**Neutral Citation Number: [2026] CIGC (FSD) 35**

**Cause No: FSD 2025-0213 (JAJ)**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**
**FINANCIAL SERVICES DIVISION**

**BETWEEN:**

**(1) RCF VII SPONSOR LLC**
**(2) S&R CAPITAL LTD**

**Plaintiffs**

**-and-**

**BLUE GOLD LIMITED**

**Defendant**

| | |
|---|---|
| **Appearances:** | **Mr Andrew Ayres KC instructed by Mr Erik Bodden and Ms Nienke Lillington of Conyers Dill & Pearman LLP for the Plaintiffs**<br>**Mr Timothy Collingwood KC instructed by Mr Christopher Levers, Ms Farrah Sbaiti and Ms Raedean Simpson of Ogier (Cayman) LLP for the Defendant** |
| **Before:** | **The Honourable Justice Jalil Asif** |
| **Heard:** | **20-21 November 2025** |
| **Judgment:** | **14 May 2026** |

*Company law—construction of Articles of Association—whether certain shares in company are restricted or unrestricted*

*Company law—proposed amendment to Articles of Association—identification of affected class—whether consent of affected class validly obtained*

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# JUDGMENT

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## A. Introduction

1. This is my judgment on the trial on 20-21 November 2025 of certain preliminary issues in this case, pursuant to my Order dated 23 September 2025. The dispute between the parties arises out of a capital fund-raising exercise through the medium of a special purpose acquisition corporation, or "SPAC". The dispute concerns the alienability of the shares obtained by certain participants in the transaction and whether the company in question is able to change the status of those shares from unrestricted to restricted. The Order identifies the preliminary issues to be tried as follows:

> *"6. The following questions or issues shall be tried before the other issues in the case:*
>
> *a) Whether, on a proper construction of the Defendant's Amended and Restated Memorandum and Articles of Association passed on 10 June 2025 and effective from 24 June 2025 ("the Articles"), the Class A shares held by the Plaintiffs (and each of them) are Unrestricted (as contended for by the Plaintiffs) or are Restricted (as contended for by the Defendant).*
>
> *b) For the purpose of Article 30 of the Articles, which shareholders are within the relevant class (the "Affected Class") for the purpose of effecting the variation of the Articles set out in the Notice of Extraordinary General Meeting dated 29 August 2025.*
>
> *c) Whether consent in writing of the holders of a majority of the issued shares of the Affected Class has been given."*

2. In addition, the hearing before me on 20-21 November 2025 was the adjourned return date of the Plaintiffs' *ex parte* on notice application for an interim injunction, which I had granted on 5 September 2025, restraining the Defendant from holding an extraordinary general meeting to vote on a resolution proposed by the Defendant's directors linked to the primary dispute: see my

previous judgment in this matter *RCF VII Sponsor LLC and Another v Blue Gold Ltd* [2025] CIGC (FSD) 94. The Plaintiffs seek the continuation of that injunction on an *inter partes* basis, which the Defendant opposes.

3. The Plaintiffs are represented before me by Mr Andrew Ayres KC, instructed by Mr Erik Bodden and Ms Nienke Lillington of Conyers Dill & Pearman LLP, and the Defendant is represented by Mr Timothy Collingwood KC instructed by Mr Christopher Levers, Ms Farrah Sbaiti and Ms Raedean Simpson of Ogier (Cayman) LLP. I am grateful to the parties for their patience in awaiting this judgment, which has been significantly delayed due to the pressure of other work in the Financial Services Division.

## B. Factual background

### *B.1 Outline of the usual nature and purpose of a SPAC*

4. It is useful to recap in broad terms the usual nature of and purpose for using a special purpose acquisition company ("**SPAC**"), sometimes called a *"blank check company"*, since this provides the underlying context for the parties' disputes in this matter. The following summary is broadly agreed between the parties. However, I stress that the description which follows is, and is intended to be, very high level. Mr Ayres was keen to point out that every capital financing that takes place involving a SPAC will be individually negotiated and subject to the commercial terms agreed by the parties to that specific business combination.

