IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

Neutral Citation Number: [2025] CIGC (FSD) 37

CAUSE NO: FSD 155 OF 2022 (DDJ)

IN THE MATTER OF SECTION 238 OF THE COMPANIES ACT (AS REVISED)

AND IN THE MATTER OF 51JOB, INC.

Before: The Hon. Justice David Doyle

Appearances: Mac Imrie KC and Richard Boulton KC instructed by Malachi Sweetman and Joanne Poland of Maples and Calder (Cayman) LLP for 51job, Inc.

Jonathan Adkin KC instructed by Rocco Cecere and Matthew Harders of Collas Crill LLP, Christopher Easdon of Campbells LLP, Patrick McConvey and Lauren Vernon of Walkers (Cayman) LLP for the Collas Crill, Campbells and Walkers Dissenters (the "CCCW Dissenters")

Tom Lowe KC instructed by Mark Ffrancon Dowds of Carey Olsen for the Carey Olsen Dissenters

Kelsey Sabine of Harney Westwood & Riegels (Cayman) LLP for Nord Anglia Education, Inc

Heard: 16 and 17 April 2025

Draft Judgment circulated: 7 May 2025

Judgment delivered: 13 May 2025

Determination of an adjournment summons including an application to vacate a 20 day trial ordered to commence on 24 June 2025 with the consent of the parties – consideration of Section 7 (1) of the Bill of Rights and the overriding objective to deal with cases justly – withdrawal of an interrogatories summons – observations in respect of an application to access documents on the court files in respect of 10 cases under section 238 of the Companies Act spanning over nearly a decade – relevant law and procedure in respect of applications to access documents on court files

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JUDGMENT

Introduction

1. There were before the court on 16 and 17 April 2025 three applications.

2. Firstly, an application by way of Summons dated 17 January 2025 (the "Interrogatories Summons") (with a time estimate of one hour) from 51Job,Inc. (the "Petitioner" or the "Company") for leave to serve interrogatories on certain dissenters and for answers to be verified by affidavit within 28 days of service of the interrogatories.

3. Secondly, an application by way of Summons dated 28 February 2025 (the "Adjournment Summons") (with a time estimate of 1.5 hours) from the Petitioner seeking an order that the trial presently listed for 24 June 2025 to 29 July 2025 with 20 hearing days allocated

(and having been so listed with the agreement of the Petitioner as long ago as 21 June 2024) be adjourned.

4. Thirdly, an application by way of a letter dated 25 February 2025 from the Petitioner (the "Letter Application") (with no time estimate) seeking access to various Court files spanning over a period of nearly 10 years in respect of 10 other cases brought under section 238 of the Companies Act (as revised from time to time).

The Interrogatories Summons

5. Prior to the hearing two sets of dissenters had agreed to limited interrogatories being served. During the hearing two further sets of dissenters also agreed to limited interrogatories being served.

6. In such circumstances the Interrogatories Summons was withdrawn.

7. It is unfortunate that it was not withdrawn before I had wasted valuable and increasingly scarce judicial time reading into it for the purpose of determining it during the hearing on 16 and 17 April 2025.

The Adjournment Summons

8. Under the Adjournment Summons the Petitioner in effect sought the vacation of a 20 day trial due to commence on 24 June 2025 and instead sought that the trial (a) start no earlier than 3 November 2025 with (i) oral opening submissions and factual evidence to be heard between 3 November 2025 and 19 November 2025; (ii) expert evidence to be heard between 1 December and 17 December 2025; and (iii) oral closing to begin on 14 January 2026 (no end date specified) or (b) in the alternative, to start no earlier than 13 April 2026, with (i) oral opening submissions, factual evidence and expert evidence to be heard between 13 April 2026 and 13 May 2026; and (ii) oral closing submissions to begin in the week of 22 June 2026 (no end date specified).

9. In the further alternative the Petitioner suggested that an additional 6 days be added to the current trial timetable and that those additional days be limited to closing submissions to be scheduled no sooner than 23 September 2025. As it transpired there was no availability of counsel and the Court before April 2026 for 6 days of oral closing submissions or for an adjourned trial.

10. At the end of oral submissions on 16 April 2025 I delivered my decision to dismiss the Adjournment Summons and gave brief reasons indicating that detailed reasons would follow. My *ex tempore* short judgment that day indicated that I took into account the previously agreed estimate of 4 weeks (20 sitting days), Section 7 (1) (as defined below) and the Overriding Objective (as defined below). I stated that with discipline and proper focus the existing 20 days should be sufficient. I added that leading counsel should agree amongst themselves how best to use those 20 days and provide the Court with an updated schedule before 3pm on 1 May 2025, specifying the time allocations within the 20 days for opening oral submissions, evidence (identifying individual witnesses) and closing oral submissions. I stated that I doubted the Court would benefit from 2 days of oral opening submissions from counsel for the Company, especially as I would have considered the written opening submissions in advance. The cross-examinations and re-examinations would have to be tailored to fit the time available as would the closing submissions. I was not persuaded that there was a need for a break from the finalisation of the evidence to the closing submissions. If the Court was to take such a break in this case it would, with the limited counsel and Court available, turn into many months. If the updated schedule could not be agreed then I required competing versions before 3pm on 1 May 2025. Out of an abundance of caution and with some reluctance I stated that it may be wise for counsel also to keep available 30 and 31 July 2025 as a contingency just in case there were unexpected developments outside the control of counsel and the Court that meant that the evidence and submissions could not be finished by Tuesday 29 July 2025. I stressed that this potential slippage was not to encourage counsel to run over with their treatment of the evidence or submissions but was simply intended to be a potential safeguard, for example if the Court is closed on a day due to a hurricane or other matters beyond the control of counsel and the

Court. In respect of costs I stated that these could be dealt with after I had delivered my detailed reasons. I now deliver those detailed reasons and also refer to the Letter Application.

Section 7 (1)

11. In considering the Adjournment Summons I had full regard to Section 7 (1) of the Bill of Rights, Freedoms and Responsibilities in Schedule 2 to the Cayman Islands Constitution Order 2009 which provides that everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial Court within a reasonable time ("Section 7 (1)").

The overriding objective of the Grand Court Rules

12. Also of relevance is the overriding objective set out in the preamble to the Grand Court Rules ("GCR").

13. Under paragraph 1.1 of the preamble the overriding objective of the GCR is stated to be "to enable the Court to deal with every cause or matter in a just, expeditious and economical way" (the "Overriding Objective").

14. Under paragraph 1.2 dealing with a cause or matter justly includes, as far as practicable:

    (a) ensuring that the substantive law is rendered effective and that it is carried out;

    (b) ensuring that the normal advancement of the proceeding is facilitated rather than delayed;

    (c) saving expense;

    (d) dealing with the cause or matter in ways which are proportionate:

(i) to the amount of money involved;

(ii) to the importance of the case; and

(iii) to the complexity of the issues; and

(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other proceedings.

15. I should add that I do not doubt the importance in monetary terms of the case to the parties. The Company says that "By value, the delta between expert valuations is about US$1.66 billion" (paragraph 10 of the skeleton argument dated 10 April 2025). The Carey Olsen Dissenters say that "on the basis of the difference in the parties' experts' respective positions as to fair value alone, rather than the Dissenters' position as to the total fair value of their shares, the sum in dispute totals in the region of US$1.7 billion.." (para 25.1 of the skeleton argument dated 10 April 2025).

16. Paragraph 2.2 of the preamble to the GCR underlines the valid desire for cases to be dealt with justly, expeditiously and in the least expensive way. It provides that the GCR shall be liberally construed to give effect to the Overriding Objective and in particular, to secure the just, most expeditious and least expensive determination of every cause or matter on its merits.

17. Under paragraph 3 an important duty is placed directly upon the parties. It is provided that the parties are obliged to help the Court to further the Overriding Objective and in applying the GCR, and to give effect to the Overriding Objective, the Court may take into account a party's failure to help in this respect.

18. Paragraph 4 of the preamble makes reference to the Court's duty to manage proceedings. 4.1 provides that the Court must further the Overriding Objective by actively managing proceedings. Under 4.2 this may include:

> "(c) encouraging the parties to co-operate with each other in the conduct of the proceedings …
>
> (f) fixing timetables or otherwise controlling the progress of the proceeding;
>
> (g) considering whether the likely benefits of taking a particular step will justify the cost of taking it …
>
> (l) giving directions to ensure that the trial proceeds quickly and efficiently."

19. Paragraph 4.3 provides that whenever a proceeding comes before the Court the Court will consider making orders on its own motion for the purpose of giving effect to the Overriding Objective.

20. It is also well established that attorneys, as officers of the Court, have an overriding duty to positively and constructively assist the Court in the fair and efficient administration of justice, and there is a need to adhere to Court timetables and trial dates. The very existence of a smoothly functioning legal system depends on strict compliance with this overriding duty.

21. With these principles firmly in mind I now turn to consider the protracted history of these proceedings and the Adjournment Summons. I have considered all the arguments in favour and against the Adjournment Summons and I do not set them all out in this judgment. They form part of the Court record and I have full regard to them.

A little bit of procedural history and a lot of correspondence

22. The petition of the Company in FSD 155 of 2022 (DDJ) was dated 15 July 2022 nearly 3 years ago now.

23. In my judgment delivered on 2 December 2022 after a hearing on 21 and 22 November 2022 I stated:

> "2. In this case the Court will, in due course, be called upon to make a determination of the fair value of the shares held by various dissenters in

51job, Inc. (the "Company") together with a fair rate of interest if any, on the amount payable by the Company to various dissenters.

3. The Company and the dissenters had sensibly agreed some of the terms of a draft directions order leading to the trial of this case but there were a number of issues which were not agreed and which required the determination of the Court. I again stress the duty of the parties and their attorneys to help the Court to further the overriding objective of dealing with cases justly.

4. I have to say that during the hearing there appeared to be a somewhat hostile atmosphere between the attorneys. The exchanges between counsel appeared a bit too tetchy at times. I suspected a lot of that was generated by those who instructed the attorneys and the amounts at stake. The position may not have been helped by the Court having to sit until 7pm on the first day as concern had been expressed as to whether there was going to be sufficient time available to deal with all the remaining disputed issues. As it transpired we finished on the morning of the second day.

5. I express the wish that going forward the attorneys adopt a more helpful and cooperative approach. This will further the overriding objective. I think it is important to stress that pursuant to the overriding objective and the duties of attorneys as officers of this Court that there should be more positive cooperation and less negative confrontation between litigants and their attorneys. Litigants, as they are duty bound to do, need to try a lot harder to help the Court to further the overriding objective of dealing with matters justly and attorneys also need to try a little harder to assist the Court in the proper and efficient administration of justice. Litigants and their attorneys must openly and sensibly cooperate and assist the Court in respect of the overriding objective. As Segal J put it in *Great Simplicity Investment Corporation v Bitman Technologies Holding Company* (FSD 247 of 2019 (NSJ) unreported judgment 3 August 2020) at paragraph 8(i):

> "*I recognise that these proceedings arise out of a hotly contested and deeply felt dispute where the battle lines have been firmly drawn for some time but in my view both parties would benefit from increased cooperation between their legal advisers.*"

6. I am grateful for the continuing assistance of the parties and counsel in this respect."

24. I am also reminded by Kawaley J's judgment in *Vernon v Green* 2020 (1) CILR Note 13 and the need for civility between counsel. A level of cordial relations is required between opposing counsel. I should add that the hearing on 16 and 17 April 2025 was conducted in

a more constructive cordial fashion despite robust advocacy on all sides and I thank counsel for that.

25. Under paragraph 39 of the Directions Order dated 19 January 2023 the Company was ordered to file and serve any factual evidence by no later than a date 56 days from the date of uploading its documents to the Data Room pursuant to paragraph 12.4. 12.4 referred to "196 days from the Discovery Commencement Date" which in paragraph 8 was defined as 22 November 2022.

26. On 16 April 2024 the Company issued a summons (the "Extension Summons") seeking an extension of time for the filing and service of its factual evidence.

