of the French Commercial Code, the commencement of a judicial liquidation rendered all the debtor's debts immediately due and payable. If Alvance was bound by the FSA, or if it was bound under a separate contract to repay the financial support, upon the judgment of the Paris Commercial Court opening the *liquidation judiciare* of Alvance on 2 February 2022, its unmatured debts would be rendered due and payable.

107 This was common ground between Mr Assaya and Mr Podeur. It was also common ground that under French law the acceleration of the debts upon the *liquidation judiciare* of a debtor is not enforceable against a guarantor, unless otherwise agreed between the parties. The issue, then, came down to whether it had been "otherwise agreed" that LEG would be bound by the acceleration of Alvance's debts triggered by the operation of Article L.643-1.

108 Mr Assaya cited from Pierre-Michel Le Corre, *Law & Practice of the Collective Proceedings Involving a Debtor and his Creditors* (Dalloz, 12th Ed, 2022) at para 721.181 where, after describing that a guarantee has its own term (as I understand it, in the sense of when the guarantor can be called upon to pay), the learned author continues:

> However, the guarantor's own term is a purely suppletive rule. It benefits the guarantor if the guarantee agreement is silent on this point. It can be validly set aside by an express stipulation to this effect, without it being necessary for it to appear in the

> handwritten note affixed by the guarantor. In the case of bank guarantees, this is a clause that has become standard, known as the 'waiver of the benefit of a specific term' clause. In such a case, the guarantor who has waived the benefit of its own term will follow the principal debtor's term. If the principal debtor is subject to acceleration of the term, either by agreement or as a result of liquidation, the guarantor will also be subject to acceleration of the term as an accessory matter. However, in order for the acceleration of the term to come into effect, the creditor must allege the existence of this clause waiving the benefit of a specific term.

109 For his part, Mr Podeur cited from a commentary on the Code by Professor P. Simler, in which the learned author states:

> The non-enforceability, against the guarantor, of the acceleration of the debts affecting the principal debtor is based, as has been pointed out, on compliance with contractual provisions, that is to say on Article 1103 (former Art 1134) of the Civil Code. As this is a supplementary rule, it can, therefore be freely waived by a clause in the guarantee contract. This is often the case.
>
> On the face of it, no major difficulty can arise if the waiver is the result of a clear and explicit stipulation in the guarantee contract.

110 Article 1103 of the Code is the Article which gives binding force to contracts. From these citations, the authors appear to differ on whether a waiver must be found in the guarantee itself. The difference was not clarified in submissions.

111 Mr Assaya submitted that the parties, that is, Renault and LEG, had "otherwise agreed" by forms of "waiver of the benefit of a specific term" clause, the waiver being found in Article 10 of the FSA and in cl. 2.1(b) of the Guarantee, and even by the fact that the Guarantee was signed after and with knowledge of the FSA. Mr Podeur responded that Article 10 of the FSA was irrelevant because it was not part of the Guarantee, while submitting that neither Article 10 of the FSA nor cl 2.1(b) of the Guarantee gave rise to an acceleration

of LEG's obligation to pay Renault, and that "otherwise agreement" could not be found simply in signature of the Guarantee with knowledge of the FSA.

Article 10 of the FSA

112 Again, for convenience I set out the relevant part of Article 10:

> Moreover, in case i) the Purchaser is an entity of Liberty Engineering's Group substituted to Liberty Engineering in the benefit of the Sale Plan, and ii) a bankruptcy proceedings is opened towards the Purchaser (*sauvegarde, redressment judiciare* or *liquidation judiciare)* and/or iii) the Purchaser fails to reimburse the Financial Support in due time (as referred to in Article 5) for any reason whatsoever, Liberty Engineering, as Guarantor 2, commits to reimburse to Renault the Financial Support paid to the Purchaser, on first demand, in place of the Purchaser, **within the same schedule**. For the sake of clarity, it is specified that in case the amount of the Financial Support already paid becomes immediately refundable by the Purchaser, **it will also become immediately refundable by the Guarantor 2.**
>
> To this end, Liberty House Group, and Liberty Engineering, each as far as it is concerned, commit to provide Renault, within 10 business days, following the signing of the Agreement, with (i) a first demand guarantee duly approved by their competent, corporate bodies…
>
> [emphasis added in bold]

113 Mr Assaya submitted that by the words emphasised in bold, LEG had agreed that in the event of the *liquidation judiciare* of Alvance it would reimburse Renault "within the same schedule", and in the event of the financial support becoming immediately refundable by Alvance it would also be immediately refundable by LEG: that is, that if repayment by Alvance was accelerated, so also was payment by LEG accelerated.

