**THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS**

**IN THE COURT OF FIRST INSTANCE**

BETWEEN

**(1) AJIAL NATIONAL EDUCATION COMPANY K.S.C.C**
**(2) TALAL KHALIFA TALAL AL JERI**

Claimants

and

**(1) THE SECURITIES HOUSE COMPANY**
**(2) STELLAR EDUCATIONAL SERVICE CO. /RAZAN HAMAD ALHAMAD & PARTNERS**
**(3) FIRST KUWAITI FOR EDUCATION HOLDING COMPANY W.L.L**

Defendants

---

**JUDGMENT OF JUSTICE LORD ANGUS GLENNIE**

---

Hearing : **31 July 2023 - 4 August 2023**

Counsel : Mr. Hugh Lyons, instructed by Baker & McKenzie LLP (DIFC) for the Claimants
Mr. Graham Lovett, instructed by Akin Gump Strauss Hauer & Feld LLP - Dubai for the Defendants

Judgment : **7 September 2023**

**UPON** the Part 7 Claim Form dated 5 December 2021 (the "Claim")

**AND UPON** the Defence without Counterclaim dated 14 September 2022

**AND UPON** the Reply to Defence dated 11 October 2022

**AND UPON** hearing Counsel for the Claimants and Counsel for the Defendants at the Trial held before Justice Lord Angus Glennie on 31 July 2023 to 4 August 2023 (the "Trial")

**AND UPON** reviewing the Rules of the DIFC Courts (the "RDC")

**IT IS HEREBY ORDERED THAT:**

1. The Claim succeeds in part as set out in paragraphs 124, 129, 133 and 137 of this Judgment.

2. The Defendants shall within 14 days from the date of this Judgment pay to the Claimants the sum of KWD 4,123,335.68, inclusive of interest to the date of this Judgment.

3. Judgment debt interest shall accrue on the said sum of KWD 4,123,335.68 at the rate of 9% pursuant to Practice Direction No. 4 of 2017 (Interest on Judgments) from the date of this Judgment until the date of full payment.

4. Costs shall be reserved, to be dealt with hereafter by me, by way of an application made by either party.

Issued by:
**Delvin Sumo**
Assistant Registrar
Date of issue: 7 September 2023
At: 12pm

**SCHEDULE OF REASONS**

**Introduction**

1. This litigation concerns the sale and purchase of 100% of the shares in Dar Al Salam Education Company W.L.L. ("DAS" or "the Company") through a Sale and Purchase Agreement dated 15 May 2019 (the "SPA"). The Claimants were the sellers of the shares, and the Defendants were the buyers.

2. At the time of the sale, DAS owned and operated two private schools in Kuwait, the Indian Central School ("ICS") and the Pakistani English School ("PES"). Until completion of the SPA those schools were part of a much larger group of schools owned and/or operated by the Claimants

or related companies. The schools charged relatively low fees. They were attended by Indian and Pakistani students respectively. DAS had also substantially completed construction of two further schools on the same or an adjacent site, which were intended to be owned and operated by them (the "Two New Schools"), though the exact nature of those new schools (specialisations, target catchment, etc) had not yet been determined.

3. The First Claimant ("Ajial") is an established Kuwaiti education management company, and a subsidiary of Um Al Qoura Education Company K.S.C.C. (the "Group") which owns and operates a number of schools across Kuwait. The Second Claimant is the Chief Executive Officer and Chairman of the Group. Between them, the Claimants (the "Sellers") owned all the shares in DAS.

4. The Defendants (the "Buyers") are Kuwaiti companies. The First and Second Defendants have changed their names since the SPA was concluded - they are now sued in this action under their current names. The First Defendant is a private equity firm. The Second Defendant is an education management company associated with Mr K. O. Mathew (who gave evidence) and majority owned by his wife. The third Defendant is a subsidiary of the Second Defendant. Between them, they agreed to purchase 100% of the shares in DAS, 98% of which were transferred to the third Defendant under the SPA.

5. The SPA was concluded on 15 May 2019. The Completion Date was 26 June 2019.

6. The Purchase Price under the SPA was 18 million Kuwaiti Dinars (KWD 18 million) subject to the possibility of a "Leakage Adjustment" which is not relevant to this dispute. Clause 6 of the SPA set out how payments were to be made. A "Purchase Price Advance" of KWD 500,000 was paid in February 2019: clause 6.2(a). A "Signing Amount" of KWD 3.1 million was paid on the conclusion of the SPA on about 15 May 2019: clause 6.2(b). A "Completion Date Payment" of KWD 9.9 million was paid on or about 26 June 2019: clause 6.2(c). A "Hold-Back Amount" of KWD 4.5 million was to be payable one year after the Completion Date, i.e. by 26 June 2020 (clause 6.2(d)), but the Buyers were given the right "to reduce this Hold-Back Amount for any amounts incurred pursuant to sub-clause 10.1".

7. I shall refer to sub-clause 10.1 in more detail later. Suffice it to say for present purposes that the Buyers did in fact make deductions from the Hold-Back Amount to the extent that they declined to pay any further sum on the due date of 26 June 2020. They sought to justify their stance by three letters written to the Sellers (dated 2 and 5 March and 25 June 2020) alleging breaches of warranty by the Sellers valued by them at that stage at a total sum in excess of the Hold-Back Amount of KWD 4.5 million. A further letter from the Buyers sent on 15 October 2020 outlined further claims purporting to justify their refusal to pay any part of the Hold-Back Amount. Since then, as will appear below, the Buyers' claims to deduct have been re-formulated and reduced in amount. The Sellers dispute these claims in their entirety and claim to be entitled to be paid the Hold-Back Amount of KWD 4.5 million without any deductions.

**Proper law and jurisdiction**

8. Clause 24 of the SPA provides that any dispute arising out of or in connection with the Agreement shall be subject to the exclusive jurisdiction of the DIFC Courts. The Agreement itself is to be governed and construed in accordance with the laws of Kuwait.

9. As a result of this provision there was no dispute about jurisdiction. However, it was necessary to hear evidence from Kuwaiti lawyers on certain disputed aspects of Kuwaiti law.

**The SPA**

10. The SPA is a lengthy document written both in English and in Arabic. It has 13 Schedules and runs to 61 pages. It makes reference to, and was accompanied by, a Disclosure Letter some 5 pages in length. It is not necessary to set out its terms in full. Nonetheless, a number of clauses are relevant to this dispute. I quote the relevant passages below

11. Clause 3 of the SPA is headed "CONDITIONS". It provides in clause 3.1 that the sale and purchase are in all respects conditional upon the matters listed in Schedule 2. That Schedule sets out "Conditions to Completion", which are largely formal. Neither Clause 3 nor Schedule 2 are of any relevance here.

12. Clause 4 sets out "PRE-COMPLETION COVENANTS". Some of these Pre-Completion Covenants were referred to in the course of the Trial. For reasons which are set out later in this judgment (see paragraphs 15 and 32 below), none of these are directly relevant to the dispute between the parties, but I set out below the Covenants to which reference was made:

> "4. PRE-COMPLETION COVENANTS
>
> 4.1 Ajial, for itself and on behalf of Talal, shall procure that between the date of this Agreement and Completion and shall keep the other party informed:
>
> I ...
>
> (f) any authorizations, permits, contracts of any kind (including but not limited to the employment contracts of the schools) and licenses held on behalf of, or to the benefit of, the Company, but that are not in the Company's name, will be transferred to the name of the Company;
>
> ...
>
> 4.3 Ajial, for itself and on behalf of Talal, shall notify the Buyers of:
>
> ...
>
> (c) any materially adverse event having occurred in respect of the Company's relationship with its customers, auditors, suppliers, insurers, bankers or any other party with which the Company has a business relationship; or
>
> ...

4.5 Without prejudice to the generality of clause 4.4, and subject to any applicable law, as from the date of this Agreement, the Ajial, for itself and on behalf of Talal, shall procure that:

...

(d) the Buyers is provided with updates to be delivered at least three (3) Business Days prior to Completion. Such updates shall detail:

...

(vi) any event or circumstance that may be of more than insignificant importance for the Business operating results, assets, liabilities, future prospects or market position. "

13. Clause 8 is headed "AJIAL'S WARRANTIES AND COVENANTS". It provides in clause 8.1 that Ajial, for itself and on behalf of Talal

"... represents and warrants to the Buyers that each of the Warranties is accurate in all respects and not misleading at the date of this Agreement, and that each of the Warranties will be accurate in all respects and not misleading as if repeated immediately on the Completion Date by reference to the facts and circumstances subsisting at that time ."

Clause 8.3 in terms states that Ajial accepts that the Buyers are entering into the SPA in reliance on the Warranties and have been induced to enter into the SPA by each of the Warranties.

It should be noted that "Warranties" (with a capital "W") is a defined term. It means (clause 1.1) "the representations and warranties of the Sellers set out in Schedule 5 [of the SPA]".

14. Clause 9 is headed "PARTIES' REMEDIES AND LIMITATIONS ON LIABILITY". Of relevance, here is clause 9.1 which provides that:

"The Buyers shall not be entitled to claim that any fact, matter or circumstance causes any of the Warranties to be breached or renders any of the Warranties misleading if it has been fully, fairly, accurately and specifically disclosed in the Disclosure Letter .".

The Disclosure Letter is also dated 15 May 2019. Under the heading of clause 1 "General Disclosures", clause 1.1 provides that the Sellers are not liable in respect of (a) any matter fairly disclosed in, or deemed to be disclosed by, that letter, and (b) any other matter which is reported on or before the date of this letter to the Buyers by any of its professional advisers. Clause 1.3 states that, in addition, the following are disclosed or are deemed to have been disclosed by this letter, and then refers to (a) any matter referred to in written correspondence and (b) any matters contained in any documents or written material uploaded in the "virtual data room" to which the Buyer and its advisors have had access, that virtual data room ("VDR") being defined as "the documents and written material recorded on the computer disk annexed to the Disclosure Letter".