27. By letter dated 24 May 2024 the attorneys acting for the CCCW Dissenters and the Carey Olsen Dissenters (together the "Represented Dissenters") communicated to Maples in respect of the Extension Summons indicating that despite their concerns over the Company's continuing delays they were willing to extend the deadline for the Company's factual evidence to 19 July 2024 "on the condition that the trial of the Petition be listed forthwith for the earliest available date after Tuesday, 20 May 2025 …". A draft consent order was attached which referred to "a time estimate of four weeks" and it was indicated that "there should be no further delays in the Proceedings."

28. Maples responded on 29 May 2024 confirming their agreement to the proposed dates for the trial. An amended consent order was attached which at paragraph 3 provided "The trial of the Petition shall be listed forthwith, to commence on the first available date after 20 May 2025, with a time estimate of four weeks."

29. The importance of time estimates is emphasised at B1.8 of the Financial Services Division Users Guide. Under paragraph B1.8(c) it is provided that if at any time any party considers that there is a material risk that a hearing will exceed the agreed estimate time it must inform both the Listing Officer and the Personal Assistant to the Judge immediately.

30. On 5 June 2024 Maples filed a signed consent order "to dispose of the Company's Summons dated 16 April 2024."

31. On 5 June 2024 my PA responded:

> "When the Summons dated 16 April 2024 was filed were any steps taken to obtain a hearing date in respect of it? … We assume that there are no dates to avoid in respect of the requested four week trial next year which Justice Doyle is minded to specify as beginning at 10am on 26 May 2025 and finishing on 27 June 2025, with the court not sitting on Fridays during the four weeks."

32. Maples responded on 6 June 2024 stating that "Fortunately, the parties were able to agree terms to settle that Summons … and so in the event, listing a hearing was not necessary." Maples indicated that the Company was "coordinating the availability of its leading counsel, expert witnesses and factual witnesses."

33. By email dated 10 June 2024 to my PA, Campbells indicated that the Company had agreed to a direction that "The trial of the Petition be listed forthwith, to commence on the first available date after 20 May 2025, with a time estimate of four weeks." The Dissenters confirmed their availability for the proposed dates.

34. On 11 June 2024 my PA indicated that I required joint non-availability to be provided before 3pm on 19 June 2024 in order that that the draft order may be finalised and trial dates included. The email finished, "Justice Doyle thanks the attorneys for their continuing assistance and positive cooperation as officers of the court."

35. By email dated 19 June 2024 to my PA, Maples indicated that the Company's legal team, expert and witnesses were available for trial between 23 June to 31 July 2025 and added "We believe that it would be prudent to list the trial for five weeks." As the Court would not be sitting on Fridays the sitting days would be 20 days within a period of 5 weeks.

36. By email dated 19 June 2024 Campbells confirmed that the Represented Dissenters were available 23 June 2025 to 31 July 2025 and "are agreeable to reserving five weeks for the trial …. if that is convenient to the Court."

37. It is important to note that in the signed Consent Order paragraph 3 read as follows:

> "The trial of the Petition shall be listed forthwith, to commence on the first available date after 20 May 2025, with a time estimate of four weeks."

That is what the parties, represented by experienced counsel, agreed.

38. The Court made an order dated 21 June 2024 extending the time by which the Company was to file any factual evidence to 19 July 2024, and then to 2 August 2024 (by consent order dated 9 August 2024), and then to 9 August 2024 (by consent order dated 19 August 2024).

39. The consent order made on 21 June 2024 also contained an important provision at paragraph 3 as follows:

> "The trial of the Petition shall be listed to commence at 10am on 24 June 2025 (20 hearing days allocated with the court not sitting on Fridays or Constitution Day and the trial finishing on 29 July 2025)."

40. At paragraph 6 the Petitioner was ordered to pay the Respondents' costs of the Summons dated 16 April 2024 on the standard basis to be taxed if not agreed.

41. By letter dated 12 July 2024 from Maples to the attorneys acting for the Represented Dissenters, Maples indicated that the Company required a two-week extension to file its factual evidence adding at paragraph 6 that "[g]iven that the trial of this matter is listed to begin on 24 June 2025 … the Company's proposed extension poses no threat for the listed trial dates." The attorneys acting for the Represented Dissenters responded on 16 July 2024

complaining about the delays in the proceedings but agreeing to "a final two-week extension for the Company's factual evidence."

42. By email dated 19 July 2024 Maples attached a consent order to extend the timetable by two weeks. At my direction my PA responded:

> "1. What is the reason for this further slippage?
> 2. Why in the last entry of the Schedule do you say "Trial to begin no earlier than Monday 2 June 2025?" By Order made on 21 June 2024 at paragraph 3 it is provided: "The trial of the Petition shall be listed to commence at 10am on 24 June 2025 (20 hearing days allocated with the court not sitting on Fridays or Constitution Day and the trial finishing on 29 July 2025)"."

43. Maples responded on 26 July 2024 in respect of paragraph 1 but gave no response in respect of paragraph 2 but did include an amended Schedule which specified that the trial was listed to commence on Tuesday 24 June 2025.

44. By email dated 19 August 2024 Maples attached a further consent order for further extensions to the filing of evidence. On 29 August 2024 Maples referred to the consent order made on 19 August 2024 and enquired of the attorneys for the Represented Dissenters whether their clients intended to file and serve responsive factual evidence. By email dated 3 September 2024 the Represented Dissenters confirmed that they did not intend to file responsive factual evidence.

45. By letter dated 20 September 2024 Maples wrote to the attorneys acting for the Represented Dissenters indicating that they believed that the number of days allocated for the trial would not be sufficient to complete the trial and stating that "the parties should agree a time for oral closings at a date that is convenient to the Court, which is no sooner than three weeks after the hearing is currently scheduled to end (29 July 2025) … the Company suggests, subject to the Court's preference, that oral closings be scheduled for 4 days after 15 September [2025]".

46. By letter dated 22 October 2024 the attorneys acting for the Represented Dissenters responded indicating that they did not agree that the number of hearing days allocated for the trial would be insufficient to complete the trial. Reference was made to the agreement between the parties that 20 hearing days for the trial was on the basis that the trial period was for the entirety of the trial and there was no suggestion that there would be a need to have a separate hearing listed for closing submissions in addition to the agreed trial period. Accordingly, they disagreed with the proposal that oral closings should be scheduled for 4 days after 15 September 2025.

47. The attorneys on behalf of the Represented Dissenters wrote to Maples on 19 November 2024 referring to the delay in the management meeting and suggesteding that the new deadline for the exchange of expert reports be 13 January 2025. By email dated 26 November 2024 to the attorneys for the Represented Dissenters, Maples proposed an extension to the date to exchange to 15 January 2025 "and the timetable otherwise remain unchanged."

48. By email dated 28 November 2024 Maples forwarded another consent order extending the time for expert reports to be exchanged and attached an updated schedule which again referred to the trial being listed to commence on Tuesday 24 June 2025. My PA forwarded the sealed order to the attorneys by email dated 29 November 2024 and stressed:

> "Justice Doyle is concerned over this further slippage but has granted the order (attached). The parties, the attorneys and the experts should ensure that there is no further slippage and that the order is complied with."

49. By consent order made on 29 November 2024, the time by which the expert reports were to be exchanged was extended to 15 January 2025 and Schedule 1 referred to "Trial listed to commence Tuesday, 24 June 2025."

50. By letter dated 6 February 2025 Maples responded to the letter dated 22 October 2024 and stated that "the Company believes that there should be a break of four to five weeks (but no more than eight weeks) between the end of the expert evidence and the oral closing

submissions." At paragraph 6 Maples, having waited over 3 months to respond to the letter of 22 October 2024, stated:

> "We are conscious that Court time is a valuable public resource and that in circumstances where time has already been set aside for the trial, it is imperative that the parties inform the Court as soon as possible if they anticipate needing to make a request to modify that timetable. If the trial must be re-scheduled more generally to accommodate the evidence or to schedule the closings within a reasonable timeframe, it is better that this happens earlier rather than later."

Maples required a response by 5pm on 13 February 2025.

51. The attorneys for the Represented Dissenters responded on 18 February 2025 maintaining that the 20 sitting dates were sufficient and to the extent that extra time was needed as the trial progresses the Court could be invited to sit early or late on select days or to sit on select Fridays as required (and subject to the Court's availability). They added that it may be that an additional two days (30 and 31 July 2025) could be obtained at end of the trial window if required. The Represented Dissenters did not agree with the Company's proposal that there should be a break between the end of the expert evidence and the oral closing submissions. They said that such would cause the completion of the trial to be delayed considerably.

52. Maples responded on 21 February 2025 indicating that it was felt that the Company's fair trial rights would be compromised if there was not a meaningful break. It was noted that the Represented Dissenters' counsel team were not available in September and the Company's leading counsel has a prior trial commitment in October. It was stated that "a postponement of the trial date is preferable to trying to shoe-horn the entire trial into the window in June/July." It was added that any modifications to the timetable should be requested as soon as possible and a response was requested by 26 February 2025. Maples wrote to the Represented Dissenters with further proposals on 26 February 2025. A response was forthcoming on 27 February 2025 wherein the Represented Dissenters did not accept that there are any grounds to delay the trial.

53. On 28 February 2025 the Company filed the Adjournment Summons.

54. By email dated 20 February 2025 to Court administration, Maples had attached the Company's Interrogatories Summons dated 17 January 2025 and indicated that they sought leave to withdraw it against the Walkers Dissenters with no order as to costs. They said that the Interrogatories Summons remains in force against all other Dissenters.

55. By email dated 21 February 2025 my PA sent the sealed order out and added:

> "Justice Doyle enquires, are you seeking a hearing date in respect of the [I]nterrogatories [S]ummons? If so, please let us have joint non-availability, agreed estimate as to duration and a draft of proposed directions, if appropriate."

56. Some time later, by email dated 3 March 2025 Maples attached the Adjournment Summons and indicated that the Company wished to list it and the Interrogatories Summons together and were liaising with the Represented Dissenters in relation to dates and an agreed timetable "for the Court's consideration as soon as possible."

57. By email dated 20 March 2025 Maples requested a 2 day hearing on 16 and 17 April 2025.

58. By email dated 21 March 2025 my PA confirmed that the two summonses had been listed for 16 and 17 April 2025 at 10am.

The Company's submissions

59. The Company says that the original time estimate was made without the benefit of knowing very much about the factual or expert evidence in the case. It says much more is now known as a result of the receipt of the first expert reports and the joint memorandum and following the experiences of the *58.com* trial. The Company says that in light of what it describes as "such significant additional information, the Company's legal counsel and

attorneys believe that it would be very difficult to accommodate the submissions and evidence within the allocated time window."

60. I note that the Company does not say that it would be impossible to fit the trial within the period it agreed in June 2024, just that "it would be very difficult". Litigation is often "very difficult."

61. It is stated that the Company now believes that 21 hearing days will very likely be required for the opening submissions and the factual and expert evidence, and a further period of up to 6 hearing days will be required for the closing submissions. In addition, the Company now says that there should be a break to enable the preparation of written and oral submissions after the conclusion of the evidence.

62. The Company says that its opening oral submissions will take two days and its cross-examination of Mr Taylor will take six days and its closing oral submissions will take three days. The Company says that the Represented Dissenters have indicated that their opening oral submissions will take half a day. The Company now suggests that the factual evidence should not start until Monday 30 June 2025. The Company say that there are five factual witnesses to be called and they will testify in English. The Company says that the Represented Dissenters have requested up to 5 days for cross-examination and the Company does not object to this. The Company says that the Represented Dissenters consider that the re-examination can take place within that 5 day window also. The Company seems to suggest that a day in total should be allocated for re-examination. The Company says that the total expected time for cross-examination and re-examination of the factual witnesses should be increased to 5.5 days. The Company says that the opening submissions and the factual witness evidence will use up to a total of eight and a half days meaning that the factual evidence would finish by lunchtime on Wednesday 9 July.

