

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2026] SGHC 65

Originating Claim No 290 of 2025 (Summonses Nos 3235, 3248 and 3345 of 2025)

Between

Vanbo Investments Pte Ltd

... Claimant

And

- (1) ph AG
- (2) Pedro Schmidt

... Defendants

JUDGMENT

[Civil Procedure — Mareva injunctions]
[Civil Procedure — Stay of proceedings]
[Conflict of Laws — Choice of jurisdiction]

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Vanbo Investments Pte Ltd

v

ph AG and another

[2026] SGHC 65

General Division of the High Court — Originating Claim No 290 of 2025
(Summonses No 3235, 3248, and 3345 of 2025)

Tan Siong Thye SJ

5 January 2026

25 March 2026

Judgment reserved.

Tan Siong Thye SJ:

Introduction

1 The defendants, namely, ph. AG, a Swiss company, and its founder, chairperson and shareholder, Mr Pedro Schmidt (“Mr Schmidt”), filed the following applications:

(a) HC/SUM 3235/2025 (“SUM 3235”). This application seeks to set aside the worldwide Mareva injunction that was granted at an *ex parte* hearing on 14 May 2025 (“*ex parte* hearing”) *ie*, HC/ORC 2668/2025 (“Worldwide Mareva Injunction”);

(b) HC/SUM 3345/2025 (“SUM 3345”). This application seeks to stay the ancillary disclosure order that was granted together with the

Worldwide Mareva Injunction at the *ex parte* hearing pending the final determination of SUM 3235; and

(c) HC/SUM 3248/2025 (“SUM 3248”). This application seeks to stay the proceedings in HC/OC 290/2025 (“OC 290”) (“Stay Application”) on the grounds that Singapore is *forum non conveniens* and that parts of the dispute are subject to an arbitration clause.

2 Having heard the parties on 5 January 2026 and considered their submissions, I shall allow SUM 3235 and SUM 3248. Accordingly, I set aside the Worldwide Mareva Injunction and stay OC 290. During the hearing, I ordered the stay of the disclosure provision of the Worldwide Mareva Injunction (*ie*, SUM 3345) pending the outcome of the Stay Application. SUM 3345 is now moot following my decision to set aside the Worldwide Mareva Injunction entirely.

3 I shall set out my reasons for allowing SUM 3235 and SUM 3248 below.

Background facts

The parties

4 The claimant, Vanbo Investments Pte Ltd (“Vanbo”), is a Singapore-incorporated holding company engaged in investment activities.¹ Its sole shareholder and director is Mr Zhang Boxuan (“Mr Boxuan”).²

¹ Zhang Wen’s 2nd Affidavit dated 8 May 2025 (“Zhang Wen’s 2nd Affidavit”) at p 2, para 6.

² Zhang Wen’s 2nd Affidavit at p 30, Tab 1.

5 The first defendant, ph. AG, is a Swiss-incorporated company primarily engaged in the business of manufacturing, distributing, marketing and providing consultancy in the distribution and marketing of the KA-EX Product (“Product”), a cortisol stress reducer beverage.³ The Product consists of two components: a powder produced by DSM Fiermenich AG and a push-cap produced by Vicap Global AG (“ViCap”). Both components were designed to function optimally together.⁴

6 The second defendant, Mr Schmidt, is the founder of ph. AG and serves as chairperson of ph. AG’s board of directors.⁵ The other directors are Mr Boxuan, who is Vanbo’s nominee director, Mr David Guntern (“Mr Guntern”) and Mr Roger Wilfinger (“Mr Wilfinger”).⁶ The first defendant and the second defendant shall be collectively referred to as the “defendants”.

The investment relationship and dispute

7 From around July to September 2024, Vanbo began discussions with ph. AG regarding a potential investment and business partnership to expand the Product into the Asia-Pacific region.⁷ These discussions culminated in the execution of a non-binding term sheet between the parties on 24 September 2024 (“Term Sheet”).⁸

³ Pedro Schmidt’s 1st Affidavit dated 4 November 2025 (“Schmidt’s 1st Affidavit”) at p 4, para 10.

⁴ Defendants’ Written Submissions dated 22 December 2025 (“DWS”) at p 6, para 6.

⁵ Schmidt’s 1st Affidavit at p 5, para 11.

⁶ Schmidt’s 1st Affidavit at p 85, Tab 1.

⁷ Schmidt’s 1st Affidavit at p 6, para 14; Zhang Wen’s 2nd Affidavit at p 4, para 10(a).

⁸ Schmidt’s 1st Affidavit at p 6, para 15; Zhang Wen’s 2nd Affidavit at p 4, para 10(b).

8 The Term Sheet outlined the basic deal:⁹ Vanbo would invest around CHF1.5m to acquire 24,312 newly-issued preferred shares and receive exclusive rights to manufacture and distribute the Product in Asia, Australia and New Zealand.

9 Following further discussions, Vanbo and ph. AG executed two key agreements, namely a license agreement (“License Agreement”) around 27 November 2024 and an investment agreement (“Investment Agreement”) on 6 December 2024.¹⁰ The License Agreement gave Vanbo exclusive rights to use the KA-EX brand and manufacture products in the designated territories, provided it met ph. AG’s quality standards.¹¹ The Investment Agreement formalised Vanbo’s CHF1.5m investment in exchange for 12.5% of ph. AG’s total ordinary shares and allowed Vanbo to nominate a board representative.¹² The Investment Agreement also automatically bound Vanbo to the Term Sheet and a Shareholders’ Agreement that governed all shareholders’ rights and obligations,¹³ but this is disputed by Vanbo.¹⁴

10 Vanbo completed the investment due diligence process and signed a subscription form on 21 December 2024 (“Subscription Form”).¹⁵ Thereafter,

⁹ Schmidt’s 1st Affidavit at p 125, Tab 5; Zhang Wen’s 2nd Affidavit at p 91, Tab 5.

¹⁰ Schmidt’s 1st Affidavit at p 8–9, paras 18–19; Zhang Wen’s 2nd Affidavit at p 8, paras 10(c) and 16.

¹¹ Schmidt’s 1st Affidavit at p 297, Tab 7; Zhang Wen’s 2nd Affidavit at p 291, Tab 12.

¹² Schmidt’s 1st Affidavit at p 291, Tab 6; Zhang Wen’s 2nd Affidavit at p 102, Tab 6.

¹³ Schmidt’s 1st Affidavit at p 291, Tab 6; Zhang Wen’s 2nd Affidavit at p 102, Tab 6.

¹⁴ Claimant’s Written Submissions dated 22 December 2025 (“CWS”) at p 36 at para 113.

¹⁵ Schmidt’s 1st Affidavit at p 15, para 25; p 457, Tab 10.

Vanbo transferred consideration for the shares on 7 January 2025,¹⁶ and was duly allocated the shares.¹⁷

11 Disagreements arose soon after the investment transaction was completed. Issues emerged regarding the use of the push-caps for the Product. Vanbo sought to use alternatives to the push-caps which was supplied by ViCap (“ViCap Pushcaps”). However, ph. AG insisted that the ViCap Pushcaps had to be used for the Product.¹⁸ Additionally, Vanbo discovered that its shareholding had been diluted from 12.5% to 11.31% following a crowdfunding exercise conducted by ph. AG in January 2025.¹⁹

The parties’ accounts

12 I shall briefly outline the parties’ version of events.

The claimant’s case

13 Vanbo contends that its investment was contingent on three key conditions:²⁰ (a) that its shareholding in ph. AG would be maintained at 12.5%; (b) that Vanbo would remain the second-largest shareholder; and (c) that Vanbo’s written consent was required for any new share allotments. Vanbo alleges that Mr Schmidt agreed to these conditions on multiple occasions and

¹⁶ Schmidt’s 1st Affidavit at p 16, para 26; p 457, Tab 10.

¹⁷ Schmidt’s 1st Affidavit at p 15, para 25.

¹⁸ Schmidt’s 1st Affidavit at p 18, para 29; Zhang Wen’s 2nd Affidavit at pp 4–6, paras 10–13.

¹⁹ Zhang Wen’s 2nd Affidavit at p 7, para 14.

²⁰ CWS at p 6, para 10.

that they would be enshrined in the Shareholders' Agreement.²¹ Vanbo insists that its investment was in reliance upon this verbal agreement.²²

14 After Vanbo transferred the investment sum on 7 January 2025, the relationship between the parties began to deteriorate. Vanbo alleges that ph. AG breached their verbal agreement as the three key conditions were not present in the Shareholders' Agreement.²³ Further, Vanbo claims that ph. AG insisted on using the ViCap Pushcaps manufactured by ViCap. According to Vanbo, this was a breach of clause 2.1 of the Investment Agreement which stated that, with the investment, Vanbo would become "the Asia-Pacific arm of [ph. AG] with the empowerment for all key business decisions for the APAC business".²⁴

15 Vanbo also argues that it was not required by any agreement to only use the ViCap Pushcaps and that there was a conflict of interest, as ph. AG's director, Mr Wilfinger, was also the sole director of ViCap.²⁵

16 The situation worsened when Vanbo discovered in April 2025 that its shareholding had been diluted to 11.31% through a crowdfunding exercise conducted in January 2025.²⁶ Vanbo alleges that this crowdfunding exercise was deliberately concealed from it and that Vanbo only became aware of the dilution

²¹ CWS at p 6, para 10.