15. Clause 10 of the SPA is important. It provides as follows:

"10 SELLERS OBLIGATIONS TO REIMBURSE; RIGHT TO REDUCE FROM HOLD-BACK

10.1 Ajial, for itself and on behalf of Talal, shall reimburse fully the Buyers and the Company for any and all Losses which the Buyers or the Company may suffer or incur, in each case to the extent arising directly out of, related to, or in connection with any Losses to the Buyers or the Company arising from:

(a) any Losses to the Buyers or the Company arising out of any breach of Warranty; or ...

...

10.2 In the event Sellers are unable to cure such Losses arising from sub-clause 10.1 within thirty (30) Business Days, but in any event no later than fifteen (15) Business Days prior to the payment of the Hold-Back Amount, the Buyers have the right to deduct any and all amounts from the Hold-Back Amount owed to the Sellers with respect to any losses referenced in sub-clause 10.1 ..."

I should emphasise that the right to deduct from the Hold-Back Amount is limited, so far as is relevant to the present dispute, to losses incurred by the Buyers (or the Company) arising out of any breach of Warranty, the term Warranty being defined, as set out above, as "the representations and warranties of the Sellers set out in Schedule 5 [of the SPA]" - no other breach of any other provision of the SPA gives rise to a right to deduct from the Hold-Back Amount.

16. The applicable "Warranties" are set out in Schedule 5 to the SPS. They are divided into "Fundamental Warranties (in Part A) and "General Warranties" (in Part B).

17. The relevant Fundamental Warranties referred to in Part A are at clauses 2.6 and 3.1. Clause 2.6 falls under the heading "Power, Capacity, Authority and Compliance" and reads as follows:

"2.6 Except to the extent disclosed in the Disclosure Letter, the Company is in full compliance with all relevant tax, social security, labor, safety, environmental, statutory and administrative regulations in all jurisdictions relevant to the Business."

Clause 3.1 is under the heading "Related Party Transactions" and provides:

"3.1 Full details of any goods and services (including, without limitation, management and other head office services) supplied by any Seller or any person connected with any Seller to the Company, or supplied by the Company to any Seller or any Affiliate of a Seller, up to the date of this Agreement are set out in the Disclosure Letter. The details include the name of the relevant person connected with such Seller and the nature and amount of the supplies and the terms of supply."

18. The relevant General Warranties in Part B are at clauses 1, 3, 9, 12, 18 and 20. So far as material they read as follows:

"1. ACCOUNTS

1.1 The Accounts:

(a) were prepared in accordance with applicable law and IFRS
[Note: IFRS "means the International Financial Reporting Standards being the standards and interpretation issued by the International Accounts Standards Board"];

(b) show a true and fair view of the assets of the Company at each accounting reference dateI to which the Accounts relate ...

...

3. EVENTS SINCE THE REFERENCE DATE

Since the Reference Date

(a) there has been no material adverse change in the financial or trading position or prospects of the Company and no circumstance has arisen which gives rise to any such change;

(b) the Business has been carried on in the ordinary and usual course, and in the same manner (including nature and scope) as in the past and no unusual or onerous contract differing from the routine contracts necessitated by the nature of its trade has been entered into by the Company;

...

[It is relevant to note here that the "Reference Date" is 31 March 2019: see clause 1.1 of the SPA. The "Reference Date Accounts" are defined in clause 1.1 as "the pro forma balance sheet of the Business (together with supporting balance sheets) as at (and including) the Reference Date, as signed off by the management dated March 31, 2019."]

9. COMPLIANCE WITH LAWS

9.1 The Company has, at all times, conducted Business in all material respects in accordance with all applicable legal and regulatory requirements ...

...

12 INTELLECTUAL PROPERTY

...

12.8 The Company legally and/or beneficially owns or has a license to use all Intellectual Property and rights in information used currently in, or necessary to carry on, the Business conducted by the Company in the manner currently carried on and to fulfil any existing plans or proposals.

...

18 ACCURACY AND ADEQUACY OF INFORMATION

...

18.2 All information supplied to the Buyers or any of its advisers by or on behalf of the Sellers or the Company after the Buyers indicated its interest in acquiring the Parts [i.e. the shares in the Company] is true and accurate in all respects and there is no fact or matter not disclosed in writing to the Buyers or any of their advisers which renders any such information untrue or misleading because of any omission or ambiguity or for any other reason to the best of the knowledge of the Sellers.

18.3 So far as the Sellers are aware, there is no fact or circumstance relating to the affairs of the Company or the Business which has not been disclosed to the Buyers or any of their advisers and which if disclosed might reasonably have been expected to influence the decision of the Buyers to purchase the Parts on the terms contained in this Agreement.

...

20. WORKING CAPITAL

There is sufficient cash in the Company's bank accounts as of the Completion Date to cover the Working Capital Amount. "

[The Working Capital Amount is defined in clause 1.1 as being "an amount sufficient to fund all expenses of the Company through 31 August 2019, including, but not limited to, monthly expenses, monthly expenses necessary to cover the Construction Cost of the Two New School Buildings and trapped cash reserves of KWD 25,000".

19. Finally, I should mention Schedule 8, MATERIAL CONTRACTS, which includes, amongst the other Material Contracts listed there, the contract dated 10 January 2018 between Ajial (in its capacity as owner of the Company, in its capacity as owner of the ICS) and Top Business General Trading and Contracting Co ("Top Business").

**Evidence**

20. I heard evidence from four witnesses of fact, two from the Claimants and two from the Defendants.

21. The Claimants called Mr Mahmoud Saad Rashad, the Chief Financial Officer of the Aljeri Holding Group of which Ajial is a subsidiary, and Dr Shanta Maria James, who was Principal at ICS for some 15 years from 2006 until September 2021 (more than two years after the Completion Date under the SPA of 26 June 2019). I found them both to be truthful and impressive witnesses. Dr James was particularly helpful in giving an account of how the school was run in the period leading up to and after Completion

22. The Defendants called Mr KO Mathew, the Vice-Chairman of the Second Defendants ("Stellar") since 2007, and Mr Ahmed Fouad Al Falah, currently the Executive Vice President (Private Equity) at The Securities House, the First Defendants. Mr Al Falah was also a truthful and impressive witness. He gave helpful evidence in particular of how he valued the Company in the period leading up to the conclusion of the SPA. I had more hesitation about Mr Mathew, noting on a number of occasions during his cross- examination that his answers tended to be "evasive". I had some reservations about simply accepting his evidence where it was unsupported by other evidence or documents filed in the process.

23. In addition, both the Claimants and the Defendants called expert evidence on issues of quantum and Kuwaiti law.

24. On quantum, the Claimants called Mr Fred Brown, a Chartered Accountant and a Director at Grant Thornton UK LLP. The Defendants called Ms Jacqui Record, also a Chartered Accountant and a Senior Managing Director in the Disputes & Investigations practice of Ankura Consulting (Europe) Limited - Dubai Branch. The experts met and produced a Joint Report stating the points on which they agreed and disagreed. Both were well qualified to give expert evidence. Ms Record tended to be more argumentative and prone to avoid answering difficult questions, but in general, both were straightforward and impressive witnesses.

25. In terms of expert evidence of Kuwaiti law, the Claimants called Dr Yousuf Alsellili, an experienced Kuwaiti attorney and a teacher and lecturer at Kuwait University (and subsequently Kuwait International Law School), while the Defendants called Mr Mohammed Alosaimi, a practising lawyer in Meshari Alosaimi Law Firm. They too produced a Joint Report. Both expressed their opinion on the issues before the court with conviction and I have no doubt that both gave their evidence honestly and complete candour. It has to be said, however, that Dr Alsellili was clearly the more experienced of the two and, as appears from what follows, I found his evidence on certain points in issue between them the more persuasive of the two.

**The issues**

26. The main issue between the parties is as to whether the Buyers were entitled to make any and, if so, what deductions from the Hold-Back Amount. The Claimants claim payment of the Hold-Back Amount in full.

27. The Sellers also advance two independent claims: (a) a claim in respect of certain salary payments made by them after Completion on 26 June 2019; and (b) a claim for re-imbursement of bank charges allegedly incurred in respect of extending Letters of Guarantee.

28. There is also an associated issue concerning interest on any amount awarded to the Sellers. This involved a consideration of Kuwaiti law.

29. I propose first to consider the main issue, whether the Buyers are justified in making deductions from the Hold-Back Amount of KWD 4.5 million.

**Deductions from the Hold-Back Amount**

30. The Hold-Back Amount was to be paid by 26 June 2020, that date being a year after completion. Buyers had a right to deduct from the Hold-Back Amount "any amounts incurred pursuant to sub-clause 10.1". Clause 10.1 confirms that the Sellers are to re-imburse the Buyers for losses caused to them arising out of a breach of Warranty. Clause 10.2, referring back to clause 10.1, confirms that losses arising from breach of Warranty may be deducted from the Hold-Back Amount.

31. Clause 10.2 is introduced by wording strongly suggestive of there being time limits and notification requirements before the Buyers may deduct such losses from the Hold-Back Amount; see, for example, the reference to the Sellers' potential inability to cure such losses within 30/15 days prior to the date on which the Hold-Back amount falls due for payment. That wording also makes it clear - since the right is a right to deduct from payment due to be made no later than one year after Completion - that the losses sustained by the Buyers must have become known to them before that date and must have been notified to the Sellers before then. It follows that complaints raised for the first time after 26 June 2020 (at the very latest) cannot be used to justify a deduction from the Hold-Back Amount.