5. A SPAC is a capital financing mechanism that has been popular with private equity funds in recent years. A SPAC is a publicly traded shell company formed for the purposes of: (a) raising money through a listing on a stock market, most often in the United States and through an initial public offering ("**IPO**"); (b) usually merging with, or sometimes acquiring, a privately-owned operating business in need of additional capital financing; and (c) thereby taking the target business public. The overall merger or acquisition is often described as the de-SPAC and is formally achieved by a business combination agreement tailored to the particular transaction. In this regard, mergers tend to be more common for US corporate tax reasons.

6. The SPAC sponsor is the entity or group of persons that: (a) creates the SPAC, often as a Cayman Islands exempted company or Delaware corporation; (b) provides its initial funding; and (c) manages the identification of a target company for the SPAC. The SPAC is an independent corporate entity, with its own directors and shareholders. The SPAC sponsor receives founder shares in the SPAC for a nominal price and contributes the initial startup capital for the SPAC, either by making loans to the SPAC or by buying private placement warrants or other securities. The SPAC uses this capital to pay its initial operating expenses and to embark on an IPO. Public investors buy units in the SPAC through the IPO. The IPO proceeds are paid into a trust account, and the constitutional documents of the SPAC generally require that the IPO proceeds cannot be used other than for completing a de-SPAC transaction or redeeming the public investors if the SPAC fails to conclude a business combination with a target and is liquidated. The SPAC sponsor thus owns equity in the SPAC, like the public investors, but is in a different position from them in that it is usually prohibited by the constitutional documents from accessing any funds raised from public investors, which are maintained in the SPAC's trust account.

7. The SPAC sponsor usually manages the search for a target business for the SPAC to merge with or to acquire, in accordance with any relevant terms of the IPO, for example as to market sector or geographical location of the target. The SPAC's constitutional documents will normally set a period within which the de-SPAC must take place, typically 18-24 months, with the possibility for limited extension of that period. If the SPAC fails to complete a de-SPAC transaction within the applicable time limit and any permitted extension thereof, the SPAC must liquidate. In that case, the public investors' funds and any accrued interest are returned to them from the trust account but the SPAC sponsor's investment will be lost because the SPAC sponsor has no claim on the SPAC's trust account, and the founder shares and any warrants etc will be extinguished or will be worthless as a result of the failure to complete an acquisition or merger.

### *B.2 The Parties*

8. RCF Management LLC carries on business as a manager and sponsor of private equity funds with a particular mandate for investing in the mining and metals sector. The First Plaintiff, RCF VII Sponsor LLC ("**RCF Sponsor**") is a subsidiary of RCF Private Equity Fund I LP (a fund managed by RCF

Management LLC). RCF Sponsor was the sponsor of RCF Acquisition Corp ("**RCF SPAC**"). This case concerns RCF SPAC and the consequences of the business combination which it concluded.

9. The Second Plaintiff (**"S&R Capital"**) is an English company. Its sole director is Mr Sunny Shah, who is an investment team leader at RCF Management (UK) Ltd, a wholly owned subsidiary of RCF Management LLC. Mr Shah and his wife are the sole shareholders and ultimate beneficial owners of S&R Capital. Mr Shah and certain other persons affiliated with RCF Sponsor acquired shares and/or warrants in RCF SPAC as incentives as directors or officers of RCF SPAC, either directly or through their investment vehicles. However, S&R Capital is the only person who has joined with RCF Sponsor as a co-plaintiff in these proceedings.