²² CWS at p 6, para 10.

²³ CWS at p 6, para 11.

²⁴ CWS at p 7, paras 14–15; Agreed Bundle of Documents Volume 1 of 4 ("ABOD 1") at p 51.

²⁵ CWS at p 7, para 16; ABOD 1 at p 124.

²⁶ CWS at p 8, para 18.

when ph. AG’s directors circulated a resolution on 5 April 2025 showing Vanbo’s reduced shareholding.²⁷

17 Since then, Vanbo claims that it had discovered evidence of ph. AG’s poor finances and dishonesty in making false representations on the maintenance of Vanbo’s shareholding.²⁸ Vanbo also alleges that there were attempts to exclude Vanbo from its operations by removing Mr Boxuan’s signing authority.²⁹ These events led Vanbo to believe it was a victim of a fraudulent investment scheme.³⁰

The defendants’ case

18 The defendants state that differences arose in or around February and March 2025 when Vanbo unreasonably insisted on using alternative push-caps instead of the contractually required ViCap Pushcaps.³¹ The defendants submit that the use of the ViCap Pushcaps was extensively discussed before the Term Sheet was signed.³²

19 On 6 February 2025, ph. AG informed Vanbo that the ViCap Pushcaps were mandatory due to quality, safety and patent considerations.³³ Despite this, Vanbo’s subsidiary, Kangji Energy Holdings Pte Ltd, issued a tender invitation

²⁷ CWS at p 8, para 18.

²⁸ CWS at p 8, para 20.

²⁹ CWS at p 8, para 20.

³⁰ CWS at p 8, paras 19–20.

³¹ DWS at p 8, para 13.

³² DWS at p 8, para 13.

³³ Schmidt’s 1st Affidavit at p 19, para 29.

on 17 February 2025 to seek for alternative push-cap suppliers.³⁴ Vanbo also purportedly made disparaging and inaccurate claims about the ViCap Pushcaps.³⁵

20 ph. AG responded on 21 February 2025 and explained that Vanbo’s proposed alternative would infringe multiple patents.³⁶ ph. AG offered to work with Vanbo to modify the ViCap Pushcaps based on Vanbo’s feedback. ph. AG also indicated that both could “plan to build [their] own KA-EX Cap production in Asia in the future”.³⁷ After Vanbo’s insistence, ph. AG’s Swiss solicitors issued a formal breach notice on 13 March 2025, detailing Vanbo’s violations of the agreements and demanded compliance within specified timeframes.³⁸ Vanbo did not respond to this notice and the subsequent letter dated 29 April 2025 from ph. AG.³⁹

Procedural history

21 The disagreements caused Vanbo to commence OC 290 on 13 April 2025. Vanbo seeks the return of its investment sum on the basis of the alleged breach of contract by ph. AG. Vanbo also alleges inducement of the breach by Mr Schmidt, fraudulent misrepresentations by the defendants, as well as unjust enrichment of ph. AG.⁴⁰

³⁴ Schmidt’s 1st Affidavit at p 19, para 29.

³⁵ Schmidt’s 1st Affidavit at p 19, para 29.

³⁶ Schmidt’s 1st Affidavit at p 19, para 29.

³⁷ Schmidt’s 1st Affidavit at p 19, para 29.

³⁸ Schmidt’s 1st Affidavit at p 20, para 29.

³⁹ Schmidt’s 1st Affidavit at p 22, para 29.

⁴⁰ CWS at p 3, para 2.

22 On 23 April 2025, Vanbo filed an *ex parte* application for leave to effect service out of jurisdiction. On 8 May 2025, Vanbo filed an *ex parte* application for the Worldwide Mareva Injunction against the defendants. I granted the Worldwide Mareva Injunction on 14 May 2025.

23 The service of the Singapore court papers and Worldwide Mareva Injunction was only effected on the defendants on 19 August 2025.⁴¹ Prior to service of the Singapore court papers, ph. AG had commenced arbitration proceedings in the International Chamber of Commerce (“ICC arbitration”) seated in Switzerland and Swiss court proceedings on 8 August 2025.⁴²

24 In response to ph. AG’s ICC arbitration, Vanbo filed an Answer and Counterclaim, and a sole arbitrator was appointed.⁴³ Regarding the Swiss proceedings, there was an unsuccessful attempt at conciliation and the matter is proceeding to trial in Switzerland and Singapore.⁴⁴

25 Against the background facts and procedural history, I shall now address the merits of the present applications.

SUM 3235: Application to set aside the Worldwide Mareva Injunction

26 I shall first deal with the application in SUM 3235 to set aside the Worldwide Mareva Injunction.

⁴¹ Schmidt’s 1st Affidavit at p 23, para 32.

⁴² Schmidt’s 1st Affidavit at p 23, para 33.

⁴³ Zhang Wen’s 3rd Affidavit dated 3 December 2025 at p 20, para 57.

⁴⁴ Schmidt’s 1st Affidavit at p 25, para 37.

The applicable legal framework

27 The law on setting aside of Mareva injunctions is well-established. The general rule, as laid down by the Court of Appeal in *Bouvier, Yves Charles Edgar v Accent Delight International Ltd* [2015] 5 SLR 558 (“*Bouvier*”) at [36], is that a claimant seeking Mareva relief must satisfy two cumulative requirements: (a) a good arguable case on the merits of the claimant’s claim; and (b) a real risk that the defendant will dissipate his assets to frustrate the enforcement of an anticipated judgment or award.

28 Where worldwide relief is sought, the threshold becomes more demanding compared to a domestic Mareva injunction. As stated by the Court of Appeal in *Bouvier* at [37]:

“Worldwide Mareva Injunction injunctions have rightly been said to be exceptional, but the same rationale and test informs the grant of a Mareva injunction, whether over assets within the jurisdiction or over assets without. [...] While the legal test for a worldwide Mareva injunction may be the same as that for a Mareva injunction over assets within the jurisdiction, *the circumstances that will have to be established in order to cross the threshold of necessity will likely be **more exacting** where a worldwide Mareva injunction is concerned.*”

[emphasis added in italics and bold italics]

The court must therefore scrutinise with particular care whether the evidence truly justifies restraining a defendant’s assets worldwide.

29 Even when both requirements of a good arguable case and a real risk of dissipation are met, Mareva injunctions may nevertheless be set aside if they were procured through the plaintiff’s failure to provide full and frank disclosure during the *ex parte* application, thereby misleading the court into granting the

Mareva relief: *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2018] 2 SLR 159 (“*JTrust*”) at [90].

The Worldwide Mareva Injunction should be set aside

30 The defendants challenge the satisfaction of both requirements set out above at [27].⁴⁵ On the evidence, I find that both requirements are not made out by Vanbo. I shall first deal with the important issue of whether there is a real risk of dissipation of assets by the defendants.

There is no real risk of dissipation by the defendants

31 The Court of Appeal in *JTrust* comprehensively laid down the applicable test for finding a real risk of dissipation (at [64]–[65]):

64 The overarching test is whether there is ***objectively a real risk that a judgment may not be satisfied because of a risk of unjustified dealings with assets***: [Commercial Injunctions (Sweet & Maxwell, 6th Ed, 2016) (“*Commercial Injunctions*”)] at para 12-028. ***The plaintiff must produce “solid evidence” to demonstrate this risk, and not just bare assertions of fact***: *Bouvier* ([38] supra) at [36], citing *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 at [18] per Chao Hick Tin JA.

65 There are a number of factors which the court generally considers relevant in assessing whether there is a real risk of dissipation. These include the ***nature of the assets*** which are to be the subject of the proposed injunction, and ***the ease with which they could be disposed of or dissipated***; the ***nature and financial standing of the defendant’s business***; the ***length of time the defendant has been in business***; the ***domicile or residence*** of the defendant; if the defendant is a foreign entity, the ***country in which it is registered*** and the ***availability of reciprocal enforcement of local judgments or awards*** in that country; the defendant’s ***past or existing credit record***; any intention expressed by the defendant about ***future dealings with his local or overseas assets***;

⁴⁵ DWS at p 14, para 24.

connections between a defendant and other companies which have **defaulted on awards or judgments**; the defendant's **behaviour in respect of the claims**, including that in response to the claimant's claims; and good grounds for alleging that the defendant has been **dishonest**. *Commercial Injunctions* at para 12-033. But the ultimate question is **whether the defendant has any characteristics which suggest that he can and will frustrate judgment**.

[emphasis added in bold italics]

32 Vanbo argues that there is a real risk of dissipation based on the following factors:

(a) The defendants' assets are primarily funds in the bank account (containing the CHF1.5m investment sum) which are inherently susceptible to dissipation.⁴⁶ The risk is materially exacerbated as most of the defendants' assets are in Switzerland, making recovery extremely difficult once transferred out of Singapore.⁴⁷

(b) The defendants refuse to comply with the court's freezing order directing asset disclosure, creating a legitimate inference of hidden assets they intend to dissipate beyond the court's reach.⁴⁸

(c) ph. AG faced financial difficulties before Vanbo's investment and was urgently seeking funds under compressed timelines.⁴⁹ Vanbo's investment of CHF1.5m was dissipated at an "alarming speed" with only CHF686,566 remaining within one month of payment.⁵⁰ Further, the

⁴⁶ CWS at p 16, para 45.