63. In respect of the Company's cross-examination of Mr Taylor (the Represented Dissenters' expert) the Company says its counsel's best estimate is that it will take at least five and a half days plus up to half a day of re-examination by the Represented Dissenters. The Company suggests 6 days is appropriate for Mr Taylor's evidence.

64. The Company suggests 6 days for the completion of Professor Lehn's evidence (including re-examination) meaning he would start his evidence on the afternoon of Wednesday 9 July and finish it by lunchtime on 21 July with Mr Taylor concluding his evidence on 30 July 2025 one day outside the period currently allocated for the entire trial. It is stated that the Company's counsel foresees that their closing submissions will take up to three days and therefore, the likely period for both parties closing oral submissions is a total of six days. The Company submits that on their present approach the total trial, including closing submissions, is likely to require 27 hearing days rather than the 20 they agreed to in June 2024.

65. Although it did not request such a break when it agreed the consent order in June 2024 the Company now submits that it is not possible to fairly present and complete the trial without a break between the end of the evidence and the start of the closing submissions. The Company says that it "cannot easily" finish the cross-examination of the Represented Dissenters' expert and adjust its closing submissions to take into account his testimony under cross-examination and re-examination and then speak to them in oral closing within a day. I note the use of the phrase "cannot easily" – it implies that it could be done but not "easily". Litigation is rarely easy.

66. The Company says that s238 cases have been timetabled to allow a break between the conclusion of the evidence and the filing of the written submissions, followed by oral argument. The Company now submits that the same direction should be made in this case but did not suggest that in June 2024 when it agreed to the consent order to dispose of its Extension Application.

67. The Company submits that it is fair and appropriate to order that the existing trial date be vacated and another trial window fixed.

68. Recognising perhaps the shaky foundations of its application for the vacation of a 20 days trial due to commence in June 2025 the Company's fallback position was that if the existing trial is not vacated then closing submissions should be rescheduled to a date after 23

September 2025 (although in a footnote the Company added that the Represented Dissenters did indicate that one of their leading counsel was likely to be in professional difficulties in the latter part of September 2025).

Carey Olsen Dissenters' submissions

69. In response the Carey Olsen Dissenters make a number of points including the following:

(1) it is not accepted that there has been any material or significant change in circumstances since the date the directions were made which incorporated a trial time estimate and a listing date pursuant to an agreement to compromise the Company's Extension Summons;

(2) there is no good reason to re-list the trial in the manner proposed or at all;

(3) there is no risk of an unfair trial;

(4) the lateness of the Adjournment Summons is inexcusable and is just another belated attempt by the Company to delay these proceedings;

(5) there is no need for a break between the evidence and oral closing submissions. The Company itself previously agreed to the trial listing without mention or reference to a break and in other cases it has been routine to proceed straight to oral submissions after the evidence. Even putting the Company's concern at its height the lack of a break amounts only to an inconvenience and does not amount to an unfair trial; and

(6) adding additional days to the trial including taking a break during the trial will result in significant delay until such time as availability of the Court, the parties, the experts, the witnesses and counsel overlap and will undoubtedly add costs. An adjournment would not achieve the Overriding Objective and would prejudice the Represented Dissenters who are entitled to prompt access to the Courts as an

incident of their constitutionally protected property rights which were compulsorily taken from them as a result of the merger.

The CCCW Dissenters' submissions

70. The CCCW Dissenters make a number of points including the following:

(1) there is no good reason to adjourn the trial or to list a further 6-day hearing in late 2025 for oral closings and it would add significant delay and costs to these proceedings to do so, contrary to the Overriding Objective and the CCCW Dissenters' rights to a fair trial within a reasonable time;

(2) the Court is also required to give great and perhaps ordinarily decisive weight to the fact that the fixing of the trial on the current trial date was one of the terms of a consent order dated 21 June 2024 which embodied the compromise of a substantive dispute between the parties (i.e. the Extension Summons by which the Company sought a very significant extension of time for service of the Company's factual evidence);

(3) it is accepted that the Court retains control over interlocutory orders including those made by consent and the Court continues to have its ordinary case management powers including the power to adjourn or extend agreed trial dates. However, in exercising such powers the Court should give very great weight to the terms of a consent order which represents the compromise of a substantive dispute;

(4) the Court should consider (a) the Overriding Objective, (b) the parties' right to a fair trial within a reasonable time and (c) the need for efficient use of the limited Court resources in a compact jurisdiction and take into account the interests of other Court users;

(5) the Company has not been able to identify anything unexpected that has occurred in the proceedings since the parties agreed the consent order;

(6) the 20 days was agreed at a time when the Represented Dissenters might have called evidence from witnesses of fact which they have not in the event done. The Company knew at the time whom it intended to call as its five fact witnesses and it has not called any additional witnesses;

(7) by signing and filing the consent order the Company represented to the Court that it was content to list the trial for 20 hearing days. The trial dates were then fixed with specific reference to the availability of the parties' leading counsel;

(8) 20 hearing days is adequate time for a trial of this nature relating to the single issue of fair value and involving only two valuation experts and five fact witnesses (all being called by the Company);

(9) the Court will have the benefit of full written opening submissions before the trial and the parties are represented by experienced counsel who can fairly be expected to tailor their submissions and cross-examination to the time available;

(10) nothing material has changed since the trial was fixed by agreement in June 2024 and there is no good reason why the parties cannot be expected to tailor the presentation of their cases to the time available;

(11) it is not, as the Company suggests, a standard feature of s238 trials (or any trials) that there must be a break of several months between evidence and oral closings. Most trials, including s238 trials, run continuously (or with only a very short break) from the end of evidence to oral closing submissions, without any suggestion that these trials are thereby unfair to any party;

(12) the Adjournment Summons was issued late and any adjournment would cause considerable disruption;

(13) it is also likely to prove challenging, given the length of the trial and the number of parties, legal representatives, experts and witnesses involved, for a mutually convenient date for a relisted trial to be found within a reasonable period; and

(14) similarly in addition to being contrary to the parties' compromise agreement (reflected in the consent order) listing an additional 6-day hearing some time after October 2025 would also be contrary to the Overriding Objective as it is likely to add significant cost and delay.

Reasons for dismissing the Adjournment Summons

71. I have very little to add to the brief reasons I gave when dismissing the Adjournment Summons on 16 April 2025.

72. Having considered the background to the consent order made on 21 June 2024 setting the trial down for 20 sitting days commencing on 24 June 2025 and the submissions now put before the Court, I was simply unpersuaded that it would be just and fair to vacate the trial dates or to allow for a long break between the close of the evidence and the closing submissions.

73. At one stage of the hearing taking into account the lack of availability of counsel, I canvassed the possibility of hearing oral closing submissions in November 2025 but counsel were not available on the days when the Court had availability and in any event a long delay between the completion of the evidence and oral closing submissions was undesirable and justice and fairness did not require it.

74. I conducted an evaluative assessment of all the material placed before the Court and focused on whether a fair trial was possible if the existing timetable was maintained. I concluded that it was.

75. It is of great importance to the fair and efficient administration of justice that once trial dates are set they are, unless there are good reasons to the contrary, maintained. I was not persuaded that to proceed as per the consent order made on 21 June 2024 with the trial commencing on 24 June 2025 would be unfair or unjust.

76. I was simply not persuaded that the trial dates fixed by agreement should be vacated or that there should be a prolonged break until the oral closing submissions were put before the Court.

77. It appeared that the Company was seeking another 6.5 days to be added to the trial dates it had previously agreed. I was not persuaded that it was necessary or fair to vacate the trial to accommodate that fresh desire. With appropriate cooperation between the parties and counsel, the trial can properly be accommodated in the present trial window.

78. I noted Mr Adkin KC's submissions that the Court was required to give great weight to the fact that the fixing of the current trial dates was one of the terms of a consent order which embodied the compromise of a substantive dispute and his acknowledgement that the Court retained control over its orders and trial dates. In *Pannone LLP v Aardvark Digital Ltd* [2011] EWCA Civ 803, [2011] 1 WLR 2275 Tomlinson LJ at [33] expressed the view that "the weight to be given to the consideration that an order is agreed will vary according to the nature of the order and thus the agreement. Where the agreement is the compromise of a substantive dispute or settlement of proceedings, that factor will have very great and perhaps ordinarily decisive weight … Where however the agreement is no more than a procedural accommodation in relation to case management, the weight to be accorded to the fact of the parties' agreement as to the consequences of non-compliance whilst still real and substantial will nonetheless ordinarily be correspondingly less, and rarely decisive. Everything must depend on the circumstances …". I think Mr Adkin placed too much emphasis on the agreement and some of his points in respect of it, although well made, were a little exaggerated. The agreement of the parties is, of course, an important factor but not, in my judgment, as important as Section 7 (1) and the Overriding Objective.

79. The question arose however as to what had changed since June 2024 when experienced counsel for all parties agreed to a 20 day trial, commencing a year later in June 2025. It appeared to me that there had been no material developments that could not have reasonably been foreseen in June 2024. It appeared that the Company and its advisers (perhaps impacted by their experience in the *58.com* trial) had simply subsequently reflected further on the position and would have liked, in an ideal world where time is infinite and availability not a problem, the luxury of several more days. 20 days of Court time is a large chunk of time. The parties are duty bound to exercise discipline and focus and ensure that the opening submissions, the evidence and the closing submissions fit into that already generous 20 day allocation.

80. Put simply, I was not persuaded that there was a significant change of circumstances since June 2024 which would have justified a longer trial or a prolonged break between the evidence and the closing submissions. For these reasons I dismissed the Adjournment Summons.

81. I am minded to order costs against Company in respect of its unsuccessful Adjournment Summons but await any concise (no more than 5 pages) written submissions on costs within 14 days from the delivery of this judgment and will thereafter proceed to make a costs order on the papers.

The Letter Application

82. The Letter Application is contained in a letter dated 25 February 2025 from Maples and Calder (Cayman) LLP to "Ms Shiona Allenger Clerk of Court". It is set out below (footnotes omitted):

> "Dear Ms Allenger
>
> GCR O.63 r.3(5), O.38, r.2A(12), open justice principles application to access Court files

1 We act for 51job, Inc. ("51job") which is a party to the Cayman Islands Companies Act s.238 proceeding with the Cause No. FSD 155 of 2022 (DDJ) ("Proceeding").

Application to access Court file

2 This is an application to access the Court files in the Cayman Islands Companies Act s.238 proceedings listed in appendix 1 ("Appendix 1") ("Past Cases") to obtain copies of the following documents:

2.1 the reports of the parties' testifying valuation experts;
2.2 the parties' written opening and closing submissions for the fair value trial;
2.3 the transcripts of the fair value trial; and
2.4 any judgments that are not available on the judicial.ky website. (together the "Documents").

3 The application is made pursuant to:

3.1 Grand Court Rules O.63 r.3(5) and O.38, r.2A(12);
3.2 Grand Court Practice Direction No.1 of 2015 ("PD 1 of 2015");
3.3 the open justice principles; and
3.4 the Court of Appeal's judgment in *The International Banking Corporation BSC (in administration) v Ahmad Hamad Algosaibi and Brothers Company* [2018 (2) CILR 20].

Background and reason for the application

4 S.238 proceedings involve disputed valuation issues including the reliability of the market price of the shares of the company, the reliability of the price agreed as part of the merger, and the reliability of discounted cashflow and comparable methodologies when determining fair value.

5 In our experience in s.238 proceedings both the experts and the parties frequently cite Past Cases to support their position on fair value. This has already occurred in the Proceeding and 51job intends to make extensive reference to past judgments in its submissions at trial.

6 We believe that our ability, and that of the Court, to understand and make use of the Past Cases will be greatly enhanced if we have access to the Documents. This belief is to a large extent based on experience – we know from Past Cases our firm was involved in that the Documents contain helpful nuance that enable the reader to more fully understand the context of the judgments in those cases.

