Neutral Citation: [2026] UKFTT 01108 (TC)

Case Number: TC 09969

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

London, Taylor House

Appeal reference: TC/2021/01662
TC/2022/012704

*CORPORATION TAX – corporate residence – place of central management and control – located in UK – appeal dismissed – penalties – whether behaviour deliberate – no – appeal against penalties partially upheld – personal liability notice – appeal allowed*

**Heard on:** 27 June – 25 July 2025
**Judgment date:** 30 July 2026

**Before**

**TRIBUNAL JUDGE ANNE FAIRPO**
**TRIBUNAL MEMBER GILL HUNTER**

**Between**

**COGEFIN (BERMUDA) LIMITED**
**and**
**GIUSEPPE CIARDI**

**Appellants**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS**

**Respondents**

**Representation:**

| | |
|---|---|
| For the Appellant: | Mr Jones KC, of counsel, and Mr Macklam, of counsel, instructed by Macfarlanes LLP |
| For Mr Ciardi: | Mr Nutbrown, tax consultant |
| For the Respondents: | Mr Nawbatt KC of counsel, Ms Balmer, of counsel, Mr Schofield, of counsel, Mr Bignell, of counsel, and Ms Atkinson, of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs |

## DECISION

### Introduction

1. This case arises from appeals brought by Cogefin (Bermuda) Limited ("Cogefin") and Mr Giuseppe Ciardi ("Mr Ciardi") against discovery assessments and penalties issued by HMRC. The assessments relate to corporation tax liabilities for the accounting periods from 1999 to 2017, and penalties for failure to notify chargeability for the periods from 1999 to 2013. A Personal Liability Notice (PLN) was also issued to Mr Ciardi in respect of penalties for the years 2010 to 2013. Details of the assessments and penalties are set out in the schedule to this decision.

2. The hearing of this appeal took place over four weeks during July 2025, with the parties subsequently making additional written submissions over the following six months. An extensive bundle in several volumes was provided, including a bundle of chronological correspondence from Cogefin's history of 20,148 pages which the panel was required to read in detail following the hearing as part of making this decision.

### Background

3. The assessments and penalties have their origin in a disclosure made by Mr Ciardi under the Liechtenstein Disclosure Facility (LDF) in June 2012. The disclosure included a draft report prepared by BDO LLP, which was formally accepted into the LDF in September 2013. The report disclosed Mr Ciardi's financial interests, including his involvement with Cogefin, a Bermudian company owned by the Poole Family Trust, of which Mr Ciardi was the economic settlor and beneficiary.

4. Cogefin was incorporated in Bermuda on 12 February 1996, ultimately wholly owned by the Poole Family Trust. Cogefin was initially funded by the transfer of approximately $7.7m of stocks transferred from the trustees of that trust. The company was established to hold and manage investments on behalf of the trust. As an exempted company under Bermudian law, Cogefin was not permitted to conduct business within Bermuda but could operate from Bermuda for international purposes. The directors of Cogefin have always been Bermudian-resident lawyers working for MLH Quin & Co, which later became Wakefield Quin Limited. MQ Services Limited (affiliated to that law firm) also provided corporate management services to Cogefin.

5. By 1999 Cogefin's value amounted to around $25m, in part due to significant rises in value of technology stocks. It subsequently invested in a range of diverse matters and by 2011 was worth in excess of $250m. In addition to external investments, the company provided significant funds for a number of projects linked to Mr Ciardi, including commercial property in Europe and renewable energy projects as well as the acquisition of residential property, art and jewellery for his personal use (these were largely held in various special purpose vehicles).

6. The LDF report described Mr Ciardi as an investment advisor to Cogefin. It stated that the directors routinely sought and followed his recommendations on investment decisions, including the acquisition and disposal of financial assets, real estate, and artwork. Cogefin held accounts with major financial institutions such as Morgan Stanley and Goldman Sachs, and invested in hedge funds and start-ups, often based on Mr Ciardi's personal network and expertise. The report disclosed that Cogefin had made substantial loans to Mr Ciardi and entities associated with him. Cogefin also funded the purchase and renovation of Mr Ciardi's London residence at 27 Chester Square and financed the acquisition of artwork and jewellery.

7. Although the LDF report indicated that Cogefin's central management and control (CMC) resided in Bermuda, HMRC questioned this. The report acknowledged that Mr Ciardi had, on occasion, acted beyond his authority—such as during the 2008 financial crisis when he instructed Morgan Stanley to move Cogefin's funds into government bonds. Following a review of the LDF report, HMRC opened an investigation under Code of Practice 8 in 2014 into Cogefin's UK tax position. These appeals arise out of the conclusions of that investigation.

8. HMRC contended that Mr Ciardi had exercised CMC of Cogefin from the UK since at least 1999 and issued discovery assessments and penalties accordingly. HMRC also contended that Mr Ciardi acted as a shadow or de facto director and was personally liable for the penalties under the PLN.

9. The appellants disputed HMRC's contentions, maintaining that Cogefin was managed and controlled in Bermuda and that Mr Ciardi's role was limited to that of an advisor.

10. By agreement, this decision addresses issues of principle only. Matters of quantum are excluded. The issues for determination are:

(1) whether Cogefin was resident in the UK or in Bermuda during the relevant periods;

(2) whether assessments for 1999-2013 were validly made under paragraph 41 Sch 18 Finance Act 1998 ("FA 1998"), including whether the relevant time limits and statutory gateways were satisfied (there was no dispute that the assessments for 2013-2017 were validly raised in time);

(3) whether Cogefin had a reasonable excuse, whether conduct was careless or deliberate, and whether penalties were validly imposed;

(4) whether Mr Ciardi was an officer or shadow director of Cogefin and whether any deliberate failure is attributable to him.

**"Dramatis personae"**

11. The following is a list of the people and entities mentioned in this decision in order to assist, given the length of the decision; it is not a complete list of all persons and entities mentioned in evidence.

*Ciardi family*

(1) Mr Giuseppe Ciardi ("Mr Ciardi"): Economic settlor and beneficiary of the Poole Family Trust

(2) Mr Francesco Ciardi: father of Mr Ciardi

*Cogefin directors*

(3) Mr Roderick Forrest ("Mr Forrest")

(4) Mr Nicholas Hoskins ("Mr Hoskins")

(5) Mr Garth Lorimer Turner ("Mr Lorimer Turner")

(6) Mr Ian Pilgrim ("Mr Pilgrim")

(7) Mr Maxwell Quin ("Mr Quin")

*Administrators & Corporate Services*

(8) MLH Quin & Co ("MLH Quin"), subsequently Wakefield Quin Limited ("Wakefield Quin"): law firm in which the Cogefin directors were partners.

(9) MQ Services Limited ("MQ Services"): corporate services firm owned by MLH Quin/Wakefield Quin

(10) Ms Kim Charaman ("Ms Charaman"): Administrator, MQ Services

(11) Ms Lorna Phillips ("Ms Phillips"): Administrator, MQ Services

(12) Ms Abby Correia ("Ms Correia"): Administrator, MQ Services

(13) Ms Elizabeth Ward ("Ms Ward"): Administrator, MQ Services

(14) Mr Don Marwick ("Mr Marwick"): Trust administrator, MQ Services and director of 27CSL Limited

*Financial Institutions*

(15) Goldman Sachs: managed discretionary and advisory portfolios.

(16) Morgan Stanley: earlier primary bank

*Advisors and Intermediaries*

(17) Mr Michael Bonds ("Mr Bonds"): employed by Mr Ciardi and, earlier, by entities associated with Mr Ciardi

(18) Mr Paolo Revelli ("Mr Revelli"): Morgan Stanley; later worked for Caledon and involved with energy projects

(19) Mr Marco di Cesaria ("Mr di Cesaria"): Morgan Stanley

(20) Mr Raoul Fraser ("Mr Fraser"): Goldman Sachs; later involved with Caledon and energy projects

(21) Ms Natasha Pope ("Ms Pope"): Goldman Sachs

(22) Mr Anton Sternberg ("Mr Sternberg"): family office adviser to Mr Ciardi

*Principal Corporate Vehicles*

(23) Cogefin (Bermuda) Limited: appellant company

(24) 27 Chester Square Ltd ("27CSL"): vehicle holding London residential property occupied by Mr Ciardi

(25) 5 The Little Boltons Limited: Special purpose vehicle for property acquisition

(26) Appetency: Special purpose vehicle for property acquisition (Hollywood Mews)

(27) Kharanos Investments Limited ("Kharanos") (Switzerland): owned a Swiss residential property

(28) Foncière entities: property-related investment structures connected to the Ciardi family

(29) Solar Power Farms Limited ("SPFL") / Solar Power Developments Limited ("SPDL") / SPD2 Limited ("SPD2") / SPD3 Limited ("SPD3") / SPD5 Limited ("SPD5") (later renamed Solipen Limited, "Solipen"): solar energy project vehicles

(30) Sunnyside 1 Wind Turbine Limited ("Sunnyside 1") and Sunnyside 2 Wind Turbine Limited ("Sunnyside 1"): wind energy project companies

(31) Gas Power Developments Limited ("GPDL"): Gas project entity associated with later investments

*Trusts*

(32) Poole Family Trust: ultimate owner of Cogefin

(33) Bournemouth Trust: Ciardi family trust

*HMRC*

(34) Officer Barry Charles ("Officer Charles"): main investigating officer

**Cogefin's place of residence for tax purposes**

***Submissions (in summary)***

12. The appellants contended that central management and control of Cogefin was at all times in Bermuda. The directors did not stand aside; they considered advice, made decisions "for themselves", and understood their fiduciary duties. Even if they sometimes made decisions on the basis of little or no information, case law shows that decisions need not be well-informed to be genuine.

13. HMRC contended that central management and control of Cogefin was in the UK throughout, as Mr Ciardi's correspondence with the directors was not merely advice but was instead instruction, control and decision-making based in the UK. They contended that Mr Ciardi directed investments, loans, property purchases, bank account openings, FX trades, fund subscriptions made by Cogefin and that the directors lacked meaningful engagement and simply implemented decisions already made.

**Relevant law**

14. It is well established that the burden of proof is on HMRC to show that a company is resident in the UK. There was no particular dispute between the parties as to the relevant case law which is, in summary, that a company is resident where its central management and control is actually located; this may not be where it ought to be located. It is necessary to consider who is managing the company by making high level decisions and where. This is entirely a question of fact.

15. The parties' submissions made particular reference to a number of cases, including the following (some of which also summarised the case law in turn). For the avoidance of doubt, we have considered all the cases referred to by the parties but, as there was little dispute as to the case law principles, we have included only this short summary of the principal cases referred to:

16. *De Beers* [1906] AC 455: decisions about the technical management of the company were taken in South Africa and the major decisions were taken in London. The court concluded that the meetings in London were where the real control was exercised and where the important business of the company was carried on. The court asked where the company 'kept house and did business' and held that a company resided where its real business was carried on and that was where the central management and control abided. To determine whether any case fell within that rule was a pure question of fact to be determined upon a scrutiny of the course of business and trading.

17. *Untelrab* [1996] STC (SCD) 1: that directors act on strong recommendations does not amount to usurpation unless the outsider dictates the decisions. Although a board might do what it was told to do it did not follow that the control and management of the

company lay with another, so long as the board exercised their discretion when coming to their decisions and would have refused to carry out an improper or unwise transaction; and that when deciding the issue of residence one should stand back from the detail and make up one's mind from the picture which the whole of the evidence presents.

18. *Wood v Holden* [2006] EWCA Civ 26: directors may rely on professional advice and they need not initiate proposals; responding to proposals can still be a genuine decision. Ill informed decisions are still decisions if the directors actually made them; the decision noted that the directors must apply their minds as to whether or not to enter into the transactions.

**Documentary evidence**

19. This decision has taken some time to produce, not least because, as encouraged by the parties, the panel reviewed the entire "chronological run" of correspondence and associated documents in the bundle. This section of the bundle ran to 20,148 pages covering the period 29 March 1996 to 29 December 2017 (in correspondence and board minutes; a number of documents from 1995 and 2018 were also included without accompanying correspondence). The correspondence and documents were, as indicated by the title of the bundle section, set out in chronological order.

20. The panel reviewed and analysed this "chronological run" in detail to identify the correspondence and documents relating to each transaction or relationship (in the case of banks in particular) in order to consider how each transaction or relationship developed over time. This, together with the witness evidence, was to assist us in determining, as set out in *De Beers* (at page 108):

> "… where [the company] really keeps house and does its real business. The real business is carried on where the central management and control actually abides. Whether any particular case falls within that rule is a pure question of fact, to be determined not according to the construction of this or that regulation or by-law, but upon a scrutiny of the course of business and trading".

21. Our findings from the documentation and correspondence are referred to below, in addressing witness evidence, and in our conclusions on corporate residence. We have not, given the volume of information, been able to set out those findings in exhaustive detail in this decision. We have - as required by case law - focussed on the overall picture formed by the evidence.

**Witness evidence**

***Reliability of witness evidence: passage of time***

22. The nature of these appeals is such that the relevant events took place between eight and twenty-six years before the hearing. As noted in *Jaffe & Anor Greybull Capital LLP & Ors* [2024] EWHC 2534 (Comm) (at [195]):

> "Against that background there is an obvious point as to the reliability of recollection".

23. The parties both made reference to the comments on memory in the decision in *Gestmin SGPS SA v Credit Suisse (UK) Limited* [2013] EWHC 3560 (Comm) which noted that

> "… the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of

what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

24. The decision in *Gestmin* was developed in *Jaffe*, taking into account (at [200-201]):

> "…the important lecture given by Popplewell LJ [in 2023 which] updates and expands upon the matters considered by the then Leggatt J in *Gestmin*. It deals with the value of recollection, the nature of the fact-finding exercise in commercial litigation, the science of memory and the problems which result from faulty encoding of memories.
>
> Passages of particular interest … include the following:
>
> "10 ...determining what happened is not the only task. Commercial litigation often involves an inquiry into a witness' state of mind. That state of mind may be an essential ingredient of the cause of action, as for example where claims are framed in constructive trust. But more generally, it matters what the witness knew, or believed, or was thinking or intended at a particular point in the narrative of events because that casts light on the events themselves. Fact-finding is concerned not only with what happened, but just as much with why it happened….
>
> 36. …When we encode our memories we don't photograph what is happening; we interpret what is happening, and that interpretation uses our schema. … So experience and expertise can make a big difference to what goes into our memory…. "We don't see things as they are, but as we are"….
>
> 40. The semantic memory can also corrupt a recollection by affecting it at the retrieval stage. Our beliefs, attitudes and approach, our worldview, our schema, changes over time. The recollection is affected by the schema at the time of retrieval, which may be different from that which applied at the time of the events in question…. As Leggatt J said in *Gestmin* "Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs."…
>
> 52. Further, encoding is often influenced by pride or wishful thinking. It is a common, although not universal, human tendency to want to portray our participation in events in a way which paints us in the best light. … it can also infect how witnesses picture events to themselves when first encoding the memory…
>
> 55. … contemporaneous documents… may be produced near the time, but they are produced after the memory has been encoded, and if there is an encoding fallibility, which there may be for all these different reasons, it infects the so called contemporaneous record every bit as much as other reasons for the fallibility of recollection which affect it at the storage and retrieval stage.

> 66. One [other issue] is reconstruction from semantic memory. We assume that something happened because that is what we would expect to have happened. … our memories fill in gaps by reference to what we assume we would have done or would not have done. The witness will respond in cross-examination that they are sure that something did not occur because "I would never have done that", or vice versa.
>
> 67. The dangers here are several: things do not always happen as we expect them to, and may not have done so on this occasion. We are also applying our present semantic memory schema to our attitudes at a different time. A third is another common source of erroneous recollection, in my experience, which is, again, pride or wishful thinking. We like to suppose that we did or thought that which we now consider we ought to have done or thought."'

25. The comments highlighted in *Jaffe* are, we consider, of importance here: we find that the witness' evidence was given honestly. However, as is clear from the contradictions and inconsistencies outlined below, we do not consider that their evidence should be relied upon in preference to the pattern that emerges from a review of the documentation provided to the panel. We find that although the witnesses were answering to the best of their ability, their memory of events was not reliable.

## Directors' evidence

### *Mr Lorimer Turner*

26. Mr Lorimer Turner was a director of Cogefin from August 1996 to June 1999; he was appointed through his employment as a lawyer by MLH Quin. He provided a witness statement and gave oral evidence at the hearing. The bundle contained limited information from the period in which Mr Lorimer Turner was involved with Cogefin; given the length of time since he ceased to be a director, this was not surprising.

27. Mr Lorimer Turner's evidence was, in summary, that the directors made all investment decisions for Cogefin and that Mr Ciardi acted as an investment adviser. Although Mr Ciardi was influential, Mr Lorimer Turner stated that decisions were taken in Bermuda after the directors considered the advice and applied their own minds to the decisions. He accepted, however, that the passage of time meant that his memory of events was necessarily incomplete and could not recall any specific transactions. He considered that he still had a reasonably high-level view of how Cogefin was managed, because it was broadly the same as other companies for which he was a director. The directors would review proposals and documents from investment advisers, as they did not have the necessary expertise to formulate their own investment strategy, and would exercise reasonable due diligence and care to consider, for example, ongoing obligations such as further capital commitments required of Cogefin. Mr Lorimer Turner's evidence was that he would have discussed proposals with Mr Ciardi before the directors made a decision so far as necessary although, where the directors were also responsible for the relevant fund companies (particularly the Park Place companies, which were related to Mr Ciardi), they would not have needed as much information for investments relating to those funds. In context, we consider that Mr Lorimer Turner's evidence is essentially similar to that of the other directors: assumption as to what should have happened rather than recollection of what did happen. In context, the documentary evidence is more reliable.

28. As noted, there is limited documentation from this period; much of it is inconclusive, with requests from Mr Ciardi for shares to be purchased and instructions from Cogefin to the bankers to make the purchase, usually on the same day. Available

board minutes do not provide any evidence of discussion, or reasons, as to why the shares were purchased. The board minutes at this time are also sporadic and generally ratify a number of transactions over a period of months with no explanation as to why those transactions were undertaken.

29. Much of the correspondence referred to by Mr Lorimer Turner in his witness statement is also inconclusive.

30. For example, he referred to correspondence regarding a subscription in Novocomm. None of that correspondence shows a decision being taken by the directors. His evidence included the statement that he reached an agreement with Novocomm's general counsel that Cogefin would be able to rescind the subscription if the share price reached $1.80 per share: he did not, however, mention that this was a restriction that Mr Ciardi had included in his proposal. This subscription was also not ratified by the board until some six months later.

31. Similarly, the discretion given to Paolo Revelli of Morgan Stanley regarding the portfolio in September 1998 is described in the letter to Morgan Stanley as being "confirmed" by Cogefin, rather than an instruction from Cogefin.

32. Following an investment in Collagenesis, Mr Lorimer Turner noted that he had asked Mr Ciardi whether Cogefin should make a further investment. His witness statement states that Mr Ciardi did not recommend Cogefin making such further investment; the reply from Mr Ciardi's assistant was that "Giuseppe is currently not interested in making an additional investment".

33. The remaining documentation is also not particularly consistent with Mr Lorimer Turner's evidence. Correspondence from Mr Ciardi at this time appears to be instruction, rather than advice. For example, a fax of 27 March 1998 stated that Mr Ciardi wished to advise the directors to transfer certain shares. Although using the phrase "wishes to advise", the fax was effectively instructing the directors to sell the shares to Park Place International Ltd; the fax provided instructions as to the date of sale (describing it as a transfer) and clearly assumed that the sale will take place. The fax indicates that Mr Ciardi viewed this as a transfer of his assets.

34. Similarly, a fax of 1 April 1998 advised the directors to purchase shares but then stated "please note that the transaction will be arranged through Morgan Stanley". The subsequent correspondence in the bundle stated that this transaction had been completed by Morgan Stanley before Cogefin sent instructions for them to do so. Mr Lorimer Turner wrote to Morgan Stanley, stating that the directors would appreciate it if the bank would take instructions only from Cogefin directors. Mr Lorimer Turner's evidence was that this showed that he ensured proper authorisation and decision making was undertaken only by the directors.

35. The letter contains no evidence as to who was to make decisions: it stated that Morgan Stanley should - consistent with their mandate - only take instructions from authorised signatories.

36. Further, the letter also stated that the directors had been "instructed" to undertake the transaction. Mr Lorimer Turner's evidence in the hearing was that he thought this would have referred to the directors having been instructed to undertake the transaction by the board of directors. In context and on the balance of probabilities, we consider that this explanation is more a statement of what should have happened. We find that the letter more accurately reflects that the directors viewed the letter from Mr Ciardi as an instruction.

37. Other available correspondence also shows Cogefin at this time turning to Mr Ciardi for decisions: for example, on 28 September 1998, MQ Services (the services company owned and operated by MLH Quin) wrote to Mr Ciardi asking him to confirm that their invoice for services to Cogefin could be paid from funds held in their client account on behalf of Cogefin. This was a decision that should properly have been taken by the directors of Cogefin and should not have required any authorisation from Mr Ciardi.

***Mr Forrest***

38. Mr Forrest was appointed a director through his employment as a lawyer by MLH Quin. He was initially an alternate director to Mr Lorimer Turner. In April 1999, as Mr Lorimer Turner was leaving MLH Quin, Mr Forrest was appointed as a director of Cogefin. Mr Forrest provided two witness statements and gave oral evidence at the hearing.

39. Mr Forrest was the lead director for Cogefin from 2001 to around 2004 or 2005. He is accordingly generally listed as the chairman in board minutes until August 2005, although Mr Hoskins is occasionally shown as chair after late 2002. Mr Forrest's evidence was, in summary, that the directors made all investment decisions and that Mr Ciardi acted as an investment adviser to Cogefin. His advice was considered by the directors when making decisions.

40. Mr Forrest accepted that he had very limited recollection of the events during his tenure as lead director: his witness statement's assertions are made by reference to the contents of board minutes and then extrapolated from those as to what he considered must have happened at the time. We consider that much of his evidence was therefore speculation as to events and consequently added little to the documentary evidence.

41. The chronological run of correspondence from this period does not particularly assist as the correspondence is not generally addressed to, or sent by, Mr Forrest. For example, faxes from Mr Ciardi during 2001, 2002, 2003 regarding payment of invoices relating to 27 Chester Square are addressed to Don Marwick (director of 27CSL Limited), Ms Ward and Ms Charaman of MQ Services rather than Mr Forrest, although the letters refer to the invoices being paid by way of loans from Cogefin.

42. The only correspondence in the bundle to or from Mr Forrest in this period whilst he was a lead director:

(1) a letter from Mr Ciardi regarding a shareholder vote by Cogefin in October 2001

(2) three instructions to Morgan Stanley to make payments in June 2001 and September 2002

(3) a letter from Mr Ciardi in June 2004, asking Mr Forrest whether it would be helpful to have Mr Bonds assist with work on the company's accounts, giving him access to online reports and statements at Morgan Stanley. Mr Bonds also emailed Mr Forrest regarding his possible involvement with Cogefin: Mr Forrest replies to say that he had "received the confirmation of this in [Mr Ciardi]'s fax".

(4) an email from Mr Bonds in June 2004 asking for access to the Morgan Stanley reports and statements. The response to this, to Mr Bonds, is sent by Ms Charaman who asks him to liaise directly with her and notes that she will "liaise with Rod and/or Nick as needed".

43. A transfer of escrow agent in October 2001 was signed by Elizabeth Ward. Correspondence around that time stated that "if Mr Ciardi wants to make this investment"

in Tacoma Offshore Limited, Ms Ward will have to have written instruction before she "works on it". In December 2001, Mr Ciardi wrote to Ms Ward regarding a redemption of shares by Cogefin; in September 2002, his PA wrote to Ms Ward with Mr Ciardi's request that Cogefin purchase artwork, enclosing an invoice and directions for payment of that invoice. Following Ms Ward's resignation in September 2002, such correspondence continued to be sent to Ms Charaman.

44. As during Mr Lorimer Turner's time as lead director, Cogefin continued to send items to Mr Ciardi for approval or action which were matters for Cogefin. These included tax invoices relating to land in the US owned by Cogefin: on 24 September 2002, Ms Charaman sent a notice of unpaid Delaware property taxes owed by Cogefin to Mr Ciardi, stating that it required "urgent attention/payment". Mr Ciardi replied to Ms Charaman, instructing her to arrange for the invoice to be settled and the transaction minuted.

45. The next day, 25 September 2002, an email to Ms Charaman from Mr Ciardi's PA stated that he had asked his PA "to request that the Opus subscription be dealt with today if possible". The paperwork for this was sent to Cogefin by Mr Ciardi's PA, including the details of the amounts to be invested, noting that 'detailed instructions' had been provided by email. This appeared to refer to an email asking Ms Charaman to "arrange for [Mr Hoskins] to sign and the subscription to be approved".