⁴⁷ CWS at p 16, para 46.

⁴⁸ CWS at p 17, para 49.

⁴⁹ CWS at p 18, para 50.

⁵⁰ CWS at p 18, para 50.

defendants did not provide any explanation for the expenditure.⁵¹ Their continued weak financial position is evidenced by how they sought an additional €1.5m investment despite receiving Vanbo's investment sum.⁵² The defendant also sought more funding of around €1.3m from crowdfunding.⁵³

(d) The defendants have “consistently displayed a lack of transparency regarding their dealings with ViCap”.⁵⁴ They insisted that Vanbo use the ViCap Pushcaps without disclosing the commercial relationship between ViCap and ph. AG. They also did not disclose that Mr Schmidt and Mr Wilfinger both serve as directors of ph. AG and Mr Wilfinger is also the founder and chairman of ViCap.⁵⁵ Vanbo further alleges that the defendants faced a conflict of interest or would benefit from ph. AG's acquisition of ViCap.⁵⁶ The acquisition had channelled funds of ph. AG into ViCap. Vanbo contends that this suggests a real risk of dissipation of ph. AG's assets.⁵⁷

33 I shall explain why none of these factors demonstrate a real risk of dissipation.

⁵¹ CWS at p 18, para 51.

⁵² CWS at p 19, para 54.

⁵³ CWS at p 19, para 54.

⁵⁴ CWS at p 19, para 56.

⁵⁵ CWS at p 20, para 58.

⁵⁶ CWS at p 20, para 58.

⁵⁷ CWS at p 19, para 55.

(1) The nature of the defendants' assets

34 As disclosed in Mr Schmidt's 1st Affidavit, ph. AG's balance sheet as of 31 August 2025 reflects total assets of about CHF9.3m, comprising not merely of cash holdings but receivables, inventory, investments in subsidiaries and movable fixed assets.⁵⁸ Thus, ph. AG's assets do not consist primarily of liquid bank account funds. Even if this were true, the liquidity and transferability of such assets cannot, without more, establish a real risk of dissipation: *Continental Shipping Line Pte Ltd v Jonathan John Shipping Ltd* ("*Continental Shipping*") [2025] 1 SLR 1191 at [24].

35 Vanbo has also provided no evidence for alleging that most of the defendants' assets are in Switzerland, beyond the bare assertion that this must be the case given the defendants' Swiss domicile. However, the foreign origin of a company cannot in and of itself justify a real risk of dissipation: *Milaha Explorer Pte Ltd v Pengrui Leasing (Tianjin) Co Ltd* [2023] 1 SLR 1072 at [30]; *Continental Shipping* at [27]. There must be credible evidence of intention or propensity to dissipate assets improperly.

36 Moreover, Vanbo's characterisation of the freezing order as being "specifically over ph. AG's bank account to which it transferred the Investment Sum" is misleading.⁵⁹ As rightly pointed out by the defendants, Vanbo did not restrict the scope and imposition of the Mareva injunction to a specific and identified bank account.⁶⁰ This is a Worldwide Mareva Injunction which applies to all of the defendants' assets, beyond ph. AG's bank account in which Vanbo's

⁵⁸ Schmidt's 1st Affidavit at p 772, Tab 27; DWS at p 42, para 56.

⁵⁹ CWS at p 16, para 46.

⁶⁰ DWS at p 41, para 54.

investment sum was credited into, and thus requires a higher threshold to be met before it is granted as established above at [28].

(2) Alleged refusal to comply with the ancillary disclosure order

37 Ancillary disclosure orders can only contribute to establishing dissipation risk in two specific and limited scenarios: (a) when a defendant declines entirely to disclose any assets; and (b) when the information revealed through disclosure is “so glaringly inadequate or suspicious” that such deficiencies cannot reasonably be attributed to the urgency of disclosure requirements or ordinary accounting or valuation inaccuracies: *Continental Shipping* at [28]; *Bouvier* at [104].

38 The present situation does not fall within either of these scenarios. ph. AG has provided disclosure of its assets in compliance with the disclosure order through Mr Schmidt’s 1st Affidavit.⁶¹ The assets disclosed are of considerable value — ph. AG holds total assets of CHF9.3m as reflected in its balance sheet dated 31 August 2025.⁶² Mr Schmidt also holds a significant shareholding of 54,911 shares in ph. AG, which Vanbo is aware of. Based on Vanbo’s own assessment of CHF1.5m for 24,312 shares, Mr Schmidt’s larger shareholding would very likely surpass the quantum of Vanbo’s claim in these proceedings.⁶³ The defendants have explained that they are withholding further disclosure pending their application in SUM 3345, which would be rendered nugatory by premature additional disclosure.⁶⁴

⁶¹ Schmidt’s 1st Affidavit at p 772, Tab 27; DWS at p 42, para 56.

⁶² Schmidt’s 1st Affidavit at p 772, Tab 27.

⁶³ DWS at p 42, para 56.

⁶⁴ DWS at p 43, para 57.

(3) Financial standing of ph. AG

39 Regarding the allegation of improper dissipation of Vanbo’s CHF1.5m investment sum, the burden rests upon the claimant to prove the risk of unjustified dealings with the defendant’s assets through “solid evidence”: *Continental Shipping* at [3]. Dealings for genuine commercial purposes or “in the ordinary course of business” cannot demonstrate a real risk of dissipation: *Continental Shipping* at [3]. Vanbo has failed to adduce any evidence to indicate dishonest or improper use of the investment funds by the defendants,⁶⁵ rendering its claim of dissipation of assets entirely unsubstantiated.

40 As for ph. AG’s poor financial standing, the defendants have adduced evidence to show that both Vanbo and its Swiss legal advisers, Haffter Law, were granted access to ph. AG’s Consolidated Quarterly Financial Reports for Q4 2023 to Q3 2024. This access occurred during the October 2024 due diligence process conducted by Haffter Law and the due diligence exercise was done prior to Vanbo’s investment.⁶⁶ ph. AG’s Consolidated Quarterly Financial Reports disclosed ph. AG’s operating losses and stated that successful completion of the fundraising round was “top priority and crucial to meet financial obligations going forward”.⁶⁷ The evidence thus shows that ph. AG did not conceal its pre-profitability status and its need for more funds or funding requirements. Where a claimant possesses full knowledge of a defendant’s financial position and voluntarily accepts associated risks, such circumstances cannot subsequently establish dissipation risk: *Continental Shipping* at [26].

⁶⁵ CWS at p 18, para 51.

⁶⁶ Schmidt’s 1st Affidavit at p 865, Tab 30.

⁶⁷ Schmidt’s 1st Affidavit at p 860, Tab 30.

(4) Alleged dishonesty and lack of transparency

41 A common thread within the allegations in Vanbo's submissions is that the defendants engaged in dishonest conduct by concealing material information. However, the evidence, in my view, cannot support a finding of dishonesty sufficient to establish a real risk of dissipation.

42 The evidence demonstrates that Vanbo was aware of the facts it claims were concealed from it from the inception of its investment. Regarding ViCap's relationship with ph. AG, ViCap was listed as a shareholder of ph. AG in Annex 1 to the Term Sheet,⁶⁸ and Mr Wilfinger had executed the Shareholders' Agreement on ViCap's behalf.⁶⁹ These documents were circulated twice (on 25 September 2024 and 6 December 2024), and would necessarily have been reviewed by Vanbo as part of the due diligence exercise for the purpose of its investment decision. Even if these documents were not reviewed by Vanbo, it was pointed out by the defendants,⁷⁰ and accepted by Vanbo,⁷¹ that corporate searches would have revealed Mr Wilfinger as ViCap's sole director. Further, the minutes of a board meeting on 18 June 2025, which the defendants have shown that Mr Boxuan was invited to attend,⁷² explicitly recorded Mr Wilfinger's abstention from voting on the ViCap acquisition due to his declared interest.⁷³ I do not think the defendants were at any point dishonest or had concealed the existence of the relationship between ViCap and ph. AG.

⁶⁸ Zhang Wen's 2nd Affidavit at p 100; Tab 5.

⁶⁹ Schmidt's 1st Affidavit at p 183.

⁷⁰ DWS at p 21, para 33.

⁷¹ CWS at p 20, para 58.

⁷² Schmidt's 1st Affidavit at p 867, Tab 31.

⁷³ Schmidt's 1st Affidavit at p 867, Tab 31.