Practical considerations

7 We note that:

7.1 the trial for the Proceeding is scheduled to commence on 24 June 2025. While a deadline for the exchange of written opening submissions has not yet been set, we anticipate that this will be one to two weeks before the trial start date ("Submission Filing Deadline"). In order to be able to review the Documents and incorporate them into 51job's written opening submissions, it would be very helpful to receive them well before the Submission Filing Deadline;

7.2 there are many parties to some of the Past Cases (for example, there were 74 dissenters in the 58.com s.238 and 34 dissenters in the Nord Anglia s.238). While each party to each Past Case is entitled to be consulted on this application, we believe it would be inconsistent with the Overriding Objective if the consideration (and, hopefully, approval) of the application is delayed because individual parties fail to respond in a timely manner;

7.3 if the Court no longer has access to all of the Documents, between them, the Cayman Islands law firms listed in Appendix 1 likely already have access to all of the Documents we seek and could easily make them available if ordered to do so by the Court;

7.4 the Documents we seek are all Documents that are all likely to have been read or referred to or record what was said in open court in the Past Cases.

8 In light of the above, we would humbly invite the Clerk of the Court to indicate to the parties to the Past Cases that they have 14 calendar days to indicate whether they object, agree or take no position in relation to our application, and that if they object, to provide reasons why.

9 If no party to any specific Past Case objects to the application in respect of that Past Case, we invite the Clerk of the Court to determine that aspect of our application administratively, in accordance with PD 1 of 2015. If the Court no longer has copies of the Documents in respect of that Past Case, we invite the Clerk of Court to request the parties' Cayman attorneys to furnish copies of the Documents.

10 To the extent that any party to a Past Case does object to the application in respect of that Past Case, we invite the Clerk of Court to refer those parts of our application to a judge for determination. In that case, we request an opportunity to make further submissions in response to any objection, before the application is determined. In our view, given the commonality of

> issues, it would be in accordance with the overriding objective for all objections to parts of our application to be heard by the same judge and, while we are open to the matter being referred to any judge, we would humbly suggest that Justice Doyle might be most appropriate given that His Lordship already has carriage of the 51job proceeding in aid of which we are submitting this application. We have copied the Cayman Islands law firms that we understand most recently acted for the parties in the Past Cases.
>
> Further considerations: FSD Users Committee s.238 Subcommittee
>
> 11 We note that the significance of s.238 cases to the jurisdiction is such that the FSD Users Committee has established a s.238 subcommittee and that that subcommittee maintains a summary of s.238 cases. If the Court deems it appropriate to make a corresponding order, we would be happy to share the Documents we obtain pursuant to this application with the FSD Users Committee s.238 subcommittee so that the Documents can be made available to both the judiciary and other s.238 litigants and their attorneys in other matters."

The letter was stated to be copied to "Appleby, Campbells, Carey Olsen, Collas Crill, Harneys, Mourant, Ogier, Walkers".

83. Without identifying the names of the judges involved or the dates of the relevant judgments, or the hearing dates, Appendix 1 listed the 10 "Past Cases" in the following order:

(1) *58.com Inc*
(2) *FGL Holdings*
(3) *iKang Healthcare Group*
(4) *Integra Group*
(5) *Nord Anglia Education Inc*
(6) *Qunar Cayman Islands Ltd*
(7) *Shanda Games Limited*
(8) *Sina Corporation*
(9) *Trina Solar Limited*
(10) *Xingxuan Technology Ltd*

84. Appendix 2 was an authority from "Kathleen Chien COO 51job, Inc." to Maples and Calder (Cayman) LLP to act as its agent for the purposes of the Letter Application.

85. During the hearing Mr Imrie KC handed up a document which confirmed the identity of the judges in the Past Cases as follows: (1) Ramsay-Hale CJ; (2) Parker J; (3) Segal J; (4) Jones J; (5) Kawaley J; (6) Parker J; (7) Segal J; (8) Parker J; (9) Segal J; (10) Kawaley J. This information had not been included in the Letter Application. He also handed up a file with the relevant judgments revealing the dates of the delivery of the judgments in the Past Cases.

86. The hearing dates and judgment delivery dates in the 10 Past Cases were as follows:

(1) *58.com* (MRHCJ) heard on 10 June - 2 July, 15-19 July, 12-14 August, 3-6 September 2024, judgment awaited;
(2) *FGL Holdings* (RPJ) heard 23 May - 8 June, 22-24 June 2022, judgment delivered 20 September 2022;
(3) *iKang* (NSJ) heard 11-22 April, 9-10 May 2022, judgment delivered 21 June 2023;
(4) *Integra* (AJJ) hearing dates not clear from judgment, judgment delivered 28 August 2015;
(5) *Nord Anglia Education* (IKJ) heard 2-20 December 2019, judgment delivered 17 March 2020;
(6) *Qunar* (RPJ) heard 26 February - 15 March 2019, judgment delivered 13 May 2019;
(7) *Shanda Games* (NSJ) heard 7-12 and 16-17 November 2016, judgment delivered 25 April 2017;
(8) *Sina* (RPJ) heard 17 February - 14 March 2025, judgment awaited;
(9) *Trina Solar* (NSJ) heard 6-10, 13-17, 21 May, 5-7 June 2019 and 6-7 April 2020, judgment delivered 23 September 2020;
(10) *Xingxuan* (IKJ) heard 17 July 2024, judgment delivered 9 September 2024

87. It can be seen from the Letter Application that in respect of all the Past Cases the Petitioner was seeking 4 categories of documents (1) the reports of the parties' testifying valuation experts; (2) the parties' written opening and closing submissions at the fair value trial; (3) the transcripts of the fair value trial and (4) any judgments that are not available on the judicial.ky website. Access was not sought in respect of witness statements.

88. The purpose of the Letter Application was stated to be that the Petitioner believed that its "ability, and that of the Court, to understand and make use of the Past Cases will be greatly

enhanced if we have access to the Documents." It was stated that "the Documents contain helpful nuance that enable the reader to more fully understand the context of the judgment in those cases". There was no indication of the specific documents or parts of documents that contained the "helpful nuance". At no stage did Mr Imrie KC take me to any passages in the judgments where it would be necessary to consider the documents sought by the Petitioner to "more fully understand the context of the judgments" in the Past Cases. To my mind the purpose appeared to be to enable the parties and the Court to better understand judgments in previous s238 cases.

The correspondence in respect of the Letter Application

89. I have reviewed the correspondence in the Supplemental Bundle. I have to say the correspondence from Maples and their endeavours to lead all others to conclude that I had listed the Letter Application for hearing on 16 or 17 April 2025 was unsatisfactory as was the Letter Application itself. I note Mr Imrie KC's apologies in respect of the unsatisfactory nature of the correspondence.

90. On 25 February 2025 an email from "Jenesha Simpson/Senior Deputy Clerk of the Court" was sent to "FSD Registry" with a copy to Clerk of Court referring to the Letter Application and stating:

> "Please see attached letter requesting access to a court file.
>
> Please refer to the Judge and parties as necessary."

91. On 26 February 2025 the FSD Registrar invited those copied with the Letter Application to "let me have your feedback." Various "feedback" was received.

92. On 13 March 2025 Maples wrote a further letter to the Clerk of Court:

> "… we respectfully request that the Clerk of the Court assign the Application to a judge now, to give such directions or make such orders as thought fit.

> We note that in our letter of 25 February 2025, we had indicated that while we are in the Court's hands as to which judge should deal with the Application, we suggested that Mr Justice Doyle might be the most appropriate. Alternatively, as the Application relates to a number of historic fair value appraisal cases and may be of more general application to Grand Court practice in this regard, it may be a matter for the Honourable Chief Justice Ramsay-Hale."

93. The FSD Registrar did not at that stage think it appropriate to refer the Letter Application to me. I can well understand that approach as the Letter Application did not seek access to court records in respect of any cases in which I was the assigned presiding judge.

94. On 21 March 2025 Maples wrote further to the Clerk of Court indicating "[i]n case it is relevant to the court's assignment decision" that they "wrote to the Court on 20 March 2025 requesting that certain interlocutory matters in [FSD 155 of 2022 (DDJ)] be set down for hearing on 16 and 17 April before The Honourable Justice Doyle" and that "51job would be open to the [Letter] Application being heard at the end of the 16 to 17 April fixture (if the same goes ahead)."

95. By a second letter dated 21 March 2025 Maples informed the "Clerk of Court" that "the Court has now fixed the two interlocutory matters in [FSD 155 of 2022 (DDJ)] for Wednesday, 16 April and Thursday, 17 April 2025 at 10am."

96. The FSD Registrar by email dated 27 March 2025 to Maples stated:

> "As requested, all correspondence was forwarded to Justice Segal and Justice Kawaley, who are seized of matters listed for file inspections.
>
> Both Judges are of the view that Justice Doyle should consider your request at the upcoming hearing on 16 and 17 April."

97. By email dated 2 April 2015 to the FSD Registrar and copied to my PA, Maples asked that "this email, and our earlier correspondence in relation to the application (re-attached for convenience) is brought to His Lordship's attention. Could the Court please confirm whether all cases in the application have been referred to Mr Justice Doyle? The application also relates to files of other matters of which Mr Justice Kawaley and Mr Justice Segal are not seized (e.g *Qunar*, *FGL*, *58.com* and *Integra*). For its part, 51job would be happy for all cases to be considered by Mr Justice Doyle …". Maples made no mention of the fact that the Chief Justice was the presiding judge in 58.com.

98. On 2 April 2025 the FSD Registrar replied:

> "The matter was not referred to Justice Doyle as Just[ices] Kawaley, Segal and Parker all stated that it should be addressed at the upcoming hearing.
> I will at this time forward your request to Justice Doyle."

99. In view of the failure of Maples in their letter dated 21 March 2025 to specify the nature of the interlocutory applications presented to the Court in 51job for my determination it seems that the learned Justices may have been under the mistaken impression that an application to deploy, at the forthcoming trial in 51job, material from the 10 Past Cases was already before me on 16 or 17 April 2025, which was not the case. No such application had or has been made.

100. By email dated 3 April 2025 it was indicated on behalf of the dissenting shareholders represented by Collas Crill and Campbells in the *58.com*, FSD 275 of 2020 (MRHCJ) proceedings that they objected to 51job being granted access to, or being provided with copies of the documents from the *58.com* proceedings but that they did not object to the Letter Application being heard by Justice Doyle at the conclusion of the two interlocutory matters fixed for hearing in the 51job proceedings on 16 and 17 April 2025. A similar email was sent on 11 April 2025 on behalf of the dissenting shareholders represented by Carey Olsen, Collas Crill and Mourant in *Sina Corporation*, FSD 128 of 2021 (RPJ).

101. On 10 April 2025 Maples emailed my PA and made reference to the Letter Application and added "which the Company has requested his Lordship should hear, which request the Court has directed his Lordship may consider at the hearing next week."

102. Amongst a busy judicial calendar in early April with hearings and other pressing judicial commitments, over the weekend of 12 and 13 April 2025 I finally got the opportunity to consider the Letter Application and the barrage of emails that followed it and also prepared for the main two applications before the Court on 16 and 17 April namely the Adjournment Summons and the Interrogatories Summons and the 6 files connected to them. I have to say that I was surprised to see the suggestion that the Letter Application should be listed before me to be dealt with on 16 or 17 April 2025 as I had not been consulted in that respect and I had made no direction that the Letter Application be heard before me on those dates and the parties and their attorneys were well aware of that. It is presumptuous in the extreme for attorneys to presume that a matter will be listed before a particular judge on a particular day unless that has been expressly confirmed. I was also concerned not to be distracted from the determination of the Adjournment Summons and the Interrogatories Summons that had been duly listed before me with my consent and on my direction.