114 Quite apart from whether French law requires that the waiver be in the guarantee itself, I doubt that regard can be had to the Article for whatever status it may have as a "waiver of the benefit of a specific term" clause. That is

because, as the latter part of Article 10 says, LEG is to provide a guarantee to Renault, and it is to the guarantee that Renault and LEG must look for their respective rights and obligations. In the Suit 1 Judgment I explained at [41]–[42] that the Guarantee was "a quite different animal from the First Demand Guarantee 2 outlined in Article 10", and that it was to be construed on its own terms; similarly, when its terms differ from what was contemplated as the First Demand Guarantee 2, those are the terms to operate between Renault and LEG. But even if that be incorrect, I do not think that the words emphasised in bold are an agreement upon acceleration of LEG's liability if Alvance's liability is accelerated. As was common ground in Suit 1, the opening of bankruptcy proceedings towards the Purchaser did not accelerate repayment by it or make the financial support immediately refundable, so an agreement to reimburse "according to the same schedule" in that event was not agreement upon acceleration of LEG's liability. Failure by the Purchaser to reimburse the financial support in due time, meaning according to the payment schedule in Article 5, would make the whole of the financial support already paid immediately refundable, and there would be a corresponding liability of LEG, but that was not the situation in February 2022. That is, the "agreement otherwise" was not a waiver of the benefit of a specific term either across the board or in the situation of the acceleration of Alvance's debts upon its *liquidation judiciare*.

115 It is therefore unnecessary to resolve whether a waiver must be found in the guarantee itself.

Clause 2.1(b) of the Guarantee

116 Again, for convenience, cl 2.1(b) reads that the guarantor:

> undertakes that (i) whenever the Purchaser does not pay any amount when due under or in connection with the Financial Support Document, or (ii) upon the occurrence of a Bankruptcy Event, the Guarantor shall immediately on demand by the Financial Support Provider pay that amount to the Financial Support Provider **as if it were the Purchaser**…
>
> [emphasis added in bold]

117 Mr Assaya submitted that the effect of the words emphasised in bold was that if Alvance's debt was accelerated, so also was LEG's liability as guarantor accelerated. Mr Podeur said otherwise, submitting in particular to the effect that in the case of a Bankruptcy Event there was not an acceleration of either the Purchaser's obligation to repay the financial support or the guarantor's liability under the Guarantee, so the words could not be seen as adoption of any acceleration of the Purchaser's debts. The construction of the Guarantee is governed by Singapore law, but neither Mr Liu nor Mr Chew intervened.

118 Although its construction is governed by Singapore law, what must be found in the Guarantee is what is required by French law, agreement to waive the ordinary position that the acceleration of the debts of the debtor is not enforceable against the guarantor. That is the waiver of a valuable right, and I do not think that it should be found lightly, in which I am fortified by Professor Simler's reference to a clear and explicit stipulation in the guarantee contract: in a footnote, the Professor cites a case where the guarantor had agreed to pay "as soon as the debt becomes enforceable for any reason whatsoever, particularly in case of acceleration of maturity".

119 I do not think that the words emphasised in bold are such a stipulation. Commonly it is enough to say, in the form found in cl 2.1(a), that the guarantor guarantees performance of the debtor's obligations. Clause 2.1(b) overlaps with this, in the different form that in the events stated the guarantor will pay in place of the debtor. The words in bold emphasise that the guarantor will pay in place

of the debtor, but do not clearly go beyond that status of the guarantor and mean that the guarantor will do so according to any accelerated obligation of the debtor.