43 As for ph. AG's acquisition of a 100% shareholding in ViCap, the defendants have explained that the acquisition served a legitimate commercial purpose. Hijos de Rivera S.A.U., an internationally renowned Spanish beer producer wanted to invest €1.6m in ph. AG on condition that ph. AG acquires ViCap.⁷⁴ This was to enable ph. AG to control the patent for the ViCap Pushcaps, a critical component of the Product.⁷⁵

44 Even if the defendants had acted dishonestly, which is not the case here, any alleged dishonesty must bear a relationship to asset dissipation to be relevant to this analysis: *JTrust* at [66]. I do not see how Vanbo's allegations of dishonesty bear a connection to any risk of the defendants dissipating their assets. The acquisition of ViCap was executed through the issuance of ph. AG's shares to ViCap instead of cash payment, thus no transfer or dissipation of funds occurred.⁷⁶

There is no good arguable case on the merits

45 The legal principles governing a good arguable case have also been summarised comprehensively by the Court of Appeal in *JTrust* (at [38]):

38 A good arguable case is **one which is more than capable of serious argument, but not necessarily one which the court considers would have a better than 50% chance of success**: *Bouvier, Yves Charles Edgar v Accent Delight International Ltd* [2015] 5 SLR 558 ("*Bouvier*") at [36] per Sundaresh Menon CJ, citing *Ninemia Maritime Corporation v Trave Schiffahrtgesellschaft mbH und Co KG (The Niedersachsen)* [1984] 1 All ER 398 ("*The Niedersachsen*") at 404d per Mustill J. In making this assessment, **the court must not try to resolve conflicts of evidence on affidavit, or to**

⁷⁴ Schmidt's 1st Affidavit at p 846, Tab 29.

⁷⁵ Schmidt's 1st Affidavit at p 846, Tab 29.

⁷⁶ Schmidt's 1st Affidavit at p 824, Tab 28.

decide difficult questions of law which call for detailed argument and mature consideration: Derby & Co Ltd v Weldon (No. 1) [1989] 2 WLR 276 at 283C–D per Parker LJ. But the court will examine the apparent strength or weakness of the respective cases to decide whether the plaintiff’s case, on the merits, is sufficiently strong to reach the threshold: Steven Gee QC, *Commercial Injunctions* (Sweet & Maxwell, 6th Ed, 2016) (“*Commercial Injunctions*”) at para 12-026.

[emphasis added in bold italics]

46 Vanbo advances four claims:

- (a) ph. AG breached the Investment Agreement by allocating only 11.31% preferred A2 shares instead of the promised 12.5% ordinary shares to Vanbo.⁷⁷ This was revealed to Vanbo via ph. AG’s board resolution circulated on 5 April 2025.⁷⁸
- (b) Mr Schmidt induced ph. AG’s breach by treating the company as his personal extension and using it as a vehicle for fraud, in breach of fiduciary duties.⁷⁹
- (c) The defendants fraudulently misrepresented that Vanbo would have absolute control over the Product in the Asia-Pacific region, become the second-largest shareholder with 12.5% ordinary shares, receive notification and approval rights for new share allotments, and enjoy protection against dilution without Vanbo’s consent.⁸⁰

⁷⁷ CWS at p 12, para 29.

⁷⁸ CWS at p 12, para 30.

⁷⁹ CWS at p 12, para 32.

⁸⁰ CWS at p 13, para 36.

- (d) ph. AG was unjustly enriched by the CHF1.5m investment as the fundamental conditions for payment were not fulfilled.⁸¹

47 Vanbo has failed to establish that it has a good arguable case. As mentioned above at [13], Vanbo's claims rest upon its assertion that its investment was contingent on three fundamental conditions:⁸² (a) Vanbo maintains a 12.5% shareholding in ph. AG; (b) Vanbo remains the second-largest shareholder in ph. AG; and (c) ph. AG requires Vanbo's written consent for any new share allotments. Vanbo contends that Mr Schmidt repeatedly agreed to these conditions with the understanding that they would be formalised in a subsequent Shareholders' Agreement.⁸³

48 Crucially, these alleged investment conditions do not appear anywhere in the contracts executed by Vanbo. At the hearing on 5 January 2026, when questioned as to why Vanbo failed to insist that these terms be included in the Shareholders' Agreement before execution, Vanbo was not able to provide a satisfactory explanation.⁸⁴ Similarly, when asked whether Vanbo possessed any contemporaneous documentation to show that the investment was premised on maintaining 12.5% shareholding and requiring consent for future share issuances, none was produced.⁸⁵

⁸¹ CWS at p 13, para 42.

⁸² CWS at p 6, para 10.

⁸³ CWS at p 6, para 10.

⁸⁴ Certified Transcript dated 5 January 2026 ("Certified Transcript") at p 54, line 27 to 55, line 6.

⁸⁵ Certified Transcript at p 54, line 21 to p 54, line 26.

49 Conversely, the defendants produced contemporaneous evidence to refute Vanbo’s claim of ignorance regarding the crowdfunding exercise before it invested. The Term Sheet, which is expressly incorporated in the Investment Agreement,⁸⁶ states that Vanbo’s CHF1.5m contribution formed part of a larger CHF5m fundraising round, with Vanbo’s shares expressly subject to dilution by future capital increases.⁸⁷ There is nothing to suggest that the Investment Agreement “superseded” the Term Sheet as Vanbo contends. Vanbo’s allegation is clearly contradicted by the Investment Agreement. Furthermore, ph. AG’s email to Mr Boxuan on 2 January 2025 specifically referred to the crowdfunding exercise which would commence on 28 January 2025.⁸⁸ Vanbo, by its own admission, had knowledge of the crowdfunding exercise before it paid the subscription price on 8 January 2025 and had raised no objection or inquiry.⁸⁹

50 The remaining issue under fraudulent misrepresentation concerns Vanbo’s assertion that despite being granted exclusive rights to manufacture and distribute the Product in Asia, Australia and New Zealand, the defendants improperly insisted on using the ViCap Pushcaps against Vanbo’s wishes.⁹⁰ However, the Term Sheet expressly provided that “[ph. AG] shall exclusively supply all push-caps and powder (sachet) for the entire duration of the contract”.⁹¹ Consistent with this, the License Agreement also contains a

⁸⁶ Schmidt’s 1st Affidavit at p 292, Tab 6.

⁸⁷ Schmidt’s 1st Affidavit at p 126, Tab 5.

⁸⁸ Schmidt’s 1st Affidavit at p 868, Tab 31.

⁸⁹ Certified Transcript at p 55, line 25 to p 56, line 4.

⁹⁰ CWS p 14, para 40.

⁹¹ Schmidt’s 1st Affidavit at p 116, Tab 4.

provision requiring Vanbo to “ensure that the Products are manufactured in compliance with [ph. AG’s] quality standards, specifications, and any applicable regulatory requirements”.⁹² In my view, reading these provisions together establishes that the Product’s quality, which includes the use of the ViCap Pushcaps, must be maintained.

51 Without establishing the above premises, Vanbo’s claims for breach of contract, inducement of breach, fraudulent misrepresentation and unjust enrichment, in my view, cannot be said to be more than capable of serious argument. Accordingly, I find that Vanbo has failed to establish a good arguable case.

No full and frank disclosure by Vanbo

52 For completeness, I address the final submission on this issue made by the parties. I find that Vanbo had made material non-disclosures at the *ex parte* hearing that warrant the discharge of the Worldwide Mareva Injunction.

53 The Court of Appeal in *JTrust* comprehensively summarised the legal principles regarding full and frank disclosure (at [90]):

90 On an *ex parte* application, the plaintiff must disclose to the court ***all matters within his knowledge which might be material even if they are prejudicial to the plaintiff’s claim***. The “*Vasiliy Golovnin*” [2008] 4 SLR(R) 994 at [83] *per* V K Rajah JA. In the context of Mareva relief, the applicable principles have been summarised by Ralph Gibson LJ in *Brink’s Mat Ltd v Elcombe* [1988] 1 WLR 1350 at 1356F–1357G. Our adaptation of those principles is as follows:

(a) ***The duty of the plaintiff is to make a full and fair disclosure of all the material facts***. The material facts are those which it is material for the judge to know

⁹² Schmidt’s 1st Affidavit at p 281, Tab 5.

in dealing with the application as made. Materiality is to be decided by the court and not by the assessment of the plaintiff or his legal advisors.

(b) ***The plaintiff must make proper inquiries before making the application.*** The extent of inquiries which will be held to be proper, and therefore necessary, must depend on all the circumstances of the case including (i) the nature of the case which the plaintiff is making when he makes the application; (ii) the order for which the application is made; and (iii) the probable effect of the order on the defendant.

(c) If material non-disclosure is established, the court will be astute to ensure that a plaintiff who obtains an *ex parte* injunction without full disclosure is ***deprived of any advantage he may have derived by the breach of duty.*** In particular, the court will be inclined towards discharging the injunction for abuse of process, unless there are extenuating circumstances for which the plaintiff might be excused.

(d) Whether the fact not disclosed is of sufficient materiality to justify or require the immediate discharge of the order without examination of the merits depends on the importance of the fact to the issues which were to be decided by the judge on the application. The answer to the question whether the non-disclosure was innocent, in the sense that the fact was not known to the plaintiff or that its relevance was not perceived, is an important consideration but not decisive by reason of the duty on the plaintiff to make all proper inquiries and to give careful consideration to the case being presented.