103. By email dated 14 April 2025 at 1:54pm Collas Crill wrote on behalf of the dissenters represented by Campbells and Collas Crill in *58.com* indicating their understanding that the Letter Application had not formally been listed but Maples had requested that it be heard by Justice Doyle at the hearing in 51job on 16 and 17 April 2025. They asked for confirmation that the Letter Application was listed for hearing immediately following the hearing of the two interlocutory matters in 51job. They also attached a Note together with two additional authorities and request that the same be brought to my attention. The FSD Registrar responded at 2:45pm confirming that the email and attachment had been provided "to the judge as requested" and added "[a]n update will be provided once I am in a position to provide one."

104. By email dated 15 April 2025 8:47am my PA responded:

> "If the parties are content and there is time on 17 April 2025 Justice [Doyle] would be willing to hear oral submissions in respect of the [Letter Application] (which has only recently been brought to his attention), if that would be of assistance."

105. And so it was, the Interrogatories Summons having been belatedly withdrawn, that I heard preliminary oral submissions for half a day on 17 April 2025 in respect of the Letter Application. Mr Imrie KC presented oral submissions on behalf of 51job, Mr Lowe KC on behalf of the 51job Carey Olsen Dissenters and some but not all of the Sina Dissenters, and Mr Adkin KC on behalf of some of the 58.com Dissenters (those represented by Collas Crill and Campbells). I should add that Ms Kelsey Sabine appeared on behalf of Nord Anglia Education and justifiably complained over lack of notice and requested an adjournment which Mr Imrie did not oppose. I simply indicated that I was not minded to make an order against the interests of Nord Anglia Education without giving them a proper opportunity to be heard, but as other counsel were present and had prepared and some court time was available because the Interrogatories Summons had been belatedly withdrawn, I was willing to hear what counsel had to say in respect of the Letter Application, to see if I could legitimately assist.

106. I now turn to the relevant law and procedure in respect of the Letter Application.

The relevant law and procedure in respect of the Letter Application

107. The Letter Application is stated to be pursuant to:

(1) Grand Court Rules ("GCR") O63 r3 (5) and O38 rule 2A (12);
(2) Grand Court Practice Direction No 1 of 2015 ("PD1 of 2015");
(3) Open justice principles; and
(4) *The International Banking Corporation BSC (in administration) v Ahmad Hamad Algosaibi and Brothers Company* 2018 (2) CILR 20 ("*AHAB*").

Order 63 rule 3 of the Grand Court Rules

108. Order 63 rule 3 (3) provides that "[s]ubject to paragraph (4) and (5), the Court file relating to any proceeding shall be open to inspection only by the parties to that proceeding.

109. Order 63 rule 3 (4) provides that "[t]he Court may order that the court file relating to any proceeding or any specific document therein be closed and not open to inspection by any party or other person except with the prior leave of the Court.

110. Order 63 rule 3 (5) provides that "[t]he court may give leave on application to any person not being a party to the proceedings to inspect the court file or take a copy of any document on the Court file relating to those proceedings.

O38 rule 2A (12) of the Grand Court Rules

111. O38 r2A of the GCR concerns the exchange of witness statements.

112. O38 r2A (12) provides that "[s]ubject to paragraph (13), the Judge shall, if any person so requests during the course of the trial, direct that any witness statement which was ordered to stand as evidence in chief under paragraph (7)(a) shall be open to public inspection." (my underlining)

113. Paragraph (7)(a) refers to the situation where the party serving the statement does call the witness at trial and the court may direct that the statement served shall stand as the evidence in chief of the witness.

114. Paragraph (13) covers situations where the judge may refuse to give a direction under paragraph (12).

115. Underlining the need to move quickly O38 r2A (15) provides that subject to any condition the Court may impose a person may inspect and take a copy of the certified copy of the

witness statement following a direction under paragraph (12) "from the time when the direction is given until the end of 7 days after the conclusion of the trial." (my underlining)

PD1 of 2015

116. The relevant part of PD1 of 2015 provides as follows:

> "Application for inspection of Court Files
>
> An application under O.63 r. (5) for leave to inspect a Court file may be made by letter to the Clerk of Court and may be determined administratively by the Clerk of Court unless the Clerk is of the view that the matter should be referred to a Judge for determination. The application should contain:
>
> 1) The identity of the person seeking leave to inspect and, where that person is an attorney or agent, the identity of his principal. Where the person applying is an agent, written authority of the principal must be furnished.
> 2) A concise statement of the reason for the request; and
> 3) A description of the portion of the Court file that the applicant wishes to inspect." (my underlining)

The open justice principles and caselaw

117. A lot has been written on the importance of open justice both in the Cayman Islands and elsewhere. Counsel, exercising due restraint, brought to my attention just 3 authorities (1) *AHAB*; (2) *Dring v Cape Intermediate Holdings Ltd* [2019] UKSC 38, [2020] AC 629 ("*Dring*") and (3) *Moss v Upper Tribunal* [2024] EWCA Civ 1414, [2024] 4 WLR 99 ("*Moss*") and I now turn to consider those authorities.

AHAB

118. In *AHAB*, the International Banking Corporation BSC (in administration) ("TIBC"), the appellant in that case, sought to inspect and copy documents disclosed or filed in proceedings in the Cayman Islands between AHAB (the respondent to the appeal) and another party. AHAB brought an action in the Grand Court against members of the Saad group of companies to recover the proceeds of an alleged fraud. It was alleged that TIBC had been incorporated by the use of false documents. TIBC was not a party to the proceedings in the Cayman Islands but was a claimant in proceedings in Saudi Arabia and Bahrain concerning the same events. It was common ground that TIBC had a legitimate interest and purpose in obtaining access to the evidence, including to use the evidence in foreign proceedings.

119. Smellie CJ (as he then was) dismissed the application for disclosure of the transcripts, which had been prepared at the parties' expense and had not been deemed to be the official record. Disclosure was ordered of all non-sealed statements and affidavits on the court file which were directed to stand as evidence in chief at the trial, limited to those in which reference was made to TIBC, but not including exhibits, annexes or schedules attached to or identified in such witness statements and affidavits. The judgment is reported at 2017 (2) CILR 788.

120. The Court of Appeal (Martin, Newman and Field JJA) allowed the appeal and ordered (a) disclosure in electronic form of the witness statements and affidavits without limit to TIBC being mentioned therein, and (b) disclosure in electronic form of the transcripts of all of the proceedings in court.

121. Newman JA at [8] stated: "It was noted that in the Cayman Islands there is no rule of court which requires a recording of the evidence or judgment to be made … The Chief Justice … concluded that the terms of Practice Direction No 3 of 2017 … presented a formidable barrier to intervention by the court because the parties were required in civil cases to make their own arrangements at their own expense, for the provision of these services … It is the

case that in the Cayman Islands there is no rule which suggests that transcripts could be made available to third parties …"

122. Newman JA added:

> "10. It is firmly established that the administration of justice in Cayman must comply with the principle of open justice … the starting point when applying the principle is that disclosure should prevail unless there are sufficiently powerful countervailing factors to present or limit its application (the so-called "default position") …
>
> 11. … It is obvious that the Chief Justice was aware that TIBC wished to obtain the documents in order to assist it in the foreign litigation … I can see little room for the applicability of the rule that a lack of specificity and the undue breadth of a request justify refusal on the ground that it is "a fishing expedition". It is clearly inconsistent with the default position …
>
> 13. The corollary of the default position places the burden on the party resisting disclosure to establish why it should not take place. The process for the court is fact sensitive and involves weighing of all the factors. It is likely to start with an examination of the threshold ground which has been advanced by a member of the public and has been recognised as legitimate, being treated by reason of the character of the purpose, as having a lesser entitlement to the harvest from the disclosure than the harvest to which the pursuit of a journalistic purpose may give rise. The right of the public to open justice can be expressed from any public quarter or person. A purpose must be identified because the court must reasonably and proportionately respond to the application and the purpose will point to the character and weight of any countervailing factors.
>
> 14. This case illustrates some of the difficulties which can arise. The volume of disclosure from a trial which has proceeded for one year, involving a number of parties and counsel and where the same evidence is likely to appear in numerous parts of the record, will require particular attention. The

court must be able to see and understand the connection between the interest and purpose of the non-party and the rationale for the disclosure being sought. Proportionality will be in play. Matters of weight are likely to include consideration as to how clearly an interest has been demonstrated. An application may be driven by a number of mixed motives and purposes. The presence of a personal and private interest in the issue may be relevant and care will need to be taken in assessing the strength of each element. For example, the principle of public access to the courts in a democracy means that the public is entitled to see how the system grapples with issues of a public interest, as well as how it dispenses justice generally …

16. … I can see no reason why the statements that do not mention TIBC should not be disclosed. If there was an underlying concern about the volume of documents which would be involved it is likely to be outweighed by the potential value of the statements and their relevance to TIBC notwithstanding the absence of reference to it. The production of the witness statements will not involve an onerous task because all the documents in the case were uploaded onto a database that can be searched for the witness statements relatively easily and quickly and result in the statements being available in electronic form …

22. … As the Chief Justice had already recognized, TIBC was not looking at a likelihood of evidence being available from a case involving a separate commercial transaction but could point with certainty that evidence was available which directly affected it …

26. … A clear example of a practice, adopted by parties to litigation, which operates to provide a true record and is designed to avoid error and uncertainty, is the use of a privately commissioned transcript of the evidence. I can see no reason why Lord Woolf's basic principle [in *Barings plc v Coopers & Lybrand (No 1)* [2000] 3 ALL ER 910 at [43]] should not apply to transcripts, subject to practical questions and the issue of cost being resolved …

29. … The judge did exclude interlocutory stages of the proceedings from the disclosure and TIBC has not appealed that order …

30. … the correct approach is to regard the nature of the interest advanced by an applicant, whether it is to be seen as a purely private interest or a public interest or a mixed purpose interest, as merely a factor to be weighed in the exercise of the court's discretion. That said, if the court fails to properly identify the interest, it is likely it will fall into error when carrying out the weighing exercise …

31. TIBC is entitled to have an understanding of the case which has been advanced in the trial and to understand the allegations which have been advanced in connection with its role in the events … TIBC has a legitimate entitlement to the witness statements and to the transcript of the proceedings. It will be able to consider the judgment of the Chief Justice with the assistance of a complete account of the evidence recorded in the transcripts and in witness statements and in addition with the assistance of access to the court bundle of documents. However, it seems to me that to grant access to attachments and documents referred to in witness statements and to documents referred to on the transcripts of witness cross-examination will be likely to give rise to a large measure of duplication and repetition, and I am satisfied that without them TIBC will have an adequate understanding of what is relevant to the foreign proceedings. I would accordingly decline to order production of documents referred to in the witness statements or transcripts."

Dring

123. The headnote complied by Shirasikha Herbert in *Dring* helpfully summarises the position. Insurers of certain employers who had been exposed to asbestos brought a claim in negligence against a company involved in the manufacture and supply of asbestos products. The company denied liability and a six-week trial took place. After the trial had ended but before judgment was delivered the parties settled the claims. Dring who had not been a party to these proceedings applied on behalf of a group which supported victims of

asbestos-related diseases for access to all documents used or disclosed at or for the trial, including the trial bundles and trial transcripts, on the basis that they were "records of the court" within CPR 45.4c(2). The master granted the application. The Court of Appeal allowed the company's appeal in part, holding that "records of the court" did not include trial bundles or trial transcripts but that the Court had an inherent jurisdiction to permit a non-party to obtain some of the documents that a trial bundle usually contained, including witness statements and skeleton arguments. On appeal by the company and cross-appeal by the applicant it was held:

(1) dismissing the cross-appeal, "records of the court" in CPR r5.4C (2) did not refer to every single document generated in connection with a case and filed, lodged or kept for the time being at Court, but referred to those documents and records which the Court itself kept for its own purposes, although it could not depend on how much of the material lodged at court happened still to be there when the request was made;

(2) dismissing the appeal that, unless inconsistent with statute or rules of Court, all courts and tribunals had an inherent jurisdiction to determine what the constitutional principle of open justice required in terms of access to documents or other information placed before the court or tribunal in question.