46. In November 2002, Ms Charaman asked Mr Ciardi to "confirm to me in writing if [Cogefin] should agree and accept the terms of" Morgan Stanley's investment management mandate so that she could arrange for the mandate to be signed and returned to Morgan Stanley.

47. In October 2003, Mr Ciardi wrote stating that he recommended that Cogefin sign a document regarding a shareholding in Albert Inc. Notwithstanding the term 'recommend', the letter went on to say that the document must be signed and faxed the next day. The document had been sent to Mr Ciardi, rather than Cogefin, notwithstanding the shareholding being in the name of the company. There was no explanation in the letter as to why the document, which was written in French, should be signed. An English translation of that letter was provided in the bundle: it was a power of attorney in connection with a summons to Cogefin to appear at a special hearing of a Swiss court in respect of proceedings in connection with Albert Inc. There was nothing to suggest that the directors made any further queries as to why the company was involved in this litigation before signing and returning the document giving power of attorney to a lawyer that was apparently dealing with Mr Ciardi rather than Cogefin.

48. Around the same time, in a reorganisation of SVG group, Mr Ciardi wrote to recommend a course of action by Cogefin; in related correspondence, he told Wakefield Quin that the completed ballot "should be received by the lawyer tomorrow via fax since there is no time for the mail to reach them. Please call to get the fax number". This related correspondence clearly assumed that Cogefin's directors would sign the documentation. The reorganisation plan documentation had been sent to Mr Ciardi, rather than Cogefin, and the urgency for signature appeared to relate to some delay on Mr Ciardi's part in forwarding the document for signature.

49. A letter from Mr Ciardi to Ms Charaman recommending a subscription in Aerium was sent on 21 May 2004; on 23 May 2004 Mr Ciardi emailed again to say that Cogefin could give instructions to Morgan Stanley to do the subscription. The board minutes of 9 June 2004 ratified an instruction to Morgan Stanley on 2 June 2004.

50. However, correspondence from Morgan Stanley to Cogefin on 25 May 2004 stated that the request for the subscription (with details of amounts) was made in an email

sent to Morgan Stanley on 20 May 2004. The correspondence of 25 May 2004 sought confirmation of various statements in order to enable Morgan Stanley to execute the subscription. Morgan Stanley's correspondence was addressed to "Cogefin" and did not specify who sent the email of 20 May 2004.

51. Mr Forrest had also been a director of related companies in these matters, notably 27CSL, which acquired a property in central London. The transactions relating to this are set out below: Cogefin made substantial loans in respect of the property to 27CSL. Mr Forrest stated in the hearing that he anticipated that the loans, which had been made interest-free and he said were still outstanding, would be paid when 27 Chester Square was eventually sold by 27CSL. His initial evidence in the hearing was that he was still a director of 27CSL: it was pointed out to him that 27CSL had been dissolved on 8 November 2019 and that Land Registry records showed that 27 Chester Square had been transferred to Mr Ciardi personally on that date. Mr Forrest stated that he had forgotten that, and that it was a typical transaction at the time as properties were being de-enveloped.

52. Overall, we did not consider that Mr Forrest's evidence was to be preferred to the documentation in the bundle. We also consider that his evidence regarding the transfer of 27 Chester Square is indicative that he did not apply his mind to transactions but simply did whatever he was asked to do, given that he had no recollection of a relatively recent event regarding loans which amounted to a substantial asset of Cogefin.

***Mr Hoskins***

53. Mr Hoskins provided two witness statements and gave oral evidence at the hearing. He was the lead director during the periods for which we have most correspondence and documentation in the bundle. The length of our discussion as to his evidence below therefore reflects the availability of documentary evidence for this period, compared to other periods. In giving oral evidence, Mr Hoskins was often unable to recall matters and, as with other witnesses, gave many answers by reference to what he considered would have happened. As already noted with regard to the witness evidence generally, we consider that he was giving evidence honestly but conclude that his evidence should not be relied upon in preference to the documentary evidence.

*General points*

54. Mr Hoskins' evidence was, in summary, that the directors made all investment decisions and that Mr Ciardi acted as an investment adviser to Cogefin. Mr Ciardi's advice was considered by the directors when making decisions. Many decisions were made informally, through discussions with other directors or administrators such as Ms Phillips, or in discussions with Mr Ciardi. Mr Hoskins accepted that Mr Ciardi's approval was often sought by Cogefin's administrators before transactions were carried out.

55. Mr Hoskins accepted in the hearing that there was limited documentation, and that decisions were not properly documented in board minutes, many of which were inaccurate or misleading in terms of timing or content.

56. In correspondence, Mr Hoskins often stated that the directors (albeit that he often referred to them as the "trustees") were not experts but were "happy with … suggestions" made by Goldman Sachs when giving the approval required by Goldman Sachs' mandate. In a file note in August 2011, Mr Hoskins noted that "… from a Trustees perspective our preference really is to have funds in a discretionary account so the

Trustees don't have to make these sorts of decisions, i.e. what the [sic] investments to buy as it is beyond our expertise.”

57. Whilst we accept that directors are not required to have such expertise, and may take independent advice to reach decisions, we consider that such comments are nevertheless relevant to considering whether or not the directors actually applied their minds to making decisions. A lack of expertise could lead to the directors simply accepting what is put to them, without any consideration of the contents of the recommendation. There are, for example, some occasions where Goldman Sachs provided Mr Hoskins with a choice and he effectively replied ‘yes’. The bank had to email him again to ask him which option they should execute (for example, in an email exchange on 30 September 2015). Mr Hoskins’ response indicated that he had not actually read the email sent to him and so cannot have applied his mind to the request.

58. Mr Hoskins also, on a number of occasions, sent payment instructions before reviewing accompanying documentation. For example, on 28 November 2016, he instructed Ms Correia to “start the money moving” on a loan to Foncière CG, as Cogefin were lending an additional €1,500,000 to this company (in which the Ciardi family had a significant interest). In the same email, he noted that he still needed to look at the loan agreement, indicating that the funds were sent before Cogefin knew what they were committed to.

59. Cogefin had similarly sent funds in relation to a loan to Foncière on 4 August 2009; on 11 August 2009, Mr Hoskins told Ms Phillips that he had not yet looked at the loan agreement but that she should go ahead with the board resolution and date it on the day the funds were sent. Again, in November 2010, Mr Hoskins authorised a payment of a loan, saying that the loan agreements could wait. We do not consider that this behaviour is consistent with the directors applying their minds, when monies are sent in advance of reviewing documentation governing the transaction and particularly when the documentation is provided by the borrower’s representative. We note that the terms of this loan were shown in correspondence to have been negotiated and agreed by Mr Ciardi with the lawyers representing Foncière.

60. Mr Hoskins repeatedly refers to the “trustees” in correspondence in which the context clearly means that he is referring to the directors of the company. The same individuals were both trustees and directors; given that Mr Hoskins is a lawyer and obviously familiar with the distinction between trustees and directors, we consider that this is indicative of his approach to correspondence from Mr Ciardi, that the requests should be treated as instructions from a beneficiary and acted upon unless there was some clear reason not to do so. This approach was confirmed by Mr Hoskins’ evidence that he considered that trust assets should be used as required by the beneficiary. In effect, as with Mr Forrest, we consider that Mr Hoskins considered the directors’ role to be the provision of at best a ‘sense check’ of Mr Ciardi’s proposals and so effectively treated these proposals as matters to be implemented by the directors unless there was some specific impediment to doing so, rather than matters to be considered for a decision to be taken by the directors.

61. Mr Hoskins began to record file notes of some calls from approximately 2010 onwards; as set out below, these are not always entirely consistent with related email correspondence. Some of the notes read as if they have been copied from another document. For example, a long note dated 30 September 2015 of a call between Mr Hoskins, Mr Ciardi and Goldman Sachs makes reference to Mr Hoskins in the third person and is phrased differently to other, shorter, notes. This note also makes it clear

that Goldman Sachs are providing their investment ideas to Mr Ciardi and his business, Caledon, before providing them to Mr Hoskins. Apart from the advent of the file notes, nothing else appears to have changed in the way in which Mr Hoskins approached his role as director of Cogefin.

*Witness statement*

62. Mr Hoskins' evidence in his witness statement was not wholly consistent with the documents. In particular, in his witness statement he stated that there were various times where he did not follow Mr Ciardi's advice. He then gave two examples.

63. The first example given was that, in March 2012, the directors had been asked for their views on the suitability of Cogefin opening an account to be managed by an advisor to "Libra", another fund in which Cogefin had invested. Mr Hoskins' evidence was that the directors would not be comfortable with an account which would allow "short selling" as this was "a higher risk strategy which had the potential for unlimited losses and would be more likely to expose the portfolio to margin calls and short squeezes".

64. However, at around the same time, Mr Hoskins had agreed to short selling transactions in Cogefin's Goldman Sachs account: for example, on 14 December 2011 he stated that he was "not an expert … as trustees we are happy with your suggestions so please proceed". In addition, in February 2011, Mr Hoskins had been advised by Morgan Stanley that Mr Ciardi wanted to be able to short sell in a separate advisory account which Cogefin had with Morgan Stanley, to accommodate trading ideas from Libra. Morgan Stanley would produce the documentation and let Mr Hoskins know when it was ready. Mr Hoskins' response to this was "Not a problem".

65. Given that the directors had previously expressed no concerns that short-selling take place on Cogefin accounts, we consider that it is more likely that the correspondence in March 2012 reflects some other person's concerns about the specific account which the directors are repeating rather than a decision made by the directors.

66. The second example, which Mr Hoskins described as a recommendation from Mr Ciardi which the directors decided not to follow, was not a recommendation from Mr Ciardi. The correspondence shows that Mr Ciardi had talked to someone about a fund that they were setting up. When told that the deadline for investment was the same day (31 March 2011), Mr Ciardi's reply was to ask for the documents to be sent directly to "my trustees".

67. There was no evidence indicating that Mr Ciardi had recommended the investment, or that he had any knowledge of the £10 million minimum investment and ten-year lock-in period involved. We accept that, nevertheless, this second example does indicate that the directors (albeit both Mr Hoskins and Mr Ciardi refer to them as the 'trustees') checked the details of the potential investment.

68. In context, this was not an example of the directors deciding something contrary to Mr Ciardi's recommendation - it appears, instead, that they were providing a sense check in circumstances where Mr Ciardi was not in a position to make a recommendation.

*Comparison with documentary evidence*

69. From our review of the correspondence in the bundle, we consider that on the balance of probabilities, the documentary evidence does not support Mr Hoskins' contentions. We accept that, on very few occasions, the documents show that Mr Hoskins asked questions in respect of investment recommendations. For example, in August 2011

he asked Mr Fraser whether a new Italian tax had been factored into a stock price; however, he opened the email with "ok with me" as a response to Goldman Sachs' email regarding the investment before then asking the question. The question was not, therefore, raised in order to assist with any decision to be made by the directors, as he gave the requested authorisation required by the bank before asking any question. A similar instance occurred in October 2013, where Mr Hoskins asked a question about the markets to Mr Fraser, but only after having provided the approval sought. Further, these questions were few and far between and were not sufficient for us to conclude that the directors were the decision makers at any point in the relevant periods.

70. As already noted, much of the correspondence was inconclusive on the point but there are quite a number of instances where the correspondence showed that the relevant decision was not taken by the directors. On balance we consider that these were not isolated occurrences, as there was no objection or comment from the directors when it was clear that someone else had taken the decision, and so conclude that these instances demonstrate how decisions were generally taken. It is not practical to list each such instance across more than two decades (for which the documentation is in any case incomplete), and so we have set out a representative sample of these below. We have addressed evidence regarding two categories of transactions, relating to property transactions and energy projects, in different sections as we concluded that the volume of documentation relating to these should be summarised separately.

*Routine approvals*

71. Correspondence showed Cogefin routinely asking Mr Ciardi to make decisions in circumstances where the directors should have made the decision without recourse to Mr Ciardi. For example, there were many instances of requests to Mr Ciardi to approve payment of capital calls on investments made by Cogefin. It was accepted by Mr Hoskins in cross-examination that Cogefin was obliged to meet these capital calls and should not have needed to seek Mr Ciardi's agreement before making the payment. Nevertheless, these were regular requests by email and, in respect of one capital call, Ms Phillips advised Mr Hoskins that she had asked Mr Ciardi to confirm payment four times and, as it was due, asked Mr Hoskins whether she should pay it anyway. Mr Hoskins' response was to email Mr Ciardi directly to ask him to advise as payment was due shortly.

72. It was only in March 2012, when Mr Bonds responded to a request for approval to pay a capital call to say (in summary) that there was no need to seek approval, that the repeated referrals to Mr Ciardi (and later Mr Bonds) for confirmation that Cogefin should make payment on a legal obligation ceased to appear in the documentation.

73. Other examples include correspondence regarding taxes for the property in Andes, New York, and even the corporate services fees for services provided by MQ Services, the corporate services body owned by the law firm in which the directors of Cogefin were partners. Somewhat oddly, at least one of MQ Services' invoices was addressed to Cogefin at 27 Chester Square, London (Mr Ciardi's address).

*Purchase of Lavendon stock - June 2008*

74. In an exchange of emails, Mr Ciardi told Morgan Stanley to purchase over £2m of shares in Lavendon Group PLC ("Lavendon"). Morgan Stanley contacted Cogefin by email to say that "although the trade is confirmed and booked, we would require a fax from you with these instructions". The email to Cogefin states that the price has been "agreed upon Mr Ciardi and the traders" [sic]. Mr Hoskins was asked if he had a problem

with confirming this trade and "using the stamp", indicating that he was not in the office to sign the order. Mr Hoskins' entire reply is "No that's fine".

75. Mr Hoskins' witness statement states that he recalled having discussions with Mr Ciardi about the Lavendon investment, and that it was likely that he would have discussed the investment with Mr Ciardi first. He did not know why Morgan Stanley had placed the trade without obtaining his approval first as this was the process that was usually followed.

76. Noting that Mr Hoskins' evidence was that "it was likely" that he would have discussed the trade, there is nothing in the correspondence to indicate this. Indeed, the correspondence asks Mr Ciardi how "he" would like to purchase the stock, with a suggestion as to purchasing through Morgan Stanley. Mr Ciardi passes the request on to Mr di Cesaria and asks him to proceed. The correspondence indicates that it is only when the request is passed on by Mr di Cesaria, as a request from "the client", that Morgan Stanley note that they need to obtain a fax order from Cogefin.

77. In addition, subsequent correspondence in 2010 referring to Lavendon took place between Mr Ciardi and Mr di Cesaria without involving Mr Hoskins. In May 2010, Mr di Cesaria informed Mr Ciardi that a dividend had been paid; Mr Ciardi asked Mr di Cesaria to keep it separate as it would probably be needed for Mr Ciardi's taxes in England. No-one from Cogefin was copied into this exchange. In December 2010, Mr Ciardi instructed Mr di Cesaria to transfer all cash balances; he then told Mr Hoskins that "it might be appropriate to sweep the cash balances from Morgan Stanley to Goldman Sachs", but it appears that this email was sent after he had already given instructions to Morgan Stanley. Although Mr Hoskins' subsequent email referred to having had calls regarding potential tax issues "in the last few days", the overall correspondence was consistent with Mr Ciardi dealing with Morgan Stanley personally and issuing instructions in respect of this stock.

78. We conclude that the Lavendon share acquisition was carried out by Morgan Stanley on Mr Ciardi's instructions and that Cogefin's role was only to confirm his instructions. There was no board minute approving the trade which was for an amount which (in the context of another transaction at around this time) Mr Hoskins described as significant.

*Grove Equity election - February 2009*

79. This investment was originally made by Cogefin in December 2005 and subsequently increased in 2006. The investment was then modified in 2007, redeeming some shares in the fund and subscribing for another class of shares. On 19 February 2009, Mr Hoskins signed a form electing to switch the investment to a new class of shares. This was sent by Cogefin on 23 February 2009 and recorded in a board minute dated the same day. On 24 February 2009, Mr Hoskins sent an email to Mr Ciardi confirming that he had sent the form and then asking "did we not redeem out of Grove last year".

80. This correspondence is wholly inconsistent with the directors having made a decision with regard to the election; a director, applying their mind to a decision as to whether to make an election in respect of an investment which they believed, or even simply suspected, had previously been redeemed would not have signed the form without making appropriate enquiries first.

*Anchorage - January 2010*

81. Goldman Sachs emailed Mr Hoskins asking him to approve various trades which they had recommended and stated that Mr Ciardi would like to invest US$1m in the Anchorage Illiquid Opportunities Fund. The email asked Mr Hoskins to complete and sign the attached subscription document. The correspondence did not seek a decision from Cogefin as to whether or not to make the investment: it simply requests the signed document. There was nothing in the correspondence to indicate that the directors did anything other than sign the document.

*Goldman Sachs - equity sales in September/October 2011 and new accounts in 2013*

82. In September 2011, Goldman Sachs sold a number of equities and acquired high quality fixed income assets instead; Mr Fraser's evidence was that he did not necessarily think it was the right time to sell the equities and Mr Hoskins' file note at the time states that Mr Fraser had made the sales because he was "conscious of the appetite of the Trust" and that Mr Hoskins agreed with his views, "from a Trustee perspective". Mr Hoskins and Mr Fraser's evidence suggested that the decision to sell the equities was one made by Mr Hoskins. A subsequent file note from Mr Hoskins however states that Mr Ciardi had recommended that the equities be sold, and that Mr Ciardi had then admitted that he had "got it wrong" with regard to the sale of equities and Mr Fraser had re-emphasised to him that the company needed to take a long term view of the markets.

83. Bearing in mind Mr Hoskins' evidence that the directors did not have the expertise required to make such decisions, we consider that the reference to the "appetite of the Trust" is a reference to Mr Ciardi's wishes, which were contrary to the recommendations of Goldman Sachs. We consider that Mr Hoskins' file note would have had more detail as to why they were going against the recommendations of the bank if this had been a decision taken by the directors. On balance, we conclude that the directors did not make this decision but rather simply gave the approval required by the bank mandate for the transaction to take place.

84. In October 2013, after Goldman Sachs set up a new margin account, Mr Hoskins responded to an email from Mr Bonds effectively asking him to explain the meaning of an email from Goldman Sachs, with the comment "sorry, quite confused with all the accounts now". It seems unlikely that Mr Hoskins would have made such a comment if he had actually made the decision to open the relevant accounts, rather than simply authorising someone else's decision to open an additional account.

*Property investments - 2013*

85. The evidence and our conclusions on this are largely set out in the section on property transactions in this decision, but we note in particular that Mr Hoskins described, in file notes, interactions with Mr Bonds regarding the Swiss property in 2013 as being decisions made by someone other than the Cogefin directors (as to the appropriate categorisation of payments made to Mr Ciardi and noting that 'instructions' were to be sent to make a distribution).

*Correspondence regarding Game IPO - June 2014*

86. In early June 2014, Mr Ciardi emailed Mr Hoskins and asked him to look at the prospectus for the Game IPO, as he thought it would be a good opportunity: Mr Ciardi had been in correspondence with the sponsor, who had treated this as a possible investment by Mr Ciardi. In correspondence with Mr Bonds, Mr Ciardi stated that he had thought "about 3 million" would be a suitable investment, but Mr Fraser had thought that

"we should go for no more than 2. I think that is sensible Please relate". That email was forwarded by Mr Bonds to Mr Hoskins.

87. The IPO sponsor followed up with Mr Fraser, asking him to confirm Mr Ciardi's order of £3m as the books were to close shortly. Mr Fraser emailed Mr Hoskins, noting that "it is our understanding that the actual demand should be £2m" and asking Mr Hoskins to confirm that he was happy for them to liaise with the sponsors. Mr Hoskins responded to say that the company was happy to invest £2m. Later the same day, Mr Hoskins advised that he had been reviewing the prospectus further and felt that the maximum investment should be £1.5m. Mr Hoskins confirmed to the sponsors that he had recommended an investment of £1.5m.

88. At this point, the documentation appeared to be consistent with this being a decision taken by the directors. However, the next day, Mr Fraser emailed Mr Hoskins on a different matter and added "BTW [Mr Ciardi] did not participate in the IPO in the end - the stock is trading down though in any case …". Mr Hoskins' reply was (in its entirety) "Good call".

89. Mr Fraser initially stated in the hearing that his recollection was that none of Goldman Sachs' investors received any allocation in this IPO, although he subsequently accepted that he was not sure about this. On balance, we consider that the reference to Mr Ciardi not participating was because Mr Ciardi had decided not to do so. We consider that Mr Fraser would have made it clear in the email if no allocation had been received by Goldman Sachs at all, to explain why the shares had not been acquired. And, in any case, Mr Hoskins' response clearly indicates that he interpreted this email as meaning that someone other than the directors had decided not to participate in the IPO and that, as the stock was trading down, that had been a good decision.

90. We consider that the initial correspondence on this matter is therefore misleading and that the directors did not make the decision to participate in the IPO, and that the directors' involvement was to provide the confirmation to the transaction required by the bank mandate.

*Correspondence regarding Alibaba IPO - September 2014*

91. Mr Ciardi had received an email from a colleague about this IPO; he replied, copying in Mr Hoskins and Mr Bonds to say that Mr Hoskins "needs to make the decision" and will need the relevant information. Mr Hoskins emailed Mr Bonds asking to discuss the IPO. The reply from Mr Bonds was that "the Alibaba IPO isn't something for Cogefin". Nevertheless, a day later, Mr Hoskins was asked by Goldman Sachs to complete a form in respect of the IPO. He emailed Mr Bonds again, stating that he was "getting confused". Mr Bonds replied to say that the deadline was the next day for Cogefin to place an order for an allocation in the IPO, and to contact Goldman Sachs the next day if he had not heard from them. Later that same day, Mr Hoskins emailed the signed and dated form back to Goldman Sachs. A day later, he was asked to confirm that Cogefin intended to invest $5m in the IPO.

92. There is no further information in the bundle, so we could not tell whether Cogefin had received the requested allocation in the IPO. What is clear from the correspondence, however, is that the decision to participate in that IPO was not made by Cogefin's directors. Having been told that this investment was not suitable, Mr Hoskins was then simply told to sign the necessary papers; there was no correspondence - beyond his initial confusion - to suggest that he was given any explanation for the change or that the directors then made a decision regarding participation.

*Correspondence regarding refinancing Foncière - November 2015*

93. In November 2015, Mr Hoskins was asked to release security which Cogefin held regarding a loan to Foncière CG, a company in which the Ciardi family had an interest. Mr Hoskins initially asked Mr Ciardi if he knew any more about the matter, which he did not. Mr Hoskins then wrote to the lawyer dealing with Foncière and stated that Cogefin would require more information before releasing the security and that replacement security would need to be put in place immediately. The lawyer responded to Mr Ciardi and gave him (not Mr Hoskins) details of possible equivalent security and requested an immediate response. Mr Ciardi agreed to the proposed alternative security and asked for more details as to why the security was being rearranged, which the lawyer then set out in a further reply to Mr Ciardi (copied to Mr Hoskins). A few days later, the documentation was sent by the lawyer to Mr Hoskins, who then signed and returned it the same day. This was recorded in board minutes dated 18 November 2015.

94. Considering the correspondence overall, although Mr Hoskins was seeking additional information in respect of what was being requested, the correspondence shows that the agreement to the alternative security was provided by Mr Ciardi and not the directors, even though Mr Ciardi had apparently commented (as recorded in a file note by Mr Hoskins) that it was his sister who was involved with the investment rather than Mr Ciardi directly. Although Mr Ciardi apparently had little more information than Mr Hoskins, he still agreed the alternative security following the lawyer's explanation. There was no indication that Mr Hoskins made any objection to that, even though it was a matter for the directors of Cogefin to decide.

*Energy projects*

95. These are dealt with in a separate section, as they involved a substantial number of transactions between 2014 and 2018. The projects show Cogefin effectively being used by Mr Ciardi as the source of funds for these projects, which were largely personal investments by Mr Ciardi and in respect of which he stated that he was claiming UK tax relief on amounts loaned by Cogefin to the projects. Substantial funds were generally called for at very short notice, with little or no information, and with the terms effectively dictated to Cogefin. In many cases, the only available record of funds moving is in board minutes. Where additional information was available, the board minutes were in many cases inconsistent with the additional information. As such, the board minutes were not a reliable record of the transactions and we consider that they did not provide any support for any contention that the directors were applying their minds to decisions in respect of these projects.