32. I did not understand it to be disputed that the right to deduct from the Hold-Back Amount is a right to deduct losses arising out of a breach of Warranty - a defined term, meaning a representation or warranty set out in Schedule 5 - and not any other losses arising from other breaches of Conditions or Covenants found elsewhere in the SPA.

33. This would not, in the ordinary course, prevent the Buyers from bringing a claim for damages against the Sellers for breach of some other Covenant or Condition and, subject to evidence of Kuwaiti law on the point, to set such a claim off against the Sellers' claim for payment of the Hold-Back Amount; but they have not done so in the present case. Their claims in these proceedings must depend entirely on their claims being for breach of Warranty and their right to deduct such claims for breach of Warranty from sums otherwise payable from the Hold-Back Amount. So that, for example, reliance on breaches of other clauses of the SPA to justify withholding payment of part of the Hold-Back Amount would be misplaced. The Defendants appeared to accept, but then floated the idea that if a claim depended ultimately on a breach of covenant or condition which was not a Warranty, then it could still justify withholding that sum by way of counter-claim and set-off. No such case is pleaded, nor was any such claim developed in detail; and in the absence of evidence of Kuwaiti law on the availability of any variety of set-off I decline to allow this argument to be advanced. In the event, it probably does not matter much.

34. In paragraph 7 above, I have referred to letters from the Buyers on 2 and 5 May, 25 June and 15 October 2020 identifying claims for breach

of the SPA and putting forward such claims as justification for their non-payment of the Hold-Back Amount. In due course, after this suit was brought by the Sellers, these letters and their contents were effectively superseded by Annex A to the Defendants' Response to the Claimants' Request for Further Information served by the Defendants on 25 November 2022. In Annex A the Defendants quantified their case on breaches of Warranty in the amount of KWD 4,933,691 which, if made good, would justify withholding the entire Hold-Back Amount. Subsequently, however, at the Pre-Trial Review the Defendants undertook to serve a Position Paper clarifying their claims for breaches of Warranty. They did this on 7 July 2023. The Position Paper drops three claims previously asserted by the Defendants and helpfully groups the remainder of the claims under a variety of headings which I shall adopt in discussing them in this judgment. The Claimants object that the Position Paper brings into play additional alleged breaches of Warranty. In particular it relies on the warranties in Schedule 5, Part A, Fundamental Warranties, clause 3.1, and Schedule 5, Part B, General Warranties, clauses 3(a), 3(b), 12.8, 18.2 and 18.3, none of which had been raised previously. The complaint is that these are new claims and that no evidence has been directed at them. I shall deal with that as the point arises; but in general, it seems to me that there is a distinction to be drawn between raising new factual complaints, which is not allowed under the contract, and simply re-labelling an existing complaint, which is allowed. During the course of the Trial the Defendants abandoned a further two claims, viz. claims 12A and 12B, and I say nothing more about these.

35. The revised total sought to be justified by the Defendants is now in the region of KWD 2.2 million. On any view, therefore, a sizeable chunk of the Hold-Back Amount is due from the Defendants.

**A general point applicable to a large number of claims - the appropriate EBITDA multiplier**

36. Before dealing with the individual heads of claim relied on by the defendants to justify their refusal to pay the Hold-Back Amount, it is convenient to deal with a general point which impacts upon a large number of the claims. This concerns the appropriate EBITDA multiplier.

37. This issue arises in this way. In respect of a number of the Buyers' claims - viz. claims 2, 13, 7, 9, 11, 14, 22, 27, 1, 17, 10 and 23 - it is the Buyers' contention that the profitability of the Company was overstated by reason of, for example, management and/or other costs having been paid by the Sellers at group level and not featuring in the accounts for the Company. Put more generally, the Buyers contend that revenues were overstated and expenses were understated; that the profitability of the Company was therefore overstated; and that, in consequence, they have suffered a loss reflecting the difference between the purchase price for the shares under the SPA (KWD 18 million) and the amount they would have paid for the Company had the true position been known.

38. Ms Record, the Defendants' expert witness, explains how she approached the issue of quantification of such losses in paragraphs 3.3.1 and 3.3.2 of her expert Report. She says this:

> "3.3.1 When valuing a business based on earnings, its value is assessed using a multiple of the Earnings Before Interest, Taxes, Depreciation and Amortisation ("EBITDA") as one of the bases for calculating the Purchase Price. As such, any potential overstatement of revenues or understatement of expenses needs to be multiplied by the same implied multiple in order to quantify the impact to the Purchase Price.
>
> 3.3.2 Therefore, in order to quantify the impact of the Profitability issues on the Purchase Price, I first calculated the amount of any potential revenue overstatement or expenses understatement. I then applied an implied multiple to these amounts in order to calculate the impact that the issues would have had on the Purchase Price."

39. Thus far, subject only to the adjective "implied" when used in "implied multiple", there was not, as I understood it, any difference in principle between Ms Record and Mr Brown, the Claimants' expert. In their Opening Skeleton Argument, the Claimants accept "that the impact of the EBITDA multiplied by the relevant EBITDA multiplier is an appropriate way to determine the damage that flows from a breach of warranty that affects the Company's EBITDA".

40. The difference between the parties is as to the appropriate EBITDA multiplier. [The terms "multiplier" and "multiple" appear to be used interchangeably by the experts and others to refer to the factor by which the EBITDA (the multiplicand) is multiplied to produce the given result - I propose to use the term "multiplier" in accordance with the standard definition of that term, but wherever the term "multiple" is used in this section of this judgment it is to be treated as synonymous.] The Defendants argue for an implied multiplier of 11.9, whereas the Claimants argue for a figure somewhere below 10, possibly as low as 7

41. Ms Record, at paragraph 3.3.3 of her Report, explains how the multiplier is calculated. She says this:

> 3.3.3 The implied multiple is a ratio that is calculated by comparing an entity's Enterprise Value to its EBITDA and is a commonly used valuation metric. The Enterprise Value of an entity is calculated by taking its Equity Value, namely the Purchase Price of KWD 18 million, and adjusting for its cash and debt, as this presents a valuation of the company as a whole (i.e. the value a Buyer would have to pay to buy-out the shareholders and settle the company's debt)."

Mr Brown for his part agreed with a proposition put to him in cross-examination by Mr Lovett, for the Defendants, that "the multiple ... is the enterprise value of the business divided by EBITDA".

42. The difference between the experts, and it is the difference which gives rise to the different multipliers selected by them (see paragraph 40 above), lies in what they include within the enterprise value of the Company for these purposes. Ms Record includes within the enterprise value for these purposes the cost of the Two New Schools which had been completed at the date of the SPA at a Construction Cost of KWD 3 million or more (see SPA, Schedule 5, Part B, General Warranties, clause 17.12) but had not by that date been licensed to operate as schools. Mr Brown, on the other hand, considered that for the purpose of calculating the multiplier it was necessary to exclude from the enterprise value the construction costs (KWD 3 million) of the Two New Schools, essentially because if you try to compare the EBITDA (i.e. a figure for earnings) with an enterprise value which includes not only earnings but also construction costs of the new schools, you are not comparing like with like; you would have a "complete mismatch"; and you would arrive at an inflated multiplier which would then exaggerate the effect on the value of the Company of any of the breaches of warranty to which this issue is relevant. What you should be looking for is the multiplier that relates to the EBITDA of the two existing schools.

43. I prefer Mr Brown's evidence on this part of the case. It is important to bear in mind, what is the purpose of the exercise. The purpose is to ascertain what impact a certain type of breach of warranty (if proved) would have had on the overall purchase price paid by the Buyers. It is alleged, for example (at claim 11), that management staff costs were booked at the holding company level and were not allocated to the schools, thereby failing to record the relevant costs in the operational cost of the schools and, as a result, overstating the profits of the Company. This impacts on the assessment of the EBITDA for the relevant year and only on that assessment; it has no impact whatsoever on the construction costs of the Two New Schools. Any multiplier should reflect the impact of the breach of warranty on the EBITDA; and the calculation of that multiplier should be made by reference to earnings/profits and not by reference to those construction costs.

44. This seems to me to accord with the evidence given by Mr Al Falah at paragraphs 13 of his first Witness Statement, on which he was cross-examined at length. Mr Al Salah was involved in negotiating the purchase of the shares in the Company. He gave evidence of the Buyers' initial valuation of the Company at KWD 20,891,000. He said this:

> "13 To arrive at our initial evaluation of the DAS enterprise value (i.e. KWD 20,891,000), we undertook the following calculation:
>
> (a) We applied a 10.0 x multiple of the DAS EBITDA for 2017 of KWD 1,464,978, resulting in an amount of KWD 14,649,780. The multiple applied is in line with the multiple range used for the acquisition of schools in Kuwait.
>
> (b) We then added an estimated valuation of KWD 6,175,000 for the new DAS buildings. This valuation was based on our internal calculations. To get to this number, we estimated the plot size of the buildings at 15,000 square metres and calculated their value on the basis of: (i) the land cost per square metre in the area (KWD 3,175,000) and (ii) a provision of KWD 3,000,000 for construction costs, giving a total value of KWD 6,175,000.
>
> (c) Adding (a) and (b) gave us a subtotal of KWD 20,824,780, which we rounded up to arrive at the enterprise value of KWD 20,891,000."

In other words, to work out the enterprise value for the Company, i.e. the price the Buyers would be willing to pay, Mr Al Salah applied the multiplier of 10.0 (a figure in line with the range used for the acquisition of schools in Kuwait) to the EBITDA taken from the accounts of the Company for the year ending 31 August 2017, and then added a figure (KWD 6,175,000) for the value of the new buildings. The important point is that he only applied the multiplier to the earnings figure (the EBITDA); he did not apply that multiplier to the figure for the value or construction cost of the new buildings. This seems to me to make obvious sense.