124. Lady Hale handing down the judgment of the court shed some light at [6] on the purpose of the application. It was because the applicant "believed that the document would contain valuable information about such things as the knowledge of the asbestos industry of the dangers of asbestos, the research within the industry and industry-related bodies had carried out, and the influence which they had had on the Factory Inspectorate, and the Health and Safety Executive in setting standards. In the [applicant's] view, the documents might assist both claimants and defendants and also the court in understanding the issues in asbestos-related claims. No particular case was identified but it was said that they would assist in current cases."

125. Lady Hale stated:

> "24. … The principle of open justice is completely distinct from the practical requirements of running a justice system …
>
> 34. … There can be no doubt at all that the court rules are not exhaustive of the circumstances in which non-parties may be given access to court documents …
>
> 42. The principal purposes of the open justice principle are two-fold and there may well be others. The first is to enable public scrutiny of the way in which courts decide cases – to hold the judges to account for the decisions they make and to enable the public to have confidence that they are doing their job properly …
>
> 43. But the second goes beyond the policing of individual courts and judges. It is to enable the public to understand how the justice system works and why decisions are taken. For this they have to be in a position to understand the issues and the evidence adduced in support of the parties' cases … [i]t is difficult, if not impossible, in many cases, especially complicated civil cases, to know what is going on unless you have access to the written material …
>
> 45. However, although the court has the power to allow access, the applicant has no right to be granted it (save to the extent that the rules grant such a right). It is for the person seeking access to explain why he seeks it and how granting him access will advance the open justice principle. In this respect it may well be that the media are better placed than others to demonstrate a good reason for seeking access. But there are others who may be able to show a legitimate interest in doing so …. the court has to carry out a fact-specific balancing exercise. On the one hand will be "the purpose of the open justice principle" and "the potential value of the information in question in advancing that purpose."
>
> 46. On the other hand will be "any risk of harm which its disclosure may cause to the maintenance of an executive judicial process or to the legitimate

interests of others". There may be very good reasons for denying access. The most obvious ones are national security, the protection of the interests of children or mentally disabled adults, the protection of privacy interests more generally, and the protection of trade secrets and commercial confidentiality. In civil cases, a party may be compelled to disclose documents to the other side which remain confidential unless and until they are deployed for the purpose of the proceedings. But even then there may be good reasons for preserving their confidentiality, for example, in a patent case.

47. Also relevant must be the practicalities and the proportionality of granting the request. It is highly desirable that the application is made during the trial when the material is still readily available, the parties are before the court and the trial judge is in day-to-day control of the court process. The non-party who seeks access will be expected to pay the reasonable costs of granting that access. People who seek access after the proceedings are over may find that it is not practicable to provide the material because the court will probably not have retained it and the parties may not have done so. Even if they have, the burdens placed on the parties in identifying and retrieving the material may be out of all proportion to benefits to the open justice principle, and the burden placed upon the trial judge in deciding what disclosure should be made may have become much harder, or more time-consuming, to discharge. On the other hand, increasing digitisation of court materials may eventually make this easier. In short, non-parties should not seek access unless they can show a good reason why this will advance the open justice principle, that there are no countervailing principles of the sort outlined earlier, which may be stronger after the proceedings have come to an end, and that granting the request will not be impracticable or disproportionate.

48. It is, however, appropriate to add a comment about trial bundles. Trial bundles are now generally required. They are compilations of copies of what are likely to be the relevant materials - the pleadings, the parties'

> submissions, the witness statements and exhibits, and some of the documents disclosed. They are provided for the convenience of the parties and the court. To that end, the court, the advocates and others involved in the case may flag, mark or annotate their copies of the bundle as an aide memoire. But the bundle is not the evidence or the documents in the case. There can be no question of ordering disclosure of a marked up bundle without the consent of the person holding it. A clean copy of the bundle, if still available, may in fact be the most practicable way of affording a non-party access to the material in question, but that is for the court hearing the application to decide."

126. Lady Hale at [51] urged the relevant rules committees to give consideration to the questions of principle and practice raised by the case. The Supreme Court was "conscious that these issues were raised in unusual circumstances, after the end of the trial, but where clean copies of the documents were still available." The Court had "heard no argument on the extent of any continuing obligation of the parties to cooperate with the court in furthering the open justice principle once the proceedings are over. This and the other practical questions touched on above are more suitable for resolution through a consultation process in which all interests are represented than through the prism of an individual case."

Moss

127. In *Moss*, the English Court of Appeal (Underhill, Coulson, Males LJJ) considered and applied *Dring*. In *Moss*, it appears from the headnote provided by Hui Ying Gan, the non-party applicant, in advance of a tribunal hearing, sought to be provided with written submissions from the Information Commissioner made in separate proceedings with a similar claim alleging that the Information Commissioner would otherwise have an advantage over him. The tribunal refused the application, concluding that the applicant did not need documents from another case to know the issues in his case and that it was therefore not a good or proportionate use of the tribunal's resources. Dismissing another application, the tribunal held that (1) the applicant had not shown a good reason that

disclosure would advance the open justice principle; (2) the applicant gave a different reason from his earlier application for wanting the same documents; and (3) the applicant had not shown that granting disclosure would not be disproportionate. The Court of Appeal allowed the appeal and held that "although open justice was one of the cornerstones of the English legal system and the court had the power to allow the public to access the written submissions and arguments, as well as the documents which had been placed before the court and referred to during the hearing, a non-party did not have the right to see every document referred to in every case; that the first step in the process was for the non-party to show a good reason for seeking disclosure, in particular, to explain why he sought it and how granting him access would allow him to follow the case and understand the reasons why the judge decided the case in a particular way, thereby advancing the open justice principle; that that test needed to be satisfied in every case and although it was a low threshold, it was a threshold which needed to be surmounted; that if there was no good reason for granting disclosure, that was the end of the matter and the application had to fail; that if there was a good reason, it was then necessary for the court to carry out a fact-specific balancing exercise and consider any countervailing factors which would include the risk of any harm or prejudice that might be caused by the disclosure of the documents to a non-party; that it was not a requirement for the non-party to demonstrate that there were no countervailing factors and to show that granting the request would not be impracticable or disproportionate; that in the present circumstances, bearing in mind the low threshold of the test, the applicant's stated reason had just surmounted the test, there was no risk of harm and no disproportionality, given that there was no significant delay between the judgment and the request; and that, accordingly, the applicant should be granted disclosure of the written submissions." (my underlining)

128. The Court also stressed the desirability of the rules being considered by the respective rules committees. The Court also made three general observations about good practice regarding the disclosure of skeleton arguments and written submissions. In the first instance, it is sensible that the non-party where practicable seek such documents directly from the party which has created them. In the event of objections or difficulties, the non-party should make an application for the documents to the tribunal and that should be done on notice to

the parties. If such an application is made, the party or parties who object to disclosure will then have an opportunity of setting out the reasons for their objection. These should also be provided to the non-party, so that he or she can, if necessary, comment upon them. If the basis of the objection is the confidentiality or sensitivity of the material in question, then the details should not be provided to the non-party. (my underlining)

129. Coulson LJ stated:

> "26. A non-party does not have the *right* to see every document referred to in every case … Therefore, to the extent that it is said that there is a "default position" to that effect, it is wrong …
>
> 27. The first step therefore is for the person seeking access "to explain why he seeks it and how granting him access will advance the open justice principle …" … The first step in the process, therefore, is for the non-party to show a good reason for seeking disclosure, and that test needs to be satisfied in every case … it is a low threshold, at least where what is being sought are copies of skeleton arguments or written submissions which are central to an understanding of the case, and that in many or most cases it will be easily cleared. But it is a threshold and it needs to be surmounted.
>
> 28. … the non-party must explain how access will allow him or her to follow the case and understand the reasons why the judge decided the case in a particular way.
>
> 29. If there is no good reason for granting disclosure, that is the end of the matter, and the application must fail. No balancing exercise is required. But if there is a good reason, it is then necessary to consider any countervailing factors. Those will most obviously include the risk of any harm or prejudice that may be caused by the disclosure of the documents to a non-party. In addition, there is "the practicalities and the proportionality of granting the request" … an application made during the trial when the material is readily available is one thing; an application made thereafter is much less likely to succeed because it may not be practicable to provide the

> material and even if it was, "the burdens placed on the parties on identifying and retrieving the material may be out of all proportion to the benefits to the open justice principle and the burden placed upon the trial judge in deciding what disclosure should be made may have become much harder, or time-consuming, to discharge …"
>
> 30. … Countervailing factors and impracticabilities or lack of proportionality will be matters which, at least in the first instance, one would expect an objecting party to raise."

130. Coulson LJ did not think that the non-party was required to demonstrate that there were no countervailing factors and to show that granting the request would not be impracticable or disproportionate.

131. Coulson LJ at [34] (a) suggested that in the first instance non-parties should where practicable seek documents (certainly skeleton arguments and written submissions) directly from the party which has created them and at [34](b) stated that in the event of objections or difficulties the non-party should make an application for the documents to the tribunal and stressed that "should be done on notice to the parties". Coulson LJ at [35] stated that the process he envisaged tied back to the issue of proportionality and [47] of *Dring*. Coulson LJ added:

> "If the tribunal has to rule at the start of or during a hearing on, say, the provision of skeleton arguments to a non-party, all the relevant material would be immediately available, and it should be a relatively straightforward exercise. But once the hearing is finished and judgment given, the process that I envisage – which is necessary to ensure fairness between the parties and the non-party is going to be much more burdensome for the [tribunal]. Thus, as Lady Hale said in *Dring*, the longer the delay, the greater chances will be that a request for disclosure by a non-party will be rejected on proportionality grounds."

132. At [42] Coulson LJ commented that in *Moss* "there was no disproportionality, given that the request was made a day or two after the judgment had been handed down, when the written submissions would have been readily available. This was not a case where there was a significant delay between the judgment and the request which, for reasons noted above, might make a real difference to the disproportionality argument. So any balancing exercise would only serve to confirm that the appellant should be granted disclosure of the written submissions."

133. At [43] Coulson LJ stated: "… it was quite irrelevant to the application for disclosure that [the judge] had set out in some detail in her judgment what the submissions had been … It would be difficult for a member of the public fully to scrutinise the judicial decision-making process in circumstances where he or she only had the judgment to go on, because it may inaccurately summarise the submissions or may miss an important point, an example that Lady Hale gave at [44] of *Dring*. Furthermore, if it was the right approach, it would mean that when the [tribunal] was considering an application for disclosure to non-parties, it would have to consider the underlying judgment and to decide whether or not it accurately summarised the submissions. That would be a further unnecessary and wasteful burden on the [tribunal]."

134. Males LJ at [46] commented that the matter raised "important issues of principle involving consideration of open justice, finality and resources which are best considered" by the relevant rules committee.

135. Underhill LJ at [47] noted that although the reasons that the appellant gave were "unhelpfully sparse", they were just sufficient to get over the low threshold and there were no countervailing considerations sufficient to justify denial of access to the particular documents requested. Underhill LJ noted that prior to taking the decision to refuse access the judge had decided it was appropriate to seek the parties' views and had done so "but in other circumstances, particularly where the application is made further away from the date of the decision, the court or tribunal may decide that it is disproportionate for it to have to embark on that exercise at all".

The initial concerns of the court in respect of the Letter Application

136. I raised my initial concerns in respect of the Letter Application with Mr Imrie KC during the hearing and he patiently, eloquently and helpfully endeavoured to deal with them. Noting that Mr Imrie KC of Maples was listed as counsel in *Integra* (judgment 28 August 2015), *Shanda Games* (judgment 25 April 2017), *Nord Anglia* (judgment 17 March 2020), and *FGL* (judgment 20 September 2022) and Maples were for the company in *58.com* (5 of the cases in Appendix 1 to the Letter Application) and being aware that Mr Imrie KC was an attorney with extensive experience and knowledge of s238 cases I considered very carefully what he had to write and say in respect of the Letter Application and the way he was seeking to advance it. Having said that I was also conscious that he was, of course, seeking to promote the best interests of his client rather than fulfilling the role of some independent amicus with no axe to grind.