(e) ***It is not for every omission that the injunction will be automatically discharged.*** A *locus poenitentiae* may sometimes be afforded. The court has a discretion, notwithstanding proof of material non-disclosure which justifies or requires the immediate discharge of the *ex parte* order, nevertheless to continue the order, or to make the order on new terms. Where the court finds it appropriate to continue an injunction despite material non-disclosure, the court may in its discretion hold that the plaintiff is sufficiently penalised by an appropriate order as to costs.

[emphasis added in bold italics]

54 At the *ex parte* hearing, Vanbo had failed to disclose the following material facts:

(a) Vanbo represented that it had only recently discovered ph. AG’s financial difficulties “[b]ased on the documents which Vanbo has now obtained”,⁹³ which gave the impression that ph. AG’s financial situation disclosed dissipation risk. This was not the truth as Vanbo in fact had knowledge of ph. AG’s poor financial condition as Vanbo had access to the company’s financial reports prior to the investment and had accepted this commercial risk from the outset.⁹⁴ Vanbo’s Swiss legal adviser, Haffter Law, conducted proper due diligence before Vanbo invested in ph. AG. Thus, Vanbo would have known of the financial situation of ph. AG. Vanbo was satisfied with this and nevertheless invested in ph. AG.

(b) Vanbo represented that ph. AG’s crowdfunding exercise “was not disclosed to Vanbo at the material time”,⁹⁵ when Vanbo had in fact been notified on 2 January 2025 that crowdfunding would commence on 28 January 2025.⁹⁶ Vanbo misled the court to believe that the share dilution was unexpected and constituted a breach of the Investment Agreement.

(c) Vanbo alleged that the defendants habitually excluded Mr Boxuan from board decisions and removed his signing authority, which led the court to believe that there was dishonesty on the part of

⁹³ Agreed Bundle of Documents Volume 2 of 4 (“ABOD 2”) at p 21, para 51.

⁹⁴ Schmidt’s 1st Affidavit at p 865, Tab 30.

⁹⁵ ABOD 2 at p 18, para 43(b).

⁹⁶ Schmidt’s 1st Affidavit at p 868, Tab 31.

the defendants.⁹⁷ However, Vanbo failed to disclose that Mr Boxuan was properly invited to the meetings but chose not to attend,⁹⁸ and had failed to bring to the court's attention that there were documents to show that Mr Boxuan did not have signing authority in ph. AG.⁹⁹

(d) Vanbo failed to disclose that the Term Sheet, which was incorporated into the Investment Agreement, expressly allowed for dilution of shareholding.¹⁰⁰ Instead, Vanbo represented the dilution as a clear breach.¹⁰¹

55 These non-disclosures were not mere peripheral omissions. They involved active misrepresentations and concealment of facts that Vanbo knew would be adverse to its application. If the court were aware of the material facts that were not disclosed by Vanbo, the Worldwide Mareva Injunction would not have been granted to Vanbo at the *ex parte* hearing. Accordingly, I am of the view that, in addition to the failure to satisfy the two requirements for Mareva relief, the Worldwide Mareva Injunction should also be discharged for material non-disclosure at the *ex parte* hearing.

SUM 3248: Application to stay OC 290

56 I shall now deal with the application in SUM 3248 for a stay of OC 290. The defendants argue in favour of the Stay Application on two grounds: first, that Singapore is *forum non conveniens* and second, that there is an arbitration

⁹⁷ ABOD 2 at p 24, para 57(c).

⁹⁸ Schmidt's 1st Affidavit at p 867, Tab 31.

⁹⁹ DWS at p 27, para 36.

¹⁰⁰ Schmidt's 1st Affidavit at p 126, Tab 5.

¹⁰¹ ABOD 2 at p 14, para 32.

clause to deal with any dispute falling within the License Agreement. Unfortunately, the parties' submissions did not adequately deal with the issue of multiple competing jurisdiction clauses. This determination is essential and must be dealt with before considering arguments relating to *forum non conveniens* or a stay in favour of arbitration, as it establishes the proper legal foundation for analysing the defendants' applications. Therefore, I shall now examine this issue.

The applicable jurisdiction clause

57 I shall analyse the jurisdiction clauses in the various contractual documents for the resolution of the dispute. In this analysis, it is important to ascertain which forum the parties have designated to resolve their dispute, and also assess whether the parties confer exclusive or non-exclusive jurisdiction to the court or arbitral tribunal. Whether a jurisdiction clause is exclusive or non-exclusive is a question of contractual interpretation depending on the intention of the contractual parties. The mere presence or absence of the word "exclusive" is not conclusive. The language employed by the parties is significant: exclusive jurisdiction is more likely to be intended when parties use mandatory language such as "shall" and when there is a submission of all disputes, and not merely submission by the parties, to the chosen jurisdiction: Yeo Tiong Min, "The Contractual Basis of the Enforcement of Exclusive and Non-Exclusive Choice of Court Agreements" (2005) 17 SAcLJ 306 at [21].

58 The present case involves five competing jurisdiction clauses across five agreements:

- (a) The Investment Agreement contains a multi-tiered dispute resolution provision under Clause 5.2, which establishes the non-

exclusive jurisdiction of Singapore courts following unsuccessful negotiation:

Any dispute out of or in connection with this Agreement shall be resolved through negotiation between the parties. If the dispute cannot be resolved, either party has the right to file lawsuit in the courts of Singapore.

(b) The Shareholders' Agreement establishes exclusive jurisdiction in favour of the Swiss courts under Clause 21.2, as the mandatory language "shall be resolved" creates a binding obligation that precludes parties from pursuing disputes in alternative forums:

Any dispute, controversy or claim arising out of, or in relation to, this contract, including the validity, invalidity, breach, or termination thereof, shall be resolved by the ordinary courts of Zurich, Switzerland, the venue being Zurich 1.

(c) The Term Sheet establishes exclusive jurisdiction in favour of the Swiss courts:

This Term Sheet is governed by Swiss law and subject to the exclusive jurisdiction of the ordinary courts of Canton Zurich.

(d) The Subscription Form establishes exclusive jurisdiction in favour of the Swiss courts:

Any dispute, controversy or claim arising out of, or in relation to, this document, including the validity, invalidity, breach, or termination hereof, shall be subject to the exclusive jurisdiction of the courts of the canton of Zurich, the venue being Zurich 1, Switzerland.

(e) The License Agreement contains a multi-tiered dispute resolution clause under Clause 8.2, providing for ICC arbitration following unsuccessful negotiation:

Any dispute arising out of or in connection with this Agreement shall be resolved through negotiation between the parties. If the dispute cannot be resolved through negotiation, it shall be referred to and finally resolved by arbitration under the Rules of the International Chamber of Commerce (ICC). There shall be one arbitrator, appointed in accordance with such Rules. The place of arbitration shall be Switzerland.

59 Where multiple competing jurisdiction clauses exist, the key inquiry rests on identifying which clause the parties objectively intended to apply to the dispute. This depends on which clause has the closest connection to the dispute after analysing the “pith and substance” of the dispute: *Bunge SA v Shrikant Bhasi* [2020] 2 SLR 1223 (“*Bunge SA*”) at [42], citing *Oei Hong Leong v Goldman Sachs International* [2014] 3 SLR 1217 (“*Oei Hong Leong*”) at [36].

60 In *Oei Hong Leong*, Lee Siu Kin J (as he then was) articulated the objective intention test and emphasised that the determination of the parties’ intentions regarding the jurisdiction clause goes beyond literal textual interpretation (at [30]–[31]):

30 To recapitulate, the central task in determining which of the competing dispute resolution clauses apply to the plaintiff’s claims is a “careful and commercially-minded construction” of the two contracts: see to *Dicey, Morris and Collins on The Conflict of Laws* (Sir Lawrence Collins gen ed) (Sweet & Maxwell, 14th Ed with 4th Cumulative Supplement, 2010) at para 12–094. Various terms are used to describe this exercise. They are essentially one and the same. In *Sebastian Holdings Inc v Deutsche Bank AG* [2010] EWCA Civ 998; [2011] 1 Lloyd’s Rep 106, it is referred to as locating the “**centre of gravity of the dispute**”, whereas in *UBS AG v HSH Nordbank AG* [2009] EWCA Civ 585; [2009] 2 Lloyd’s Rep 272 (“*UBS AG*”), it is a search for the “**the agreements which are at the commercial centre of the transaction**”.

31 In any case, **this exercise goes beyond a contemplation of the literal wording of the dispute resolution clauses**. This is because, *even if the dispute resolution clauses overlap*, there is a **presumption that parties**

would act commercially and would not intend for similar claims to be subject to inconsistent clauses: *UBS AG* per Lord Collins of Mapesbury at [95].

[emphasis added in bold italics]

61 I shall first assess how the jurisdiction clause in each contract deals with the dispute between the parties. It is clear that the parties have structured the Investment Agreement, the Shareholders’ Agreement, the Term Sheet and the Subscription Form to govern the investment and shareholder matters. On the other hand, the parties intended the License Agreement to operate and govern territorial licensing and intellectual property rights. The parties also intended to incorporate the Shareholders’ Agreement and the Term Sheet in the Investment Agreement.¹⁰² This is evidenced in the following clauses in the Investment Agreement:

(a) Clause 1.4 states:

With the signing of this Agreement the Investor agrees with the draft shareholder agreement as attached in Annex I to this Agreement.