***Overall***

96. The inconsistencies and clear evidence of decisions being taken elsewhere mean that, although there are a few documents which suggest that a decision was taken by the directors during the periods in which Mr Hoskins was the lead director, we do not consider that these are representative of the general pattern. For example, a file note of 9 February 2016 regarding a call with Goldman Sachs states that Mr Hoskins felt that "we should sit tight … rather than sell" contrary to Mr Ciardi's apparent wish to sell and go to cash. In this, he was echoing Goldman Sachs' advice and appears to have decided to follow that advice.

97. Email correspondence from the bank a few weeks later appears to follow up on this, and is addressed to both Mr Ciardi and Mr Hoskins, stating that Goldman Sachs have been unable to reach Mr Ciardi by telephone and asking to speak to both to discuss

the risk budget. Mr Ciardi's response is to say that he was "constructive at the moment" and perhaps they could adjust the mix of assets. He considered that the mandate should not be changed "in the middle of the channel". He did not defer to Mr Hoskins nor did Mr Hoskins suggest that this should be a decision for the directors. Goldman Sachs responded to say that they had wanted to check in to see what Mr Ciardi's views were, and that they were happy to leave things where they were. There was no input to this conversation from Mr Hoskins, other than to subsequently respond with his availability for a call.

98. This is one of a very few examples that appears to show a clear decision by a director in over 20,000 pages of correspondence, yet it is followed by correspondence showing Mr Ciardi continuing to drive the investment decisions with Goldman Sachs. As on other occasions where Mr Ciardi was, or appeared to be, making decisions, Mr Hoskins did not make any comment to indicate that this was inappropriate.

99. On balance, and considering the standard of proof, we consider that the documentation shows that Mr Hoskins did not generally apply his mind to requests and proposals. He principally reacted to implement the requests.

**Other witnesses**

*Mr Ciardi*

100. The documentary evidence in this appeal has been provided by others, not by Mr Ciardi himself, and so has been primarily considered in other sections of this decision. For the avoidance of doubt, we state this to explain why this section is somewhat briefer than might be expected.

101. Mr Ciardi provided two witness statements and gave oral evidence at the hearing. As with the other witnesses, the passage of time means that much of Mr Ciardi's oral evidence was effectively speculation as to what he thought would have happened. For example, in respect of the residential property in Switzerland (Kharanos) he said in the hearing that he "made the decision that the deal was a good deal, that I wanted to have a piece of it, and then I thought it was such a good deal that it would be nice for me to show it to the directors. And I think that other people were involved in discussing this thing with the directors, because there were -- by that time, I had Michael working with me and he might have spent some time to explain the deal. This is what I can assume that happened".

102. It is clear from the documents that Mr Ciardi was generally aware that Cogefin decisions were supposed to be taken by the directors. In earlier years this was not entirely consistent: on quite a few occasions he (or an assistant) sent invoices to Cogefin with instructions that the invoices were to be paid, rather than a request that the directors consider paying the invoices.

103. However, throughout the periods in question there are emails in which he asks others (such as banks or those bringing investment ideas to him) to pass them onto Cogefin (albeit that he tended to say that these should be passed to the trustees, rather than the directors). There was oral and documentary evidence that he would generally discuss these proposals by telephone with the directors so, as already noted with regard to the directors, the directors had more information provided by Mr Ciardi than was set out in correspondence.

104. There were some exceptions to this approach, particularly when Mr Ciardi needed funds relatively quickly, where Cogefin's involvement was something of an

afterthought. For example, in July 2010, although Mr Ciardi wrote to Mr Hoskins suggesting he redeem an investment in Libra, he had also written to Libra the same day, without copying anyone at Cogefin, stating that he needed immediate liquidity for another transaction although he expected to reinvest soon, and asking them to send him the forms. The response from Libra indicates that they considered the Cogefin shareholding to effectively belong to Mr Ciardi. The redemption funds were transferred to Morgan Stanley, who invested them in a bond at Mr Ciardi's instruction; Cogefin were informed that this had been done rather than being asked to approve it. The entire transaction was, we consider, decided by Mr Ciardi with no more than cursory reference to Cogefin.

105. Although he more usually referred matters to the directors, there is almost no evidence that he took any steps to check what the directors were actually doing. The exception, for reasons that were not explained, was in respect of 27CSL, where - at least in the first few years - there were requests for copies of board minutes evidencing loans from Cogefin to 27CSL.

106. In the earlier years under appeal, as already noted, Cogefin would routinely ask Mr Ciardi to authorise particular transactions, and he did not appear to consider this unusual or inappropriate, nor to query why the directors were not dealing with the transaction.

107. For example, he was regularly asked to confirm that Cogefin should pay demands for taxes for the property owned by Cogefin in Andes, New York, and asked to approve the payment of capital calls on investments already in place. In March 2009, Ms Phillips asked Mr Ciardi to confirm that he had requested a new account be opened in Cogefin's name in respect of Cogefin; she also asked him to authorise the execution of a contract to open that Cogefin account at Cazenove. Mr Ciardi simply confirmed that it was fine to sign this. There are other similar instances set out in other sections of this decision; much of the correspondence was chasing his approval, indicating that Cogefin considered that they were unable to make payments (which they were legally obliged to make) without Mr Ciardi's agreement.

108. There were other administrative matters also deferred to Mr Ciardi. In October 2003 Mr Bonds stated in correspondence with Ms Charaman that Mr Ciardi had not yet accepted the quote from Mazars in respect of Cogefin's audit. Correspondence in 2009 shows that Mazars' invoices in respect of work for Cogefin were being sent to Mr Ciardi; although the correspondence was copied to Ms Phillips, the emails sending the invoices and requesting payment (including a request for earlier invoices to be paid) were addressed to Mr Ciardi.

109. Mr Ciardi was often treated by third parties as the principal point of contact for investments; investments are often described as "his" even where Cogefin had been involved and provided the funds. For example, in August 2005, Cogefin provided approximately €1.5m for a property project (Grivita). On 22 May 2006, Mr Ciardi wrote to Cogefin, referring to the August 2005 investment, and requested a further €1.5m to complete "the remainder of the following transaction" (details apparently attached, but not in the bundle). On 25 May 2006, Ms Phillips replied to Mr Ciardi to query the transaction, as the attachment related to a resort project in Morocco.

110. Mr Ciardi replied to say that the money sent for the Grivita project had never been used, as the company had not managed to secure the deal on their terms and so they had kept the funds in cash. The same group now planned to provide capital for this Moroccan resort project and Mr Ciardi recommended that Cogefin should invest €3m,

by adding a further €1.5m investment to the original amount sent. Ms Phillips forwarded this reply to Mr Hoskins. The board minutes, dated 25 May 2006, effectively repeated Mr Ciardi's explanation.

111. The documentation here is clear: no-one had told Cogefin that the Grivita project had not gone ahead and no-one at Cogefin had followed up the project. All communication from the project had been with Mr Ciardi, who had effectively treated the Cogefin funds as if they were his own and was now essentially committing Cogefin to a further investment.

112. There was no suggestion that Cogefin could obtain a return of the funds which had not been used, only that they should provide a further equal amount again for a different project. It was not until Ms Phillips queried matters that any explanation was provided. There was no correspondence to suggest that the directors had raised any objection to the lack of adequate communication.

113. This continued: the next clear mention of the project in the bundle is on 11 September 2012 when (following a query from Mr Bonds), Mr Hoskins sent an email to ask for information as Cogefin had not received any correspondence since 2008 on this matter. The reply, the next day, states that their records showed that Mr Ciardi had been updated on several occasions. In a file note dated 7 April 2015 Mr Hoskins described the investment as "a private investment" for Mr Ciardi, funded by Cogefin.

114. This description is somewhat at odds with the fact that Cogefin had entered into a subscription agreement in respect of this project in 2006. We consider that this is, however, indicative of the manner in which investments were often approached - that is, that they were something which Mr Ciardi wanted to do and the directors simply carried out his request.

115. We consider that the correspondence also indicates that Mr Ciardi did not expect his proposals to be refused. For example, in May 2000 when writing to recommend a particular investment, he asked for confirmation of the bank instruction to be sent to him by return.

116. This expectation that proposals would be carried out was particularly obvious with the expenditure on residential property, and also on the energy projects (solar, wind, gas) where the companies required significant funds at very short notice in order to meet obligations to third parties. There was no indication that there was any alternative option in place to meet those funds and, indeed, Mr Hoskins at one point noted that Cogefin may "have to" effectively fund an entire gas development project owned by Mr Ciardi.

117. Although in oral evidence there were suggestions that matters would have been discussed by telephone in advance, we consider that the correspondence does not support this. There are emails referring to things happening very quickly with little notice; explanations provided with funds being required within 24 hours are not written in a form that suggests there has been any earlier discussion. Some of the demands for payments to be made by Cogefin (such as one in August 2009) are clearly instructions and the correspondence equally makes it clear that they have not been previously discussed with the directors.

118. This is not, however, an indication that Mr Ciardi knew that the directors would do what was asked of them without applying their minds. Taking all of the evidence together, we consider that Mr Ciardi was not controlling matters or driving others' decision making with a specific aim of controlling Cogefin's actions. We consider, on the balance of probabilities, that the structure was set up with the aim of utilising UK tax

laws as applicable to the non-domiciled and that Mr Ciardi assumed thereafter that things were happening as they should and did not pay particular attention to the background detail of the operation of the structure. He was clearly highly involved in those things that interested him, given the frequent reference in correspondence to discussions between him and the banks, but appears to have been much less interested in detail. There are many instances in the correspondence where he is being chased for a response, including one very exasperated chain of emails from a third party attempting to get a decision from Mr Ciardi in respect of the Swiss residential property.

119. His correspondence reflects this: requests to the directors usually refer to the 'trustees' rather than the directors, although clearly addressed to Cogefin's directors. Many of the requests, particularly in the first few years, include a formulaic reference to passing on a request or reference from his father. Mr Ciardi's evidence was that he thought that, as his father was the original trustee settlor, this was an appropriate way to phrase matters rather than because there was an actual request or recommendation by his father. We consider this is indicative that he considered the structure to be something that was there and that, if things were phrased appropriately, that was all that mattered.

***Mr Bonds***

120. Mr Bonds provided a witness statement and gave evidence in the hearing. He has worked for Mr Ciardi in various capacities. From 2002 onwards, he became involved with Cogefin and acted as an intermediary between Mr Ciardi and Cogefin on administrative matters. This role became more active from 2011 onwards. He was also more directly involved with the energy projects which were funded by Cogefin. In common with the other witnesses, Mr Bonds' oral evidence was principally speculation upon the meaning or intention of documents to which he was taken. Given the passage of time, this is not particularly surprising.

121. We also found Mr Bonds to be somewhat defensive in answering questions and in answering would often formulate his response by reference to statutory and case law tests of residence, and so appeared to be trying to argue the appellants' case for them rather than simply give evidence. We consider that the most likely explanation for this is his close work with, and thus some form of identification with, Mr Ciardi. However, it does mean that we consider that his oral evidence was not reliable although we consider that it was honestly given.

122. For this reason, we have generally preferred the documentary evidence. Having reviewed the documentary evidence, it is clear that Mr Bonds was extensively involved in correspondence on behalf of Mr Ciardi with Cogefin. Given his role as a conduit, and his less reliable oral evidence, we have focussed on the more direct evidence involving the directors and Mr Ciardi and so Mr Bonds' involvement and evidence is therefore considered in the sections dealing with their evidence.

***Mr Revelli***

123. Mr Revelli provided a witness statement and gave oral evidence in the hearing. He has known Mr Ciardi for his entire life, and was involved with Cogefin whilst working at Morgan Stanley until 2007, although this was less so after 2000 when he was promoted. He subsequently worked with Mr Ciardi at Caledon and, from 2014, was involved with the energy sector including some of the projects in which Cogefin invested. In common with the other witnesses, Mr Revelli's oral evidence was principally speculation upon the meaning or intention of documents to which he was taken. Given

the passage of time, this is not surprising and, as with other witnesses, we have therefore preferred the documentary evidence.

124. Overall, the documentary evidence shows that Mr Revelli had limited involvement with Cogefin and therefore, to the extent relevant, Mr Revelli's evidence has been discussed in other sections of this decision.

***Mr Fraser***

125. Mr Fraser provided a witness statement and gave evidence at the hearing. His involvement with the company started at Goldman Sachs where he worked from 2004 to 2014, where he was the primary relationship manager for the company from 2009. After leaving Goldman Sachs he worked with Mr Ciardi at Caledon Partners, which he considered to be similar to a family office, principally on energy projects. Consistent with other witnesses, given the passage of time, Mr Fraser was unable to recollect details of transactions in which he was involved without reference to the documents. His evidence was largely commentary on the documents, with some speculation as to what may have been the reason for correspondence and actions.

126. Mr Fraser was introduced to the company through a client of Goldman Sachs who was a friend of Mr Ciardi: the recommendation was made to Mr Ciardi on the basis that Mr Fraser would be able to help manage the company's investments. Mr Fraser spoke initially with Mr Ciardi and afterwards was put in contact with the directors, having been asked by Mr Ciardi to liaise with Mr Hoskins to set up an account.

127. Mr Fraser had been told that the company was responsible for investing the trust assets, and that the directors were also the trustees. He understood that Mr Ciardi was one of the beneficiaries of the trust.

128. The documents show, and Mr Fraser accepted in his evidence, that when the company accounts were opened with Goldman Sachs, the correspondence with the company stated that Mr Ciardi wanted the company to have a discretionary account with Goldman Sachs (that is, an account in which the investments were managed by Goldman Sachs within agreed parameters without the need to obtain approval for each transaction). In practice, the company opened both a discretionary account and an advisory account (in which each investment transaction required approval from a person authorised by the account mandate).

129. The company advisory account initially had a medium risk portfolio; shortly after, correspondence from Goldman Sachs noted that "Mr Ciardi wants to change the investment objective … to enable all types of trading". The risk profile for discretionary accounts would usually be consistent with that for an advisory account; Mr Fraser agreed that correspondence between him and Mr Ciardi showed that Mr Fraser confirmed with Mr Ciardi that he was happy for Goldman Sachs to alter the risk profile for the discretionary account accordingly. The forms for both risk profile amendments were signed by Mr Hoskins, but the decision as to the nature of the accounts was made by Mr Ciardi.

130. Mr Fraser's evidence was that he did not give much thought to the relationship between Mr Ciardi and the company. Nevertheless, he stated that he understood the final authority rested with the company directors, particularly Mr Hoskins and that Mr Ciardi did not have authority to approve transactions. He had initially thought that Mr Ciardi did have such authority but this was a misunderstanding which was corrected. His evidence was that, for a few very early transactions in November and December 2009 he had assumed that Mr Ciardi had authority to authorise transactions but that this was

quickly corrected. Correspondence at the time shows Mr Fraser emailing Mr Ciardi to confirm that trades discussed with him had been carried out, and providing a copy of "your accounts". He stated that Mr Ciardi had, in January 2010, reminded Goldman Sachs that they needed to get authorisation from the directors; Mr Fraser stated that he remembered that Mr Ciardi was very aware that he did not have authority to approve transactions on behalf of the company. In his witness statement, Mr Fraser stated that from 2010 onwards, he would discuss a recommendation with Mr Ciardi and then seek approval from Mr Hoskins. The correspondence in the bundle is not wholly consistent with this.

131. Much of the correspondence shows Mr Fraser (or Goldman Sachs more generally) seeking Mr Hoskins' approval for transactions. We do not consider that, taken alone, any of this correspondence is determinative evidence of decisions being taken by the directors: Goldman Sachs was required to act in accordance with the account mandate, and that would require approval from an authorised person for various actions. Obtaining approval from such an authorised person does not mean that person made the relevant decision: they are simply the person authorised to communicate with the bank and may be communicating a decision taken by someone else.

132. Mr Fraser stated that he had consistently sought director approval for advisory account transactions. He had spoken regularly with Mr Hoskins and used email to provide investment ideas and research, to record approvals and confirm trades. Mr Fraser stated that Mr Ciardi was often copied into these because of his interest and financial knowledge and not because he was a decision-maker.

133. The correspondence is not wholly consistent with this. For example, in March 2010, a chain of correspondence shows Mr Fraser telling Mr Hoskins that he had spoken to "the beneficiary" who wanted Goldman Sachs to trade currency opportunistically: "ie when it goes near 1.38 we are to sell and when it touches 1.35 we are to buy, with the size of trade being €5-10m in total … can we get permission to do this without getting a response from you each time". The company administrator (Ms Phillips) then forwarded this to Mr Ciardi, asking him to "confirm your agreement to the arrangement". Mr Hoskins replied to Mr Fraser to say "Subject to confirmation from [Mr Ciardi] via email we are happy with this". Mr Ciardi replied to say "Fine for me".

134. We consider that this is clear that Mr Ciardi made this decision and that the role of the directors was simply to authorise the bank to execute Mr Ciardi's decision.

135. Mr Fraser explained that much of the communication with both Mr Ciardi and Mr Hoskins was by telephone; he stated that this meant that the documentary records could therefore be misleading as the email chain would not record the telephone discussions and approvals obtained from Mr Hoskins. Given that Mr Fraser also stated that he could not recall details, we consider that this is further speculation on his part but also note, as set out above, that obtaining approval from a person authorised by the relevant bank mandate does not mean that authorised person made the relevant decision.

136. For example, when a change to the risk profile of the portfolios was made in 2013, Mr Fraser stated that he would have discussed the change with Mr Hoskins by telephone and obtained his approval. The correspondence in the bundle shows that Mr Fraser left a voicemail for Mr Hoskins around this time, the details of which were not available, although Mr Hoskins replied to say that he agreed with a proposal contained in that voicemail.

137. An email which Mr Fraser stated was in respect of this shows that Mr Fraser had spoken with Mr Ciardi and sets out in detail that conversation: it notes that "Following our conversation on Monday evening, we sold $3.1m worth of equities that night in your advisory account and yesterday our investment team sold $10.8m of equities from your discretionary account. This means your portfolio is back in line with our moderate risk mandate". This email was sent only to Mr Ciardi; it was subsequently forwarded by Mr Fraser to Mr Hoskins.

138. Mr Fraser's evidence was that Mr Hoskins had made this decision: given the content of the email to Mr Ciardi, the fact that Mr Hoskins was not included in the email setting out the actions taken (albeit the email was forwarded to him afterwards), and the repeated references to the company portfolio as being Mr Ciardi's portfolio, we consider that it is far more likely that Mr Ciardi made the decision and Mr Fraser obtained the approval required by Goldman Sachs' mandate from Mr Hoskins. The documentation does not support his evidence that the decision was taken by Mr Hoskins.

139. Similarly, in December 2013, Mr Hoskins emailed Mr Fraser noting that he could see "quite a lot of selling" in the account. Mr Fraser responded to say "I spoke to [Mr Ciardi] and he wanted to sell down $10m of exposure (we have done $8m) and bought some puts to protect the remaining portfolio". The trade confirmations included indicate that these trades were undertaken in the advisory account, as an email shortly afterwards seeks Mr Hoskins' "confirmation" for a purchase to be made in that account. The correspondence effectively makes it clear that Goldman Sachs was carrying out transactions on the basis of Mr Ciardi's instructions alone.

140. Even when Mr Fraser left Goldman Sachs in mid-2014, the correspondence shows that this was communicated only to Mr Ciardi and not to Mr Hoskins. Mr Hoskins emailed Goldman Sachs on 9 July 2014 to say that he had only just learned that Mr Fraser - who was, as noted above, the client relationship manager for the company at Goldman Sachs - had left the bank "a few weeks ago". The reply from the bank the next day advised that someone from the bank had previously spoken with Mr Ciardi to inform him of the change.

***Mr Sternberg***

141. Mr Sternberg provided a witness statement and gave oral evidence at the hearing.

142. Mr Sternberg is a chartered accountant and acts as a key adviser to ultra-high net worth families. He was instructed by Mr Ciardi personally from late 2009 into 2011. His role was to assist with Mr Ciardi's personal financial matters, including HMRC's enquiries into Mr Ciardi's tax affairs. HMRC suggested that he had also provided tax advice to Cogefin.

143. In giving evidence Mr Sternberg was clear that he had limited recollection of relevant events, given the passage of time. Much of his witness statement was based on the documents in the bundle and his understanding of matters when giving oral evidence was similarly based on the documents. He generally could not remember any particular detail. Similarly in the hearing, his recollection of events was primarily prompted by viewing documents. Although HMRC suggested that he was evasive, we consider that is much more likely that he simply did not recall after the length of time that has passed.

144. Given that Mr Sternberg was not a director of Cogefin, his evidence has been given limited weight in considering the residence of the company. HMRC spent considerable time cross-examining him on the contents of a file note created by Mr

Hoskins following a meeting in 2010. As this was not a file note written by Mr Sternberg, we placed no particular weight on the fact that his recollection of events in connection with this meeting varied once he was taken to particular documents.

145. There was very little documentation in the bundle involving Mr Sternberg, which we consider supports his evidence that his role was to advise Mr Ciardi and not the company. The only invoice that is in the bundle is (in context) for a very small amount and is addressed to the trust company, described as being for work done for the various trusts. The limited correspondence with which Mr Sternberg was involved was consistent with being in respect of Mr Ciardi's personal tax position. The meeting with Mr Hoskins and Mr Ciardi in August 2010, which is documented in Mr Hoskins' file note, does cover a number of company issues. In context with all of the other documentation, we consider that the fact that Mr Ciardi and Mr Hoskins discussed company matters with Mr Sternberg does not mean that he was advising the company or providing anything other than ad hoc comments in the meeting. We also take note that this file note was, of course, prepared by Mr Hoskins and so reflects his understanding rather than being a strictly detailed account of the meeting. Another file note prepared by Mr Hoskins, in respect of several telephone calls between Mr Hoskins and Mr Sternberg in December 2010, also focussed on Mr Ciardi's tax enquiry with HMRC and the impact on Mr Ciardi's tax position of various investments.

146. HMRC contended that Mr Sternberg had acted as a tax advisor, which he denied and explained that, although he was an advisor, he did not advise on tax matters. His role was as a family office adviser, dealing with a range of issues. He had a reasonable understanding of tax matters, to be able to identify where there might be issues requiring advice from others, but did not provide tax advice. His role was, in this case, gathering information and coordinating advisers to respond to the enquiry into Mr Ciardi's tax affairs. Mr Hoskins did, in correspondence with others, apparently refer to Mr Sternberg as a tax adviser but we do not consider that this is determinative of Mr Sternberg's role.

147. On balance we accept Mr Sternberg's evidence as to his role noting, for example, that in the file note of August 2010, it is Mr Ciardi who notes that there would be a tax problem with the company becoming a shareholder in a particular investment as suggested by Mr Sternberg. If Mr Sternberg were a tax advisor, we consider that this discussion would have been rather different. The file note does record Mr Sternberg as making a comment regarding decision-making "from a UK tax point of view". This is a single comment in the context of the investment accounts at Goldman Sachs, and Mr Ciardi's involvement with their investment recommendations. Mr Sternberg could not recall the conversation and, in evidence, pointed out some errors in the file note such as references to 'trustees' which, in context, was presumably intended to be a reference to the 'directors'. He could only guess at what may have been the basis of discussion, which did not assist us.

148. Mr Sternberg's evidence was that he had been somewhat frustrated at difficulties in obtaining documentation and information which may or may not have existed; he considered that the record keeping of the structure "could have been better". His evidence indicated that he did not consider that decisions were properly documented but, as he did not know how the directors operated in practice, he would not have been in a position to say whether there were any deficiencies in the way that decisions were made. As such, he considered that any comments that he may have made would have been general observations rather than specific advice or criticisms.

## Particular areas of evidence

149. There were a number of thematic areas which we have covered here, regarding real estate transactions, energy projects and relationship with banks.

### *Real estate transactions*

*27 Chester Square*

150. 27 Chester Square was acquired and subsequently renovated as a residential property intended for occupation by Mr Ciardi and his family. The funds for the purchase price and extensive renovation works, together with other expenses, were provided by the company. The payments were generally by payment of invoices, but recorded as loans to an associated company owned by the trust (27CSL). The total expenditure ran into many millions of pounds over a number of years.

151. The correspondence in the bundle regarding the acquisition of 27 Chester Square shows that Mr Ciardi negotiated for the purchase of the property: the solicitors' correspondence includes statements such as ”Mr and Mrs Ciardi have instructed me to proceed with the purchase of the above property at a price of £3.75 million with an exchange of Contracts to take place as quickly as possible following receipt by me from the sellers solicitors of a draft Contract and full supporting documentation” (in an email from Mr Ciardi's solicitors in December 1999). The correspondence continued to refer to Mr Ciardi as the client and referred to 27CSL as “the purchasing company”, that company having been incorporated on 21 January 2000 in the British Virgin Islands as a special purpose vehicle to make the acquisition.