137. Having considered the Letter Application in more detail (especially paragraph 2 and exactly what was being sought which was not the entirety of the documentation in every case) together with the submissions put before the court and the relevant law, I think that on occasions I was setting the bar a little too high during some of my exchanges with Mr Imrie KC. I think I was right however to be concerned that the Letter Application raised some fundamental issues and I still hold concerns in respect of the following areas:

(1) *The reason/purpose of the Letter Application*

138. At paragraph 6 of the Letter Application the reason for it is stated to be that "We" presumably the Company for whom Maples act or perhaps just Maples themselves or perhaps both (the word is ambiguous in the context within which it is used) - "believe that our ability, and that of the court, to understand and make use of the Past Cases will be greatly enhanced if we have access to the Documents … the Documents contain helpful nuance that enable the reader to more fully understand the context of the judgments in these cases". My initial impression when I first read that paragraph was that the Company

wanted access to the documents so that it and the court could better understand the judgments in the 10 cases listed at Appendix 1 of the Letter Application. Judgments in s238 cases do not have a reputation of being short and concise. I think the record, so far, is the 248 page judgment in *Trina Solar*. *FGL* was 149 pages, *iKang* 179, *Nord Anglia Education* 121, *Qunar* 70, *Shanda Games* 112. The judges normally deal with the relevant material issues in some detail and Mr Adkin KC submits that judgments normally speak for themselves.

139. The reason or purpose, as specified in the Letter Application (which is an important factor to consider), appears to have changed or at least been added to. For example at paragraph 90 of the Company's skeleton argument under the heading "*Purpose of Inspection*" a new "level playing field" point is raised. It is now stated:

> "… the first and most important point is that in order for the parties to be on a level playing field, the attorneys on both sides should be able to review, research and have access to material from previous cases on those points. If one party wishes to make submissions based on an earlier case, the other party should have access to the very material from the Court file for that case."

140. At paragraph 91 it is stated in effect that "The Court may wish to know via the parties how such matters [as valuation issues, reliability of market price of the shares, the approach to the merger process and the reliability of the merger price and the approach to discounted cashflow and comparable companies or transaction analysis] have been addressed in other cases". It is not explained how that could not be gleaned from the comprehensive judgments in the previous cases or how access to the voluminous documentation sought dating back almost 10 years could advance the open justice principle as required by *Dring*.

141. At paragraph 92 it is added that granting the Company access to the court files "will facilitate preparation for its case, and may be of real assistance to the Court in reviewing and even resolving issues taking into account what has happened in other cases."

142. There was no reference to the "level playing field" reason/purpose in the Letter Application. I was concerned that the Company, although speaking of the need for a "level playing field" was seeking to move the goal posts in respect of the reasons/purpose of the Letter Application.

143. It is unfortunate that the Company did not nail its colours to the mast in the Letter Application and fully set out the purpose of the Letter Application. The Court and all relevant parties need to know what the applicant's stated purpose is in its application. As Mr Adkin KC put it so colourfully "it shouldn't be like trying to nail jelly to the wall."

144. The authorities (*Dring* and *Moss*) make it clear that the purpose of the application to inspect a court file is a very important factor for the Court to consider. In my judgment it would assist the Court and indeed the parties responding to such applications if the purpose(s) of the application were clearly and fully stated in the application from the outset. An objective read of the Letter Application would lead a reasonable reader to conclude that the main purpose of the application to inspect the Court file and obtain the documentation sought was to enable the parties and the court to better understand judgments in previous cases. Mr Imrie KC in his written and oral submissions sought to add to or at least elaborate upon the purpose of the Letter Application beyond the purpose stated in the Letter Application.

145. Lady Hale in *Dring* referred to the obvious importance of the open justice principle but was at pains to stress that a non-party (such as the Company in this case) had no automatic right of access under the Court's inherent jurisdiction but would have to explain why access was sought and how granting access would advance the open justice principle. Coulson LJ in *Moss* helpfully elaborated on this point and at [28] stated that "the non-party must explain how access will allow him or her to follow the case and understand the reasons why the judge decided the case in a particular way."

146. Mr Imrie KC during his submissions did not refer to any of the judgments in the Past Cases (and indeed in two of them judgments were still awaited) where a point was unclear, he just stressed that they needed the material to assist them in their preparation for the 51job trial which is commencing on 24 June 2025. This leads me to my second initial concern.

(2) *The delay in presenting the Letter Application*

147. One of my other initial concerns was the delay in presenting the Letter Application, not just in respect of the staleness of many of the Past Cases (and practicality and proportionality issues) but also in respect of the forthcoming hearing in 51job in June 2025.

148. The Company's petition is dated 15 July 2022. On 21 and 22 November 2022 there was a hearing in respect of the directions that should be made. On 2 December 2022 I delivered a 14 page judgment. On 19 January 2023 I made an order which at paragraph 39 specified a time period for the Company to file and serve any factual evidence. By order made on 21 June 2024 I ordered, with the consent of the parties, that the trial of the petition commence at 10am on 24 June 2025. On none of these occasions did the Company suggest a need to access documents on the court files in respect of the 10 Past Cases to better understand the judgments or to prepare for trial. I tried unsuccessfully to extract from Mr Imrie KC an explanation for the delay in filing the Letter Application. None was forthcoming but he denied it was a tactical manoeuvre to bolster the Adjournment Application which some cynics may have thought.

149. At paragraph 7.1 of the Letter Application the Company says that it would be "very helpful to receive [the Documents] well before the Submission Filing Deadline" for the trial in 51job commencing on 24 June 2025. The Letter Application was dated 25 February 2025. In the Company's skeleton argument dated 10 April 2025 at paragraph 85 the Company states "in order for the documents to be incorporated into the parties' trial preparations and opening submissions it would be useful to gain access to them sooner rather than later." It is in such circumstances unfortunate that the Company did not make the Letter Application much sooner than it did.

150. If applicants hard up against trial dates leave applications for access to court files too late for proper judicial determination within the timescale belatedly required by such applicants then they will have no-one but themselves to blame.

151. In *Sina* [2025] CIGC (FSD) 21 it appears that the company left it until day 15 of a 20 day trial (albeit in a more focused way than in the Letter Application presently before me) to seek copies of the transcript of the testimony of the valuation expert instructed by the dissenters in *58.com* who was also the valuation expert of the dissenters in *Sina*. The company said it may wish to use or rely on certain parts of the transcript in the *58.com* proceedings (which were stated to be heard on open court between July and September 2024 with judgment awaited). The transcripts were of the cross-examination of the expert in the *58.com* proceedings which it said may need to be put to the expert in circumstances where, for example, it may show previous inconsistent statements/opinions and where the making of such statements is denied at trial. Parker J was having nothing of it. At [26] he comments that "[t]his is very late in the day" and at [27] stated in effect that any such application should have been made well before the pre-trial review on 24 January 2025. Parker J did not think it fair to allow it and at [30] added "whilst these fair value appraisal cases have certain similarities of which the Court is well aware, the commercial context and facts are specific to each case and sometimes unique." Parker J felt that an explanation of the perspective of *58.com* with which the dissenters and their legal teams as well as the court are unfamiliar with ([33]) was "unlikely in the Court's view to be a productive process" and noting that the court had no knowledge of the details of the *58.com* and no access to the relevant material ([34]). Parker J also added "35. The Court would also be loath to make any such findings [of inconsistency or reliability] in circumstances where the Chief Justice has not yet handed down her own judgment in 58.com." Parker J at [18] had stated: "There is no issue which arises as to the admissibility or nature of the transcripts of evidence provided in open court in the *58.com* proceedings which would ordinarily justify their exclusion or limitations on their use. Any required purpose and interest have been made out by the Company in this case."

152. My main concern on delay however is related to the fact that the Company was seeking material from court files of 10 cases dating back over a period of almost 10 years.

153. In *AHAB* the application appears to have been "at the conclusion of the trial" ([1]) and before judgment was given ([7]). In *Dring* it appears that the application was made on 6

April 2017 after the trial had ended and shortly after the claims were settled by consent order sealed on 17 March 2017. In *Moss* there was a judgment on 23 January 2023 and by application dated 31 July 2022 the applicant had sought the parties' written submissions in advance of the hearing. Delay in making the application does not appear to have been an issue in *AHAB*, *Dring* or *Moss*. The judges did however comment on the possible impact on delay in the determination of applications for access to court files (see Lady Hale in *Dring* at [47] and [51] and Coulson LJ at [29], [35], [42], Males LJ at [46] and Underhill LJ at [47] in *Moss*).

154. It may be that the delay in this case will be fatal to the majority of Past Cases where access is sought to the court files in respect of these long since concluded cases. The Company needs to seriously reflect upon whether it is wise to continue with its efforts to gain access to court files in respect of cases which have long since been concluded. I think Mr Imrie KC wisely, albeit belatedly, recognised these very real difficulties when on 17 April 2025 he indicated in effect that the Company was abandoning its Letter Application insofar as it concerned *Shanda Games* and *Integra*. Much time has also past since the hearing dates and judgments in many of the other cases. Delay was and is a real concern.

(3) *Practicabilities and proportionality*

155. Connected with my initial concerns over delay was also a concern as to whether there was sufficient evidence before the Court in respect of practicalities and proportionality. Mr Imrie KC seemed to suggest it would simply be a case of clicking a few buttons and gaining access to the documents sought electronically. I am not so sure it would be that simple especially insofar as the transcripts are concerned. There is also the issue as to the requested redactions and who would undertake that onerous and time-consuming task. Moreover the request at paragraph 2.4 of the Letter Application for access to "any judgments that are not available on the judicial.ky website" seemed somewhat problematic.

156. I was also concerned to note that the Company had only arranged for notification of the Letter Application to certain attorneys. There had not for example been notification direct

to the various companies and dissenters and no formal service had been effected upon the various companies and dissenters some of whom were, if still in existence (Mr Lowe KC referred to two possible dissolutions), resident outside of the jurisdiction. That also could create additional difficulties none of which had been properly explored in the Letter Application.

157. I appreciate there is no burden on applicants to prove that there were no issues in respect of practicalities and proportionality but on the face of the Letter Application there were plainly serious issues in these respects.

(4) What is the correct format for the applications and who should they be directed to in the circumstances of these cases?

158. My greatest concern, which is of most relevance in the present context, is what is the correct format for the applications in these cases and who should they be directed to. In my judgment the Company has proceeded in a very unsatisfactory and inappropriate way.

159. Mr Imrie KC in the Company's skeleton argument dated 10 April 2025 at paragraph 81 stated:

> "This issue is not the subject of a summons. The Company has followed the format for such a request set out in Practice Direction No 1 of 2015 which *requires* a letter to be written to the Clerk of the Court." (emphasis added)

160. Mr Imrie KC is plainly wrong about that. PD1 of 2015 provides that the application "may" be made by letter to the Clerk of the Court. It does not "require" an application to be by way of a letter. As Mr Imrie KC immediately accepted once the point was put to him the wording is permissive not mandatory. There is no requirement that the application be made by letter. In my judgment in the circumstances of these cases the application should have been by way of a summons directed to the presiding judge of the relevant case to which access to records in such case was sought with proper notification/service on all relevant

interested parties. It is important that all interested parties (including the companies and dissenters) are notified of the applications and given an opportunity to be heard. The Clerk of Court may also have something to say about practicalities and proportionality. The valuation experts, the authors of the written submissions and the transcribers may all have relevant points to make. It is inappropriate and unsatisfactory for an applicant in such circumstances to dump a letter into the lap of the Clerk of Court, in respect of 10 separate cases, without identifying the names of the trial judges and say "There you go, you sort it out, just notify people and see what they've got to say within 14 days". An applicant is duty bound to adopt a much more appropriate, satisfactory and helpful approach from the outset.