(b) Clause 4.3 states:

This Agreement together with the term sheet as of 24 September 2024 constitute the entire understanding between the Parties and supersede prior written or oral agreements.

The Investment Agreement makes no reference to the License Agreement.

62 In determining the “pith and substance” of the dispute, I note that most of Vanbo’s claims are related to issues concerning investment and shareholder matters, *ie*, alleged improper share dilution and the failure to honour investment

¹⁰² Zhang Wen’s 2nd Affidavit at pp 103–104.

representations. The question now is, which of the four agreements, namely, the Investment Agreement, the Shareholders' Agreement, the Subscription Form and the Term Sheet, ought to be identified as having the closest connection to the dispute. As I found at [58] above, each of the agreements contain its own jurisdiction clause.

63 In my judgment, the Shareholders' Agreement bears the closest connection to the dispute. Crucially, the Term Sheet contains a supremacy clause which expressly provides:¹⁰³

In the event of any conflict between the provisions of the Investment Agreement and the Shareholder's Agreement, the terms of the Shareholder's Agreement shall prevail.

This suggests that the parties had objectively intended for the Shareholders' Agreement to take precedence in governing investment and shareholding matters. Vanbo's pleadings reinforce this observation. Vanbo claims that the three conditions are fundamental to its investment and were to be incorporated into the Shareholders' Agreement.¹⁰⁴ This again suggests that the Shareholders' Agreement is the main agreement to the dispute. Further, the Subscription Form merely specifies the number of shares Vanbo is subscribing to and the corresponding subscription price, while the Term Sheet expressly states that it is for "discussion purposes only" and it gains binding contractual effect only by way of reference in the Investment Agreement. The Investment Agreement formalises the investment obligation. However, the ongoing shareholder relationship and entitlements flow from the Shareholders' Agreement, which is a comprehensive document of more than 60 pages compared to the brief two-

¹⁰³ Schmidt's 1st Affidavit at p 127.

¹⁰⁴ CWS at p 6, para 10.

page Investment Agreement and four-page Term Sheet. Accordingly, the Swiss exclusive jurisdiction clause in the Shareholders' Agreement applies to the dispute.

64 There is, however, one aspect of Vanbo's claim for fraudulent misrepresentation that bears the closest connection to the License Agreement ("ViCap Licensing Claim"). This concerns Vanbo's control over Asia-Pacific licensing and manufacturing, and the defendants' alleged improper insistence on using the ViCap Pushcaps. This dispute falls within the scope of the License Agreement and requires the interpretation of its terms. Thus, the parties would objectively have intended ICC arbitration to apply to disputes arising from the License Agreement.

65 Therefore, in determining the Stay Application, the dispute must be analysed under two distinct jurisdictional regimes:

- (a) In so far as Vanbo's claims under (a) breach of contract; (b) unjust enrichment; and (c) inducement of breach and fraudulent misrepresentation relate to shareholder and investment matters ("Shareholding and Investment Claims"), they are governed by the Swiss exclusive jurisdiction clause in the Shareholders' Agreement.
- (b) The ViCap Licensing Claim concerning fraudulent misrepresentations about Vanbo's control over Asia-Pacific licensing and manufacturing falls within the scope of ICC arbitration under the License Agreement.

The stay application for the Shareholding and Investment Claims

66 The parties did not identify the applicable jurisdiction clause, instead they structured their arguments around the *forum non conveniens* principles based on *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 (“*Spiliada*”). However, this may not be the appropriate test. Where an exclusive jurisdiction clause governs the dispute, the controlling test is whether “strong cause” exists to deny a stay application: *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] 2 SLR 1271 (“*Vinmar*”) at [112].

67 The “strong cause” determination employs factors outlined in *The Eleftheria* [1969] 1 Lloyd’s Rep 237 (“*Eleftheria*”), refined by the Court of Appeal in *Vinmar* at [71]:

- (a) In what country the evidence on the issues of fact is situated or more readily available, and the effect of that on the relative convenience and expense of trial as between the Singapore and foreign courts.
- (b) Whether the law of the foreign court applies and, if so, whether it differs from Singapore law in any material respects.
- (c) With what country either party is connected and, if so, how closely.
- (d) Whether the defendants are acting abusively in applying for a stay of proceedings, rather than genuinely seeking trial in the foreign jurisdiction.
- (e) Whether the plaintiffs would be prejudiced by having to sue in the foreign court because they would:

- (i) be deprived of security for their claim;
- (ii) be unable to enforce any judgment obtained;
- (iii) be faced with a time bar not applicable here; or
- (iv) for political, racial, religious or other reasons be unlikely to get a fair trial.

No strong cause to deny a stay of OC 290

68 Applying the *Eleftheria* factors, I conclude that no strong cause exists to refuse the Stay Application. Although the parties made submissions with reference to the *Spiliada* test, the factors bear sufficient similarity to the strong cause test such that the arguments and evidence provided by both counsel remained relevant to my decision. I find that the personal connections of the parties, the location and availability of evidence and witnesses, and the governing law of the claims all point to Switzerland. There is also no evidence to suggest that the defendants are acting abusively in seeking the stay, nor that Vanbo would suffer prejudice by pursuing its claims in Switzerland.

(1) Personal connections of the parties

69 The defendants submit that the personal connections of the parties point to Switzerland.¹⁰⁵ ph. AG is incorporated under Swiss law.¹⁰⁶ Its operation and headquarters are in Switzerland.¹⁰⁷ Swiss corporate law governs its shareholders

¹⁰⁵ DWS at p 85, para 130.

¹⁰⁶ DWS at p 85, para 130.

¹⁰⁷ DWS at p 85, para 130.

and management matters.¹⁰⁸ Mr Schmidt is also a Swiss national resident in Switzerland.¹⁰⁹ Although Vanbo is incorporated in Singapore, the defendants argue that Vanbo is merely a holding company and is not truly resident in Singapore. Mr Boxuan, who is Vanbo’s sole director and shareholder, resides in New Zealand.¹¹⁰ On the other hand, Vanbo does not dispute the defendants’ Swiss connections,¹¹¹ but emphasises that Vanbo is a Singapore-incorporated company with no ties to Switzerland.¹¹²

70 In my view, the parties are more closely connected to Switzerland. The place of incorporation ordinarily suggests where a company conducts its business and makes key decisions. However, the evidence indicates that Vanbo operates as an investment vehicle rather than an active Singapore-based entity. Mr Boxuan, Vanbo’s sole director and decision-maker, resides in New Zealand and Vanbo did not contest these factual assertions regarding the limited nature of its Singapore connections. On balance, I find that the personal connections point to Switzerland.

(2) Availability of witnesses and evidence

71 The analysis of witness connections involves two distinct considerations: (a) the convenience in having the case decided in the forum where the witnesses are ordinarily resident (“Witness Convenience Factor”); and (b) the compellability of those witnesses in the chosen forum (“Witness

¹⁰⁸ DWS at p 85, para 130.

¹⁰⁹ DWS at p 85, para 130.

¹¹⁰ DWS at 85, para 130.

¹¹¹ CWS at p 35, para 107.

¹¹² CWS at p 35, para 101.

Compellability Factor”): *JIO Minerals FZC v Mineral Enterprises Ltd* [2010] 1 SLR 391 (“*JIO Minerals*”) at [63]. The Witness Compellability Factor carries greater weight in the modern context, as “[t]he physical locations of witnesses are generally of less significance today given the ease of travel and the possible use of information and communication technology”: *Halsbury’s Laws of Singapore* vol 6(2) (LexisNexis, 2023) at para 75.106; cited with approval in *JIO Minerals* at [63]. Since the Singapore courts lack jurisdiction to compel foreign witnesses to testify in Singapore courts, a witness’s compellability in a particular jurisdiction constitutes a significant factor pointing towards that jurisdiction as the more appropriate forum: *JIO Minerals* at [71]. These principles, although developed by the Court of Appeal in *JIO Minerals* in the *Spiliada* context, ought to remain applicable to the “strong cause” analysis given the overlapping consideration of witness and evidence availability.

72 The defendants argue that the witness connections favour Switzerland, given that Vanbo’s claims centre on disputed factual questions requiring credibility assessments of key participants.¹¹³ Regarding the Witness Convenience Factor, the defendants identify several crucial factors. ph. AG directors and personnel, who were directly involved in the substantive discussions with Vanbo, participated in board meetings and shareholder meetings, and oversaw the crowdfunding exercise — namely Mr Guntern, Mr Schmidt and Mr Wilfinger — all of whom are based in Switzerland.¹¹⁴ Additionally, Vanbo’s own Swiss legal advisers, Haffter Law, who acted as legal counsel throughout the investment transaction, are located in

¹¹³ DWS at p 86, para 131.

¹¹⁴ DWS at p 87, para 132.