152. On 28 January 2000, Mr Ciardi faxed MLH Quin. The fax was “to instruct you to instruct Paolo Revelli to transfer the amount of £385,000 (sterling) from the Cogefin account at Morgan Stanley for value 31st January” to a solicitors' account. A handwritten note on the fax states that this is “For the purchase of the house - 27 Chester Square”. A fax was sent from Cogefin the same day, authorising Morgan Stanley to make the payment.

153. Mr Ciardi's evidence on this was that this was just one fax and that there had been a number of interactions with the trustees, that this was not something coming out of the blue. This was just a record of payment, not asking them to buy a property. He did not accept that this was an instruction from him to Cogefin to make the payment and he considered that the lawyers acting for him would not have allowed an incorrect procedure to be followed.

154. Mr Forrest answered questions on this fax in cross-examination. We did not find his evidence particularly helpful, as it contained significant errors - including statements such as Cogefin being the purchaser of the property - and his evidence was generally in the form of speculation on what may have occurred, given the passage of time.

155. On 14 March 2000, a subsequent fax from Mr Ciardi to MLH Quin states that, in order to complete the purchase, funds will have to be in place by 16 March. In this fax, he requested that the directors of Cogefin transfer £3,600,550.10 from a specific account to a solicitors' account. On 24 April 2000, in board minutes ratifying a number of transactions, the Cogefin board chairman reported that the company had loaned funds and the meeting ratified the directors' actions in making a loan of £3,985,550.10 (in aggregate), which was interest free, to 27CSL.

156. Between October 2000 to October 2007 there were a substantial number of further payments by Cogefin on behalf of 27CSL. Each of these was described as a further interest-free loan to 27CSL. The payments generally take the form of direct payment of invoices. Mr Forrest's evidence was that he could not recall whether there had been any budget for these costs agreed; he speculated that there would have been an agreement by Mr Pilgrim on behalf of 27CSL to fund the costs. There was no evidence of any such agreement in the documents provided to us. Mr Forrest was also not aware that there was ever an agreement that the costs would be funded by Cogefin; he considered that any obligation would fall on 27CSL as owner of the property. He assumed that the Cogefin directors would have agreed to fund the running costs, if the documents showed that they had funded them.

157. Although these faxes for payment were couched in the form of requests, usually expressed in the form that "my father, Mr Francesco Ciardi, would like to recommend …" the faxes were, in our view, sent with an expectation that payment would be made and were treated as instructions to make payment on receipt. The requests were usually for a loan to be made the same day as the fax and advised that attached invoices should be settled directly by Cogefin. At least one of the faxes, sent 15 November 2001 to Cogefin, stated that Mr Ciardi "should like to bring to your attention that you should only accept instructions signed by me. We need to devise a secure system for you accepting faxed instructions".

158. In September 2002, Mr Ciardi faxed an invoice for payment which was said to be a recommendation that Cogefin pay the invoice and treat the payment as a loan to 27CSL. The invoice attached was addressed to 27CSL in Bermuda yet was apparently provided by Mr Ciardi to Cogefin (at the same address). The invoice was accompanied by a covering letter advising that payment was seriously overdue and threatened to commence proceedings against 27CSL within seven days if not paid. The letter was dated a month before the fax sending it to Cogefin.

159. Whilst, again, this invoice related to a legal obligation of 27CSL rather than Cogefin, Mr Ciardi appears to be the person who established when payments are to be made, rather than the company. Although this is, of course, in respect of a different company we consider that it is indicative of the approach involved with Cogefin given the substantial overlap in persons involved. The fax included instructions to Cogefin as to how the transaction should be minuted and how the payment should be made, including where the funds should be paid from, and requested a copy of the minute book entry by return. A number of the faxes from Mr Ciardi regarding payment required the company to provide copies of the Cogefin minute book entries for the loans to 27CSL. It was not explained in correspondence why these were required by Mr Ciardi.

160. As with other similar faxes, this was not a request that anticipated any possibility that the answer may be "no". These faxes did not indicate that there have been any discussions as to the payment beforehand: indeed, as noted, this particular loan was in order to pay an invoice which was addressed to 27CSL in Bermuda. If there were to be any request to Cogefin for a loan to make this (and the other) payments, it should have come from 27CSL. If the directors of that company, who included Mr Forrest, had decided to make these payments we would have expected that they would make the request for a loan to Cogefin. We would have expected the directors of 27CSL to have dealt with a demand for payment which threatened legal proceedings without requiring Mr Ciardi to send such a fax. Again, we note that this appeal is concerned with Cogefin, not 27CSL, but given the common directors between the companies we consider that this

is relevant evidence to take into account when considering the approach of the directors in respect of Cogefin.

161. Possibly unsurprisingly, given the time lapse between the date of the letter from the surveyors and the date on which Mr Ciardi sent it to Cogefin, the surveyors commenced legal action. This time, the letter with the relevant information was sent by Ms Charaman to Mr Ciardi attached to a fax headed "Cogefin (Bermuda) Limited". The surveyors' letter noted that payment had been made but that accrued interest and court costs had been claimed and that the court action would not be discontinued until these were paid. The letter from Ms Charaman asks Mr Ciardi for his instructions regarding payment.

162. Although the flow of invoices for payment had ceased by October 2007, and 27CSL was described as inactive by February 2011, the later introduction of the Annual Tax on Enveloped Dwellings gave rise to further correspondence. In October 2013 Mr Bonds emailed Mr Hoskins and stated that "27CSL needs to pay HMRC £140,000 in respect of the Annual Tax on Enveloped Dwellings (ATED) by 31 October … To fund the payment £140K should be taken by way of a loan from Cogefin's newly opened account 049-21506-4 at Goldman Sachs … let me know when the payment is made". Mr Hoskins simply forwarded this to Ms Phillips and asked her to prepare a draft instruction. There was no suggestion that this is a request, or that any consideration was given to whether or not it should be paid by Cogefin. There is nothing in the correspondence to indicate that the payment had been discussed by telephone.

163. Although there was no correspondence available to us regarding the 2014 ATED payment, the 2015 payment was made following a similar email: Mr Bonds sent the ATED return through. The recommendation was as to which Cogefin account the payment should be from: there was no request that Cogefin directors should consider whether to make the payment. Indeed, the correspondence advised (and did not request) that the payment should be recorded as a loan between Cogefin and 27CSL. The 2016 payment was similar.

164. 27CSL was valued at £18 million in April 2017, for ATED purposes. We note for completeness and as indicated above, that the property was transferred to Mr Ciardi in November 2019. As that is outside the periods under appeal, nothing turns on that transfer in respect of these appeals.

*5 The Little Boltons*

165. The correspondence on this transaction began in May 2006 and stated that Mr Ciardi had agreed to purchase this property. Notwithstanding this, the fax to Cogefin on 12 May 2006 for funds to exchange contracts stated that Mr Ciardi's father would like to purchase the property. Contracts were to be exchanged on 17 May and Mr Ciardi writes "Please have the deposit money of 10% of the purchase price wired as per the following instructions". In our view, this was not a request to the directors to consider whether or not to make the payment, it was an instruction to make that payment.

166. On 15 May, the solicitors stated that the purchaser of the property would be Cogefin and that the contract should be emailed to Cogefin for signature. Cogefin board minutes dated the same day approved the purchase. This transaction evidently then ran into difficulties as, on 6 September 2006, the solicitors noted that the purchaser (in context, this appears to have been a reference to Mr Ciardi) and vendor had mutually agreed to put back completion until 31 January 2007. On 10 January 2007, completion was again put back to 31 March 2007. On 12 January 2007, completion was stated to be

1 March 2006. Notwithstanding the Cogefin board minutes, on 17 January 2007 the purchaser was stated to be another company, 5 The Little Boltons Limited, which was registered on 31 January 2006 in Bermuda.

167. On 20 February 2007 Mr Hoskins emailed Mr Ciardi as follows "… I am assuming that you will be assigning the contract to the new company … is it intended that Cogefin loan the money to 5 The Little Boltons Limited". This email is wholly inconsistent with the decision making on this transaction having been undertaken by Cogefin's directors: the contract had been entered into by Cogefin, and any decision on assignment should have been made by them. If the purchasing company required funds to complete the purchase, that was a request for the directors of that company to make. There was no reason to ask Mr Ciardi what his intentions were in that respect.

168. Arrangements were made for a mortgage to be registered in Cogefin's name against 5 The Little Boltons Limited. On 28 February 2007, Ms Phillips emailed Mr Ciardi asking him to confirm the wording of the mortgage charge, asking if this was what he wanted and whether it was correct. She also asked him how he wished Cogefin to record the loan. Again, this is wholly inconsistent with the directors making decisions in respect of this transaction.

169. This property was also quickly sold. In April 2007 it was offered to a potential buyer, with the agents noting that Mr Ciardi was prepared to sell it for £13m. The property was sold in June 2007 and the completion information stated that the vendor was Mr Ciardi. The estate agents' fees were agreed with Mr Ciardi, although payable by the owner company. There is no detail in the bundle regarding repayment of the mortgage. The sale correspondence is all focussed on, and relates to decisions by, Mr Ciardi. Again, the owner company was not Cogefin but there was considerable overlap in the persons involved and we consider that this is indicative of the approach taken within Cogefin as well.

170. Overall, this transaction indicates that Cogefin's directors were reacting to Mr Ciardi rather than applying their minds and making decisions.

*3 Hollywood Mews*

171. This is another property transaction taking place at the same time as the 5 The Little Boltons transaction. In the hearing, Mr Ciardi confirmed this was a companion property to 5 The Little Boltons.

172. The proposed purchaser was stated to be Cogefin, but it was noted that Mr Ciardi wanted freedom in the contract to take the property into his own name or that of another company. Cogefin paid the deposit. Eventually a new company (Appetency) was the purchaser. On purchase, Morgan Stanley confirmed that payment had been sent on behalf of Cogefin, but no instructions or board minutes were available to evidence this other than minutes in November 2006 which ratified a mortgage in favour of Cogefin.

173. In April 2007 an offer was also accepted on this property: the offer documentation states that the vendor was Mr Ciardi, and he signed the fixtures and fittings form. There was limited further documentation but, in January 2008 Morgan Stanley advised Mr Ciardi that they had received the funds from the sale and asked him whether it should be converted to Euro and invested in the same way as previous funds. There is no further correspondence to explain this, or what actually happened to the money. Morgan Stanley clearly believed that this transaction was undertaken by Mr Ciardi; whilst that is not determinative of the Cogefin directors' approach, it does indicate that the directors had little or no involvement and so were unlikely to have been the

decision makers. Mr Ciardi also does not appear to have responded to Morgan Stanley to correct their perception that the funds from the sale belonged directly to him.

*Mosquitos (Portugal)*

174. On 16 October 2007, Mr Ciardi wrote to the directors to say that he was buying a house in Portugal and that his father had agreed to borrow from the trust and asked directors to consider a loan to Mr Ciardi. Despite this, the board minutes of 19 October 2007 state that Cogefin wished to invest in residential property in Portugal and had received instructions to make a payment accordingly.

175. The company documentation regarding the purchase of this property indicates a lack of attention on the part of the Cogefin directors which we consider shows that they did not apply their minds to a decision on this occasion. They simply made the payment, following what they themselves described as an instruction.

176. This lack of attention followed through into incorrect information in the Cogefin accounts, which treated the payment as being for the acquisition of an asset. Given that the directors cannot have signed off on any purchase documentation, we conclude that they cannot have actually applied their minds to this transaction and so did not make a decision in respect of it.

177. The subsequent purchase of the land underneath this building in 2016 was, we note, funded by a distribution from the Bournemouth Trust.

*Land in Andes, Delaware County, NY*

178. The board approved the purchase of this property in 1997. Given the passage of time, there is almost no documentation regarding the purchase other than a board minute. In the hearing, Mr Ciardi agreed that he had wanted to buy the land and had negotiated the purchase.

179. The subsequent correspondence available regarding this property consists of demands for property taxes, all addressed to Cogefin as the owner of the property. From 2001 to 2011 these were routinely sent by Cogefin to Mr Ciardi asking him to confirm that the demand should be paid. Mr Ciardi did not suggest that this was a decision for the directors. It was not until September 2011 that any comment on this approach was made, when Mr Bonds replied to state that the payment of such taxes was a decision for Cogefin to make.

180. It is clear that, at least until September 2011, the Cogefin directors were deferring to Mr Ciardi on a decision that was entirely for the directors to make. Annual property taxes for a property which Cogefin owned was not a matter which required any investment advice. We conclude that the directors were clearly not turning their minds to a decision in respect of these matters.

*Kharanos - Switzerland*

181. The evidence given by Mr Ciardi in the hearing was that payments made by Cogefin in respect of Kharanos related to a chalet, used a couple of times by his family for skiing and otherwise rented out. It appeared, although information was limited, that Kharanos was a corporate entity which owned the property.

182. The correspondence indicated that Kharanos was a personal investment of Mr Ciardi's, which was funded by Cogefin, although the board minutes described payments as being made for investment in Swiss residential property. Correspondence from third parties chasing Mr Ciardi to deal with matters suggested that the investment was in fact

held by Mr Ciardi personally. Nevertheless, the Cogefin accounts included an asset described as "Swiss property".

183. The information in the bundle indicated that Cogefin had made a series of payments over the years in respect of this property. The board minutes between December 2006 (on purchase) and July 2008 state that the board had received instructions to make payment to Kharanos, generally for working capital purposes. In correspondence in July 2009, Mr Ciardi told Ms Phillips to pay an amount of interest due and record it "as usual". In October 2009, Mr Ciardi told her to wire funds as soon as possible, as these were very late and, again, to "book as usual". In the hearing Mr Ciardi initially stated that he did not know if he had given instructions to make payment, then stated that he did not give instructions.

184. In January 2012, correspondence with Stonehage Fleming confirmed that Mr Ciardi in fact owned the investment personally but that he wanted his shares to be owned by Cogefin. Stonehenge requested that Cogefin provide 'KYC' (know your client) information to be able to finalise the shareholders agreement.

185. In March 2013, Mr Bonds advised Mr Hoskins that all payments in respect of the Swiss property should be considered as loans to Mr Ciardi. Nevertheless, two days later, a Cogefin board minute describes a payment as being a "further investment in residential property in … Switzerland". In August 2013, a file note of a telephone call headed "Cogefin" between Mr Hoskins and Mr Bonds notes that Mr Bonds would be sending through a "new instruction to distribute funds to Mr Ciardi" regarding the Swiss property.

186. The considerable inconsistencies in the documentation relating to Kharanos indicate that the directors did not make the decisions in respect of this property; even if the board minutes were 'poor wording' as suggested, it remains the case that the directors obviously paid no attention to them. If they had been applying their minds to these transactions, we consider that they would have corrected board minutes which described a transaction wholly incorrectly. Given that the company accounts also reflected the board minutes, describing the payments as investments in an asset for which the directors cannot have signed any acquisition documentation, we conclude that the directors did not apply their minds to these transactions.

187. This clearly continued given that in 2013, two days after being told that payments in respect of Kharanos should be treated as loans to Mr Ciardi, the board again recorded such a payment as being a property investment. We note that file notes prepared by Mr Hoskins in 2013 in respect of Kharanos also refer to decisions being made by someone other than the directors (for example, he states that Mr Bonds confirmed that the payments should be treated as loans to Mr Ciardi; and also that Mr Bonds had stated that an instruction would be sent to distribute funds).

***Energy projects***

188. These involved a substantial number of transactions between 2014 and 2018. As set out below, the projects show Cogefin effectively being used by Mr Ciardi as the source of funds for these projects, which were largely personal investments by Mr Ciardi and in respect of which he stated that he was claiming UK tax relief on amounts loaned by Cogefin to the projects. Substantial funds were generally called for at very short notice, with little or no information, and with the terms effectively dictated to Cogefin. In many cases, the only available record of funds moving is in board minutes. Where additional information was available, the board minutes were in many cases inconsistent

with the additional information. As such, the board minutes were not a reliable record of the transactions and we consider that they did not provide any support for any contention that the directors were applying their minds to decisions in respect of these projects.

*Solar projects (2014-2015)*

189. These projects were the subject of considerable correspondence, which is reflected in the length of this section.

190. The correspondence on these projects began (in the bundle) with Mr Bonds advising Mr Ciardi in late July 2014 that he had asked Mr Hoskins for a basic loan agreement that the solar company (SPFL) could use with the entities from which it borrowed. Mr Hoskins provided a basic form loan agreement for Mr Bonds "to play with" and stated that he did not really have enough detail to advise, and noted that another law firm would be providing advice to SPFL on the loans.

191. Approximately a week later, a file note prepared by Mr Hoskins of a call with Mr Bonds noted that there had been delays with the law firm signing off on the loan agreement. SPFL required funds to pay invoices, and the file note stated that "if we cover these relatively small invoices due Cogefin would consider advancing funds as an advance on the lending which will follow in due course". The note shows that it was assumed at this point that Cogefin would lend funds to SPFL, given the reference to an "advance" on future lending.

192. The loan agreement continued to be stalled, so on 8 August 2014 Mr Bonds sent Mr Hoskins a letter to be signed which stated that Cogefin would loan £10,000 to SPFL so that the company could pay invoices. Mr Ciardi was stated to be "OK with the loan". The email sending the letter to Mr Hoskins also noted that Mr Ciardi was "going to claim Business Investment Relief in respect of the loans from Cogefin to SPFL … it would be good if the funds are [available] on Wednesday so that the outstanding invoices can be paid". Although the email asked Mr Hoskins to send Mr Bonds an agreement "So long as you are in agreement", we consider that it is clear that Mr Bonds expected the funds to be provided on time. The draft letter, to be printed on Cogefin headed paper, stated that Cogefin would lend £10,000 at 5% interest per annum on a "short term basis" (undefined) and that the loan would be repaid by drawdowns on the main loan facility once put in place. At this date there was no documentation or information as to this "main loan facility" in any correspondence in the bundle. On receipt, Mr Hoskins asked Ms Phillips to "take care of this". She sent a signed copy of the letter to Mr Bonds shortly afterwards and advised that payment instructions had been sent. The board minute (dated the same day, 8 August 2014) stated that the loan was to be paid 30 days after demand, in contrast to the repayment terms in the letter.

193. The letter sent by Ms Phillips to Mr Bonds, signed by Mr Hoskins, was dated 19 August 2014. The same date appeared on the draft sent by Mr Bonds to Mr Hoskins. When Mr Bonds received the letter, he replied to Ms Phillips to advise her that he had put the wrong date on the draft and that it should have been dated 9 August 2014. Ms Phillips sent another copy of the letter, dated 8 August 2014 and signed by Mr Hoskins. This is, we consider, another example of the directors not applying their minds to matters: Mr Hoskins originally signed a letter dated 19 August 2014 without asking why it was dated 10 days later, given that SPFL apparently had an urgent need for funds and when Cogefin was sending the funds immediately.

194. Mr Hoskins' evidence was that the energy projects would have been discussed by telephone and that the lack of information in correspondence was not a reliable

indicator of the directors' knowledge. However, a file note date 15 August 2014 with details of a telephone call between Mr Hoskins and Mr Bonds shows that there had not been any such discussion. This file note contains a short description of the structure and the companies involved, noting that one (SPFL) "will buy land options and is the company that we loaned money to last week and will be loaning larger amounts in due course". The other company (SPDL) was negotiating to buy rights to build solar farms; the vendor required proof of funding and "this will likely require a letter from Cogefin, but Michael will be in touch next week". There is nothing in the note to indicate that there had been any previous discussion of the project.

195. This file note shows that, when Cogefin had lent funds the previous week, the directors did not have any detail of the proposed project for which the funds were required. The file note stated that Cogefin would be loaning larger amounts to SPFL in due course: there was nothing in the correspondence that indicates that this was something which the directors had agreed to and, as noted, this file note indicated that this was the first time that Mr Hoskins was given any information as to the project.

196. Cogefin provided a further £70,000 to SPFL on 21 August 2014 on a similar basis (that is, by letter prepared by Mr Bonds and signed by Mr Hoskins). Mr Bonds chased Mr Hoskins for the funds as SPFL required the funds the next day in order to meet obligations.

197. On 2 September 2014, Mr Bonds sent Mr Hoskins a proposed loan agreement between SPFL and its lenders. The email stated that Cogefin "will have a Commitment of £1,217,510". The amount of funds to be provided by Cogefin had not previously been mentioned in any correspondence; in context, it appears that Cogefin were being told how much they would lend. The schedule of lenders shows that Cogefin were by far the largest lender and so were carrying the most risk. The next largest loan amount was for £382,899. Nevertheless, Cogefin were apparently to lend on the same terms as all other lenders, including Mr Bonds, who was to loan £4,841. As a majority lender, Cogefin could force SPFL to provide security but only on the basis that security was to be provided to all lenders.

198. Mr Hoskins clearly read the agreement as he pointed out a couple of typographical errors to Mr Bonds in an email on 3 September 2014. He made no comment to the statement that Cogefin would be lending a specific amount, although that should have been a decision for the directors to make. Also on 3 September 2014, SPFL requested and obtained from Cogefin a further £50,000 to pay more invoices on the same basis as before.

199. On 17 September 2014, the board minutes state that the directors approved a loan agreement in respect of a loan of $1,217,510 even though the loan was in sterling. The amount stated to have been agreed in the board minutes would therefore have been rather less than the loan actually requested, given the currency difference. On 29 October 2014, the loan agreement referred to in the board minutes of 17 September 2014 was dated. This signed version states that Cogefin's commitment was £1,256,155 and the lenders differ from those in the draft, with the next largest commitment now being £191,450. There was no explanation as to why this commitment amount varied from that in the draft provided to Cogefin, nor why the lenders had changed. On balance, we conclude that Cogefin's directors did not apply their minds and so did not make the decision to lend these funds to the solar project. It was something which they simply carried out on request.

200. Thereafter, Cogefin appears to be used by the solar project as akin to a cashpoint. Further amounts were provided as follows:

(1) £50,000 on 7 October 2014 to "settle some invoices".

(2) £1,150,000 on 27 October 2014 to SPDL to acquire share capital in two companies which owned the rights to solar power projects at two UK sites. The board minutes for this note that the potential total funding required by SPDL could be £7,000,000. This was simply noted, not discussed and agreed to by the board.

(3) £196,846.50 to SPFL on 31 October 2014. The board minutes state that this is a "further loan … for [SPFL] to be able to settle some invoices". The request, made the same day, stated that the request was a drawdown on the commitment in the loan agreement of 29 October 2014. Given the significant difference between a "further loan" and a drawdown on an existing commitment, we consider that this is a further indication that no particular thought was applied to requests. We consider that directors who were properly applying their minds would have noted that the board minutes were materially incorrect.

(4) £650,000 to SPDL on 11 December 2014. This was a further loan to purchase shares in another company. The funds were stated to be needed the next day to enable the deal to proceed.

(5) £600,000 to SPDL on 7 January 2015. This was a further loan to 'preserve' a network operator connection for a project.

(6) £1,500,000 to SPDL on 12 January 2015. This was a further loan and no reason is given for the request, which simply states that SPDL is involved in a number of projects, the largest being one to develop a solar farm project in Norfolk.

201. On 13 January 2015, Mr Revelli and Mr Bonds provided unspecified documents relating to two solar projects (the bundle contains emails which state that Dropbox links were provided). Mr Bonds also provided "the first draft of a memo on SPDL's various projects".

202. In other words, at a point in time at which Cogefin had already provided over £5,000,000 in funding, and at a point where they were being asked to provide a further £1,500,000, the directors were finally provided with detail (in draft) of the projects for which the funds were being used. Previous file notes refer only to structure information being provided.

203. On 15 January 2015, Mr Ciardi wrote to the directors to request a further loan of £10,000,000 to be able to develop the Norfolk solar farm in time to benefit from renewables tariffs. This request appears to have prompted Mr Hoskins to call Mr Bonds. A file note dated 16 January 2015 stated that Mr Hoskins had read the memo and asked for more background on SPDL. The file note indicates that a spreadsheet had been provided which showed that the Norfolk project would cost approximately £34,000,000. Mr Hoskins asked where the further funding would come from, to determine whether it was likely that there would be further requests for funding. Mr Bonds advised that a bank would provide funding for the balance, but that they were taking time to check the contracts to ensure that the site development partner would not fail during the project. The file note includes short details of names of the SPVs for other projects.

204. The contents of this file note make it clear that there had not been any earlier substantive discussion of the solar projects with Cogefin. There is nothing in this file note

to suggest that Mr Hoskins had any significant detail on the projects before the draft memo was sent to him on 13 January 2015.