45. At paragraph 17 of that Witness Statement Mr Al Salah explains how they eventually arrived at an offer price of KWD 18 million. He says this:

> "17 During the period of exclusivity, between December 2018 and January 2019, we were discussing fundraising, undertaking our due diligence and finalising the deal structure. In the end, having looked at the audited Financial statements for the year ending 31 August 2018, which indicated an EBITDA of KWD 1,546,091, we settled on the offer of KWD 18 million equity value (approximately USD 59 million). Our offer was based on a 10.0 x multiple of the 2018 EBITDA for DAS (being KWD 1,546,091) and KWD 3 million for the construction cost of the new buildings, less the net debt of KWD 461,321. ..."

Again, the offer was based on a multiple of the relevant EBITDA. The multiplier was not applied to the KYD 3 million construction costs of the new schools. That figure is then added to the result of multiplying the EBITDA by the multiple of 10. It is true that Mr Al Falah went on to say this (in paragraph 17):

"... This implied an enterprise value for DAS of KWD 18.46 million and an Enterprise Value/EBITDA multiple of 11.94 x. This multiple included consideration for the growth projections that were anticipated from the two new school buildings."

I have no difficulty with this as an *ex post facto* assessment of the value of the acquired business, though some might question its usefulness. But that is not the question here. It is clear that had Mr Al Salah been told before concluding the SPA that in fact because of the treatment of management staff costs the profits of the Company were overstated by X, he would have worked towards a revised calculation involving deducting X from the figure for the EBITDA and applied the multiplier of 10 to that revised figure. Just to emphasise the point, he would have used the same multiplier of 10 and he would have applied it only to the revised EBITDA.

46. As I have said, I prefer the Claimants' case on this aspect and will apply a multiplier of 10 to any successful claim within these categories.

47. It was tentatively suggested by Mr Lyons, for the Claimants, that I should choose a multiplier below 10. I reject this invitation. There was insufficient evidence before me to enable me to select a figure. And I take some comfort from the fact that a multiplier of 10 was the multiplier chosen by Mr Al Salah and is in line with the range used for the acquisition of schools in Kuwait.

**The individual claims relied on by the Defendants to justify deduction from the Hold-Back Amount**

48. I turn therefore to deal with the various claims as set out in the Position Paper. The claim numbers given to the claims are somewhat random, reflecting (as I understand it) the sequence in which they were first presented, but I shall keep to that numbering to avoid causing confusion. It goes without saying, and it was not in dispute, that the Defendants bear the burden of establishing, on the balance of probabilities, their right to deduct from the Hold-Back Amount under each head of claim relied on.

**A. REVENUE FROM BOOKS SUPPLY CONTRACT**

**Claim No. 2: Overstatement of Income from ICS Book Sales**

49. The basic facts are not in dispute. On 12 June 2018, the First Claimant (Ajial) entered into an agreement with Top Business in terms of which Top Business agreed to supply textbooks and notebooks at ICS for the year ending 31 August 2019. Although not spelled out in terms in the contract, my understanding is that Top Business would generate its revenue from the sale of the books to students at the school. In return for that opportunity, Top Business agreed to pay Ajial KWD 125,000 for that financial year, in two equal instalments, the first in September 2018 and the second in April 2019. This contract was disclosed to the Buyers before the SPA was concluded and it is not in dispute that it is listed (albeit with a different date) in Schedule 8 to the SPA as a "Material Contract".

50. Top Business duly paid Ajial the first instalment of KWD 62,500 on 10 September 2018. Shortly before that date, on 1 September 2018, Ajial made an intercompany transfer to ICS for the whole sum of KWD 125,000 due from Top Business. It was agreed by Ms Record, the Defendants' expert witness, that this was a transfer of value from Ajial to ICS; and the Reference Date Accounts for the Company (the pro forma balance sheet of the Business prepared as at the Reference Date of 31 March 2019) reflected the full amount of revenue due and received in respect of the Top Business contract.

51. There was a delay in payment by Top Business to Ajial of the second instalment due in April 2019. By the time the SPA was concluded on 15 May 2019, the second instalment was overdue by some two weeks. At the time of Completion on 26 June 2019, it was still overdue, though by then by about seven weeks.

52. At the date of the Reference Date Accounts of 31 March 2019, no payment under the Top Business contract was late. The second instalment was not due until April 2019. By May and June 2019, the payment was slightly overdue - but despite that, there was no indication as at that time that it would not be paid. It was only in October 2019 that Top Business wrote to Ajial seeking a KWD 45,000 reduction in the contract price. In fact, Top Business then paid a further KWD 45,000 to Ajial in December 2019. The balance ultimately outstanding was therefore only KWD 17,500, payment of which was in due course waived by Ajial.

53. The Buyers' claim under this head has undergone some transformation in the course of this dispute. Initially it was contended that there was a breach of the warranty at Schedule 5, Part B, General Warranties, clause 1.1, relating to the accuracy of the accounts of the business for the year ended 31 August 2018. This contention was dropped when it was appreciated that the Top Business contract fell within the accounts for the year ended 31 August 2019, and not the year warranted by clause 1.1 of Schedule 5 Part B. The claim is now put as a breach of the warranties in Schedule 5, Part B, General Warranties, clauses 3(a), 18.2 and 18.3. None of these breaches of Warranty were pleaded in the original case made out by the Buyers. The Claimants very fairly make the point that there was no Kuwaiti law evidence as to how these Warranties should be interpreted, particularly the "no material adverse change" Warranty in Schedule 5, Part B, clause 3(a) which has been a matter of some debate in England in recent years. But I need not concern myself with such points. In my judgment the Top business claim fails for a number of reasons.

54. The Buyers had full disclosure of the Top Business contract. They knew it was a contract not with the Company, DAS, but with Ajial. Payment of the KWD 125,000 by Ajial to the Company - and I shall call it a "payment" for these purposes because that was its effect, as agreed by the experts - carried with it no implication that Top Business had paid Ajial that sum. In fact, when the payment was made by Ajial on 1 September 2018 nothing had been received from Top Business - they paid ten days later as they were entitled to do. The Company's accounts correctly reflected the full payment received from Ajial and did not misrepresent the position in the slightest.

55. Further, at the time the SPA was concluded, on 15 May 2019, the second instalment due from Top Business was only two weeks late. That would have come as no great surprise to anyone. Late payments are a feature of business. They are not uncommon, as Mr KO Mathew agreed. It is difficult to imagine that anyone from the Buyers' side of the transaction would have regarded a small delay in payment of the second instalment as material or significant or as affecting their decision to proceed with the purchase. The same is true of the seven-week delay as at the Completion Date of 26 June 2016.

56. I recognise that the contract was listed amongst the "Material Contracts" in Schedule 8 of the SPA, but that does not affect my assessment of the situation. The contract was for one year only, renewable by agreement between the parties. It was concluded before any negotiations started for the sale of the shares in the Business. The Defendants described it in their submissions as an "outlier" compared with the value of similar contracts for the preceding and subsequent years (KWD 45,000 and KWD 73,000 respectively), but absent any suggestion that the contract was not genuine I fail to see the relevance of this. Of course, the Buyers would want to have the benefit of that contract going forward, but they knew that there was no guarantee of that either at all or at the same rate. It would be a matter for negotiation between the Buyers and Top Business. I do not accept the proposition that any delay in payment under the existing contract with Top Business would have affected the decision to buy the shares in any way - and I do not think any evidence was presented to suggest that it did influence the decision to proceed. The sum in question, although material, must be viewed in the context of the Company's revenue of in excess of KWD 3 million. The three breach of Warranty claims advanced by the Buyers under this head must fail.

57. In addition to their claims for breach of the three Warranties mentioned above, the Buyers also seek to rely on clause 4.3(c) of the SPA, one of the Pre-Completion Covenants. The Pre-Completion Covenants have no relevance to the claim to withhold payment of some or all of the Hold-Back Amount for reasons already explained

58. Accordingly, I reject the Defendants' arguments on this issue.

59. I should just add this. The claim is quantified in the sum of KWD 45,000. I see no justification for this, even on the assumption that the claim can otherwise be justified. If the complaint is that the delay in payment put the Seller's in breach of the various Warranties, that ought to mean that the complaint relates to the whole of the second instalment, in the sum of KWD 62,500. If the complaint relates to the waiver of the final balance of KWD 12,500, then that is the relevant figure. The discussion about the sum of KWD 45,000 was initiated after completion and resolved by December 2019, before the date on which the Hold-Back Amount became due.

**B. REVENUE FROM CANTEEN SERVICES AT ICS**

**Claim No. 13: Revenue recorded for canteen services in ICS. No canteen space existed.**

60. This is a curious claim. The complaint is made under Schedule 5 Part A, Fundamental Warranties, Clause 3.1 and Schedule 5, Part B, General Warranties, clause 1.1. The Buyers say, in short, that a total of KWD 11,818 was included within the Company's accounts for ICS in respect of revenue from the provision of canteen services. It is said that after completion it emerged that Ajial had a contract with a canteen company, Voltaire (Kuwait) General Trading Company ("Voltaire") dated 22 June 2018 for the school year 2017-2018. In terms of that contract, Voltaire paid Ajial KWD 40,000 for the right to provide canteen services to four schools in the Ajial portfolio, including ICS, from which Ajial allocated KWD 11,818 to ICS.

61. The complaint is that ICS had no designated canteen space. I fail to see how that matters. Admittedly, the Ajial/Voltaire contract required the schools to provide canteen space, but it is clear that Voltaire was willing to and did provide canteen services despite the absence of such space. The contract was being performed.

62. I am satisfied that there was no breach of the Accounts Warranty (Schedule 5, Part B, General Warranties, clause 1.1. Nor, since no services were provided by Ajial, was there any breach of the Related Party Transaction Warranty (Schedule 5, Part A, Fundamental Warranties, Clause 3.1). It would in any event be difficult for the Buyers to succeed under this latter warranty in the absence of any evidence as to what they would have done - or would have wanted to do - had further information been given.