Signature with knowledge

120 Mr Assaya referred to a decision of the Court of Cassation dated 13 May 2003, Commercial Chamber, No 00-15.642, in which the guarantors asserted that their "waiver of the unenforceability of the forfeiture of the term" could only result from express waiver, but the Court said:

> However, the guarantor's express waiver of the unenforceability of the term forfeiture clause included in the loan agreement is not a condition for the guarantor's enforceability of the clause; whereas the judgement holds that the guarantors undertook to pay the sums due by the principal debtor company after having read the terms of the loan agreement, in particular, the clause forfeiting the term in the event of non-compliance with the deadlines and that it follows that they have tacitly agreed to pay as soon as the term has lapsed …

121 Mr Assaya submitted, in reliance on this decision, that the agreement to waive the benefit of a specific term could be deduced from the mere fact that the guarantor agreed to the guarantee after having read the terms of the agreement between the debtor and the beneficiary of the guarantee that provided that the debt will become immediately due and payable in certain circumstances. Mr Podeur responded to the effect that this would negate the principle that the acceleration of debts upon the *liquidation judiciare* of a debtor is not enforceable against a guarantor unless otherwise agreed, and that the decision should not be viewed as reflecting French law.

122 Again, the submissions did not well equip me to come to a view on Mr Assaya's proposition as a matter of French law. It appears, however, that the loan agreement contained a clause "forfeiting the term in the event of non-

compliance with the deadlines", being a clause providing for acceleration of the debtor's obligation in the particular circumstance, and so there must be found in the present case a clause in the FSA providing for acceleration of the Purchaser's obligation to repay the financial support in the event of the *liquidation judiciare* of the Purchaser. There is no such clause; to the contrary, a Bankruptcy Event does not accelerate repayment. The reliance on the decision is misplaced.

123 I add that LEG's written submissions included that the judgment of the Paris Commercial Court converting the *redressment judiciare* into *liquidation judiciare* has not been recognised in Singapore, therefore the acceleration of debts resulting from Article L.643-1 of the Commercial Code cannot be validly invoked by Renault in this Singaporean court. Mr Podeur repeated the argument in his oral submissions, but Mr Chew whose place it was to make it did not take it further, and Mr Liu did not respond to it. The submission may not be open when the effect of Article L.643-1 of the Commercial Code was admitted in the Defence in OA 3. It is not necessary for me to address the matter.

Recovery under cl 2.1(c) of the Guarantee

124 The Reply in OA 9 included a pleading to the effect that LEG was obliged to indemnify Renault in the amount of €5,250,025.61, pursuant to cl 2.1(c) of the Guarantee, for its loss and damage suffered because Alvance "is insolvent and has entered judicial liquidation" and the claim against it was unenforceable and/or ineffective. Renault's written submissions so contended.

125 This was not a matter raised by Mr Liu in his formulation of the issues at the hearing. On enquiry whether the pleaded claim was maintained, there was some confusion. Ultimately Mr Liu said that he was not relying on cl 2.1(c) because, as I understand it, he considered that if there was no debt of Alvance,

it could not be said that the claim against it was unenforceable or ineffective as a result of its liquidation; and implicitly, if there was a debt, he did not need to rely on cl 2.1(c).

126 I express no view as to this position. For a separate reason the pleaded claim under cl 2.1(c) could not succeed. Whether or not Alvance owes money to Renault, Renault must show a loss suffered because of the insolvency and liquidation of Alvance, the cause (according to the pleading) of the unenforceability and ineffectiveness. In its own Statement of Case it alleged, and the evidence established, that its proof of claim for €7 million had been "approved" and entered on the list of claims concerning Alvance. How this was meant to be part of Renault's case is unclear, and it was not referred to in the submissions in support of Alvance's liability to repay the financial support; but it indicates that Renault may recover some or all of the now balance of the €7 million in the liquidation of Alvance. There was no evidence enabling a finding as to any shortfall in recovery. Renault has not shown the suffering of loss.