10. The Defendant, Blue Gold Limited ("**Blue Gold**"), is an exempted company incorporated in the Cayman Islands. It was created specifically to participate in the de-SPAC transaction underlying this claim and is the surviving entity with which RCF SPAC merged for that purpose. It is listed on the NASDAQ exchange. As part of the business combination and at all times since the completion of the de-SPAC, Blue Gold has been the holding company for Blue Gold (Cayman) Limited and Blue Gold Holdings Limited, through which it owns majority interests in leases of gold mines in Ghana, with the Government of Ghana as a minority investor.

### *B.3 The Securities Purchase Agreement*

11. The IPO in respect of RCF SPAC took place on 15 November 2021. The IPO set a de-SPAC date of 15 May 2023, i.e. 18 months from the IPO. However, RCF Sponsor and RCF SPAC were not able to identify a suitable target for a business combination within that period, and so the investors agreed to extend the duration of RCF SPAC for a short period.

12. By August 2023, RCF SPAC had still not identified a suitable target. It is common ground between the parties that the options facing RCF Sponsor were: (a) to liquidate RCF SPAC, returning funds to investors but losing the benefit of its own investment in setting up RCF SPAC and promoting it as a SPAC vehicle; or (b) a secondary sale of RCF SPAC to another sponsor who might be able to identify a suitable target for a business combination. It is also common ground that RCF Sponsor would

have lost approximately US $16,675,000 if RCF SPAC had been liquidated at that time. Unsurprisingly, RCF Sponsor elected to pursue a secondary sale of RCF SPAC.

13. On 2 November 2023, RCF Sponsor and Perception Capital Partners IV LLC ("**Perception Partners**") concluded a securities purchase agreement ("**the SPA**"). The effect of the SPA was that RCF Sponsor sold 31.3% of its Class A shares in RCF SPAC to Perception Partners. Perception Partners became the sponsor and manager of RCF SPAC, which was renamed from RCF Acquisition Corp to Perception Capital Corp. IV ("**Perception SPAC**"). RCF Sponsor and its affiliates who had obtained shares or private warrants in RCF SPAC retained those shares and warrants after the SPA. The retained shares are defined in the SPA as *"Founder Shares"*.

14. The SPA included the following provision in clause 5.13:

> *"[…] the Management Shares and all Founder Shares and Private Warrants retained by the Sponsor shall be free of any contractual transfer restriction upon completion of the Business Combination […]"*

***B.4 The negotiation of the Warrant Exchange and Business Combination Agreements***

15. During late 2023, Perception Partners identified Blue Gold Holdings Ltd as a target. As already indicated, Blue Gold was incorporated on 4 December 2023 to facilitate the de-SPAC transaction. Perception SPAC, Blue Gold Holdings Ltd and Blue Gold executed a Business Combination Agreement on 5 December 2023. This was amended and restated on 12 June 2024 and was further amended on various dates thereafter. It appears that throughout much of 2024 Perception Partners, Perception SPAC and Blue Gold were obtaining regulatory approval from the SEC for the proposed transaction.

16. Between September and November 2024, various emails were exchanged between representatives of the Plaintiffs, Perception Partners and Blue Gold Holdings Limited and/or Blue Gold. This was in the context of RCF Sponsor agreeing to enter into a warrant exchange agreement ("**WEA**") to exchange its warrants in Perception SPAC for Class A shares in Perception SPAC, which would then be swapped for shares in Blue Gold as part of the merger and overall de-SPAC transaction. The Plaintiffs rely on these communications to support their case that the Class A

shares in Perception SPAC that they acquired, and their shares in Blue Gold following the merger, are not subject to any lock-up restrictions. Blue Gold disputes the legal effect of these communications, but the fact of their existence is not in dispute.