63. The Defendants' case on this issue fails.

**C. STAFF AND OTHER COSTS RECORDED AT HOLDING COMPANY LEVEL**

64. This heading covers five claims, nos. 7, 9, 11, 14 and 22. It also covered claim no. 12A, but as indicated earlier this claim is no longer insisted on. These claims are also made under the Warranties in Schedule 5, Part A, Fundamental Warranties, clause 3.1 and Schedule 5, Part B, General Warranties, clause 1.1. The difficulty with the former - which requires disclosure of Related Party Transactions - is again that there was no evidence of what the Buyers would have done - or would have wanted to do - had further information been given. So the Buyers' case rests on the alleged breach of the Accounts Warranty in Schedule 5, Part B, General Warranties, clause 1.1

65. It is said, in short, that facility management and other services identified in these claims were provided by Ajial at holding company (i.e. Ajial) level before Completion and that the costs of such services were therefore charged at holding company level and not allocated to the individual schools such as ICS and PES. The failure to record the cost of such services in the accounts for the individual schools, or the Business as a whole, meant that the true operational costs of those schools were understated in the accounts and the profits of those schools and of the Company were correspondingly overstated. It is said that, to ensure that the schools could continue to make use of these and other services post Completion, the Buyers incurred the cost of hiring staff to perform the functions that had previously been carried out and booked at holding company level.

66. I heard detailed evidence from Mr Brown and Ms Record on the question of what was required under IFRS and general accountancy principles, in particular as regards the allocation of centrally incurred costs to the Business as a whole. I accept Ms Record's evidence that without proper recording of such matters the Accounts cannot show "a true and fair view of the assets and liabilities of the Company", provided of course that the time and costs under consideration are not so small as to be de minimis. I found Ms Record's explanation of the IFRS and of the Conceptual Framework harder to pin down, but I accept her evidence that the Warranty at clause 1(b) of the Accounts Warranty - that the Accounts "show a true and fair view of the assets and liabilities of the Company" - is separate and distinct from the IFRS Warranty at clause 1(a); it is not sufficient compliance that the Accounts were prepared in accordance with IFRS if they do not also show a true and fair view of the assets and liability of the Company. I do not accept Mr Brown's evidence that compliance with IFRS automatically means that the Accounts show a true and fair view of the assets and liabilities of the Company

67. It follows that in principle, and subject to the evidence on each head of claim, these five claims have the possibility of success to some extent. I consider them individually below.

**Claim No. 7: Facility management staff costs booked at holding company (Ajial) level and not allocated to PES and ICS**

68. The claim is summarised by the Defendants in their Position Paper in the following way. They say that it transpired after completion on 26 June 2019 that, contrary to the impression given by the Accounts, facility management services were provided by the Ajial at holding company level and the costs for facility management staff were therefore charged at holding company level and not allocated to the individual schools in the Accounts as appropriate. As a result, the true operational costs of the schools were understated in the Accounts and the profits of the Company were correspondingly overstated. To ensure that the schools could continue to make use of facility management functions after completion the Buyers incurred the costs of hiring staff to perform facility management functions that had, pre-Completion, been carried out and booked at holding company level. This entailed the hiring of a Mr Abraham and a Mr Kamal. The claim is for their salaries (multiplied by the appropriate multiplier - see above)

69. I have already held in principle that if facility management staff engaged at holding company (Ajial) level carried out relevant work for the schools, beyond a de minimis amount, the failure to allocate an appropriate amount to the schools, and therefore to the Company in its Accounts, amounts to a breach of the Accounts Warranty at Schedule 5, Part B, General Warranties, clause 1.1 (b). Such a failure would give rise to a misleading impression of the assets and liabilities of the Company. But that only establishes the principle. For the claim to succeed it is necessary to ascertain: (a) what facility management staff were engaged at holding company level pre-completion, carrying out work for the two schools; (b) how much of their time was spent on working in relation to the two schools; and (c) what figure ought to have been included within the Accounts for the schools and, ultimately, for the Company.

70. The evidence on such matters is surprisingly sparse. It comes largely from Mr KO Mathew, the Vice Chairman of the Second Defendants. In his first witness statement, at paragraphs 31 and 32, he explains the general point about staff costs having been allocated at holding company level and not at the level of the individual schools. He says that this became "obvious" because "after taking over the business it became apparent that there was nobody in place at [DAS or the individual schools] to perform essential functions, such as accounting, managing the facilities management team and managing the IT team. He goes on to say that to ensure the Company's business could operate without Ajial's support, "we had to incur the costs of hiring members of staff post-acquisition to perform functions that had been carried out (and booked) at holding company

level pre- acquisition." Then, dealing specifically with the issue of facility management staff costs booked at holding company level and not allocated to the schools he says this:

> "After we took over the schools, we came to see that although there was a small number of technicians and handymen employed at the schools, there was nobody undertaking a facilities management role, by which I mean overseeing and coordinating maintenance of the facilities. That is essential to keep the schools compliant with regulations and regulator expectations. I know from my 20 years of experience operating schools that facility maintenance and management is a critical function for the safety and security of the children and staff. There must have been staff responsible for facility management at ICS and PES pre-acquisition, but the fact that there was nobody carrying out this function when we took over post acquisition is a strong indication that the costs for these staff members were booked at holding company level. After the acquisition, we had to incur the costs of hiring two individuals to perform this function ."

71. In cross-examination, Mr KO Mathew confirmed that it was the "management cost" that he was emphasising; "a guy changing a lightbulb is not a facilities manager ..."; he meant "overseeing and coordinating maintenance of the facilities". Mr Mathew confirmed that "there were people at head office who would come and fix things" and "there would be service contractors or people coming", but it is accepted that this claim is not about that; it is about the management of such work. As to this, Mr Mathew had to resort to speculation. There must have been some management at head office level. For example, a technician employed by the school would not deal with fire regulatory issues, or deal with the Ministry over such issues. But he could not say what facilities management team there was at holding company level - he did not know any names, but he was talking about a function, which must have existed at that level. When it was put to him that no such person existed at Ajial, he said: "Perhaps that explains why the Fire Brigade issue was an oversight on their part". In other words, Mr Mathew appears to be saying: there ought to have been some facility management supervision by Ajial staff, but there may not have been any such supervision, at least to any material extent, and if there was no such supervision that might go to explain why things were not done correctly at school level. Mr Rashad, for his part, said that there was no facilities manager at holding company level pre-completion. I have no evidential basis for disbelieving his evidence on this point.

72. I accept, on the evidence, that there may have been an element of facility management supervision at holding company level falling short of a dedicated facilities manager. But there is no evidence from which I can infer any particular level of such supervision. It may well have been *de minimis* - answering isolated queries raised by individuals at the school - or it may have been more substantial. So although it is conceivable that there ought to have been charge in the Company's Accounts to reflect this, there is no evidence from which I can make any inference as to what this charge should have been. For me to pluck a figure out of the air would be pure speculation.

73. It is important to remember that the alleged breach is in failing to enter into the Company's Accounts a charge to reflect the value of the facility management staff time and expense incurred at holding company level for the benefit of the schools. This should be an ascertainable sum, but the evidence is lacking. The claim is not based on a complaint that the schools ought themselves to have incurred such a cost, nor is it a complaint about the level of facility management staff time that should have been expended for their benefit. Nor was there any assertion, still less any evidence, that had there been an appropriate entry in the accounts the Buyers would in some way have been saved the cost of hiring in the faculty management subsequently engaged by them. It is not relevant, therefore, to proceed on the basis that the loss can be quantified by reference to the costs of hiring the two individuals (Mr Abraham and Mr Kaimal) who were hired later. Their hiring must be assumed to reflect a decision made by the Buyers as to the appropriate level of facility management services to be dedicated to the two schools. In any event, they were hired (or in one case transferred from another company associated with Mr Mathew) nearly a year after completion and in circumstances where their employment appears to have been for all four schools on the site, i.e. including the Two New Schools, and not just the two schools functioning as such at the time of the contract.

74. For these reasons this claim fails.

**Claim No. 9: Accounting staff costs were booked at holding company (Ajial) level and not allocated to PES and ICS**

75. The premise of this claim is the same as for Claim No. 7. Mr KO Mathew explained in his witness statement that there were individuals employed at the school pre-acquisition who were working as cashiers - handling cash collections and deposits, and collecting school fees and fines from families. There was nobody at a school level performing the role of accountant (and no accountant staff costs were booked at school level). The Buyers came to know, post-acquisition, that the accounting function at the school was being handled at Ajial level by Ajial's Chief Accountant and his team. This could be seen, for example, from the fact that he was the one that received and forwarded on to the Buyers the email from Top Business regarding the waiver - there was nobody on the ground at ICS or PES to handle or coordinate such issues. The costs for such a function were therefore being booked at holding company level and not allocated to PES and ICS. After the acquisition, to perform the important role of accountant at ICS and PES, the Buyers had to incur the cost of hiring two members of staff, Mr. Anish Thomas (for ICS) and Mr. Austin Ducunha (for PES). The Buyers' claim is based on the salaries of these two individuals.

76. I accept that the accounting function for the two schools - as opposed to the employment of cashiers - was being handled pre-Completion at holding company level. This is consistent with Mr Rashad's evidence where he accepted that there was a centralised accounting function at Ajial providing accounting services to the schools. For reasons set out above, this ought to have been reflected in the Company's Accounts. Failure to do so resulted in the profits of the Company being overstated. There was a breach of the Accounts Warranty in Schedule 5, Part B, General Warranties, clause 1.1(b). In this respect, the Accounts did not show a true and fair view of the assets and liabilities of the Company.