205. We note that the board approved the further loan of £1,500,000 on 14 January 2015 after receiving the memo but before Mr Hoskins' call to Mr Bonds. That is, at a point where Mr Hoskins apparently thought more information was needed, the board nevertheless signed off on a substantial payment to SPDL. On 16 January 2015, board minutes note approval of the loan of £10,000,000 and also note that if the bank does not agree to the funding then there was "a chance that SPDL will be seeking further funds from Cogefin".

206. Board minutes record a "further loan" of €6,500,000 to SPDL on 21 January 2015, "to enable down payments to suppliers of equipment". This amount was covered in a call between Mr Bonds and Mr Hoskins on 23 January 2015, recorded in a file note. The payment was not a further loan: half of the £10,000,000 loan approved on 16 January 2015 had been returned and was resent in Euros. It appears that either the directors did not pay any attention to the board minutes which they signed, or that they did not know why they were making a payment in Euros. The file note also states that a request for a further €10,000,000 was being made. This was approved in a board minute on the same day. The board minutes did not explain why the further loan was required; the file note indicated that it was because SPDL wanted to start building and bank funding was not yet available.

207. On 23 January 2015, Mr Hoskins set out details of a call with Mr Ciardi in a file note. The note made it clear that Mr Ciardi owned the solar project companies personally and would get the benefit of the gains on sale, together with the benefit of the Business Investment Relief which most of the loan requests stated that he would be claiming. The file note stated that Cogefin would be getting 5% interest "which is not bad" and that "there is some inherent risk involved". Mr Hoskins does not appear to make any comment on the fact that all of the risk appears to be being taken by Cogefin, as the funder, with most of the gains on sale going to Mr Ciardi. The SPV contractor did not have financial statements, which was apparently making the bank nervous. They were looking at a new contractor, and the bank would have to perform due diligence on that new contractor.

208. We note that, shortly after this, in February 2015, Mr Ciardi asked "the trustees" to consider details of an investment in a property project in Berlin. The investment opportunity was to provide mezzanine financing; Cogefin provided funds of €1,575,000 and the interest rate agreed upon was 17%. In context, 5% interest on unsecured debt (also intended to bridge the gap between equity and bank funding) in respect of the solar projects in excess of £20,000,000 does not appear to be "not bad" and we consider that directors of an investment management company who were properly applying their minds to decisions would have asked further questions in respect of the terms of these loans at this stage.

209. On 26 January 2015, Goldman Sachs wrote to Mr Hoskins as they understood that "there is a need for some liquidity within Cogefin" and made some suggestions of possible sales. Mr Hoskins replied, asking them to hold off selling until they heard further from him. On 27 January 2015, Mr Hoskins made a file note of a call with Mr Ciardi. The subject of the call was the sale of €20,000,000 of investments in the Goldman Sachs discretionary account to fund the solar project. In context, it would appear that Mr Ciardi had been talking to Goldman Sachs about the need to have money readily available for the solar projects without involving the directors of Cogefin in that discussion.

210. On 28 January 2015, Mr Hoskins recorded another call in a file note: this was a call with Goldman Sachs and Mr Ciardi, who was at Goldman Sachs' office. The call recorded that €16,000,000 would be made available from the discretionary portfolio to cover the funding required by the solar projects in accordance with a cash flow projection which had been prepared by Mr Bonds. The portfolio was to be managed to avoid the possibility of margin calls which might require cash. Specific sales were discussed with Goldman Sachs.

211. Also on 28 January 2015, the board approved a further loan of €1,200,000 to SPDL. On 30 January 2015, the board approved a further loan of €6,000,000. There is no correspondence in the bundle setting out requests for these amounts. The board minutes provide no details of the terms of the loans, such as interest rate or repayment proposals. The loan of €6,000,000 was documented in a loan agreement dated 3 February 2015, providing for interest of 5% and for the loan to be repaid by 31 December 2016 or earlier, on 30 days' notice.

212. On 9 February 2015, a request for a further €7,000,000 was made, stated to be in connection with the "cash requirements" for the Norfolk project. A payment instruction was sent to Goldman Sachs by Mr Hoskins on the same day. Board minutes also dated the same day recorded the further loan. Also on 9 February 2015, Mr Bonds wrote to Goldman Sachs to advise that Mr Ciardi would be in touch with Mr Hoskins to request this €7,000,000 and to recommend the sale of more of the discretionary portfolio to raise cash to provide to SPDL; he provided a spreadsheet to give Goldman Sachs "more of a sense and flavour of the imminent cash requirements". Goldman Sachs responded to Mr Bonds to advise that there was just enough available to cover the payment of €7,000,000 but that it would be close to the limit. Mr Bonds asked how much was available in another account; the bank replied that there was approximately $14,000,000 "of release total" available between Cogefin's accounts.

213. On 10 February 2015, Mr Ciardi wrote to Mr Hoskins to say that Goldman Sachs had "a sensible plan" to raise €12,000,000 by selling a combination of securities and that Mr Ciardi "would have no objection to you following" the bank's suggestions. The direct contact between Mr Ciardi/Mr Bonds and Goldman Sachs continued: on 13 February 2015, in an email which did not copy in Mr Hoskins, Mr Bonds advised Goldman Sachs that SPDL would have to make an early payment and so Mr Ciardi was "going to recommend to [Mr Hoskins] that Cogefin makes another loan of €3million to SPDL." This recommendation was sent to Mr Hoskins and shortly (on the same day) followed up by an email from Mr Bonds to Mr Hoskins, copied to Goldman Sachs which stated "Over and above [the €3m] … SPDL will need *at least* [€6,000,000 plus £1,000,000] next week in order to fund its commitments". The information was stated to be provided in connection with the liquidation of some of Cogefin's holdings to fund SPDL. Goldman Sachs replied to Mr Hoskins to say "With relation to the below" that they were selling down US$7,000,000 of the discretionary portfolio, over and above the fund redemptions earlier in the week. Mr Bonds noted in an email to Goldman Sachs that they had been speaking to Mr Ciardi and stated that Cogefin "should be looking to liquidate sufficient holdings" to enable payments of €11,000,000 and £3,500,000 the following week. Goldman Sachs advised that the speed of redemptions was impacting performance of the discretionary portfolio.

214. These emails in particular read to us as instructions being provided by Mr Bonds: SPDL would need money, Goldman Sachs would have to liquidate some of the Cogefin portfolio to provide that money. The directors were simply expected to provide the approval under the bank mandate.

215. Board minutes dated 13 February 2015 approved the further loan of €3,000,000, again without any reference to terms. On the same day (13 February 2015), Mr Hoskins asked Mr Bonds - who was a shareholder in the solar projects - whether he had been keeping a spreadsheet of the loans made. We find it surprising that Cogefin did not apparently keep such records and, again, consider that it indicates that the business of the company was not managed in Bermuda.

216. A number of emails and file notes in this sequence describe Mr Hoskins as agreeing things jointly with Mr Bonds, such as an email from Mr Bonds on 13 February 2015 that states that "we agreed that … Goldman Sachs should sell too much rather than too little" and (on 16 February 2015) a file note that states that "we agreed that we need to redeem a further €10million worth of investments in order to cover the expenses". On 16 February 2015, an email from Mr Bonds to Mr Hoskins stated that Mr Ciardi was "fine with your conclusion [that we need] to raise €10 million further this week". Although Mr Bonds describes this as Mr Hoskins' conclusion, given the content of the file note we consider that it is more likely that this was not a decision made by the directors of Cogefin.

217. Mr Hoskins had also emailed Goldman Sachs on 16 February 2015 to advise them that he and Mr Bonds had determined that a total of €17,700,000 would be needed in the following week, of which €7,000,000 was already accounted for from existing sales. Goldman Sachs responded to advise that more would be needed as the existing sales would not raise €7,000,000 because they had been used as collateral against existing loans, so up to twice the amount required would need to be redeemed.

218. On 17 February 2015, Mr Hoskins noted in a file note that he was "getting confused with the recommendations" and so had had a call with Goldman Sachs and Mr Bonds; this followed an email from Goldman Sachs which Mr Hoskins had described to Mr Bonds as "getting a little technical for me" and had asked to discuss with Mr Bonds. We note that this does indicate that Mr Hoskins was, at this point, attempting to obtain clarification from Goldman Sachs rather than simply accepting what they told him; this is, however, in the context of Goldman Sachs telling him that they could not do what they had been asked to do.

219. On 18 February 2015, Mr Bonds asked Goldman Sachs to confirm how much could be lent by Cogefin from a specific account. The bank responded to Mr Bonds and the next day Goldman Sachs confirmed to Mr Bonds that that they had sent €5.8m and £1m to SPDL. No board minutes for these loans were in the bundle and, although Mr Hoskins was copied on the correspondence between the bank and Mr Bonds, there was no reply or comment from him with regard to these amounts. Loan agreements in the usual format for these amounts were sent by Mr Bonds to Mr Hoskins the next day, together with loan agreements for amounts loaned in January and February which had not been signed by Cogefin.

220. On 23 February 2015, Goldman Sachs advised Mr Hoskins that they had had to take the margin off one of the Cogefin accounts, due to the sales being made, and so did not have enough cash to make a payment requested. At this point, there were snowballing amounts being diverted from Cogefin's investment portfolio into the solar projects, unsecured at just 5% interest, to effectively fund Mr Ciardi's shareholdings and in respect of which he was intending to secure UK tax relief and all of the gains on the eventual sale of the projects. Cogefin had no protection if the projects failed and appeared to be providing all of the funding. There was nothing in the correspondence to indicate that

bank funding was still being pursued by the solar projects. This was perhaps unsurprising given that Cogefin continued to provide funds at such a low interest rate.

221. The fund requests continued. On 3 March 2015, Mr Bonds asked Mr Hoskins to "consider arranging" loans of €2,500,000 and £500,000. The email was copied to Mr Ciardi who "hopefully … will confirm by email his agreement to these loan requests". On 10 March 2015, a further drawdown of £200,000 was requested from the 29 October 2014 agreement. Once again, the board minutes (of 11 March 2015) refer to this as a further loan instead of acknowledging that it was part of an existing commitment.

222. On 11 March 2015, Mr Bonds asked for a further loan of £3,500,000 to make various payments; he had again "copied [Mr Ciardi] into this email and hopefully he will confirm by email his agreement to this loan request." The board minutes on the same day approved the loans. Over two months later, on 26 May 2015, Mr Bonds chased Mr Hoskins to sign a loan agreement in respect of this as Mr Bonds was "being pressed", although he did not say by whom.

223. On 18 March 2015, Mr Bonds emailed Mr Hoskins to say that he was preparing a loan agreement with another lender for SPDL, similar to the agreements between SPDL and Cogefin, and asked whether the lender should sign first or whether it made no difference. Mr Hoskins replied that it would make no difference, but that "they will want it signed by SPDL before sending money I would think". This is a somewhat startling statement given that Cogefin had, by this stage, provided millions in funding to SPDL without obtaining signed loan agreements before sending money; indeed, in many cases, it was SPDL who asked Cogefin to complete the loan agreements.

224. A partial repayment of the loans, of approximately £18m, was made by SPDL on 18 May 2015 although there is no information in the bundle to indicate which loans were repaid or what the source of the funds was. Mr Hoskins had to ask Mr Bonds for an explanation of the amounts; this appears to have been done by provision of a spreadsheet that was not included in the bundle. An undated spreadsheet which must have been produced after 9 March 2016, given the internal information, shows the repayment but does not set out which loans were repaid.

225. On 22 May 2015, a file note of a call between Mr Hoskins and Goldman Sachs describes a discussion about the £18m received into the bank account from the solar projects' repayment. Mr Hoskins noted that there would be funding needs for a wind energy project (detailed below) and that there might be a need for further capital. Goldman Sachs were to move £3m into the discretionary account, to be invested, and potentially move a further £3m when there was an opportunity to do so. However, the context for this file note arises in an email from Goldman Sachs to Mr Hoskins, stating that they have had a discussion with Mr Ciardi about the funds received, and that Mr Ciardi had "explained that he needs about half of that liquid but it would be sensible to invest the rest into the portfolio we manage here at GS … We discussed doing a portion of it now (£3m) and then reassessing the rest when we see a good opportunity in markets". Mr Ciardi replied to the email to state that Mr Hoskins would have to decide "on the amounts to allocate to the various activities".

226. Considering the email and the file note together, we consider that this was a decision taken by Mr Ciardi which Mr Hoskins implemented; Goldman Sachs still clearly considered the Cogefin account to effectively belong to Mr Ciardi and did not look to Mr Hoskins for decisions: the correspondence indicated that they considered that he was providing the approval required under the mandate. They did not treat him as the decision

maker. Whilst the bank's perception of the relationship is, of course, not determinative it is, we consider, indicative of the way in which the Cogefin directors acted.

227. On 3 June 2015, Mr Ciardi wrote to request a further drawdown of £239,654 against the 29 October 2014 facility for day-to-day operations. The board minutes, dated 4 June 2015, again describe this as a "further loan" rather than accurately recording it as a drawdown on the facility.

228. In June 2015, a series of further amounts were paid out to or on behalf of solar projects. These were evidenced in the bundle only by board minutes; there was no correspondence or other details.

(1) 25 June 2015: a facility agreement with SPD2 for £500,000

(2) 25 June 2015 (separate set of board minutes, dated the same day and the same time): €387,763.20 to SPD2, to be paid directly to a contractor

(3) 9 July 2015: €400,000 to SPD2, to be paid to a contractor

(4) 17 July 2015: £1.75m to SPD2

(5) 20 August 2015: £600,000 to SPDL

(6) 28 August 2015: £439,654.45 to SPDL

(7) 2 September 2015: £654,722 to SPDL

(8) 26 November 2015 - £3m to SPD2

(9) 8 January 2016: £620,000 to SPD2

(10) 8 January 2016 (timed 15 minutes later): €4m to SPDL

(11) 6 January 2016: £3m to SPD2, to be paid from a partial repayment by SPDL of its loans. The spreadsheet produced some time after 9 March 2017 indicates that this partial repayment in fact took place five days earlier, on 21 January 2016. The directors were authorised to negotiate and execute a loan agreement to evidence the loan. There was no evidence as to what scope the directors thought they would have to negotiate a loan agreement when they had already recorded the making of the loan for a specific amount, in a specific way, at a set interest rate.

(12) 19 February 2016: £1,410,000 to SPDL. The board minutes include some information apparently copied from elsewhere, stating that "we are arranging financing with Close leasing" but that this will only be available once expenditure on the project phase 2 has reached £7.1m. The funds from Cogefin were needed to enable the project to reach this milestone.

(13) 29 February 2016: £300,000 to SPDL.

229. On 16 March 2016, board minutes recorded a further loan of £782,157 to SPDL at 7.5%, required by SPDL to bring all of the loans from its lenders into line with their ownership percentages or the percentages of entities affiliated with lenders. The loan from SPDL would be used to partly repay other lenders. There is no correspondence or any further details or discussion in respect of this request, which increased Cogefin's unsecured exposure to SPDL in order to reduce the exposure of lenders who had an ownership interest. Cogefin had no ownership interest; this appears to be equating Mr Ciardi's ownership interest with Cogefin.

230. On the same day, minutes of a second board meeting recorded a loan of £417,843 to SPD2 at 7.5%. This loan was for the same reason as the loan to SPDL, to

bring loans into line with ownership percentages. Again, Cogefin had no ownership interest and this was presumably to reflect Mr Ciardi's ownership.

231. Bank funding was apparently eventually obtained, although no loan repayments to Cogefin appear to have been made from that funding: on 16 June 2016, board minutes recorded another loan of £250,000 to SPDL to enable the project company to make loan repayments and interest payments to Close Leasing.

232. From late 2016, the solar projects juggled funding between themselves, with requests for loans to new solar projects which would be paid by repayment of loans by other solar companies.

233. On 13 December 2016, Mr Ciardi sent a request for a further loan of £5,150,000 to be made to SPD2; the covering email indicated that it had been discussed between Mr Bonds and Mr Hoskins earlier that week. This was, again, to be dealt with by offset against a repayment of a loan by SDP2. The next day, Mr Bonds advised that there had been a mistake and that the loan should be £4.4m. A board minute dated 15 December 2016 approved a loan of £4.4m to SPD3 at an interest rate of 5%, to be made by offset of a repayment by SPD2. A revised board minute (setting out a meeting on the same date and time) was later prepared, on or after 16 December 2016, with the interest rate stated to be 7.5%. On the same day, 15 December 2016, Cogefin sent the original £5.15m loan agreement back to Mr Bonds, signed by Mr Hoskins. On 16 December 2016, Mr Bonds advised that there had been a further error and that the interest rate should be 7.5% rather than 5%. The same day, Ms Correia sent a further signed loan agreement for the correct loan amount but with the incorrect interest rate. There was nothing in the bundle to indicate that the correct loan agreement was ever signed and returned.

234. The directors did not query the amounts or the statement that the interest would change, albeit that it was in their favour. Similarly, they did not apparently question why the interest rate was originally lower than that which had been used for a considerable period of time for loans in respect of the solar projects. Board minutes were drafted setting out decisions which cannot have been made on the date stated, as they reflect revisions made by Mr Bonds later.

235. On balance, we consider this indicates that the directors were not applying their minds to the transactions but simply doing what was requested of them - making the payment and signing the documents. It also indicates that the board minutes in the bundle are not reliable; although in this case there is evidence of the revision because the bundle contains two sets of signed minutes for a board meeting apparently held on 15 December 2016 at 10:30am, with the only difference being the interest rate, there is nothing otherwise to indicate that one set is a revision.

236. On 22 December 2016, an email from Mr Bonds to Mr Hoskins stated that two loans from Cogefin to SPDL had been converted from euro to sterling. These were loans of €500k and €2m, to be restated as loans of £425,300 (to SPDL) and £1,701,200 (to SPD2). The loan agreements make no reference to any earlier loans and there are no earlier loans to SPD2 in the euro amounts referred to. The documents were signed and returned the next day. The spreadsheets provided, prepared after early March 2017, show only the sterling loans, with no indication of any earlier equivalent euro loans. This appears to be an instruction from Mr Bonds for the sterling loans to be dealt with as stated, rather than a request for the directors to consider.

237. In a letter dated 12 January 2017, Mr Bonds wrote to Mr Hoskins to say that SPDL and SPD2 were showing loans of €500k and €2m respectively and that they would also like to convert these loans to sterling. A file note, dated the next day, of a call

between Mr Hoskins and Mr Bonds advised that the directors had no objection in principle and that the converted amount should be hedged. A board minute dated 16 January 2017 approved the conversion of the loans to £439,451.50 and £1,757,806 respectively. The email to Ms Correia on 13 January 2017 asking her to prepare the resolution noted that Mr Hoskins had discussed the conversion with Mr Ciardi and Mr Bonds and that Cogefin were going to go ahead and do the conversion. The spreadsheets for the companies show further loans in these sterling amounts as made on 13 January 2017 and, again, there is no reference to any earlier loans in euro or to any loans being repaid at this time.

238. Accordingly, either both sets of these 'conversions' were entirely new loans or the undated spreadsheets do not accurately reflect the loans which were made from Cogefin to those companies.

239. On 17 January 2017, Mr Bonds sent Mr Hoskins four loan agreements, asking him to sign and return them. The agreements are for £23,160,454.78 on 5 May 2015, described as arising from the conversion of a number of euro loans to one sterling loan, and further agreements for loans made on 1 March 2016, 17 June 2016 and the loan of £439,451.40 on 13 January 2017. Further agreements were sent by Mr Bonds for signature on 18 January 2017, relating to a loan of £3m on 25 January 2015 and £1,757,806 on 13 January 2017. The agreements make no reference to any earlier loan agreements, or give any indication (where relevant) that they relate to a conversion of the currency of the loan.

240. On 15 February 2017, Mr Ciardi requested a loan of £1.1m to be made to SPD3 to provide working capital for three solar power farms. Mr Hoskins sent the request to Ms Correia and asked her to prepare the payment instruction. The loan was recorded in board minutes on 20 February 2017, following a chasing email from Mr Bonds as the funds were urgently needed. Mr Hoskins appeared to be initially unaware that a loan agreement had been provided; his concern was not that Cogefin were being asked to make a loan without an apparent agreement but only that Goldman Sachs might delay payment if no agreement was provided.

241. It should be noted that on the same day, Mr Hoskins had set out a rationale for an IPO investment of $2m elsewhere (albeit that he set this out in an email to Mr Ciardi, who had already discussed that amount in correspondence with others as being appropriate for the investment). Here, however, the board appeared to be willing to sign off on a further substantial unsecured loan to SPD3, having made a loan of over £4m in December 2016, without any such detail or rationale.

242. The bundle includes various 'certified extracts' of board minutes apparently drafted by Mr Hoskins or on his instructions which provide Mr Revelli with power of attorney to execute documents on behalf of Cogefin, in relation to the sale of SPD and SPD2. He was authorised to execute, sign and deliver any documents which in his absolute discretion he considered necessary or to be desirable in relation to the sales. He could execute any documents relating to the loans and loan facilities provided by Cogefin to SPD and SPD2, including releasing security held over any share capital being transferred in the sale. There was no information as to why this was considered necessary or why such a wide power of attorney was being conferred on Mr Revelli by the directors.

243. The date of the board meeting for which this 'certified extract' was prepared was variously 15 February 2017 (this version was signed and dated) and 16 February 2017 (unsigned). The board meeting passing this resolution was actually held on 27 February 2017. There was no evidence in the bundle as to when, if ever, a certified extract

was sent and to whom. This is, however, a further indication that board minutes cannot be regarded as particularly reliable, when Mr Hoskins was preparing and signing 'certified extracts' of minutes of a board meeting that had not been held.

244. On 1 March 2017, Mr Bonds wrote to Mr Hoskins to advise that the loans to the solar and wind projects combined amounted to £27.4m. Two days later, Mr Bonds advised that subject to completion, certain amounts would be repaid by SPDL and SPD2. In correspondence, Mr Hoskins deferred to Mr Bonds as to figures and the contents of documents and apparently had no concerns as to any conflict of interest in relying on Mr Bonds for this information despite Mr Bonds being involved with the borrower entities. The loans to SPL and SPD2 were repaid on 9 March and 7 March 2017 respectively.

245. This broadly brought the solar projects to a close, insofar as we can tell from the correspondence. The companies continued to be used for other projects as, on 16 June 2017, Mr Fraser emailed Mr Hoskins with a payment request for SPD5 (now called Solipen). The email clearly assumes that the payment will be made, asking Mr Hoskins to instruct Goldman Sachs to make payment on the next working day. The request from Mr Ciardi was in the usual format, requesting £360k to fund development of a hydroelectric project. The payment was apparently approved on 16 June 2017; Mr Hoskins subsequently requested a loan agreement because Goldman Sachs had asked for one in order to support the payment request and not because the directors thought it necessary to record the loan.

*Wind projects (2015-2018)*

246. On 18 May 2015, on the same day that the solar project loans were partially repaid, a file note records that Mr Bonds told Mr Hoskins that they were now considering a wind energy project and that "the idea is that Cogefin will invest $3.2million in return for 40% interest in the company [with a 14% return] … 80% [of the structure] will be debt and the shareholder loans will get repaid first". As with the solar projects, the company required funds urgently as they needed to make a €450,000 payment and a £400,000 payment by the end of the week. The file note indicated that the funds were to be used to pay the turbine builders. Mr Hoskins noted that he didn't see a problem with the recommendation and would talk to his fellow director about it. The company had instructed lawyers to prepare an agreement for Cogefin to sign.

247. At the end of the week, on 22 May, Mr Fraser emailed Mr Hoskins to say that he was going to forward some documents for signature relating to the wind project. These included the facility agreement to lend money to the project partner. Mr Hoskins replied "fine with me please note that I am out of the office from 4pm UK time today. Will we be required to transfer funds today?" The agreements were sent by the contractor later that day to their clients; these were forwarded by Mr Fraser to Mr Hoskins with the comment "here you go".

248. There is nothing in the bundle to indicate that the related agreements (the maintenance and service agreement, the turbine supply agreement, and the facility agreement) on which the agreements depended had been provided to Mr Hoskins.

249. Mr Hoskins signed and returned the agreements the same day, although he completed his details in the section marked for a witness' details, and did not have the agreements witnessed.

250. The board minutes, dated 26 May 2015, note that the company had entered into 'a' direct agreement, although there were in fact two agreements. The direct agreement approved in the minutes was in respect of the turbine supply agreement. There was

nothing in the board minutes to indicate that the directors were aware that the security provided by the agreements was the ability to take over Sunnyside 2's obligations (and make the required payments which should have been made by Sunnyside 2, possibly from funds already provided by Cogefin) if they defaulted, rather than have the contractor terminate the agreements.