17. The relevant individuals involved at this stage, or once the dispute regarding the treatment of RCF Sponsor's shares in Blue Gold was emerging, are as follows:

17.1 Mr Sunny Shah, Ms Kate Broome, Mr Mason Hills, Mr Juan Diego Garcia and Ms Missy Dettmann of RCF Sponsor;

17.2 Mr Elliott Smith and Mr Jordan Leon of White & Case and subsequently of Perkins Coie, attorneys for RCF Sponsor and its affiliates, the former directors and officers in RCF SPAC;

17.3 Mr Rick Gaenzle and Mr Tao Tan of Perception Partners;

17.4 Ms Joan Guilfoyle and Mr Giovanni Caruso of Loeb & Loeb, attorneys for Perception SPAC;

17.5 Mr Andrew Cavaghan of Blue Gold Holdings Ltd and subsequently of Blue Gold;

17.6 Mr Andy Tucker and Ms Rebekah McCorvey of Nelson Mullins and subsequently of Duane Morris, attorneys for Blue Gold Holdings Ltd in relation to the WEA;

17.7 Ms Liz Walsh, Mr Brian Hirshberg and Ms Anna Pinedo of Mayer Brown, attorneys for Blue Gold in relation to the de-SPAC and the dispute with the Plaintiffs; and

17.8 Continental Stock Transfer & Trust Company ("**CST**"), the custodian who was to hold the shares in Blue Gold following closing of the business combination agreement.

18. Starting with the correspondence in September 2024:

18.1 By an e-mail sent at 1:18 pm on Saturday 21 September 2024, Ms Guilfoyle on behalf of Perception SPAC confirmed to Mr Smith for RCF Sponsor that the Plaintiffs' shares in Blue Gold would not be subject to any lock-up restriction following the closing of the business combination agreement:

> *"Dear Elliott*
>
> *[…] With respect to the founders shares and the Exchange Shares (shares to be issued in exchange for private placement warrants), none will be subject to lock-up post-closing and will be registered on the F-4."*

18.2 At 6:29 pm on Monday 23 September 2024, Mr Smith responded by email as follows:

> *"Hi Joan – Thank you. […] Apologies for the triple check, but could you please confirm that the instruction letter to CST at closing regarding the shares that will be issued to RCF under the F-4 will not include an instruction to issue them with any legend (affiliate or otherwise), and that RCF will be able to pull the shares out of CST and into their brokerage account at closing? If easier to connect me to Nelson Mullins, I'm happy to do that. This is the last item we need for RCF to be able to sign off and execute the warrant exchange."*

18.3 At 6:37 pm on 23 September 2024, Ms Guilfoyle passed Mr Smith's query to Nelson Mullins, for Blue Gold Holdings Ltd, and copied in Mr Tao Tan of Perception Partners amongst others. She wrote:

> *"Dear Nelson Mullins Team:*
>
> *Counsel for the former sponsor is looking for assurances there will be no restrictive legends on their remaining securities before they sign the warrant exchange agreement.*
>
> *Under the agreement when Perception took control of the SPAC, the Perception team agreed there would be no lockups on the former sponsor's securities. As you represent the target, they are looking for assurances from you. Please respond as soon as possible."*

18.4 Mr Tucker replied to Ms Guilfoyle by email at 7:12 pm the same day, again copying in Mr Tan, amongst others. He said:

> *"We can confirm that we will honor your agreement. We will direct the legend to be removed/not placed on the securities."*

18.5 Ms Guilfoyle forwarded Mr Tucker's email to Mr Smith at 7:13 pm on 23 September 2024 and Mr Leon forwarded it to Mr Sunny Shah and others at 3:47 pm on 24 September 2024.