161. The Company was also wrong to suggest as it did at paragraph 10 of the Letter Application that the Letter Application be heard by Justice Doyle as he "already has carriage of the 51job proceedings in aid of which we are submitting this application." There was no application in the 51job proceedings for permission to use any of the material at trial as in *Sina.* If the Company was to proceed down the path at all it should have done so by way of separate summonses to the trial judges in the individual cases and with proper notice to all interested parties, and in a much more timely fashion.

162. In relation to notifications and responses to the Letter Application Mr Imrie KC updated the court as follows:

(1) *58.com* (MRHCJ) – the attorneys for the company (Maples) had responded yes subject to a request that the names of individuals be redacted. I was not addressed on the practicalities of the redaction process. The 58.com Dissenters represented by Mr Adkin KC oppose the Letter Application;

(2) *FGL Holdings* (RPJ) – the company (represented by Maples) takes no position in relation to the Letter Application. Mr Lowe KC suggests that this company may be dissolved. No response from the dissenters' attorneys;

(3) *iKang* (NSJ) – the company (represented by Maples) do not oppose the access referred to at paragraph 2.2 to 2.4 of the Letter Application nor does it oppose access to documents at paragraph 2.1 on the condition that the consent from the company's expert (which has not been obtained) is obtained to share the valuation report. No response from those described as the Appleby Dissenters. The Ogier Dissenters take no position in relation to the Letter Application.

(4) *Integra* (AJJ) – no response from the company or the dissenters, indeed no contact has been made with the dissenters; and

(5) *Nord Anglia Education* (IKJ) – the company wishes to oppose and requires further time to respond and no responses received from the dissenters' attorneys.

(6) *Qunar* (RPJ) – the company's attorneys have no instructions and no response from dissenters' attorneys.

(7) *Shanda Games* (NSJ) – the company's attorneys have no instructions and no response from dissenters' attorneys.

(8) *Sina* (RPJ) – company's attorneys say yes to documents at paragraphs 2.2 to 2.4 and yes to documents at paragraph 2.1 subject to obtaining consent from the expert to share the valuation report. Mr Lowe KC for the Sina dissenters he represents opposes the Letter Application. One other dissenter (Capital Ventures International) takes no position.

(9) *Trina Solar* (NSJ) – company's attorneys say yes to documents at paragraphs 2.2 to 2.4 and yes to documents at paragraph 2.1 subject to obtaining consent from the expert to share the valuation report, no response from dissenters' attorneys.

(10) *Xingxuan* (IKJ) – no contact with the company (Mr Lowe KC says it may have been dissolved). The dissenter (Waterwood 020 Project Limited) takes no position.

163. In the Letter Application at paragraph 10 the view is stated that "given the commonality of issues, it would be in accordance with the overriding objective for all objections to parts of our application to be heard by the same judge." It may be that this view was tainted by the fact that the Company had left its Letter Application late in the day and rather than incurring further delay dealing with each case separately it was seeking to try and persuade the Clerk of Court to cut corners or at the very least to proceed with undue haste and run the risk of impacting adversely on the rights of others. The Company, during its submissions on 16 April 2025, seriously back tracked from the wishful thinking displayed in its Letter Application.

164. Mr Imrie KC recognised in his oral submissions that it was preferable for the applications for access to court files to be dealt with by the relevant trial judge when he summarised his suggested way forward in respect of the 10 Past Cases: (1) *Sina* (where judgment is awaited) should be referred to Parker J (the trial judge), (2) *58.com* (where judgment is also awaited) should be referred to Ramsay-Hale CJ (the trial judge), (3) *FGL* a direction may be made that an application be made by way of summons and service may be appropriate, (4) *iKang* consent could be sought from the expert, (5) *Nord Anglia Education* should be referred to Kawaley J, (6) *Xingxuan* a direction could be made in respect of enquiring directly from the company, (7) *Trina* there is a need to notify the dissenters, (8) *Qunar* directions required, (9) *Shanda Games* too old so not proceeding with it, (10) *Integra* also too old so not proceeding with it.

165. I agree with Mr Adkin KC's powerful submission that the administrative letter application contemplated by PD No 1 of 2015 is for straightforward and likely uncontroversial requests for access to the court file and it is totally unsuitable to the complicated and controversial requests made by the Company in these cases. In his oral submissions Mr Adkin KC suggested in effect that the application in this case was as far removed as a straightforward administrative application as one could imagine. There is also much force in Mr Adkin KC's submission that where (as here) other parties to the relevant proceedings may wish to object to the application, they should have been given proper notice (by way of a properly served summons) of the application and a fair opportunity to respond. Mr Adkin

KC also properly brings to the Court's attention confidentiality concerns and says that given the informal and broad blanket nature of the application, it is not known whether (and there is no evidence as to whether) the Company has taken any steps to check whether there are any confidentiality restrictions in the third-party proceedings (e.g., in respect of commercial confidentiality, bearing in mind that many of the subject companies in past s238 proceedings are still trading; or confidentiality restrictions which might apply to material obtained through foreign discovery orders). Mr Adkin KC submitted that if orders for access in third-party proceedings are made without having heard from the parties in those proceedings (in circumstances where no proper notice has been served of the application) there may be a risk that the court is being asked to grant access to documents subject to confidentiality restrictions, without the Court having before it the information necessary to assess whether such an order would be appropriate.

166. I have to say that I have serious concerns as to the belated and unsatisfactory way in which the Company has presented its Letter Application. There is no evidence that the Company first attempted to obtain the consent of the authors of the various documents to their release and in particular I am thinking here of the experts, counsel, the transcribers and the relevant judges (paragraph 2.4 of the Letter Application seeks access to judgments that are not publicly available). I am also concerned over the timing of the Letter Application. No explanation (let alone a satisfactory one) has been offered by the Company as to why it has left its Letter Application so late in the day. The Company should seriously reflect upon whether it is worthwhile proceeding with its applications so close to the commencement of the trial in 51job,Inc. and whether it would be an appropriate use of judicial resources to hear summonses in respect of the prior s238 cases where judgments were delivered some time ago and in 2 cases presently awaiting judgment by the trial judges in those cases.

167. I was and am not the presiding judge in any of the 10 Past Cases in which access to court records including unpublished judgments were sought. It is more appropriate for the trial judges in these cases to determine applications for access to the court file in her or his case. I should again make the obvious point that there is no application before me for leave to adduce any of the material sought in the other cases in FSD 155 of 2022 (DDJ), the case

over which I preside. Whereas it was appropriate for me to deal with the Adjournment Summons and the Interrogatories Summons in FSD 155 of 2022 (DDJ) it was not appropriate for me to determine the applications for access to the court files in respect of the cases presided over by other judges.

168. Why do I say it is better that the trial judges deal with applications to access the files in respect of their cases rather than for me to determine the Letter Application? My main reasons are as follows:

(1) the authorities I have referred to above anticipate that it is best for such applications for access to the court record to be dealt with by the relevant trial judge either during or shortly after the relevant hearing. The advantages of that are obvious. The trial judge will be in the best position to determine any issues of "practicalities and the proportionality" as required by the authorities and be alive to any issues of confidentiality or other sensitivities;

(2) it is especially important, if these applications are to proceed at all, that the relevant trial judge deals with the relevant application as the Company is expressly seeking access to the trial judge's judgments not otherwise publicly available. The Company's request at paragraph 2.4 of the Letter Application is not limited to judgments with the result of the fair value trial (and it would be unusual for such judgments not to be made public) so the request must presumably cover all judgments both final and interlocutory. The presiding judge would have had good reason not to publish a judgment on the judicial.ky website and it would not be appropriate for me to permit a non-party to have access to another judge's non-public judgment in another case, against the wishes of that judge. This is another compelling reason why the application for access to non-public judgments should be directed to the judge whose non-public judgments are sought. Mr Imrie KC advanced no reasons in writing or orally as to why the Company would be entitled to access such judgments, without a direct application to the relevant trial judge, when the general public were not able to. This unusual factor, along with the

serious delay, simply highlights the troublesome nature of the Company's Letter Application. Frankly I do not think the Company and its advisers had properly thought this through when at paragraph 10 of the Letter Application they suggested that I was the "most appropriate" judge to deal with the Letter Application as I had "carriage of the 51job proceedings". The Letter Application does not seek access to documents or judgments in my case;

(3) Parker J in *Sina* [2025] CIGC (FSD) 21 was, of course, right to acknowledge the distinct undesirability of one judge being asked to make certain findings in his case on material before another judge (in his case the Chief Justice) when judgment in that case had not yet been handed down. In *Sina* there was an application for permission to deploy certain material from another case pending judgment. In the case presently before me there is no such application. It is highly undesirable to seek determinations from me in respect of applications for access to court files regarding cases before other judges;

(4) if the applicant makes a timely application and it is granted by the trial judge in respect of past cases or cases pending before other judges this will leave the judge in the other case within which the material is sought to be deployed to properly consider how such material may be deployed (if at all) at his or her separate trial. It is premature to consider such application unless and until it is made with the supporting material in support. It is best for less than straightforward applications to be dealt with by the trial judge and this would then enable the other judge in the event of an application before him or her to deploy such material to determine it without being unduly concerned as to whether he or she was unduly trespassing into the trial judge's territory. Another point Parker J was rightly sensitive to in *Sina* [2025] CIGC (FSD) 21; and

(5) the trial judge is uniquely placed to consider the state of the court file and the whereabouts of any clean copies of the documents sought whether in hard or soft format in his or her case and is in a far better position to consider all the factors

relevant to the application for access to the court file in that particular trial judge's case, than I am.

169. I appreciate that one of the Past Cases in the Schedule to the Letter Application is so stale that the trial judge has since long retired but the Company no longer seeks to pursue the application in that long since finalised case. This does not detract from the principle that the application should normally be dealt with by the trial judge.

170. In my judgment in the particular circumstances of the 8 remaining cases the most appropriate way to proceed is not administratively by way of letter but by way of summons to the relevant trial judge, with all interested parties being given a proper opportunity to be heard. This is on the assumption that having read this judgment the Company, upon advice, still thinks it sensible to proceed. The successful and timely pursuit of such applications will not be without difficulty. It appears that the Company *prima facie* simply just left it too late.

Decision and way forward in respect of the Letter Application

171. For the reasons stated in the judgment I decline to deal with the Letter Application and direct that if the Company wishes to proceed with any of its applications to access the court files in the 8 remaining matters it should do so by way of summons directed to the relevant trial judge. It will, of course, be entirely a matter for the trial judge as to how she or he deals with any such applications.

172. Taking on board the helpful guidance from the Court of Appeal in *Moss*, if the Company does decide to proceed (and it would be well advised to think long and hard before doing so) it should proceed as follows:

(1) in the first instance the Company should seek the documents from the entity that has created them;

(2) in the event of objections or difficulties the Company should make an application for the documents to the trial judge in respect of the case from which the documents are sought;

(3) the application should not be by way of an informal letter to the Clerk of Court but should be by way of a formal summons directed to the relevant trial judge with service on or at least notification to all interested parties;

(4) the summons should clearly state the purpose of the application;

(5) if the purpose is to better understand prior judgments the Company must explain how access will enable the Company to understand the judgment and the reasons why the judge decided the case in a particular way;

(6) in these cases the Company must also explain the long delay since the completion of the relevant case and the filing of the application for access to the court records in respect of the case;

(7) in these cases, although there is no strict burden on the Company to demonstrate that there were no countervailing factors and that the request was not impracticable or disproportionate (see [30] of *Moss*) it could assist the trial judge if the Company addressed these issues if it is apparent that they may be in existence.

173. Echoing the comments of Lady Hale in *Dring* and the Lord Justice of Appeal in *Moss* it would be helpful for the future if the relevant committees in the Cayman Islands (such as the Grand Court Rules Committee and the Financial Services Division s238 sub-committee) consider the position in respect of access to court files.

Costs

174. I am content to deal with any applications for costs in respect of the Letter Application administratively on the papers with any concise (no more than 5 pages) written submissions to be filed within 14 days from the delivery of this judgment.

David Doyle

The Hon. Justice David Doyle
Judge of the Grand Court