Switzerland.¹¹⁵ On the Witness Compellability Factor, the defendants emphasise the critical importance of Haffter Law as third-party witnesses who are not employed by either party and would therefore require compulsion to testify, which would only be possible in Swiss proceedings.¹¹⁶

73 Vanbo advances the contrary position that witness connections favour Singapore.¹¹⁷ On the Witness Convenience Factor, Vanbo identifies Mr Bryan Toh (“Mr Toh”) as its alleged key representative who purportedly served as the primary point of contact with the defendants, and who is Singapore-based.¹¹⁸ Vanbo also points to Mr Jeremy Tan (“Mr Tan”), described as the personal assistant of Mr Boxuan’s father, who allegedly attended discussions and is similarly Singapore-based.¹¹⁹ Regarding the Witness Compellability Factor, Vanbo argues that both Mr Toh and Mr Tan are no longer in Vanbo’s employ and would therefore not be compellable in Swiss proceedings, while the defendants’ Swiss-based witnesses are ph. AG employees who could be compelled to testify in Singapore proceedings.¹²⁰

74 The crux of the issue here, in my view, is the materiality and relevance of the respective witnesses to the substantive disputes. Both parties have identified witnesses in their preferred jurisdictions, but the court should only consider witnesses whose evidence is potentially material and relevant to the issues in the action: *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R)

¹¹⁵ DWS at p 87, para 132.

¹¹⁶ DWS at p 87, para 132.

¹¹⁷ CWS at p 33, para 101.

¹¹⁸ CWS at p 33, para 101.

¹¹⁹ CWS at p 34, para 102.

¹²⁰ CWS at p 34, para 104.

543 at [69]. My examination of Vanbo’s Singapore-based witnesses reveals significant limitations in their potential contribution to resolving the core disputes. Mr Toh’s role appears to have been confined to providing interpretation services for Mr Boxuan’s father, suggesting that his involvement was primarily linguistic rather than substantive. It is insufficient for Vanbo to simply allege that his evidence will be material as “there were several occasions where Mr Toh communicated directly with the [d]efendants”.¹²¹ Mr Tan’s function also remains nebulously defined beyond his designation as a “personal assistant”, with no clear indication of his participation in material decision-making processes.¹²² Neither witness appears positioned to offer substantive evidence on the central legal and commercial disputes that form the heart of this litigation, as their involvement seems limited to facilitating communication rather than engaging in the substantive negotiations, due diligence processes, or investment decisions that are fundamental to resolving Vanbo’s claims.

75 Conversely, Haffter Law’s involvement as Vanbo’s legal advisers places them in a fundamentally different position. Their involvement would have provided them with knowledge of the due diligence process, the legal advice provided to Vanbo, the commercial rationale behind the investment decisions, and the legal implications of the various agreements entered into — all of which are central to the present dispute. Their evidence would, in my view, be important given that Vanbo’s claims involve allegations of misrepresentation regarding the nature of the shares and the potential for dilution.

¹²¹ CWS at p 33, para 101.

¹²² CWS at p 34, para 102.

76 Given that the defendants’ material witnesses are located in Switzerland, while Vanbo’s Singapore-based witnesses, in my view, lack substantive relevance to the core issues in dispute, and considering the critical importance of Haffter Law’s evidence which would only be compellable in Swiss proceedings, I find that the availability of witnesses and evidence point to Switzerland.

(3) The governing law of the claims

77 As mentioned above at [13] and [47], Vanbo advances the three Shareholding and Investment Claims: (a) breach of contract; (b) unjust enrichment; and (c) inducement of breach and fraudulent misrepresentation. These are claims in contract, restitution and tort respectively. The choice of law analysis for the restitutionary claim mirrors that for contractual claims because the unjust enrichment claim is consequential upon the alleged breach of contract: *CIMB Bank* at [41]; *JIO Minerals* at [78].

(A) THE GOVERNING LAW FOR CONTRACTUAL AND RESTITUTIONARY CLAIMS

78 The established approach for determining the governing law of contractual disputes has been articulated by the Court of Appeal in *JIO Minerals* at [79]:

79 It is well established that a three-stage approach is applied to determine the governing law of a contract (see, for example, the decision of this court in *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 (“*Pacific Recreation*”) at [36]). At the first stage, the court considers if the contract expressly states its governing law (“the Express Law”). If the contract is silent, the court proceeds to the second stage and considers whether it can infer the governing law from the intentions of the parties (“the Implied Law”). If the court is unable to infer the parties’ intentions, it moves to the third stage and determines the law which has the

closest and most real connection with the contract (“the Objective Law”).

79 In the present case, all four agreements contain different governing law clauses:

(a) The Investment Agreement provides at Clause 5.1:

This Agreement shall be governed by and construed in accordance with the material law of Singapore.

(b) The Shareholders’ Agreement states at Clause 21.1:

This Agreement shall in all respects be governed by and construed in accordance with Swiss law to the exclusion of the UN Convention on the international sale of goods (CISG).

(c) The Term Sheet states:

This Term Sheet is governed by Swiss law.

(d) The Subscription Form states:

This Agreement shall in all respects be governed by and construed in accordance with Swiss law, to the exclusion of its private international law provisions and international treaties.

80 Given the presence of the supremacy clause in the Term Sheet, the conflict between Singapore law in the Investment Agreement and Swiss law in the Shareholders’ Agreement, in my view, resolves in favour of Swiss law as the governing law. The parties’ commercial intention appears to have been the creation of a unified transaction governed by Swiss law.

81 Vanbo challenges this analysis by relying on expert evidence asserting that it is not bound by the unsigned Shareholders’ Agreement and the Term

Sheet.¹²³ However, this argument faces several difficulties. First, the Investment Agreement itself expressly makes references and incorporates the Shareholders' Agreement and the Term Sheet. Vanbo signed the Investment Agreement and the Term Sheet. Second, Vanbo's conduct in proceeding with the investment while being aware of the terms in the Shareholders' Agreement and the Term Sheet suggests an acceptance of those terms. Third, even if the Shareholders' Agreement and the Term Sheet are not directly binding, the terms remain relevant for determining the parties' intentions regarding the governing law.

82 For the above reasons, I find that the governing law for both the contractual and restitutionary claims point to Swiss law.

(B) THE GOVERNING LAW FOR THE TORTIOUS CLAIMS

83 The choice of law rule for tortious claims in Singapore is determined by the double actionability rule as confirmed in *JIO Minerals* at [88]:

88 The choice of law rule that Singapore courts apply for torts is the double actionability rule (see *Rickshaw Investments* at [53]). The double actionability rule provides that the tort must be actionable under both the *lex fori* and the *lex loci delicti*. Exceptionally, the double actionability rule may be displaced such that the tort may be actionable in Singapore even though it is not actionable under either the *lex loci delicti* or the *lex fori*. The exception may even be applied to provide that the law of a third country is the applicable law for the tort (see *Rickshaw Investments* at [56]).

84 The *lex loci delicti* is *prima facie* the natural forum for determining the claim and the identification of the *lex loci delicti* requires analysis of where the alleged tort occurred: *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 at [37]–[39].

¹²³ CWS at p 5, para 8.

85 Vanbo made no submissions on this point in its written submissions and during the hearing before me. The defendants argue that the torts occurred in Switzerland based on several connecting factors. Mr Schmidt made the alleged representations and acts of inducement during video conferences conducted from his Swiss residence. This was prior to the face-to-face discussions that took place in Switzerland where the Term Sheet was executed.¹²⁴ The representations were received and acted upon in Switzerland, where Mr Boxuan executed the Investment Agreement and where ph. AG received Vanbo's investment funds in its Swiss bank account.¹²⁵

86 The defendants highlighted that the Swiss connection is further strengthened by the substantive legal issues underlying the misrepresentation claim.¹²⁶ The alleged representations concern share types, voting rights and protection against dilution, which must be evaluated against the backdrop of Swiss corporate law and it is Swiss law that governed the documents that define these rights.¹²⁷ The Term Sheet, the Shareholders' Agreement, the Subscription Form and the Articles of Association of ph. AG clearly indicate that they are governed by Swiss law. Therefore, these documents would have to be interpreted according to Swiss legal principles to determine whether any representations were indeed false or misleading.¹²⁸ Moreover, the alleged misrepresentation affects not only Vanbo but also other Swiss shareholders who

¹²⁴ DWS at p 64, para 107.

¹²⁵ DWS at p 65, para 107.

¹²⁶ DWS at p 68, para 108.

¹²⁷ DWS at p 68, para 108.

¹²⁸ DWS at p 68, para 108.

received the same class of shares under similar circumstances, all of whom are subject to Swiss law.¹²⁹

87 I agree with the defendants that Swiss law governs whether Mr Schmidt or ph. AG made any false or misleading representations, the nature and extent of shareholder rights, the validity of share classifications and the enforceability of anti-dilution provisions under Swiss law.

(4) No prejudice caused to Vanbo and no abusive conduct by the defendants

88 Vanbo has not demonstrated that it would be prejudiced by having to sue in Switzerland if the proceedings in Singapore were stayed. There is also no evidence to suggest that the defendants brought the Stay Application abusively.