77. The true measure of loss caused by such breach is ascertained by identifying the figure for accounting staff costs which should have been reflected in the Company's Accounts. For this reason, I reject the Defendants' proposed quantification based on the salaries of two accountants, one for each school. In cross-examination Mr Rashad said that an accountant from Ajial would spend about two hours per day working on the accounts at ICS. I assume that the same would apply to work on the accounts for PES. That totals 4 hours per day for the two schools together, say half a day. The salaries paid to the two individuals subsequently employed by the Buyers were KWD 600 monthly or KWD 7,200 per annum. I proceed therefore on the basis that a sum ought to have been included in the Company's Accounts of half this amount, i.e. KWD 3,600.

78. This claim succeeds in the sum of KWD 3,600 multiplied by the appropriate multiplier (see above).

**Claim No. 11: IT Management staff costs booked at holding company (Ajial) level and not allocated to PES and ICS**

79. This claim proceeds on the same basis as above. I accept that if there were IT Management staff employed at holding company level but working for the two schools, that ought to have been reflected in the Accounts for the Company, provided of course that such work was not *de minimis*.

80. Mr KO Mathew said this about this claim in his witness statement:

> "It became clear to us after the acquisition that the IT management function at ICS and PES was being handled and charged at Ajial level. I recall email correspondence from July 2019 relating to IT transition issues post-acquisition which were being handled by Ms Maha Najam Al Tamimi (IT manager at Ajial). There was nobody on the ground at ICS or PES that was performing the role of IT manager at the schools. After the acquisition, to solve this issue, we hired Mr. Dennis George as IT manager."

81. Mr Mathew appeared to accept that there was no one person solely employed at group level as IT manager for the two schools. He accepted that whoever did the job at Ajial would be serving the IT needs of all the schools within the group. Mr Rashad explained that there were 20 schools at group level. Ms Al Tamimi worked at group level. She was paid a salary of approximately KWD 1,000 per month. She was not the IT manager for the schools, but she would visit the two schools perhaps once or twice a month - they were on the same site so she would visit both at the same time.

82. Doing my best with the limited evidence on the point, I find that one IT manager, probably Ms Al Tamimi (or someone else if she was not available) divided her time between the 20 schools within the group. It would be fair to apportion that time between the schools equally, so that the IT management time for the two schools would have amounted to about 10% of one individual's time. I value this at KWD 100 monthly or KWD 1,200 per annum. This is the figure which should have appeared in the Company's accounts. That is not *de minimis* and I find a breach of the Accounts Warranty proved to that extent.

83. This claim succeeds in the amount of KWD 1,200, multiplied by the appropriate multiplier (see above).

**Claim No. 14: Government relations staff booked at holding company (Ajial) level and not allocated to PES and ICS**

84. The Buyers' claim is summarised as follows. It transpired after Completion on 26 June 2019 that, contrary to the Accounts, government relations services were provided pre- Completion by Ajial at holding company level and therefore charged at holding company level and not allocated to ICS and/or PES in the Accounts as appropriate. The failure of the Sellers to record the cost of the government relations function in the Accounts means that the true operational costs of those schools were understated in the Accounts, and hence the profits of the Company were overstated. To ensure that the schools could continue to make use of government relations functions post-Completion, the Buyers incurred the costs of hiring staff to perform functions that had pre-Completion been carried out and booked at holding company level. This entailed the hiring of Mr. Ahmad Alakla [HB/1525-1527], Mr. Mamdouh Abdellah [HB/1266-1269] and Mr. Sabry Mohamed [HB/1270-1273].

85. In his witness statement Mr KO Mathew said this in relation to this claim:

> "We came to understand after acquisition that the government relations staff who had been supporting ICS and PES before acquisition were under the visa quota of Ajial and so their costs were booked at Ajial level and they were no longer available to DAS. There was also one Kuwaiti employee, Mr. Abdulaziz Al Nuwaiser, who was carrying out a security, safety and public relations role before the acquisition but had left by the time we took control of the schools. Compliance with ministry demands, requirements and deadlines is crucial, especially with multiple government departments having a say on the running of the schools - e.g. the Ministry of Education, the Ministry of Social Affairs and the Ministry of Commerce - so we had to hire three government relations staff to ensure the smooth functioning of the schools, secure necessary government approvals and coordinate the timely renewal of licenses and staff residences."

86. The Claimants say that there were no government relations staff employed at group or holding company level who assisted the Company. Neither Mr Rashad nor Ms James were cross-examined on their evidence to that effect. Furthermore, as Mr KO Mathew accepted in cross-examination, each school had a person employed for this purpose. It appears to be accepted by the Buyers that Mr Al Nuwaiser was carrying out a relevant role at ICS. He left by agreement before Completion, but his leaving has nothing to do with the alleged breach.

87. There is no basis on the evidence led before me to support a finding of breach of Warranty under this head. This claim therefore fails.

**Claim No. 22: Bank charges for salary transfer not recorded in DAS book of accounts**

88. The Buyers' case is that after Completion on 26 June 2019 it emerged that although there were general entries for certain bank charges in the trial balances for ICS and PES to 31 August 2018 and 31 March 2019, bank charges relating specifically to salary transfers were charged at holding company (Ajial) level and not allocated to the accounts of ICS and/or PES as appropriate. The failure of the Sellers to record the bank charges for salary transfers in the accounts of ICS and PES means that the true operational costs of those schools were understated in the Accounts and the profits of the Company were correspondingly overstated - in breach of the warranty at Schedule 5, Part B General Warranties, Clause 1.1. Bank charges incurred during that period in relation to salary transfers amounted to KWD 2,511.

89. The legal arguments have already been addressed in relation to previous claims. There was no oral evidence on this point but the essential facts are not in dispute. It follows that there was a breach of the Accounts Warranty.

90. I find that this claim succeeds in the sum of KWD 2,511 multiplied by the appropriate multiplier (see above).

**Claim No. 27: Recruiting expenses not allocated to Schools**

91. The Buyers' case rests on an implication, as they would have it, from the fact that the schools were trying to engage staff, in particular laboratory assistants, both from inside and outside Kuwait, that there must have been some costs associated with this exercise which were incurred at head office or group level and not shown in the Company's Accounts.

92. Mr Rashad and Ms James both gave evidence that there were no recruitment costs incurred either at school level or at holding company level. They were not challenged on that evidence. Mr KO Mathew under cross-examination appeared to agree ("Yes - no, I don't think there was much - yes. Very little recruitment expenses"). He then went on, revealingly, to suggest that that was why they hadn't recruited the right quality of staff - revealing, because it shows that in some respects at least the Buyers' real complaint was as to the lack of expenditure at school or holding company level requiring them to recruit extra staff to run the schools in a manner which suited their ambitions (see also at paragraph 71 above in relation to the claim in respect of Facility Management costs).

93. This claim fails.

**D. OLD OR DEMOLISHED BUILDINGS**

Claim No. 4: Overstatement of Assets for the old/ demolished buildings which were not written off from the books

94. The Defendants assert a breach of the Accounts Warranty, i.e. the Warranty in Schedule 5, Part B, General Warranties, clause 1.1, which provides that the Accounts "(a) were prepared in accordance with applicable law and IFRS" and "(b) show a true and fair view of the assets and liabilities of the Company ...". The basis of this contention is the assertion that buildings which had been recorded in the accounts as an income generating asset of the Company had in fact been demolished - they should have been written off upon demolition but were not, with the result that the assets of the company were overstated. Putting a bit more flesh on it, the Financial Statements for the Company for the year ended 31 August 2018 - and the Warranty in Schedule 5, Part B, General Warranties, clause 1.1(a) and (b) relates to these Accounts - show the value of Buildings as KWD 4,290,959 as of 31 August 2017 and KWD 3,667,132 as at 31 August 2018. It is said by the Defendants that those figures are wrong because they include a value for buildings which had already been demolished at the time.

95. After Completion the Buyers commissioned Ernst & Young ("EY") to undertake an independent audit and prepare an independent auditors' report on the financial statements of the company and the two schools for the year ended 31 August 2019. In this independent auditors' report, EY highlighted errors in the previously issued financial statements relating to the accounting entries for property and equipment. Their view was that these entries were overstated as they included building assets that have been demolished but not written off in the accounts.

96. I was taken through the entries in the financial statements with some care, but there is no need for me to set out the accounting position in detail because there is no difference between the parties as to the accounting principles to be applied. The difficulty for the Defendants is that they have no evidence to support their contention that the accounts included value for buildings which had been demolished. Mr KO Mathew, who gave evidence for the Defendants on this point, originally seemed to say that a 25 year old building had been demolished. He then referred to buildings having been demolished but was unable to say which buildings they were. There was reference to the "Yellow Building" but that building had certainly not been demolished at the relevant time - it is still standing. In the end the Defendants were driven to say that EY were well-known and highly experienced (which I accept) and unlikely to have made a mistake, but no one from EY was called to give evidence and EY did not even provide a statement identifying the demolished buildings to which they referred in their report or setting out what they were told and by whom to lead them to their conclusions. Subject to what I say below, I was left with no evidence to support the contention that the accounts included value for buildings which had been demolished.

97. The qualification to which I referred in the previous paragraph relates to evidence given by Mr Rashad that a sum of KWD 109,547 relating to buildings at the PES should not have featured in the accounts and that the PES asset values were therefore overstated by this amount. This was agreed between the parties. I accept this evidence.

98. It follows that the Defendants' claim under this head succeeds only in the sum of KWD 109,547.

**E. RENEWAL OF SOFTWARE LICENCES**

**Claim No. 24: Licence for HR Mystro application, Al Shamel, and Microsoft software licences, VAM for PES - not transferred to PES and ICS**

99. Claim No. 24 relates to the Claimants' failure to transfer software licences to the Company. That was originally claimed to be a breach of clause 4.1(f) of the SPA, one of the Pre- Completion Covenants, but a breach of that clause is no longer relied on and would not be relevant to a claim to deduct from the Hold-Back Amount for reasons explained above. Instead, the Defendants now rely on the explanation tendered by Mr Rashad in cross- examination, who said that the licenses could not be transferred because they were rented and not owned by the Company. The Defendants say that this was not disclosed in breach of the Warranties at Schedule 5, Part A, Fundamental Warranties, clause 3.1 and Part B, General Warranties, clauses 1.1 and 12.8.