251. Subsequently, Mr Fraser sent a loan agreement, a debenture (providing security over the assets in Sunnyside 2) and a pledge (providing security over the share capital in Sunnyside 2) and asked Mr Hoskins to sign and witness these. These documents are somewhat more extensive than any used on the solar project loans. The debenture provided a first fixed charge over all properties, other than those located in Scotland: the wind farm project was located in Scotland. No comment on this apparently significant exclusion appeared to have been made by the directors. The facility agreement stated that Cogefin had agreed, at the request of a guarantor, to provide Sunnyside 2 with a secured term loan facility of £504,110 and a secured term loan facility of €426,804 to provide working capital. The facility included a provision for interest at 8% and the loan was to be repaid on 13 May 2016 or earlier exit.

252. Mr Fraser noted that they were waiting for the turbine payment instructions and would, on receipt, have Mr Ciardi "sign a letter of agreement and send it across" to Mr Hoskins. The wording of this indicated that Mr Fraser considered that the directors needed to be advised that Mr Ciardi agreed to payments being made by Cogefin.

253. Mr Hoskins signed and returned the debenture, facility agreement and pledge the same day. Also that day, after the facility agreement and other documents had been signed and returned, Mr Ciardi sent a letter asking Cogefin's directors to consider lending the funds specified in the facility agreement to Sunnyside 2 and, if the directors agreed to the loans, to set out the payment details for the transfers. Mr Ciardi noted that he would claim business investment relief on the loan amounts.

254. On 28 May 2015, Goldman Sachs emailed Mr Hoskins, copying Mr Ciardi and stated that they understood that there would be a need to spend euro from sterling soon and to confirm that Cogefin was to buy euro from sterling, and asked for a phone call with Mr Hoskins. The subsequent file note prepared by Mr Hoskins stated that 'he' had advised Goldman Sachs that they were likely to need euros in the near future for the wind project and possibly another.

255. We consider that, taking the documents together, the bank was advised by Mr Ciardi that Cogefin would need funds in a particular currency and sought approval under the mandate from Mr Hoskins; it was not something that originated with the Cogefin directors.

256. On 4 June 2015, Mr Fraser asked Mr Hoskins if he saw any potential issues with a request to be made by Mr Ciardi the next day for the final payment in respect of the turbine. The request was for €792,236 at 8% interest. The letter noted that Mr Ciardi was 'thinking of recommending further investments" into Sunnyside which could generate a return of 15%. Mr Hoskins' reply was that he would be in the office the next day and "so there shouldn't be any issues". In context, we consider that Mr Hoskins' reply was intended to confirm that he would be available to sign off the payment request, rather than that the directors would be able to consider the request and make a decision on it. The directors' evidence was that they would not have needed to be in the office for such purposes. In our view, this exchange is a further indication that the directors did not generally make decisions with regard to requests from Mr Ciardi but rather simply executed those requests.

257. On 5 June 2015, the payment request was sent through and Mr Hoskins' response to the request to make payment was "Will do". On the same day, Mr Fraser sent some documents and apologised for sending them without explanation. Nevertheless, he asked Mr Hoskins to sign them, explaining that they related to an increase in the loan facility to accommodate the final payment on the first turbine. Mr Hoskins signed and returned the documents the same day. The documents included a deed of amendment and restatement which purported to make amendments to the original facility agreement in the terms set out in the schedule to the deed. The schedule attached to the document signed and returned by Mr Hoskins was blank. The facility agreement, also returned signed, was for facilities of £444,110, €426,804 and €792,636.

258. On 9 July 2015, Mr Hoskins set out details of a call with Mr Fraser in a file note. The note stated that Cogefin would shortly be receiving a pledge and facility agreement in respect of a second turbine project (Sunnyside 1). Mr Fraser had advised that the agreements would be the same as before and so would need minimal review. Board minutes dated the same day approved a further loan of £371,295.56 to Sunnyside 2, at 6.4% interest. There was no other information in the bundle regarding this request and, in particular, no explanation as to why the interest rate on this loan was lower than the 8% interest provided for loans to Sunnyside 2.

259. Thereafter, between 22 July 2015 and 27 November 2015, board minutes showed the following loans being made. There was no correspondence or other documentation in respect of these. We note that, during the same period, substantial amounts were also recorded in board minutes as being lent from Cogefin to the solar projects for which no correspondence or other documentation was available.

(1) 22 July 2015: €568,700 to Sunnyside 1

(2) 28 July 2015: €133,000 to Sunnyside 1

(3) 17 August 2015: €672,100 to Sunnyside 1, to be paid to the contractor

(4) 19 August 2015: £431,296 to Sunnyside 2

(5) 20 August 2015: £7,228.72 to Sunnyside 1

(6) 25 September 2015: £55,042.37 to Sunnyside 1

(7) 25 September 2015 (30 minutes later): £55,042.37 to Sunnyside 2

(8) 14 October 2015: £28,230.03 to Sunnyside 1

(9) 14 October 2015 (30 minutes later): £76,734.18 to Sunnyside 2

(10) 14 October 2015 (another 30 minutes later): €840 to Sunnyside 1, to be paid to the contractor

(11) 19 November 2015: £79,660.19 to Sunnyside 1

(12) 19 November 2015 (30 minutes later): £38,929.42 to Sunnyside 2

(13) 27 November 2015: £45,961.32 to Sunnyside 1

(14) 27 November 2015 (30 minutes later): £31,680 to Sunnyside 2

260. There then appeared to be a break in funding requests for a few months. On 1 June 2016, a file note of a call between Mr Hoskins, Mr Bonds and Mr Fraser stated that Mr Fraser advised that updated facility agreements and shareholder agreements for turbine 1 and turbine 2 would be sent. The note stated that "The loans should be agreed at 6.4% and the agreements are going to be amended and restated". The amendments

were to equalise costs between the turbines on a 50/50 basis. Although the note indicates that the agreements were to be sent for approval, the contents of this note indicate that Mr Hoskins was being told what the terms were rather than negotiating or otherwise agreeing to terms. The agreements were not included in the bundle. The file note stated that "we own 80% of" turbine 2 but do not own turbine 1. There was no documentation (such as board minutes approving a share acquisition) in the bundle regarding any ownership interest in the wind energy projects, even though the original discussions indicated that Cogefin would have a 40% share.

261. On 24 November 2016, a file note of a call between Mr Hoskins and Mr Ciardi recorded that Mr Ciardi was planning to bid on an Italian wind facility and "may therefore be requesting a loan from Cogefin". Notwithstanding the reference to "may be requesting" the note then stated that "the idea if it is ok with the directors would be to make a transfer today". Mr Hoskins agreed to "talk with Rod and prepare the transfer". No amount is stated in the file note. A second file note on the same day provided more detail, noting that the money was required as a bond to show capacity to bid. The note sets out that the loan should be to SPDL (one of the solar project companies) and that the loan would eventually be assigned to a new entity owning the project.

262. The request for a loan of €3.5m was sent shortly after the call, noting again that Mr Ciardi would claim business investment relief, and attaching a copy of a loan agreement to be signed. Still on the same day, Mr Hoskins sent a transfer request to the bank, noting that the funds were required urgently and signed the loan agreement. The next day, Mr Bonds was chasing the payment as the deadline for payment of the bond was that day.

263. Although the notes refer to "if it is ok with the directors" and "if [the directors are] agreeable", the file notes read as if Mr Hoskins was simply carrying out Mr Ciardi's request. Overall, it does not appear to us that Mr Ciardi expected any possibility that the directors would refuse to make an unsecured loan; there was no indication that he had any alternative plan for funding the bond. We do not consider that the evidence shows that he was specifically ordering the directors to make payment but, rather, that he did not consider that there was any possibility that they would refuse and equally that the directors followed his assumption that payment would be made. In the event, Goldman Sachs were unable to make the transfer in time and the transfer was cancelled.

264. On 16 June 2017, a file note of a call between Mr Hoskins and Mr Fraser noted that Cogefin owned 80% of Sunnyside 2 and 100% of Sunnyside 1. This is somewhat at odds with the file note of 1 June 2016 which stated that Cogefin had no ownership interest in Sunnyside 1. As with Sunnyside 2, there was no evidence in the bundle that Cogefin had any ownership interest in Sunnyside 1; there were no board minutes approving any such share acquisition.

265. The file note recorded that other shareholders were in default and were to transfer their shareholdings to Cogefin, which would then sign heads of terms to sell the projects. Despite Cogefin's apparent ownership, the sale was being negotiated by Mr Fraser and the file note recorded that Mr Hoskins was being informed of matters rather than asked to approve points or make a decision.

266. Also on 16 June 2017, Mr Fraser sent Mr Hoskins the heads of terms and another agreement for signature. On 10 July 2017, Mr Hoskins was again asked to "consider signing" these, although the email of 16 June 2017 had simply sent the documents for signature.

267. In an internal email, Mr Hoskins had to ask whether he had already signed the documents. It seems unusual that he would not have recalled whether he had signed such documents if the directors had in fact decided to carry out the transaction. In the event, the signed documents were returned to Mr Fraser on 11 July 2017. There was nothing in the correspondence to indicate that Cogefin had any ability to provide any input on those documents, or that they had appointed Mr Fraser to negotiate on their behalf.

268. On 6 September 2017, share purchase agreements for Cogefin to acquire minority shareholdings in Sunnyside 1 and Sunnyside 2 were provided to Mr Hoskins. There was nothing in the correspondence to indicate how Cogefin could be acquiring minority shareholdings in Sunnyside 1 when Mr Hoskins had recorded in a file note in June 2017 (as above) that Cogefin owned 100% of that company. We consider that this is a further indication that Mr Hoskins' file notes were not reliable and that he did not know what Cogefin actually did, or did not, own. This is a further indication that the directors were not actually making the decisions on behalf of Cogefin.

269. In October 2017 Mr Fraser advised Mr Hoskins of the entity that had won the bidding process for the Sunnyside projects; Cogefin, although apparently now the sole shareholder in those companies, had had no involvement in that process. Board minutes recording the sale and noting repayment of debts to Cogefin were produced dated 3 November 2017. On 6 November 2017, a completion statement indicated that Cogefin were to receive £3.56m from the sale.

*Gas project (2017)*

270. In late June 2017, Mr Hoskins was in discussions with Mr Revelli and Mr Bonds, amongst others, regarding an investment in a gas project (company GPDL) owned by Mr Revelli at that point. A file note indicated that Cogefin had agreed to lend an unspecified amount, subject to Mr Ciardi becoming a shareholder and also to an interest rate of 7.5%. The correspondence with lawyers indicates that Cogefin was effectively making the loan in place of Mr Ciardi for this project.

271. A file note of a call between Mr Hoskins and Mr Bonds, dated 26 June 2017, noted that the interest rate being discussed was 3%. Mr Hoskins unsurprisingly stated that this was not as attractive as the 7.5% previously discussed. The note indicated that Cogefin were to provide £3.1m. There was also uncertainty as to whether a bank would fund any subsequent construction and at least one other investor (Mr Dreesmann) was unlikely to participate without a bank already onboard.

272. On 27 June 2017, Mr Hoskins wrote to advise that Cogefin would be willing to lend £3.3m at 7.5% and that they would require Mr Ciardi to be the majority shareholder.

273. On 29 June 2017, board minutes recorded a loan of £3.3m to GPDL, the loan agreement was signed and £3.03m was transferred. There was nothing to show that Mr Ciardi had become the majority shareholder in GPDL at this time.

274. On 5 July 2017, some six days later, Mr Hoskins asked Mr Bonds whether the gas deal had closed. Mr Bonds advised that the directors of GPDL wanted to be more confident about obtaining bank finance to fund the project.

275. The next correspondence was on 24 July 2017, when Mr Bonds asked Mr Hoskins to send the balance of the loan funds to GPDL so that they could lend it to the target company. The bundle contained no documents which confirmed whether or not the purchase of the target had gone through, although the implication of this email was that it had done.

276. A month later, on 23 August 2017 Mr Bonds advised that GPDL had an imminent funding requirement. It needed to pay £2.6m by the end of week and so was seeking a loan from Cogefin. A file note dated 25 Aug 2017 recorded a telephone call between Mr Hoskins and Mr Bonds, and another with Mr Ciardi as well. Mr Hoskins advised Cogefin would be comfortable lending the funds, although he asked questions around the other potential sources of funding. He noted that he "was aware" that the Goldman Sachs account had been "hit pretty hard in the last six months" as it had been the source of significant distributions made. Mr Hoskins was concerned that Cogefin may be "faced with having to" finance the entire project and was concerned that 7.5% interest might not be sufficient to cover costs, particularly if Mr Ciardi was to be taxed on the profit.

277. Although this file note suggests that funding was a matter for the directors, with the comment that Cogefin would be comfortable lending, we consider that the subsequent comment that Cogefin might "have to" finance the entire project is closer to reality: that the Cogefin directors would do whatever they were asked to do. Mr Hoskins' reference to "being aware" that the Goldman Sachs account had been depleted makes a similar point: we consider that directors who were applying their minds to decisions would not simply "be aware" that their main liquid asset had been significantly reduced by demands made on it. The contents of the note also indicate that Mr Hoskins effectively equated Cogefin with Mr Ciardi, as the concern about whether the investment return available to Cogefin was sufficient was at least partly dependent on the tax cost to Mr Ciardi personally of the project.

***Goldman Sachs***

278. Goldman Sachs was the primary bank for Cogefin in the later years under appeal. Although the oral evidence from Mr Fraser was that Goldman Sachs did not consider Mr Ciardi to be a decision maker in respect of Cogefin, the documentary evidence does not support that statement. Notwithstanding Mr Fraser's early confusion (set out in the section above dealing with his evidence) as to who had authority with regard to the account, the correspondence shows that Goldman Sachs continued to refer to the Cogefin account as being Mr Ciardi's account. Some of this is set out in other sections of this decision, discussing matters where Mr Fraser was involved, but correspondence with other bank staff also showed the same approach, including after Mr Fraser left Goldman Sachs in 2014. The documentation indicates that this went somewhat beyond discussing potential investments for Cogefin with Mr Ciardi. As with other sections, the following are representative examples from the relevant evidence.

279. In February 2015, Martin Cooke at Goldman Sachs advised Ms Phillips that, due to the volume of funds sent to SPDL for the solar projects, they did not have sufficient funds in the relevant account to make a further payment which had been requested. Mr Bonds replied to ask whether there was some work-around available, given the position on other Cogefin Goldman Sachs accounts. Mr Cooke replied to say that no work-around was available, for regulatory reasons. Mr Bonds stated that he had spoken to Mr Ciardi and that "we can park the request" for payment from that account for the time being. Three days later, Mr Bonds emailed Mr Hoskins to say that he thought it was "fine to proceed with the transfer … out of Cogefin's account … to the Wakefield Quin client account". The correspondence, in this case, was clearly the issue of instructions from Mr Bonds, to first Goldman Sachs and then to Cogefin, as to how a particular payment should be dealt with. Neither Goldman Sachs nor Cogefin raised any issue with his instructions to the bank.

280. As noted in Mr Hoskins' evidence, in May 2015 Goldman Sachs had discussed with Mr Ciardi the funding requirements for wind projects and had, as recorded in an email, described this as Mr Ciardi (rather than Cogefin) requiring approximately £9m in the Cogefin account to remain "liquid"; this was subsequently communicated to Mr Hoskins. As already noted, Goldman Sachs appeared to consider that Mr Ciardi was making the required decisions as to how the Cogefin funds should be managed.

281. On 22 June 2015, an internal email between Mr Shah and Ms Pope asked, in reference to transactions on the Cogefin account, what "Mr Ciardi's expected overall" would be. This internal email was subsequently included as part of a reply chain in a further email to Mr Hoskins and Mr Ciardi.

282. On 12 July 2016, following discussions about increasing a short trade which had originated from Mr Ciardi, Mr Hoskins told Goldman Sachs that he was fine with their suggestion, which Mr Ciardi had said was ok for him. Goldman Sachs responded to ask whether they should sell the remaining portion. Mr Ciardi replied to say that they should wait until the rally in sterling ran out of steam. There was no response in the bundle from Mr Hoskins.

283. In February 2017, Goldman Sachs emailed Mr Hoskins asking if he had time to discuss a possible investment which had been the subject of earlier emails. The matter was becoming urgent; they wrote that they hoped Mr Ciardi had been in touch with Mr Hoskins. In context, again, although the bank was discussing matters with Mr Hoskins, the correspondence indicated that they considered that Mr Ciardi was ultimately driving Cogefin decisions: the opportunity had been presented to him, and they were asking Mr Ciardi what level of investment he was considering, noting that they could "accept up to 5% of your liquid net worth".

284. Overall, on balance, we consider that Goldman Sachs effectively treated the Cogefin account as belonging to, and controlled by, Mr Ciardi throughout the periods under appeal. This is, of course, not determinative of residence but is a matter to be weighed in the balance when considering whether Cogefin was managed and controlled in Bermuda.

***Morgan Stanley***

285. Morgan Stanley were the initial bankers to Cogefin, appointed in 1996. Cogefin continued to have an account with them throughout the periods in question, although this was much less active after 2012.

286. From the documents provided, Morgan Stanley dealt regularly with Mr Ciardi directly. It was contended that the bank did not take instructions from Mr Ciardi other than in one unusual situation, as a result of the financial crash, which had meant that Mr Ciardi thought it important to act quickly and so gave an instruction. The documentation shows, however, that this was not an isolated instance.

287. For example, in June 2008, Mr Ciardi directly instructed the bank to purchase shares in Lavendon for Cogefin; the bank eventually asked for approval under the mandate from Cogefin, emailing Ms Phillips. She in turn asked Mr Hoskins if he had a problem with confirming the trade: he replied that it was fine.

288. Similarly, on 3 June 2008, Morgan Stanley advised Mr Hoskins and Ms Phillips that Cogefin had been allocated shares in an IPO and that the "order was given by Mr Ciardi directly to Marco di Cesaria". A day later, they were advised that Mr Ciardi had given an order to Marco di Cesaria to sell a number of the allocated shares, and that Morgan Stanley were trying to sell more, and they would inform Cogefin when the sale

was complete. There was no indication that Mr Hoskins made any objection or otherwise indicated that Morgan Stanley should not take orders from Mr Ciardi.

289. In September 2008, Mr di Cesaria asked Mr Ciardi if he wanted to undertake a currency transaction; Mr Ciardi agreed and the transaction was confirmed. Although it was on the Cogefin account, there was no documentation in the bundle to indicate that this was ever put to Cogefin. Similarly, shortly afterwards, Mr Ciardi instructed Morgan Stanley to use all available cash to purchase Treasury Bills and transfer these to another bank. This was done without reference to Cogefin, as subsequent correspondence showed that Mr Hoskins was under the impression that Cogefin's existing Treasury Bills holdings were all that were being transferred to that bank and was unaware of the purchase of additional Treasury Bills.

290. In October 2008, Mr Ciardi told Mr di Cesaria to redeem all of a particular shareholding: this was communicated to Cogefin by Morgan Stanley, but the only question raised was not in connection with Mr Ciardi instructing the bank.

291. Those at Morgan Stanley often referred to Mr Ciardi as 'the client' in correspondence, generally looking to Cogefin for paperwork to be completed but seeking decisions from Mr Ciardi.

292. For example, in December 2009, in an email to Ms Phillips, the bank stated that "the client has asked us to put an interest in the deal re Citigroup … could you sign and return … deadline is 50 minutes". Ms Phillips nevertheless asked Mr Ciardi to confirm his instructions before Mr Hoskins signed the required documents. Following the return of the documents, Ms Phillips asked the bank to provide more information as Cogefin had no knowledge of the transaction. This request came after Mr Hoskins had signed the document and it had been returned to the bank.

293. The interaction between the bank and Mr Ciardi, rather than Cogefin, continued: in January 2010, the bank checked with Mr Ciardi whether to sell part of Cogefin's Citigroup holding. The subsequent sales confirmations were sent to Mr Ciardi, not Cogefin.

294. In March 2010, Mr Ciardi asked Mr di Cesaria to arrange a particular purchase. This transaction was confirmed with Cogefin, although Cogefin again sought Mr Ciardi's approval before providing confirmation to the bank.

295. In July 2010, the bank correspondence showed that Mr Ciardi had asked Mr di Cesaria to sell shares in Mangosoft and noting that the transaction would have to be signed off by Cogefin as the titleholder to the stock. The bank emailed Cogefin asking for the forms to be signed, in accordance with discussions with Mr Ciardi, rather than asking for a decision as to whether to sell.

296. In November 2010, Mr Ciardi indicated to Mr Hoskins that Cogefin should consider appointing a particular individual to manage the Cogefin portfolio at Morgan Stanley. The individual thanked Mr Ciardi for the mandate; Mr Hoskins responded to confirm that the mandate should be discussed between Mr Ciardi and the individual.

297. In January 2011, Morgan Stanley correspondence still referred to Mr Ciardi as "the client", in an email asking Mr Hoskins to sign as a matter of priority as "the client would like to proceed with urgency". Similarly in February, Mr Hoskins was asked to sign an attachment because "the client has the interest to start trading in options" (sic).

298. From here on the correspondence involved Cogefin more regularly, but nevertheless in November 2012, Morgan Stanley emailed Mr Hoskins to state that they

had been instructed to go ahead and place a possible interest for $1m and asked Mr Hoskins to let them know if he could approve the transaction. He replied that it was “ok with the Trustees”. This exchange indicates that someone other than the directors was still issuing instructions to Morgan Stanley. There were emails with similar exchanges in the following month, with Morgan Stanley requesting approval from Cogefin for instructions given by someone else. Mr Hoskins did not comment on the fact that the bank was taking instructions from someone who was not apparently authorised on the Cogefin accounts.

**Discussion - Cogefin’s place of residence**

299. Case law focusses on where the strategic, high level, decision making of a business takes place. Noting the points arising out of case law as to how the overall picture should be approached and considered, we conclude that, in this case, such decision making rested with Mr Ciardi: the directors implemented his proposals and suggestions, whether strategic or otherwise, effectively abdicating decision making to him.

300. The correspondence clearly shows Cogefin deferring decisions to Mr Ciardi even on routine matters, such as payment of property taxes and other invoices addressed to Cogefin. Whilst such routine administrative decisions are not conclusive of central management and control, we consider that the approach is indicative of the wider relationship between Cogefin and Mr Ciardi.

301. There is very limited evidence to support the contention that Cogefin’s directors applied their minds to decisions: the handful of occasions on which there is some indication that the directors did not simply follow Mr Ciardi’s proposals are substantially outweighed by the evidence throughout that they accepted Mr Ciardi’s proposals without doing anything other than (at most) checking that Cogefin had funds to carry out the proposals. On some occasions, particularly with relation to the solar projects, this meant a last minute scramble in order to obtain the funds to carry out Mr Ciardi’s proposals, often following arrangements set out in correspondence from Mr Bonds.

302. We find that the bank correspondence in particular is generally ambiguous as to whether what is sought from the relevant Cogefin director is a decision or whether it is an authorisation in accordance with the relevant bank mandate. This is not particularly surprising, as the banks’ concern would be for their regulatory compliance: what they needed to know was that a transaction had been authorised by a signatory to the account, not whether or not that person made the decision to undertake the transaction.

303. We consider that the evidence throughout shows that the directors viewed their role effectively as being that of trustees. Mr Hoskins often refers to the ‘trustees’ in documents where the context means that he must have been referring to Cogefin’s directors. They did not correct others, such as Mr Ciardi and the bankers, when they were referred to as trustees. It should be noted that the directors were not actually the trustees of the Poole Family Trust, which owned Cogefin: they were directors of the company which was the trustee of the Trust.

304. The directors were all lawyers, who should have been well aware of the distinction between their roles. Nevertheless, there are occasions on which the directors appear to have confused their roles: board minutes of 12 February 2008 approve a gift of £75,000 to Mr Ciardi’s son to enable him to make a down payment for his birthday party. There was no explanation as to why this was thought to be an appropriate transaction for Cogefin, which was an investment vehicle for the trust, rather than the trust itself. It

appears that a request was made and the payment followed without any consideration. In May 2009, Cogefin paid for 25 hours of "jet time" for Mr Ciardi's father, following an instruction to pay the relevant invoice from Cogefin's funds. In March 2014, board minutes record approval of a "capital distribution" from Cogefin to Mr Ciardi of $150,000. There was nothing to explain how a capital distribution might be made to a non-shareholder.

305. The evidence was clear that the directors considered that, as Mr Ciardi was the main trust beneficiary, it was appropriate for him to benefit from the trust assets. On balance, we consider the evidence indicates that the directors effectively conflated Cogefin and the trust which owned Cogefin and dealt with Mr Ciardi's proposals as if they were instructions provided by a beneficial owner rather than recommendations made by an investment adviser.