Liability "in relation with" the provisions of the FSA or "in connection with" the FSA

127 In the Suit 1 Judgment at [41] the definition of "Obligations" in the Guarantee was said to be very wide. That observation was not particularly directed to the reference to money and liabilities, including debts, both *under* the provisions of the FSA and *in relation with* its provisions, but the latter phrase must be given effect: see *Travista Development Pte Ltd v Tan Kim Swee Augustine and others* [2008] 2 SLR(R) 474 at [20] (cited more fully in the Suit 1 Judgment at [45] in a slightly different connection):

> … in construing, a contract, all parts of it must be given effect where possible, and no part of it should be treated as

> inoperative or surplus. This means, as explained in *Lewison* at para 7.03, p 198, that, in general, each part of the document is taken to have been deliberately inserted, having regard to all the other parts of the document, with the result that there is a presumption against redundant words. The courts should not adopt an interpretation of a contract which would render the language of a particular clause redundant.

128 The words "in relation with" equate with the more usual "in relation to", and that phrase is one of wide import; so also the phrase "in connection with". The particular scope of the phrases depends on their context and their purpose in the statute or agreement in which they are used. The FSA identifies its signatories and refers to an entity which might be the Purchaser rather than LEG, which entity is not a signatory to the FSA. The addition of "in relation with" therefore serves to catch obligations of the Purchaser although it is not a signatory to the FSA, and the addition of "in connection with" similarly serves to catch amounts due from the Purchaser although it is not a signatory to the FSA, provided there is a relevant relationship or connection between the obligations and the provisions of the FSA or between the amounts due and the FSA.

129 Here there is. The FSA is an agreement between Renault, LEG and LHG concerning the provision of financial support to the Purchaser and the ordering from and supply of wheels by the Purchaser, with many provisions governing how those matters should occur. When (relevantly) the financial support is paid to Alvance as Purchaser, as between the parties to the FSA something occurring in fulfilment of the FSA in that respect, it is to be repaid as contemplated in the FSA. The corresponding repayment obligation under the separate contract made between Renault and Alvance has a clear relationship with the provisions of the FSA or in connection with the FSA.

130 If it be that they are maintained, I do not accept the submissions to the contrary in LEG's written submissions. Their substance was that "in relation with" in the definition of Obligations and "in connection with" in cl 2.1(b) should be construed only to extend LEG's obligations as guarantor to compensation to Renault for breaches of the FSA such as in relation to the supply of wheels, in addition to obligations as guarantor for repayment of the financial support. To interpret the phrases as Renault sought, it was said, would mean that "a guarantor will have to contend with the possibility that it may have inadvertently and unwittingly agreed to guarantee independent obligations, falling outside the scope of the underlying agreement between the lender and primary obligor". This is not persuasive. First, it is the Guarantee which is being construed, not some generic guarantee. Secondly, the guarantee here is not of independent obligations unconnected with the FSA, but of obligations with a relevant relationship with its provisions or in connection with it – the Guarantee requires the relationship or connection, and if there is a question it is whether the relationship or connection exists. Thirdly, if the Purchaser is a party to the FSA the extensions of "in relation with" or "in connection with" is not needed for LEG's obligations as guarantor to include compensation to Renault for breaches such as in relation to the supply of wheels, any more than it is needed for repayment of the financial support, since the breaches would create liabilities under the FSA: the extensions cater for such breaches and repayment of the financial support alike where the Purchaser is not a party to the FSA.

Conclusion

131 So ends a lengthy and rather untidy dispute. In OA 9 Renault has judgment for €5,250,025.61 and should have interest at 5.33 per cent from 9 June 2023. OA 3 is dismissed.

132 If there is no agreement as to costs (both their disposition and their amount) within 28 days, the parties should file their respective written submissions within a further 14 days and their replies to the other party's submissions within a further 7 days; costs will be decided on the papers.

Roger Giles
International Judge

Liu Zhao Xiang, Chia Shi Mei, T Abirami (WongPartnership LLP) and Laurent Assaya (Vivien & Associés) (registered foreign lawyer) for the claimant;
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