100. I reject the argument that the evidence discloses a breach of the Accounts Warranty (Schedule 5, Part B, General Warranties, clause 1.1) or the Warranty at Schedule 5, Part A, Fundamental Warranties, clause 3.1. Part of the problem in dealing with this claim is caused by the shift in emphasis from the alleged failure to transfer software licences to the Company to a complaint about how the matter of software licences was dealt with in the Accounts and in other provisions of the SPA. In my opinion, the better course is to treat the claim as one relating to the failure or inability to transfer the licenses to the Company. As noted above, that falls naturally within the scope of clause 4.1(f) of the Pre- Completion Covenants. It does not seem to me to fall within the scope of the Schedule 5 Warranties. In particular, it does not give rise to a breach of the Warranty in Schedule 5, Part B, General Warranties, clause 12.8. That Warranty, as the Claimants submit, is concerned with whether the Company had permission to use the various items of intellectual property in the past, leading up to Completion. If they had not had relevant permissions, they might be liable in damages for breach, which damages claim might impact upon the value of the Business. It is not suggested that the Company had failed to obtain relevant licenses or permissions.

101. This claim fails.

**F. NON-COMPLIANCE WITH FIRE SAFETY STANDARDS**

**Claim No. 17B: Noncompliance with applicable fire and safety standards**

102. This head of claim is posited on the basis that the new ICS building, completed sometime in 2018, had at the date of entering into the SPS and/or on the Completion Date in May and June 2019 no or no suitable fire safety equipment. Mr KO Mathew was unclear in his evidence as to whether there was no fire fighting equipment or that what equipment there was at the building was wholly inadequate. His evidence was wholly lacking in detail.

103. The documentary evidence is limited. There is a Fire License for the new building issued by the Kuwait Fire Service Directorate ("KFSD") on 12 December 2017 - the inspection appears to have been carried out during construction oof the building and, despite a long list of things to be attended to, the Licence did not expire until December 2022. In their submissions on this point the Buyers insisted on referring to the 2017 Fire Licence as a "notification" but I am satisfied that it is what it bears to be, namely a Fire Licence. There is then a Premises Fire Licence, apparently in respect of the same building, issued by KFSD on 5 April 2018 with an expiry date of 3 April 2020. There was no clear explanation in evidence as to how the 2017 Licence and the 2018 Licence fitted together. It is possible, I suppose, but this is purely inadmissible speculation, that the 2017 Licence identified work to be done before the new building could be used for school purposes but licensed that building in the meantime while it was under construction. In any event, on the strength of one or both of those Licenses, fire insurance was obtained for the building. Mr KO Mathew gave evidence that after Completion he was required by KFSD to comply with the requirements in the 2017 Licence before the fire licence for the school could be renewed, but there is nothing in writing to support that evidence. Finally, there is the Quotation for work to be carried out in August 2021 - broadly reflecting the work identified in the 2017 Licence - and various receipts for payment.

104. The claim was not notified until November 2022, more than two years after the uncontested part of the Hold-Back Amount became due. Furthermore, it is apparent from the quotation for the work done on the fire system at ICS and the initial payment for the work that the work was not carried out until at the earliest August 2021, more than two years after Completion and over a year after the Hold-Back Amount became due. It cannot be relied on to withhold payment of the Hold-Back Amount (see paragraph 32 above).

105. This time scale is instructive too of the weight to be attached to Mr KO Mathew's evidence on this matter. It was accepted on behalf of the Buyers that the work undertaken by the Buyers to effect changes to the fire system was not undertaken immediately. But the point goes further than that. Mr KO Mathew was challenged in cross-examination on the basis that, if he was correct in his evidence that the fire system was so inadequate, that would mean that he had allowed the school to operate with some 5,000 children in it without basic fire safety systems since October 2018. As was pointed out in closing submissions, this took a wrong starting date of October 2018, wrong because at that date the school was still being run by the Sellers. However, the same point can be made, and with equal force, if one starts with the Completion Date of 26 June 2019. It would mean that from that date until August/September 2021, a period of more than two years, the Buyers would have run the school without basic fire safety systems in place. Dr James said, and I accept, that she would have expected to be told about non-compliance with fire regulations had there been any problem. Even taking account of the fact that the school was closed for a period during this time because of the COVID-19 pandemic, those facts lend some support to the explanation advanced on behalf of the Sellers that what really happened in August/September 2021 was a comprehensive upgrade of an existing system. It may also have been an upgrade in response to the new 2020 Fire Regulations.

106. In these circumstances, I am not persuaded on the balance of probabilities that the Defendants have made good their contention under this head of claim that the Sellers were in breach of the Warranties in Schedule 5, Part A, Fundamental Warranties, clause 2.6 and in Schedule 5, Part B, General Warranties, clause 9.1 to the effect that the Company was in full compliance with all relevant laws and regulations. On the face of it, there were valid Fire Licences during the relevant period. Nor, since I was given no coherent explanation of the relationship between the 2017 and the 2018 Licences and whether the 2017 Licence continued to have effect after the 2018 Licence was issued, can I be satisfied that the Sellers were in breach of the notification Warranties relied on by the Defendants.

107. This claim therefore fails.

**G. STAFFING COSTS NECESSARY TO RESOLVE REGULATORY NON-COMPLIANCE**

108. This group of four claims (Claims 1, 17, 10, and 23) all proceed on the basis that the Sellers were in breach of warranty - viz Schedule 5, Part A, Fundamental Warranties, clause 2.6 and Schedule 5, Part B, General Warranties, clause 9.1 - the essence of the Buyers' case being that the Sellers failed to comply with Kuwaiti legal and regulatory requirements as regards employment of certain categories of staff. There is also a claim based on Schedule 5, Part B, General Warranties, clause 18.3 ("Accuracy and Adequacy of Information") but I need not dwell separately on this aspect since I did not understand it to be contended that there was a breach of this warranty if there was not established to be a failure to comply with legal and regulatory requirements.

109. These four claims divide into two categories. In respect of claims 17 and 23, there was a legal regulatory requirement to hire (a) one or more laboratory assistants and (b) a librarian. The dispute is as to compliance. In respect of claims 1 and 10, the Sellers do not accept that there was any requirement for the schools to hire (c) assistant teachers for the kindergarten at ICS or (d) Vice-Principals, though in each case the Sellers say that if there was such a requirement they complied with it.

110. In light of this clear division into two groups, I propose to deal first with claims 17 and 23, and then with claims 1 and 10.

**Claim No. 17: No Laboratory Assistant (PES)**

**Claim No. 23: Require Librarian (PES)**

111. Both of these claims relate to PES. There is no dispute that there was a requirement to hire lab assistants and a librarian. The requirement is set out in Ministerial Resolution 174/2008.

112. So far as concerns laboratory assistants, Mr Rashad appeared to accept that the requirements were strict, and that the PES did not have anyone fulfilling that role. The Resolution is not specific about the number of lab assistants required, stating only that account should be taken of "the number of laboratories and educational stages." Mr KO Mathew considered that two lab assistants were required in a school of the size of PES which, although significantly smaller than ICS, had approximately 2,000 students and three science laboratories. But there was no evidence to

support this interpretation and, since I am concerned with a Warranty as to compliance with Regulations, I should approach the matter on the basis of what minimum performance would be required to comply. I find that the school should have employed one full time laboratory assistant. There was a breach of the Warranties to that extent.

113. One of the two laboratory assistants employed by the Buyers (Mr Niaz Muhammad) was engaged on a salary of KWD 250 per month or KWD 3,000 per annum. I take this as indicative of the amount which should have featured in the Accounts for the Company.

114. Claim No. 17 therefore succeeds in the amount of KWD 3,000 multiplied by the appropriate multiplier (see above).

115. So far as concerns Claim No. 23, the Resolution required there to be one librarian at the school. It is admitted that there were none and had been none for some time. The evidence was unclear as to whether this post could have been fulfilled part time by a member of staff, but on balance I am not persuaded that this would have been allowed. I take the cost of employing a full-time librarian from the Buyer's contract with Mr Khalid Butt. He was paid KWD 275 per month or KWD 3,300 per annum.

116. Claim No. 23 therefore succeeds in the amount of KWD 3,300 multiplied by the appropriate multiplier (see above).

**Claim No. 1: No Assistant Teachers for LKG and UKG (ICS)**

**Claim No. 10: No Vice Principal (ICS)**

117. The basis for these two claims is rather different. The Ministerial Resolution says nothing about the requirement for Assistant Teachers or Vice Principals. No other Resolutions or Regulations were identified laying down any such requirement.

118. So far as concerns Claim No. 1, what is relied on in support of the Buyers' claim in respect of assistant teachers is a handwritten School Visit Form (or Inspection Report) dated 27 March 2018 signed by Dr James, Principal of ICS and Mr Walaa Al Ahmed of the Foreign School Division of the Ministry of Education. It records that a school visit took place on that day, in the course of which the Inspector, Mr Al Ahmed, made a number of observations, including the fact that there were "no female teaching assistants in all education stages." At the end of the Report, the Inspector says that he stressed the necessity of doing various things of different scales and levels of importance, one of which was "provision of female teaching assistants for kindergarten classes." The Report concluded: "Please ensure implementation of the above-mentioned notes and inform us of the same in writing as soon as practicable."