306. Overall, our view is that the directors' actions were well described by Mr Forrest in his witness statement, where he stated that he considered the directors' role was "to carry out a sense check of the merits of what [Mr Ciardi] was proposing and to ensure that there was adequate cash for the investment and the cash requirements of Cogefin". In our view, a 'sense check' is not the type of strategic decision making that is required for central management and control. It is, at best, an administrative function.

307. There are also many instances (some noted elsewhere in this decision) where the board minutes do not accurately describe the transactions said to have been approved, indicating that the directors were not paying any particular attention to what was being done. Record keeping also appears to have been less than thorough; there are many instances of the directors and administrators being unaware of previous transactions. For example, in October 2011 both Mr Hoskins and Ms Phillips appeared to believe that there had not previously been any capital calls in respect of the Anchorage Fund, although Ms Phillips had asked Mr Ciardi to confirm that he agreed that Cogefin should pay such a capital call in April 2010 and board minutes subsequently recorded the payment. Whilst they might not have remembered that exchange, we would have expected that a short check of Cogefin's records should have provided the information. Mr Hoskins also regularly asked Mr Bonds to provide details of previous transactions, including details of transactions relating to the energy projects in which Mr Bonds was involved. Poor record keeping is not, alone, a reason to conclude that the directors did not take decisions but it indicates a lack of attention which supports the pattern of evidence that the directors did not apply their minds and make a decision when dealing with proposals from Mr Ciardi.

308. Given the content of the documents and witness evidence, we consider that the directors of Cogefin treated Mr Ciardi's proposals as instructions and carried them out when requested to do so. Given that many of the proposals or payment requests came through at very short notice, often requiring payment almost immediately to complete a transaction which Mr Ciardi had initiated, we also consider that Mr Ciardi did not anticipate that his requests would be refused. On the evidence, instructions in respect of payment requests were often sent to the bank almost immediately by Cogefin, before any consideration could have been applied to the merits of the proposals. However, considering the pattern of evidence, we consider that in practice decision making was abdicated by the directors to Mr Ciardi rather than usurped by him: we consider that he did not anticipate refusal because direct requests were never refused, rather than because he considered that the directors could not refuse.

309. Accordingly, we conclude that, standing back and looking at the picture overall for each period, the directors did not make the relevant decisions at the level required for central management and control to be located in Bermuda. They - or the administrative staff working with them - undertook administrative functions to ensure that Cogefin could and did undertake Mr Ciardi's proposals, which they effectively treated as decisions made by him and did not apply their minds as directors to making decisions in respect of those proposals. Although there were a very few instances where the directors appeared to have made a relevant decision, we do not consider that these were sufficient to render Cogefin dual resident in the UK and Bermuda.

310. We also conclude that this continued throughout all of the periods under appeal, as the approach did not vary significantly. Although there was more documentation for later periods, that documentation continues to show, on balance, that the directors continued to act as administrators and not as decision makers.

311. For this reason, we find that on the balance of probabilities Cogefin was not resident in Bermuda at any time during the periods under appeal but was, instead, resident in the UK only.

**Assessments - whether validly made**

312. HMRC issued Cogefin with 19 discovery assessments for the periods under appeal. For the accounting periods ended 31 December 1999 to 2014, HMRC relied upon statutory provisions extending the time limit for issuing such an assessment.

313. There was no particular dispute about the relevant law (contained in Schedule 18 FA 1998, as amended by Finance 2008 in particular) which states, in summary, that if HMRC discover with regard to an accounting period of a company that an amount which ought to have been assessed to tax has not been assessed, they may make a discovery assessment in order to make good the loss of tax.

314. A discovery assessment may only be raised if, at the time when the ordinary time limits to give a notice of an enquiry had expired, an HMRC officer could not have been reasonably expected, on the basis of the information made available to HMRC before that time, to be aware of the relevant loss of tax (paragraph 44, Schedule 18, FA 1998).

315. The time limits for making a discovery assessment are set out in paragraph 46, Schedule 18, Finance Act 1998 (as amended from time to time).

316. For 1999 to 2009:

(1) an assessment must ordinarily be made within six years of the end of the accounting period to which it relates;

(2) the time limit for issuing an assessment is extended to twenty years after the end of the accounting period to which it relates:

(a) where a loss of tax has been brought about deliberately by the company or a related person; or

(b) where there has been a loss of tax attributable to a failure to comply with the obligation to notify HMRC of chargeability within 12 months of the end of the relevant accounting period in a case involving negligence on the part of the company or a person acting on behalf of the company.

317. For 2010 onwards:

(1) an assessment must ordinarily be made within four years of the end of the accounting period to which it relates;

(2) the time limit for issuing an assessment is extended to six years where any loss of tax is brought about carelessly by the company or a related person;

(3) the time limit for issuing an assessment is extended to twenty years after the end of the accounting period to which it relates:

(a) where a loss of tax has been brought about deliberately by the company or a related person; or

(b) where there has been a loss of tax attributable to a failure to comply with the obligation to notify HMRC of chargeability within 12 months of the end of the relevant accounting period.

318. For 2014, Cogefin argued that, for the period ended 31 December 2014, they were served with a notice to make a return on 17 May 2015. That was before the 12 month period for notification ended and so Cogefin contended that they did not therefore have an obligation to give notice of chargeability in respect of that period. HMRC did not dispute this and argued instead that the loss of tax in this period was due to carelessness on the part of Cogefin or persons acting on its behalf such that the six-year time limit for raising an assessment applied.

319. For 2015-2017: It was not disputed that the assessments raised for the periods ended 31 December 2015-2017 were raised within the applicable four-year time limit, as no returns were filed for these tax years.

320. The first question for us therefore was whether, for 1999 to 2013, Cogefin had failed to notify HMRC of chargeability. It was not disputed that no notification had been made: Cogefin argued that they should be deemed not to have failed to notify.

***Whether s118(2) TMA 1970 applied such that Cogefin was deemed not to have failed to comply with the obligation to notify chargeability for relevant years***

321. s118(2) TMA 1970 provides that:

> "For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased."

322. The appellants contended that Cogefin had a reasonable excuse for its failure to notify HMRC that it was chargeable to tax. This was because at all material times the directors of Cogefin had the objectively reasonable belief that Cogefin was not resident in the UK and therefore not liable to UK tax. The directors were qualified lawyers who were familiar with the UK tax law test of central management and control. They submitted that the reasonable excuse continued, unless and until it was judicially determined that Cogefin was resident in the UK. Further, the reasonable excuse did not cease prior to the discovery assessments being issued and it cannot sensibly be suggested that Cogefin continued to be under an obligation to give notice of chargeability to HMRC in respect of those periods for which assessments had been raised.

323. HMRC contended that Cogefin had not met the burden of proof on them to show that they had a reasonable excuse, that they had taken reasonable care to meet their obligations. Citing case law, they noted that reasonable excuse "requires as an exercise of judgment, a consideration of what the reasonable competent businessman (taken for comparison purposes) in a similar situation would have done. The Tribunal needs to be persuaded that that reasonable competent businessman would have failed to notify HMRC of its chargeability to tax (*Mutch* [2009] UKFTT 288 (TC)). It was "not sufficient simply to rely on a third party to ensure compliance with one's tax obligations. The taxpayer must also take reasonable steps to check on the activities of the third party" (*Making Productions Limited* [2019] UKFTT 535 (TC)). Further, *The Clean Car Co Ltd* [1991] VATTR 234 set out the relevant test, that "One must ask oneself: was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do?"

324. HMRC contended that there was no evidence that the directors or Mr Ciardi considered the residence position of the company at regular intervals or took fully informed professional advice on the company's residence position during the relevant period. Even if they took the view that Cogefin did not need to notify HMRC of its chargeability to corporation tax because it was resident in Bermuda for tax purposes, HMRC contended that this was not a reasonable belief for the directors, Mr Ciardi, or a professional advisor to take on the full facts.

*Discussion*

325. Our conclusions here follow on from our findings on the evidence as to residence.

326. As already set out above, we have concluded that neither the directors nor Mr Ciardi applied any particular thought to Cogefin's residence after the company was set up: we find that Cogefin operated as an administrative function, with Mr Ciardi's proposals being implemented as and when they arose without the directors applying their minds to those proposals in order to make a decision on them.

327. We find that this was at least a failure to take reasonable care. The directors were qualified lawyers; their evidence was that they were familiar with the UK statutory tests of corporate residence. There was no evidence that such familiarity was in fact applied to consider Cogefin's position, certainly prior to the LDF report being prepared. We consider, noting the decision in *Clean Car Co* for example, that a reasonable director in such circumstances would have taken steps to ensure that they were taking the relevant decisions and not simply implementing the decisions of another person.

328. At a minimum, we consider that such a director would have ensured a regular (not necessarily frequent) review of the company's position given the importance of its place of residence to the overall structure. There was no evidence that any thought was applied to the manner in which the company operated at any time, let alone on a regular basis. This is particularly clear from the LDF report which notes that, as Cogefin's account at Morgan Stanley was set up in London, it meant that all income which had arisen in the account was deemed to have been remitted by Mr Ciardi as Cogefin was a "relevant person" in respect of Mr Ciardi. The account was transferred to New York once this was identified in the course of preparing the report. We consider that, had any thought been applied to the UK tax position of the structure, the Morgan Stanley account would not have been opened in London in the first place.

329. We note, of course, that the LDF report made reference to central management and control of Cogefin. This is in one short section in a report of 41 pages (and in total over 200 pages including appendices) relating to the operation of Cogefin. This section did not explicitly state that the directors exercised management and control, but describes them as considering recommendations by Mr Ciardi and, if approved, sending instructions to implement such recommendations. The report notes that this process "might be seen to have broken down somewhat" on two occasions between 1996 and the date of the report.

330. The creation of the LDF report must, therefore, have required some consideration of Cogefin's operation by those preparing it. The report was prepared by a UK law firm acting for Mr Ciardi; we had evidence that they had visited Bermuda in the course of preparing the report, which is unsurprising given that the report extensively considers the Ciardi-related trusts and the various companies owned by or connected to those trusts in general with the section on Cogefin set in the context of being a trust-owned company. There was no evidence that the directors of Cogefin had taken advice on its residence position as part of this exercise nor that there had been any internal review of the residence of Cogefin.

331. Although the appellants contended that Cogefin could rely on the LDF report in this context, we find that this contention was not made out. The witness evidence provided in support of that contention was Mr Hoskins' second witness statement, which simply stated that the report conclusion accorded with his own belief and so it gave no reason for any change in approach. There was no evidence that he had examined this belief, and no evidence that the law firm was providing the report to Cogefin itself, such that the report could have been relied upon by Cogefin. We consider that a lawyer would be aware that they could not rely upon a report prepared in respect of another person and for a different reason.

332. There was no significant change in approach by the directors after the LDF report was prepared; Mr Hoskins had obviously considered around this time that he should make some file notes of calls but these were sporadic and often seemed to be cut and pasted from another document, as the phrasing varied and, for example, in some cases referred to Mr Hoskins as "you". Although his witness statement suggested that, following the LDF report, he "saw the value in keeping detailed records of advice … discussions … and considerations that went into my decision making", we do not consider that this was supported by the documentary evidence. The additional file notes report only some telephone calls and do not clearly record discussions and decision making; there was no more detail to the board minutes, nor any change in the nature of correspondence with banks and others.

333. On balance, we consider that there was a continued failure to take reasonable care. We consider, from the evidence before us and in particular the continued consistency of approach, that it is more likely that the position was more one of continued complaisance and lack of thought - that is that, although the LDF report had pointed out some potential issues, as these had been considered immaterial there was no need to review the position or make any changes.

334. For this reason, we consider that Cogefin did not have a reasonable excuse for the failure: the directors did not take the actions which we consider that a reasonable person in their position would have done, to ensure that they from time to time reviewed the structure and operation of Cogefin in particular, from a UK tax perspective given the connection with and involvement of Mr Ciardi.

335. The appellants also contended that HMRC had not challenged the place of residence of other Bermudan entities of which Mr Hoskins and Mr Forrest were also directors, and which were connected to Mr Ciardi: to the extent that this was intended to support the residence of Cogefin, we had very limited evidence regarding those entities and any HMRC investigation of them. The submissions appeared to relate to Park Place Management Limited in particular: the evidence we had regarding this company was that it had contractually delegated decision making on investments to a UK company within the Park Place group and so the role of the directors was significantly different. We do not consider that any reliance could reasonably have been placed by the directors of Cogefin on HMRC's lack of challenge to the place of residence of Park Place Management.

336. We find therefore that s118(2) TMA 1970 does not operate to deem Cogefin not to have failed to comply with the obligation to notify chargeability in the relevant tax years.

***Whether there was a loss of tax due to a failure to notify chargeability***

337. The test applicable to extend the assessment period to twenty years for periods before 2010 is whether the loss of tax is attributable to a failure to notify chargeability in a case involving negligence by or on behalf of the company. For periods from 2010 onwards there is no specific behavioural element: the test is whether there is a loss of tax which is attributable to the failure to notify chargeability.

338. For the reasons set out above regarding s118(2) TMA 1970, we have concluded that Cogefin acted carelessly. The test for negligence is an objective one: whether, considering all of the circumstances, the acts and/or omissions of the taxpayer were those which a reasonable and prudent taxpayer in their position, exercising reasonable care to avoid causing a loss of tax, would have done (see, for example, *Hicks* [2020] UKUT 12 (TCC)). It is, essentially, the same test as that involved in considering whether a person has a reasonable excuse. Given our findings on carelessness, we consider that this was therefore "a case involving negligence" by Cogefin where relevant. The issue remains, for all periods other than 2014, whether the loss of tax was "attributable to" the failure to notify chargeability.

339. The Court of Appeal in *Mainpay* (which considered other statutory provisions equivalent to those applying in this case) established (at [118]) that HMRC were required to make out a prima facie case that the appellants were careless and that that carelessness brought about the relevant loss of tax; the burden then moves to the appellants to show on the balance of probabilities that there was no such failure to take reasonable care and/or that any lack of care did not bring about the loss of tax.

340. The Court of Appeal concluded that there was no requirement for the First-tier Tribunal to make any findings about what would have happened if the taxpayer had taken reasonable care; it follows that there is no requirement on HMRC to show what would have happened if the taxpayer had taken reasonable care.

341. We also note that the relevant statute in *Mainpay* refers to the loss of tax being "brought about" by the carelessness, rather than "attributable to" as in this section. The appellants' submissions in respect of *Mainpay* equated "brought about" and "attributable to", with both being a test of causation. HMRC did not appear to challenge that position.

342. The appellants contended that any failure to notify chargeability had not caused the loss of tax. The requirement that the loss of tax be "attributable to" a failure to notify

was a test of causation, which required HMRC to prove that, but for the failure to notify HMRC of chargeability to tax, the loss of tax would not have occurred. The appellants contended that, in this case, any loss of tax was caused by the belief on the part of Cogefin's directors that Cogefin was resident in Bermuda and so had no UK tax liability. Even if they had notified HMRC of chargeability to tax, any returns filed would have been nil returns as they believed that there was no UK tax liability.

343. HMRC contended that the appellants' submissions were circular and illogical: Cogefin would only have notified chargeability to tax to HMRC if the directors considered that CMC was actually in the UK and that it was liable to UK corporation tax. They submitted that the loss of tax was attributable to the failure to notify; there could be a variety of reasons which lead to a failure to notify, but it is that failure which leads to the tax loss and not the underlying reason for the failure.

344. We agree with HMRC's submissions: a failure to notify chargeability is not something which arises in a vacuum. It would render this statutory provision virtually pointless to take the view that, where there has been a failure to notify, the existence of an underlying reason for a loss of tax which also led to that failure to notify must mean that the loss of tax cannot be attributable to the failure to notify but must instead be attributed only to the underlying reason which led to the failure to notify.

345. As we have concluded that the company was resident in the UK for tax purposes, and therefore subject to UK corporation tax, we find that the company was liable to UK corporation tax and was liable to notify HMRC of chargeability. The company failed to notify HMRC of that chargeability and there was therefore a loss of tax which, in our view, was attributable to the failure to notify HMRC of that chargeability. We conclude that the extended time periods in paragraph 46, Schedule 18, FA 1998 therefore apply and the assessments were raised in time.

*Whether the loss of tax in respect of the period ended 31 December 2014 was brought about carelessly*

346. Although there was no failure to notify in this period, the loss of tax arose because a nil return was filed. The reason for the nil return being provided was the same as the reason for the failure to notify chargeability: because the directors believed that Cogefin was not UK resident.

347. For the reasons given above, in respect of the application of s118(2) TMA 1970, we consider that Cogefin did not take reasonable care and so we find that the loss of tax for this period was brought about carelessly. As the assessment was raised within six years of the end of the relevant period, we conclude that it was raised in time.

**Was a valid discovery made**

348. The burden of proof is on HMRC to show that a discovery was made in order to raise the assessments.

349. HMRC contended that the required discovery that there was an insufficiency of tax was made by Officer Charles in May 2019. There was no requirement (per *Charlton* [2012] UKUT 779 (TCC)) that there be new facts or data: what was required was that it newly appeared to the officer that there was an insufficiency and that this was not objectively unreasonable. A change of view, or correction of an oversight could amount to a discovery.

350. The appellants submitted, in summary that no discovery was made: HMRC had had extensive information for years, including by way of the LDF report.

*Officer Charles' evidence*

351. Officer Charles provided a witness statement and gave oral evidence at the hearing. His evidence was largely based on the documents available to him at the various points in time.

352. With regard to discovery, his evidence was that by around March 2015, following information provided through the Liechtenstein Disclosure Facility, he had concluded Cogefin was UK tax resident and that an amount which ought to have been assessed to tax had not been assessed and that he therefore made a discovery for the purposes of paragraph 41, Schedule 18, Finance Act 1998. He raised assessments for the tax years 2009-2011 as he did not have information for earlier years. His evidence was that he also did not know key facts as he did not have financial information to identify Cogefin's accounting periods, as requests for this information had been refused.

353. Those March 2015 assessments were withdrawn, in part because the tax years had been used, rather than Cogefin's accounting periods.

354. Following correspondence and further efforts to obtain information, he had received a report in November 2018 which included over 34,000 pages of information. This took over three months to review, together with other information obtained by the use of third-party information notices and provided substantially more detail than had previously been available and provided a fuller factual picture. Officer Charles stated that he had required the information in this report to reach his conclusion and had formed the conclusion by late April 2019 that from at least 1999 onwards, Cogefin was UK resident and so amounts which ought to have been assessed to tax had not been assessed and that he had therefore made a discovery for the purposes of paragraph 41, Schedule 18 Finance Act 1998. Applying the principle of the presumption of continuity, he considered that Cogefin's UK residence continued after 2013. He accordingly raised the assessments under appeal in May 2019.

355. Officer Charles' evidence was that this was a new discovery and not simply more evidence, given the new knowledge of the accounting periods and the broader evidential base. It had been made at a time when no assessments were in place.

*Discussion*

356. We note the conclusion of the Supreme Court in *Tooth* [2021] UKSC 17 that whether there had been a "discovery" depends upon the state of mind of the individual HMRC officer who decided to make the assessment; that, for those purposes, there was no concept of HMRC having collective knowledge, and a discovery did not lose its quality as such simply by the passage of time. Although the Supreme Court was referring to the income tax and capital gains tax provisions in the Taxes Management Act 1970, these are equivalent to the corporate tax provisions in Schedule 18 and so we consider that the decision applies equally to these provisions.

357. In the hearing, in their note on evidence, the appellants submitted that the hypothetical HMRC officer could reasonably have been expected to be aware of the potential loss of tax by 31 July 2018, which was the date on which HMRC ceased to be able to give a notice of enquiry into the nil tax returns delivered by Cogefin for the periods 2012 to 2014. This was because, in summary, by that date HMRC had:

(1) issued discovery assessments for the period 2008-2011 (on 27 March 2015);

(2) issued notices to deliver a corporation tax return for the 2009-2014 tax years (on 19 April 2015) and the 2015 tax year (on 17 May 2015);

(3) HMRC had received extensive documentation provided in June 2015;

(4) issued notices to deliver a corporation tax return for the 2016 and 2017 tax years (on 22 May 2016 and 19 March 2017 respectively).

358. We note that Cogefin's tax returns for 2012-14 were provided to displace discovery determinations rather than in response to the notices to file.

359. The Supreme Court in *Tooth* observed that "it is a significant feature of the legislation that the time limits which apply are not triggered by a discovery event, but run from the end of the year to which the relevant assessment relates. Thus, in the context of the statutory regime, the concept of a discovery is employed not to determine the period beyond which the taxpayer is safe from further assessment but to trigger the powers of an officer or the Board" to make an assessment in circumstances in which they would not otherwise be able to do so.

360. In this context, on this particular aspect, what matters therefore is whether HMRC were precluded from making a discovery and, if not, whether they subsequently made a discovery.

361. For the periods for which no returns were provided, HMRC were not limited by the provisions regarding the normal enquiry period. We conclude that HMRC made a relevant discovery in respect of these periods. Provided the assessments were then made within the relevant time limits, which we will come on to, it does not specifically matter when the discovery was made as the time limits relate to the period of assessment and not the date of the discovery. There is, as was made clear in *Tooth*, no requirement that the discovery be acted upon within a particular time limit shorter than the time limits permitted by statute.

362. For the years for which a tax return was provided by Cogefin (2012-2014), a discovery assessment may only be raised if a hypothetical HMRC officer could not have been reasonably expected, by the time that HMRC ceased to be able to enquire into those returns, to be aware of the relevant loss of tax.

363. We do not consider that the issue of notices to deliver corporation tax returns indicate that a hypothetical HMRC officer would have been so aware: such notices can be sent on a protective basis and do not mean that HMRC have discovered a loss of tax. Even if a discovery of a loss of tax for the tax years 2008-2011 had been made by March 2015, that does not mean that a hypothetical HMRC officer must have been aware prior to the expiry of the relevant enquiry period that there was a loss of tax in the years for which tax returns had been filed. Given the continuing enquiry and investigation, we do not agree that the documentation provided in June 2015 was sufficient for a hypothetical HMRC officer to be aware that there was a loss of tax for the years for which a tax return was subsequently provided.

364. On balance, considering all the evidence including the information provided at various times, we accept Officer Charles' evidence that he made a discovery that there was a relevant loss of tax following receipt, and consideration, of the requested further information in respect of Cogefin in November 2018, after the enquiry window expired on 31 July 2018. We conclude that the relevant discovery was made in late April 2019, given the time taken to consider the information provided. We note that a specific date, of 3 May 2019, was indicated in written evidence. We consider that this date was extracted from the assessments under appeal, and so at best is the latest date that the discovery could have been made. We prefer Officer Charles' oral evidence that the discovery in respect of the years for which tax returns were filed, thus potentially limiting

the period in which a discovery assessment could be made, would have been made in late April 2019.

365. The parties made submissions as to whether or not the returns for 2012-2014 were in fact delivered for the purposes of the legislation; given our findings above, we have not addressed these submissions as we have concluded that HMRC would have been able to issue discovery assessments for these years regardless of the delivery status of those returns.

### *Conclusion as to validity of the assessments*

366. For the reasons set out above, we conclude that the assessments were validly raised.

### Penalties

367. Where a company fails to notify HMRC of chargeability within 12 months of the end of the relevant accounting period, it becomes potentially liable to a penalty. Cogefin were charged with penalties for the periods 1999-2013.

368. A penalty is not payable where the taxpayer had a reasonable excuse for the failure, and that reasonable excuse is remedied within a reasonable time of the excuse ceasing.

369. For periods before 2010, the penalty was an amount not exceeding the amount of tax payable for the accounting period in question that remained unpaid twelve months after the end of the period (para 2, Schedule 18 FA 1998). Subject to that maximum, the level of the penalty was that which an authorised HMRC officer considered correct or appropriate.

370. HMRC's position was that they had given a 10% (out of a possible 20%) reduction for disclosure; a 20% (out of a possible 40%) reduction for co-operation; and 15% (out of a possible 40%) for seriousness. There was therefore a 45% reduction, so that the penalty was 55% of the relevant unpaid tax.

371. For 2010 onwards, the maximum penalty is (paras 1 and 6, Schedule 41, Finance Act 2008 ("FA 2008"), as amended)

(1) for a deliberate and concealed act or failure, 100% of the potential lost revenue;

(2) for a deliberate but not concealed act or failure, 70% of the potential lost revenue, and

(3) for any other case, 30% of the potential lost revenue.

372. The "potential lost revenue" is the amount of tax payable for the accounting period in question that remains unpaid, by reason of the failure, twelve months after the end of the period (para 7, Schedule 41, FA 2008).