89 Vanbo’s primary argument centres on the alleged inconvenience and unfamiliarity of navigating the Swiss legal system.¹³⁰ However, under the “strong cause” test, factors that demonstrate greater convenience of Singapore proceedings carry limited weight if such circumstances were foreseeable at the time of contracting: *Vinmar* at [72]. Any inconvenience from litigating in Switzerland such as needing to engage foreign counsel was clearly foreseeable at the time of contracting and therefore carries limited weight. Commercial parties regularly litigate in foreign jurisdictions as part of their international business. The associated costs and complexities involved in cross-border disputes ought to be considered ordinary incidents of cross-border commerce rather than grounds for claiming prejudice.

¹²⁹ DWS at p 71, para 108.

¹³⁰ CWS at p 39, para 122.

90 Vanbo's claim of unfamiliarity with Swiss law is also undermined by its own conduct during the transaction. Vanbo's investment decision was made with full knowledge that it was acquiring shares in a Swiss company, subject to Swiss corporate law, and governed by agreements containing Swiss law and jurisdiction clauses. Vanbo also engaged Haffter Law, a Swiss law firm, to provide legal advice throughout the investment process. This demonstrates that Vanbo was not only aware of the Swiss legal context but actively sought Swiss legal expertise to navigate the transaction. Having voluntarily entered into Swiss law-governed arrangements with the benefit of Swiss legal advice, Vanbo cannot now claim substantial injustice from being required to pursue its claims in Swiss courts applying Swiss law. Hence, I find that no prejudice will result from Vanbo pursuing its investment and shareholding claims in Switzerland.

The stay application for the ViCap Licensing Claim

91 The defendants' submission on staying the ViCap Licensing Claim and the misrepresentation claim in favour of ICC arbitration was brief, while Vanbo made no submission on this at all. Nevertheless, I find that this claim ought to be stayed in favour of ICC arbitration.

92 The Court of Appeal in *Tomolugen Holdings Ltd v Silica Investors Ltd* [2016] 1 SLR 373 at [63] established that a court should grant a stay in favour of arbitration if the applicant demonstrates a *prima facie* case that:

- (a) there is a valid arbitration agreement between the parties to the court proceedings;
- (b) the dispute in the court proceedings (or any part thereof) falls within the scope of the arbitration agreement; and

- (c) the arbitration agreement is not null and void, inoperative or incapable of being performed.

The dispute should be stayed in favour of ICC arbitration

93 I agree with the defendants that there is a valid arbitration agreement under the License Agreement, with no arguments from Vanbo to the contrary. Vanbo has already filed its Answer and Counterclaim in the ongoing ICC Arbitration proceedings.¹³¹ The dispute in the court proceedings regarding the ViCap Pushcaps directly overlaps with Vanbo’s position in the ICC Arbitration, where it contends that ph. AG “had no right to insist on the use of the ViCap Pushcap” and that ph. AG breached the License Agreement.¹³² This overlap satisfies the requirement that the dispute falls within the scope of the arbitration agreement. Accordingly, the ViCap Licensing Claim should be stayed in favour of ICC arbitration.

Potential fragmentation of proceedings

94 For completeness, I shall now address the issue of fragmentation of proceedings although the parties did not raise it. The jurisdictional split arising from my determination is that the Term Sheet, the Subscription Form and the Shareholding and Investment Claims are stayed in favour of Swiss courts while the ViCap Licensing Claim is stayed in favour of ICC arbitration. This necessitates the consideration of whether this division compromises coherent resolution of related disputes and creates risk of inconsistent determination.

¹³¹ DWS at p 93, para 141.

¹³² DWS at p 93, paras 142–143.

95 The Singapore Court of Appeal in *Vinmar* at [139] recognised in *obiter* that fragmentation may be a decisive factor under the strong cause test, observing that “the risk of duplicative proceedings, inconsistent findings and incentivising a rush to judgment may well establish strong cause to refuse a stay”. This concern was primarily directed towards scenarios where the disputes fragment across multiple jurisdictions and involving parties not bound by the jurisdiction clause. The Court of Appeal cited the House of Lords in *Donohue v Armco Inc* [2002] 1 Lloyd’s Rep 425 (“*Donohue*”) at [27], which stated that:

27 ... the English court may well decline to *grant an injunction or a stay*... where the interests of parties other than the parties bound by the exclusive jurisdiction clause are involved or grounds of claim not the subject of the clause are part of the relevant dispute so that there is a *risk of parallel proceedings and inconsistent decisions*.

[emphasis added in italics]

96 In *Donohue*, Armco Inc sued various executives in New York, but only Mr Donohue and two Jersey companies were bound by exclusive English jurisdiction clauses. Mr Donohue sought an anti-suit injunction to restrain all New York proceedings, including those against non-parties to the jurisdiction agreements. The House of Lords’ majority decision declined to grant an anti-suit injunction due to concerns of forum fragmentation. As some plaintiffs and defendants were not parties to the jurisdiction agreements, splitting litigation between New York and England would create undesirable fragmentation. However, the majority secured an undertaking from Armco Inc that the latter will not enforce against those parties to the jurisdiction clause for any damages awarded in New York that would not be available in English proceedings.

97 The Singapore Court of Appeal in *Asiana Airlines, Inc v Gate Gourmet Korea Co, Ltd* [2024] 2 SLR 279 (“*Asiana Airlines*”) adopted a different

approach. Asiana Airlines Inc had brought proceedings in South Korea against Gate Gourmet Korea Co Ltd (“Gate Gourmet”) and its directors seeking damages, where the directors were not parties to the arbitration agreement but had signed only as corporate representatives. When Gate Gourmet sought anti-suit injunctions to restrain the Korean proceedings, the Court of Appeal granted injunctions for some proceedings but refused to restrain the proceedings against the directors.

98 Crucially, the Court of Appeal held that forum fragmentation concerns should not override parties’ rights to pursue legitimate claims, stating at [88]:

88 ***[Fragmentation risks] should not be overstated, especially in the context of arbitration agreements, because such disputes are inherently prone to forum fragmentation.*** When parties agree to arbitrate their disputes, they remove such disputes from their natural forum, which are the national courts, and which typically have the ability to bring involved parties with related interests or liabilities into consolidated proceedings. And unfortunately, ***related disputes that do not fall within the arbitration agreement cannot be decided by the same arbitral tribunal because this has not been agreed by parties.*** The risk of forum fragmentation can ***neither prevent parties from agreeing to arbitrate their disputes, nor prevent a party from pursuing a claim by any means available to it in the absence of an arbitration agreement.***

[emphasis added in bold italics]

99 The Court of Appeal concluded at [107]:

In the final analysis, while parties are free to enter into arbitration agreements, *it is not for the court to compel the participation of non-parties in arbitral proceedings or to prevent disputes with them being pursued in other fora in the interest of preventing forum fragmentation.*

[emphasis added in italics]

100 Thus, in *Donohue* and *Asiana Airlines*, the courts took a different approach to the concern of forum fragmentation. In *Donohue*, the House of Lords prioritised to avoid fragmentation over enforcing contractual forum selection, allowing all litigation to continue in New York to keep related parties together. In *Asiana Airlines*, however, the Singapore Court of Appeal upheld anti-suit injunctions for parties bound by arbitration clauses while refusing them for non-parties, recognising that forum fragmentation cannot override contractual obligations. When parties deliberately choose different dispute resolution mechanisms for different types of claims, some degree of fragmentation becomes an inevitable and accepted consequence of their contractual agreement.

101 Although the present context involves a stay application rather than anti-suit injunctions, the underlying principle from *Asiana Airlines* applies. Parties should receive the benefit of their contractual bargain. Since the parties have specifically agreed that certain claims shall be subject to ICC arbitration while others fall within the exclusive jurisdiction of Swiss courts, it would be neither fair nor logical for the court to override that agreement merely to avoid fragmentation of the dispute.

Conclusion

102 Regarding SUM 3235, I set aside the Worldwide Mareva Injunction as Vanbo has failed to establish both a real risk of dissipation and a good arguable case on the merits. Vanbo also made material non-disclosures at the *ex parte* hearing, misrepresenting its knowledge of ph. AG's financial difficulties and the crowdfunding event, which would have prevented the court from granting the Worldwide Mareva Injunction.

103 Regarding SUM 3248, I grant the Stay Application. I found that the Swiss exclusive jurisdiction clause in the Shareholders' Agreement governs the Shareholding and Investment Claims, and that no strong cause exists to refuse the stay. The *Eleftheria* factors — including the parties' connections to Switzerland, the location of material witnesses and evidence and the governing law of the claims — all favour Switzerland as the contractually agreed forum. I found no evidence that Vanbo would suffer prejudice by litigating in Switzerland, or that the defendants acted abusively in seeking the Stay Application. For the ViCap Licensing Claim, it is stayed in favour of ICC arbitration as it falls within the License Agreement's scope and overlaps with ongoing ICC proceedings.

104 For the reasons set out above, I allow both applications in SUM 3235 and SUM 3248.

Tan Siong Thye
Senior Judge

Sharon Chong Chin Yee, Kwong Yan Li Callie and Ho Li Xuan
Rachel (RHTLaw Asia LLP) for the claimant;
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