119. The Kuwaiti law experts were not in agreement about whether this Report imposed legal obligations on the school to carry out the steps listed therein. Critical to my approach to this question is the contrast with the Ministerial Resolution discussed above. I asked Mr Alosaimi whether if something was to be made a legal requirement it would be published in some official format (like the Ministerial Resolution). He agreed that it would. There was no such document imposing a requirement for there to be female teaching assistants for kindergarten classes, just as there was no document requiring the removal of discarded furniture or the suspension of curtains in certain spaces (both of which were also on the list). I am unable to find that there was any legal requirement imposed by the Inspection Report. Whether the recommendations in the Report, had they been ignored, could have been strengthened and become legally binding is a matter which does not require to be answered for the purposes of this claim.

120. Claim No. 1 fails.

121. Claim No. 10 relates to the alleged absence from the school payroll of the requisite number of Vice-Principals. I can deal with this briefly. Dr James gave evidence that ICS did in fact have four Vice-Principals. She identified the relevant individuals and showed how they were described as such on relevant school documentation. Her evidence on this was not seriously challenged, indeed Mr KO Mathew accepted in his witness statement and in cross-examination that these individuals were identified as Vice-Principals on the teacher timetable. His complaint was that the four individuals so identified were also full time teachers and were Vice-Principals in name only, not in function. I reject this argument. There is no defined role for a Vice-Principal and nothing was shown to me to indicate that a full time teacher could not also be a Vice-Principal. It may be that the Buyers appointed four new full-time Vice-Principals with very limited teaching duties, but it seems to me that without the benefit of evidence showing that that was a legal requirement I must conclude that that was a choice which the Buyers made to conform with their notion of sound administration rather than because it was required as a matter of law.

122. Claim No. 10 therefore fails.

**Summary of individual claims**

123. In summary, I have found that Claims Nos. 2, 13, 7, 14, 27, 24, 17B, 1 and 10 all fail.

124. The following claims succeed in the amount indicated:

Claim No. 9 KWD 3,600

Claim No. 11 KWD 1,200

Claim No. 22 KWD 2,511

Claim No. 4 KWD 109,547

Claim No. 17 KWD 3,000

Claim No. 23 KWD 3,300

The successful claims total KWD 114,158. Multiplied by the appropriate multiplier (10) this leads to a total of KWD 1,141,580 which can be

deducted from the Hold-Back Amount of KWD 4,500,000, leaving a balance due to the Claimants of KWD 3,358,420.

**Interest**

125. The Claimants claim interest on this amount from 26 June 2020 when the Hold-back Amount was due to be paid. In principle, the question of interest should be governed by DIFC law, that being the procedural law, the law of the forum. On that basis, it would be appropriate to award interest on the full sum awarded from 26 June 2020.

126. However, I heard evidence of Kuwaiti law on the question of whether interest is payable from that date or from the date of judgment, that being the date on which the sum due became established. There was no dispute that if interest was payable under Kuwaiti law it should be at the rate of 7% per annum.

127. After exchange of expert reports, the Kuwaiti law experts were able to agree a Joint Report narrowing the difference between them on this point. Mr Alosaimi's opinion (for the Defendants) was summarised in paragraphs 22 - 27 of the Joint Report. I quote relevant paragraphs:

> "22. It is well established in law and in the rulings of the Court of Cassation that if the claimed amount is not known or not clear and the court has discretion as to its amount payable to the creditor, the interest shall be payable for the date of the final ruling
>
> 23. If the claimed amount is subject to the court's discretion, it would be considered unknown, therefore, shall be payable from the date the ruling is rendered final.
>
> 24. For the legal interest to be applicable at the due date, the amount must be known and clear. Accordingly, if there is a dispute as to the amount owed then legal interest is not applicable from the due date referred to in the SPA or the date the Hold-Back Amount would have been paid out if there was no dispute. The Kuwait Court of Cassation has affirmed this view in judgment 28 of Year 2001, ruling that applying delayed interest in accordance with Article 110 of the Commercial law is conditional on the amount owed being a known amount.
>
> 25. However, if the payable amount is not unknown to the parties as the Agreement specifies its value and when it is due, and the court reached the conclusion that the claim doesn't holds any merit, and the withholding of payment was made in bad faith. Therefore, the interest is payable from the due date in the agreement not from the date of the court decision.
>
> 26. If the court reached the conclusion that the defended was acting on bad faith or unjustified legally by withholding the payments, then the claimant will be entitled to interest, but if the court reached the conclusion that the claim holds some merit making the due amount not known or not clear then interest is applied from the date the amount becomes clear with is the date of the judgment.
>
> 27. Additionally, the Court may reduce the final payment of interest in proportion to the damages incurred by the purchaser. So, for example if the Court finds that the purchaser was entitled to retain KWD 1 million, then the Court would only order interest payable from the due date on the KWD 3.5 million that should not have been retained."

Dr. Alsellili (for the Claimants) summarised his opinion in paragraph 29 of the Joint Report as follows:

> "29. As it was stated in my report 9 June 2023 para 36-43, according to article 110 of KCL, it is clear that as long as the due amount is determined and specified in the contract, the interest should be paid from the date provided in the contract, apart from any allegations or disputes. So, if the court concludes that the claims or allegations or disputes for refusing to pay were unjustified; or holding the payment was made in bad faith, in these cases the interest is payable from the date of the agreement not from the date of judgement. This is complying with the law, ruling of the court of cassation and fairness."

128. The critical paragraphs of the Joint Report, so it seems to me, are paragraphs 25, 26 and 29. This is not a case where the amount due on 26 June 2020 depended on the exercise of discretion by the court. In terms of clause 6.2(d) of the SPA, payment of the Hold-Back Amount of KWD 4,500,000 was due on that date subject only to the right of Buyers to deduct for any amounts incurred for breach of warranty. The Buyers initially sought to justify the deduction of the full amount of the Hold-Back Amount. In the course of these proceedings that claim to deduct was reduced to something in the region of KWD 2,200,000, yet nothing was paid. As to the claims insisted on at Trial, I have found only KWD 1,141,580 to be justified, leaving a balance of KWD 3,358,420 due and owing, a sum which should have been paid on 26 June 2020. In those paragraphs of the Joint Report, as applied to this case, it seems to be agreed by the experts that if the grounds on which the Hold-Back Amount, or part of it, was withheld by the Defendants were without merit, "unjustified legally" or simply "unjustified", then interest should be paid from the time the payment should have been made. That is this case.

129. Accordingly, I reach the same decision on interest whether I apply DIFC procedural law or the law of Kuwait. I shall award interest on the sum of KWD 3,358,420 at the rate of 7% per annum from the end of June 2020. For ease of calculation, I shall simply take it to the end of August 2023, a period of three years and two months (3.167 years). I shall award interest at the rate of 7% per annum in the sum of KWD 744,528.13 (KWD 3,358,420 x 7% x 3.167), making a total sum due of KWD 4,102,948.13.

**Two additional claims by the Claimants**

130. The Claimants advance two further claims. These relate to: (i) the cost of maintaining letters of guarantee; and (ii) the costs of salaries paid in respect of the period after the Completion Date of 26 June 2019.

**(i) The cost of maintaining letters of guarantee**

131. There is no dispute about liability, so I need not explain how the point arises. But the Defendants dispute quantum.

132. Mr Al Salah says that they paid an initial amount of KWD 2,536 on 7 July 2020 but despite requests the Claimants have not provided evidence justifying their claim. In his first witness statement for the Claimants, Mr Rashad attaches an Excel spreadsheet setting out costs incurred

in maintaining the guarantees from June 2019 until May 2022. That spreadsheet shows a figure of KWD 21,195.20. That is consistent with the amount set out in the Particulars of Claim of KWD 22,923.55 to June 2022, which is supported by a Statement of Truth. I do not recall Mr Rashad being cross-examined on this part of his evidence. Although the evidence is not very satisfactory, it is the only evidence I have on this issue and I see no reason not to accept it. It is not clear whether credit has been given for the sum of KWD 2,536 already paid. I shall give the benefit of the doubt on this point to the Defendants.

133. This claim succeeds in the sum of KWD 20,387.55 (22,923.55 - 2,536.00). Interest is discretionary. In light of the Claimants' failure to vouch for these payment, I can understand the Defendants' reluctance to pay. I shall not award interest on this sum.

**(ii) the costs of salaries paid in respect of the period after the Completion Date of 26 June 2019**

134. The Claimants claim to be re-imbursed the cost of paying teachers' salaries up to and including August 2019. They say they made these payments on the Defendants' behalf. A practice had grown up whereby teachers would be paid their salaries in advance of the summer holidays. Had they not made these payments, the relationship between the teachers and the Defendants, as buyers of the schools, would have been jeopardised. The amount claimed is KWD 447,872.00, alternatively KWD 280,157.59 if limited to payments made after the date of the SPA.

135. The Defendants accept that the payments were made. But they point to the Working Capital Warranty in Schedule 5 of the SPA, Part B, General Warranties, clause 21, in terms of which the Claimants warranted that there was sufficient cash in the Company's bank accounts to cover the Working Capital Amount, i.e. "an amount sufficient to fund all expenses of the Company through 31 August 2019, including, but not limited to, monthly expenses." (clause 1.1 of the SPA). They say that monthly salary payments fall squarely within that definition. Had there been sufficient in the Working Capital account, such payments would not have been needed.

136. On this issue I agree with the Defendants for the reasons advanced by them. This claim fails.

**Disposal**

137. Adding together the amounts in paragraphs 129 and 133, I shall give judgment in favour of the Claimants in the sum of KWD 4,123,335.68, inclusive of interest to the date of this judgment. Judgment debt interest shall accrue on this sum until payment.

138. I shall reserve all questions of costs. If no agreement is reached between the parties as to costs, it will be open to either party to make an application by way of a Part 23 application, to be dealt with either at a hearing or in writing as is considered appropriate.