373. Para 13, Schedule 41, FA 2008 provides for a reduction in the penalty to reflect the quality of any disclosure made by the taxpayer. The amount of the reduction depends on whether or not the disclosure is prompted. A disclosure will only be unprompted if it is made at a time when the taxpayer has no reason to believe that HMRC are enquiring into their tax position. The same paragraph also sets the minimum penalty for a deliberate but not concealed failure, where the disclosure is prompted, at 35%.

374. HMRC contended, in summary, that there had been a deliberate but not concealed failure and that the disclosure had been prompted. The penalty range was therefore between 70% (maximum) and 35% (minimum). HMRC had given a 15%

reduction (out of 30%) for 'telling'; a 20% reduction (out of 40%) for 'helping'; and a 15% reduction (out of 30%) for giving information. This resulted in a 50% reduction within the applicable range so that the penalty amounted to 52.5% of the relevant tax.

375. The appellants contended that the penalties were excessive and that, for periods before 2010, the approach taken was irrational. For periods from 2010 onwards, the appellants contended that:

(1) Cogefin had a reasonable excuse;

(2) there was no potential lost revenue as the tax was not unpaid by reason for the failure to notify;

(3) the alleged failure was not deliberate;

(4) the disclosure was unprompted;

(5) maximum reductions should be applied for the quality of the disclosure

### *Reasonable excuse*

376. For the reasons set out above, in respect of the application of s118(2) TMA 1970, we find that Cogefin did not have a reasonable excuse for any of the periods under appeal and so paragraph 20 of Schedule 41 Finance Act 2008 does not operate to eliminate the penalties.

### *Whether tax unpaid by reason of the failure*

377. The appellants' arguments in this context are broadly the same as those they put forward as to why the loss of tax was not "attributable to" the failure to notify: that is, that any tax was unpaid by reason of the belief that no tax was due, and not due to the failure to notify. If Cogefin had notified HMRC of chargeability, they would have filed nil returns and so the tax was not unpaid by reason of the failure to notify as it would not have been paid within 12 months of the end of the relevant period in any case.

378. For the reasons set out above with regard to "attributable to" in the context of the assessments, we do not agree with the appellants' submissions: we consider that it places far too limited an interpretation on the statute if one were to disregard the failure to notify whenever there is an underlying reason for a loss of tax, or failure to pay, which is also the reason for the failure to notify.

379. We therefore find that the tax was unpaid by reason of the failure, for the purposes of the penalty provisions.

### *Behaviour: careless or deliberate*

380. The question of the relevant behaviour has been addressed above, with regard to s118(2) TMA 1970, where we concluded that there was at least a failure to take reasonable care, such that Cogefin did not have a reasonable excuse for the failure to notify HMRC. It follows that we consider for the same reasons that the behaviour was at least careless.

381. HMRC (who have the burden of proof in this context) contended that the behaviour was deliberate because (in summary):

(1) when the structure was set up, the issue of central management and control was understood by Mr Ciardi, who knew that the directors needed to make the relevant decisions;

(2) the directors had a clear understanding of the test of central management and control at all times;

(3) the directors and Mr Ciardi knew that Cogefin was not managed by its board, which did not have the expertise, time or experience to manage an active investment company and make decisions even with advice, and they did not request the minimum information needed to be able to make such decisions;

(4) the directors were aware that Mr Ciardi was issuing instructions directly to banks and others;

(5) the issue of central management and control was raised in the LDF report process and stated by HMRC in response to the report as a "main risk area". The contents of the LDF report were such that those preparing it could not have been given complete and accurate information.

382. The appellants contended that HMRC had not made any allegation of deliberate behaviour, such as intention to mislead, and had not put this point to the directors and so contended that it was not open to us to make a finding of deliberate behaviour.

*Discussion*

383. On review, we agree that the allegation was not put to the witnesses nor clearly set out in pleadings. HMRC's pleadings effectively stated that the directors and Mr Ciardi knew, or at least should have known, that Cogefin was UK resident and chose not to take advice because they understood that such advice would have confirmed that position. This point was also not put to the witnesses in the hearing.

384. Given that, we conclude that it was not open to HMRC to continue to contend that there was deliberate behaviour. In case we are wrong on that, we have considered the point and concluded that there was no deliberate behaviour as set out below.

385. The Supreme Court in *Tooth* held (in summary) that "Deliberate is an adjective which attaches a requirement of intentionality to the whole of that which it describes" (at [43]) and that "there will have to be demonstrated an intention to mislead the Revenue on the part of the taxpayer as to the truth of the relevant statement" (at [47]). Although the Supreme Court was considering deliberate behaviour in the context of information provided in a tax return, we consider that the principles also apply when assessing behaviour which has led to a failure to do something.

386. With that in mind, we do not consider that this behaviour was deliberate: from the evidence before us we find that there was a lack of thought rather than an intention to mislead HMRC. Cogefin was set up to act as the investment vehicle of a non-UK trust, itself set up by a non-domiciled individual; we consider that it operated in that context as an arm of the trust rather than as a vehicle for Mr Ciardi specifically. The directors regularly referred to themselves as trustees in the context of the company, indicating that they generally considered matters from the point of view of the trust structure and we consider did not pay enough attention to the fact that they were in fact company directors.

387. We consider that on the balance of probabilities and considering all of the evidence before us, the residence of the company and the UK tax implications of its actions were simply something which was not considered by the directors. In our view, Mr Ciardi left the matter of Cogefin's operations to the directors; in the evidence before us, his correspondence over the years indicates that he assumes others will do whatever they are supposed to do and does not pay attention to the detail.

388. We do not consider that there was any evidence that the directors or Mr Ciardi specifically chose not to consider or examine Cogefin's residence status: this was not a "blind-eye" approach. It was, in our view, a substantial failure to examine the position, continuing along the same path for years without taking any time to consider whether it was appropriate, but not an intentional failure.

389. We have considered whether the continuation of this approach even after the LDF report discussions began might amount to a "blind eye" position. On balance, and considering all of the evidence before us, we find that it did not. We consider that it is more likely to have been a memory issue, as discussed in *Jaffe* and others, that the directors' memories were incorrectly encoded leading them to believe that matters were as they should have been rather than as they were and thus to respond to the report, and subsequent discussions and correspondence, as they did.

390. In summary, we do not consider that the evidence shows that the directors and/or Mr Ciardi acted deliberately in failing to notify HMRC of chargeability or declare or otherwise account for UK corporation tax in respect of Cogefin.

***Conclusion with regard to penalties***

391. Given that we have found that the behaviour which led to the failure was careless and not deliberate it follows that the penalties cannot stand as assessed. The Tribunal has full appellate jurisdiction with regard to penalties and may accordingly substitute another decision that HMRC would have had the power to make.

***Periods 2010-2013***

392. The appellants argued that the disclosure was unprompted, as Cogefin's place of residence was described in Mr Ciardi's LDF report. We do not agree that this amounts to an unprompted disclosure. First, it was not a disclosure by Cogefin - the report was provided on behalf of Mr Ciardi. Secondly, the report stated that Cogefin was not UK resident: noting a couple of instances where decision making might not have been ideal does not, in our view, amount to a disclosure for the purposes of the penalties. At best it was a disclosure of the existence of the company, but more is required for these purposes.

393. We find that the disclosure was, for the purposes of the penalties provisions, prompted.

394. The maximum penalty for a careless failure is 30%. Where the disclosure is prompted, the minimum penalty is 20%. If HMRC become aware of the failure less than 12 months after the time when the tax was first unpaid by reason of the failure (para 13, Schedule 41 FA 2008) the minimum penalty is reduced to 10%. As set out above, we do not accept the appellants' contention that the tax was not unpaid by reason of the failure.

395. The appellants also contended that HMRC first became aware of the failure in June 2012, when the LDF report was submitted and that, as this was within twelve months of the date on which tax would have been first unpaid for 2011-2013, the lower minimum penalty would apply for those years as the earliest that tax in relation to the accounting periods could have been due (on the appellants' calculations) would have been 14 July 2011, 2012, and 2013 (respectively). The actual due date would depend on profit levels.

396. We do not accept that the provision of an LDF report for an individual which states that a company is not UK resident is sufficient to mean that HMRC would become

aware of a failure to notify on receipt of that report. The appellants' contention that the LDF report meant HMRC would have been aware that Cogefin would not be submitting returns is clearly not sustainable, given that Mr Hoskins stated to HMRC in July 2015 that Cogefin would not be submitting returns, after Cogefin had been issued with notices to file.

397. In our view, awareness of a failure to notify would effectively follow on from the discovery of a loss of tax. Given that we have found that the relevant discovery was made in April 2019, it follows that we find that HMRC first became aware of the failure well after the relevant 12 month periods in each case (even if the date on which tax became unpaid was later than the earliest date calculated by the appellants).

398. Accordingly, we conclude that the appropriate penalty range for 2010-2013 is 30%-20%.

*Mitigation*

399. For these periods, the mitigation ranges are set out in guidance. HMRC allows up to 30% quality of disclosure reduction for telling, up to 40% for helping and up to 30% for giving access.

400. HMRC gave 15% for telling, on the basis that there had been no acceptance that the company was resident in the UK and they considered that not all of the facts had been disclosed. They gave 20% for helping, on the basis that assistance had been piece-meal and full information had not been given. They gave 15% for giving access, as they had had to use formal information powers throughout the investigation. This provided, therefore, mitigation of 50% which was applied to the penalty range.

401. The appellants contended that maximum mitigation should have been given, as they submitted that Cogefin's conduct throughout was entirely reasonable. The penalty assessment, in setting out the allowance for giving access, had also made reference to an exchange of information request with Bermuda which was subsequently withdrawn by Bermuda. They contended that it was not reasonable to use this as a reason when considering mitigation.

402. They also contended that Cogefin had responded appropriately to HMRC requests for information and had, for example, voluntarily provided a 48 page report and over 34,000 pages of documents in response to HMRC's request for information in January 2017. We note that this report and the documents were provided to HMRC in November 2018, almost two years after the request was made.

403. We note that the Tribunal approved the issue of Schedule 36 information notices in July 2017. We also note that it was not until the documentation was provided that HMRC were provided with information that enabled them to establish even the accounting periods for Cogefin.

404. On balance, we do not consider that this amounts to a level of responsiveness that merits maximum mitigation for telling, giving access, and helping. We consider that HMRC's mitigation was reasonable; we note the comments with regard to the information request to Bermuda but do not consider that this was sufficient to merit any further mitigation: in our view, the need to pursue information notices in the UK and the time taken for relevant information to be provided is of considerably more significance.

### *Periods before 2010*

405. The appellants contended the approach taken for these periods was irrational; HMRC had not alleged any deliberate behaviour in respect of these periods and yet have issued a higher penalty for these years than the subsequent years for which they have alleged deliberate behaviour. They also contended that it was irrational to apply different mitigation for these periods, compared to the mitigation given for 2010-2013 for what was essentially the same conduct.

406. HMRC contended that the difference in penalty rates was 2.5% and arose as a consequence of the change in statutory provisions, giving a different calculation. It was not sufficient to meet the threshold of irrational.

407. The appellants also noted that the amount assessed for 2009 was a larger percentage of the tax assessed than the amount which Officer Charles indicated in his witness statement had been charged (55%) and so was therefore clearly excessive. HMRC contended that the penalty percentage applied for that year was 55%; however, the percentage had been applied to a different figure from that assessed. They contended that an arithmetic error did not mean that the penalty was manifestly excessive.

408. On balance, we consider that the circumstances leading to the penalties for the periods before 2010 were broadly the same as those which led to penalties for subsequent periods. We therefore conclude that the same overall penalty percentage (25% of the potential lost revenue) should apply to those earlier periods.

### *Conclusion as to mitigation*

409. In context, therefore, we consider that mitigation of 50% should be applied to the penalty range of 30%-20% for the periods 2010-2013. We find that the overall penalty percentage for each of the periods in question should therefore be 25% of the potential lost revenue. The appeals against the penalties are therefore upheld in part.

## Personal liability notice

410. Given our findings above, it follows that Mr Ciardi's appeal against the personal liability notice is upheld: as we have concluded that the behaviour which led to the loss of tax was not deliberate, there can be no liability on Mr Ciardi under the provisions of paragraph 22(1) Schedule 41 Finance Act 2008.

## Conclusions

411. For the reasons set out above we find that:

(1) Cogefin was resident in the UK for all of the periods under appeal as its place of central management and control was in the UK;

(2) The assessments were validly raised;

(3) The behaviour which led to the penalties was not deliberate and the penalties should therefore be reduced, although the mitigation given was appropriate.

412. Cogefin's appeal in respect of residence and the validity of the associated assessments is therefore dismissed. The appeal in respect of the penalties is allowed in part.

413. Mr Ciardi's appeal against the personal liability notice is allowed.

414. As agreed between the parties, issues relating to quantum have been reserved. Formally, we adjourn Cogefin's appeals for Cogefin and HMRC to seek to agree the

quantum of the assessments and penalties in light of this decision, with liberty to apply to the Tribunal for appropriate directions for the resolution of issues relating to quantum should the parties be unable to reach an agreement. That is without prejudice to the parties' ability to appeal in respect of the issues of principle determined by this decision before the issues relating to quantum have been agreed or determined.

**Right to apply for permission to appeal**

415. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**Release date:**
**30 July 2026**

## SCHEDULE OF ASSESSMENTS AND PENALTIES UNDER APPEAL

### ASSESSMENTS

| Account Period End | Amount (£) | Date of Issue | Date of Appeal | Relevant Statute | Time Limits | Time Limits Statute |
|---|---|---|---|---|---|---|
| 31 Dec 1999 | 907,397.26 | 16 Dec 2019 | 29 Jan 2020 | Para 41, Sch 18, FA 1998 | 6 years (ordinary) / 20 years (negligence) | Para 46(2), Sch 18, FA 1998 Art 8, Order 2009/403 |
| 31 Dec 2000 | 900,000 | 16 Dec 2019 | 29 Jan 2020 | Para 41, Sch 18, FA 1998 | 6 years (ordinary) / 20 years (negligence) | Para 46(2), Sch 18, FA 1998 Art 8, Order 2009/403 |
| 31 Dec 2001 | 900,000 | 16 Dec 2019 | 29 Jan 2020 | Para 41, Sch 18, FA 1998 | 6 years (ordinary) / 20 years (negligence) | Para 46(2), Sch 18, FA 1998 Art 8, Order 2009/403 |
| 31 Dec 2002 | 900,000 | 16 Dec 2019 | 29 Jan 2020 | Para 41, Sch 18, FA 1998 | 6 years (ordinary) / 20 years (negligence) | Para 46(2), Sch 18, FA 1998 Art 8, Order 2009/403 |
| 31 Dec 2003 | 16,500,000 | 16 Dec 2019 | 29 Jan 2020 | Para 41, Sch 18, FA 1998 | 6 years (ordinary) / 20 years (negligence) | Para 46(2), Sch 18, FA 1998 Art 8, Order 2009/403 |
| 31 Dec 2004 | 900,000 | 16 Dec 2019 | 29 Jan 2020 | Para 41, Sch 18, FA 1998 | 6 years (ordinary) / 20 years (negligence) | Para 46(2), Sch 18, FA 1998 Art 8, Order 2009/403 |
| 31 Dec 2005 | 1,800,000 | 16 Dec 2019 | 29 Jan 2020 | Para 41, Sch 18, FA 1998 | 6 years (ordinary) / 20 years (negligence) | Para 46(2), Sch 18, FA 1998 Art 8, Order 2009/403 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 31 Dec 2006 | 4,500,000 | 16 Dec 2019 | 29 Jan 2020 | Para 41, Sch 18, FA 1998 | 6 years (ordinary) / 20 years (negligence) | Para 46(2), Sch 18, FA 1998 Art 8, Order 2009/403 |
| 31 Dec 2007 | 3,300,000 | 16 Dec 2019 | 29 Jan 2020 | Para 41, Sch 18, FA 1998 | 6 years (ordinary) / 20 years (negligence) | Para 46(2), Sch 18, FA 1998 Art 8, Order 2009/403 |
| 31 Dec 2008 | 1,709,836.06 | 16 Dec 2019 | 29 Jan 2020 | Para 41, Sch 18, FA 1998 | 6 years (ordinary) / 20 years (negligence) | Para 46(2), Sch 18, FA 1998 Art 8, Order 2009/403 |
| 31 Dec 2009 | 3,080,000 | 21 Apr 2021, (re-issue 15 Sep 2021) | 21 May 2021 | Para 41, Sch 18, FA 1998 | 6 years (ordinary) / 20 years (negligence) | Para 46(2), Sch 18, FA 1998 Art 8, Order 2009/403 |
| 31 Dec 2010 | 504,000 | 21 Apr 2021, (re-issue 15 Sep 2021) | 21 May 2021 | Para 41, Sch 18, FA 1998 | 4 years (ordinary) / 6 years (careless) / 20 years (deliberate or failure to notify) | Para 46(2A), Sch 18, FA 1998 (amended by FA 2008) |
| 31 Dec 2011 | 132,465.76 | 21 Apr 2021, (re-issue 15 Sep 2021) | 21 May 2021 | Para 41, Sch 18, FA 1998 | 4 years (ordinary) / 6 years (careless) / 20 years (deliberate or failure to notify) | Para 46(2A), Sch 18, FA 1998 (amended by FA 2008) |
| 31 Dec 2012 | 318,464.48 | 21 Apr 2021, (re-issue 15 Sep 2021) | 21 May 2021 | Para 41, Sch 18, FA 1998 | 4 years (ordinary) / 6 years (careless) / 20 years (deliberate or failure to notify) | Para 46(2A), Sch 18, FA 1998 (amended by FA 2008) |
| 31 Dec | 871,746.58 | 16 Dec | 29 Jan | Para 41, | 4 years | Para 46(2A), |

| | | | | | | |
|---|---|---|---|---|---|---|
| 2013 | | 2019 | 2020 | Sch 18, FA 1998 | (ordinary) / 6 years (careless) / 20 years (deliberate or failure to notify) | Sch 18, FA 1998 (amended by FA 2008) |
| 31 Dec 2014 | 386,876.72 | 16 Dec 2019 | 29 Jan 2020 | Para 41, Sch 18, FA 1998 | 4 years (ordinary) / 6 years (careless) / 20 years (deliberate or failure to notify) | Para 46(2A), Sch 18, FA 1998 (amended by FA 2008) |
| 31 Dec 2015 | 1,012,328.77 | 16 Dec 2019 | 29 Jan 2020 | Para 41, Sch 18, FA 1998 | 4 years (ordinary) / 6 years (careless) / 20 years (deliberate or failure to notify) | Para 46(1), Sch 18, FA 1998 (amended by FA 2008) |
| 31 Dec 2016 | 1,000,000 | 16 Dec 2019 | 29 Jan 2020 | Para 41, Sch 18, FA 1998 | 4 years (ordinary) / 6 years (careless) / 20 years (deliberate or failure to notify) | Para 46(1), Sch 18, FA 1998 (amended by FA 2008) |
| 31 Dec 2017 | 962,328.77 | 16 Dec 2019 | 29 Jan 2020 | Para 41, Sch 18, FA 1998 | 4 years (ordinary) / 6 years (careless) / 20 years (deliberate or failure to notify) | Para 46(1), Sch 18, FA 1998 (amended by FA 2008) |

**COGEFIN PENALTIES**

| **Account Period End** | **Amount (£)** | **Date of Issue** | **Date of Appeal** | **Relevant Statute** | **Time Limits** | **Time Limits Statute** |
|---|---|---|---|---|---|---|
| 31 Dec 1999 | 499,068 | 18 Jan 2022 | 10 Feb 2022 | Para 2, Sch 18, | 6 years from date penalty incurred / 3 | s 103 TMA 1970 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | | FA 1998.<br><br>ss 100, 118(2) TMA 1970 | years after determination of amount of tax | |
| 31 Dec 2000 | 495,000 | 18 Jan 2022 | 10 Feb 2022 | Para 2, Sch 18, FA 1998.<br><br>ss 100, 118(2) TMA 1970 | 6 years from date penalty incurred / 3 years after determination of amount of tax | s 103 TMA 1970 |
| 31 Dec 2001 | 495,000 | 18 Jan 2022 | 10 Feb 2022 | Para 2, Sch 18, FA 1998.<br><br>ss 100, 118(2) TMA 1970 | 6 years from date penalty incurred / 3 years after determination of amount of tax | s 103 TMA 1970 |
| 31 Dec 2002 | 495,000 | 18 Jan 2022 | 10 Feb 2022 | Para 2, Sch 18, FA 1998.<br><br>ss 100, 118(2) TMA 1970 | 6 years from date penalty incurred / 3 years after determination of amount of tax | s 103 TMA 1970 |
| 31 Dec 2003 | 9,075,000 | 18 Jan 2022 | 10 Feb 2022 | Para 2, Sch 18, FA 1998.<br><br>ss 100, 118(2) TMA 1970 | 6 years from date penalty incurred / 3 years after determination of amount of tax | s 103 TMA 1970 |
| 31 Dec 2004 | 495,000 | 18 Jan 2022 | 10 Feb 2022 | Para 2, Sch 18, FA 1998.<br><br>ss 100, 118(2) TMA | 6 years from date penalty incurred / 3 years after determination of amount of tax | s 103 TMA 1970 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | | 1970 | | |
| 31 Dec 2005 | 990,000 | 18 Jan 2022 | 10 Feb 2022 | Para 2, Sch 18, FA 1998. | 6 years from date penalty incurred / 3 years after determination of amount of tax | s 103 TMA 1970 |
| 31 Dec 2006 | 2,475,000 | 18 Jan 2022 | 10 Feb 2022 | Para 2, Sch 18, FA 1998.<br><br>ss 100, 118(2) TMA 1970 | 6 years from date penalty incurred / 3 years after determination of amount of tax | s 103 TMA 1970 |
| 31 Dec 2007 | 1,815,000 | 18 Jan 2022 | 10 Feb 2022 | Para 2, Sch 18, FA 1998.<br><br>ss 100, 118(2) TMA 1970 | 6 years from date penalty incurred / 3 years after determination of amount of tax | s 103 TMA 1970 |
| 31 Dec 2008 | 940,409 | 18 Jan 2022 | 10 Feb 2022 | Para 2, Sch 18, FA 1998.<br><br>ss 100, 118(2) TMA 1970 | 6 years from date penalty incurred / 3 years after determination of amount of tax | s 103 TMA 1970 |
| 31 Dec 2009 | 1,848,000 | 18 Jan 2022 | 10 Feb 2022 | Para 2, Sch 18, FA 1998.<br><br>ss 100, 118(2) TMA 1970 | 6 years from date penalty incurred / 3 years after determination of amount of tax | s 103 TMA 1970 |
| 31 Dec 2010 | 264,600 | 14 Jan 2022 | 10 Feb 2022 | Paras 1, 12 and 20, Sch 41, FA 2008 | 12 months from end of appeal period (during which an appeal could | Para 16, Sch 41, FA 2008 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | | | be brought or appeal has not been determined) | |
| 31 Dec 2011 | 69,544.52 | 14 Jan 2022 | 10 Feb 2022 | Paras 1, 12 and 20, Sch 41, FA 2008 | 12 months from end of appeal period (during which an appeal could be brought or appeal has not been determined) | Para 16, Sch 41, FA 2008 |
| 31 Dec 2012 | 167,193.85 | 24 Feb 2022 | 24 Mar 2022 | Paras 1, 12 and 20, Sch 41, FA 2008 | 12 months from end of appeal period (during which an appeal could be brought or appeal has not been determined) | Para 16, Sch 41, FA 2008 |
| 31 Dec 2013 | 457,666.95 | 14 Jan 2022 | 10 Feb 2022 | Paras 1, 12 and 20, Sch 41, FA 2008 | 12 months from end of appeal period (during which an appeal could be brought or appeal has not been determined) | Para 16, Sch 41, FA 2008 |

**GIUSEPPE CIARDI PERSONAL LIABILITY NOTICE**

| **Account Period End** | **Amount (£)** | **Date of Issue** | **Date of Appeal** | **Relevant Statute** | **Time Limits** | **Time Limits Statute** |
|---|---|---|---|---|---|---|
| 31 Dec 2010<br><br>31 Dec 2011<br><br>31 Dec 2012 | 264,600<br><br>69,544.52<br><br>167,193.85 | 28 Feb 2022 | 24 Mar 2022 | Para 22, Sch 41, FA 2008 / s251 CA 2006 | 12 months from end of appeal period (during which an appeal could be brought or appeal has not been | Paras 16 and 22, Sch 41, FA 2008 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 31 Dec 2013 | 457,666.95 | | | | determined) | |