19. On 18 October 2024, Mr Tan sent Mr Shah a slide deck for a presentation and spoke with Mr Shah and other representatives of RCF Sponsor the same day to discuss the possibility of RCF Sponsor and its affiliates agreeing to a lock-up period for their shares. The slide deck, which is in evidence, states that Blue Gold was *"close to the finish line"* on the de-SPAC transaction, with a small number of technical comments from the SEC to be addressed. Of particular relevance to this claim, on the slide entitled *"Executive summary"*, the slide deck included the following text:

> *"• All parties have learned hard lessons in deSPAC trading dynamics; very interested in maintaining competitive stock price (>$10). Strategy to do so is to 'know identity and intentions of all selling shareholders on close' […]*
>
> *• Selectively unlock supportive shareholders upfront for float/exchange requirements*
>
> *[…]*
>
> *• Unlock other shareholders over time subject to stock price performance, to balance liquidity and stock support*
>
> *• **Our ask today:** join the lockup regime so we can 1) present a united front to the market from a position of strength, 2) avoid self-reinforcing 'dumping' dynamics, thus 3) enabling all of us to exit at attractive valuations"*

The second and third slides summarised the two different lock-up arrangements that had been agreed by approximately 92.5% of the shareholders in Perception SPAC, including Perception Partners, and noted that RCF Sponsor and its affiliates, who had not agreed any lock-up, owned approximately 7.5% of the shares in Perception SPAC. The final slide sought to make the case for RCF Sponsor and its affiliates to agree to a lock-up for their shares similar to those agreed by the other shareholders in Perception SPAC:

> *"• Uncontrolled 'dumping on the close' has destroyed shareholder value in deSPACs time and time again*
>
> *• We can be the 'exception to the rule': we want to align interests and incentives to support stock price and provide liquidity*
>
> *• Potential to know **100%** of shareholders' identities and intentions*
>
> *• **Reiterating our ask today:** join the lockup regime so we can 1) present a united front to the market from a position of strength, 2) avoid self-reinforcing 'dumping' dynamics, thus 3) enabling all of us to exit at attractive valuations"*

20. Mr Shah's evidence is that RCF Sponsor declined to agree to the lock-up requested by Mr Tan and Perception Partners.

21. On 25 October 2024, Nelson Mullins confirmed to White & Case that White & Case's revisions to the draft WEA on behalf of RCF Sponsor and its affiliates were agreed by the Blue Gold entities and asked White & Case to prepare a clean version. The marked-up copy of the draft WEA dated 25 October 2024 that is in evidence does not clearly indicate which party made which revisions. However, it appears that White & Case had added a new section 1.2 to the draft WEA in the following terms:

> *"**Section 1.2 Freely Tradeable Securities.** The [Perception SPAC] hereby agrees (i) that, upon the closing of the Business Combination (the "**Closing**"), the Exchange Shares and the other*

> *securities of the [Perception SPAC] held by [RCF Sponsor] and the securities of the [Perception SPAC] held by each of the individuals and entities listed on Schedule A hereto (the "**Legacy Directors**") will be exchanged for newly issued ordinary shares of the surviving company (the "**Closing Shares**"), (ii) that, when issued, the Closing Shares will be freely tradable, issued free and clear of any liens and without restrictive legends of any kind, and (iii) to facilitate the transmittal of the Closing Shares (including, without limitation, by causing the [Perception SPAC]'s counsel to deliver any legal opinion required by the transfer agent to effectuate the foregoing) to [RCF Sponsor]'s and Legacy Directors' brokerage accounts immediately upon the Closing by instructing its transfer agent to credit the accounts of such parties at the Depositary Trust Company through its Deposit/Withdrawal at Custodian (DWAC) system pursuant to [RCF Sponsor]'s or Legacy Directors instructions in writing, to be provided by [RCF Sponsor] at least two business days prior to Closing, or through such other electronic means of transferring shares to a brokerage account as may be agreed by the Parties prior to Closing."*

22. At 6:24 pm on Friday 1 November 2024, Mr Tan of Perception Partners wrote to Mr Smith by email:

> *"Hi Elliott,*
> *Sorry for letting this drop. I just dug this latest version up with W&C comments dated 10/25.*
> *This is fine with us. Let's execute."*

I infer that Mr Tan must have been referring to the draft WEA dated 25 October 2024, including White & Case's new section 1.2 that I have just set out.

23. The WEA was then executed by Perception SPAC and RCF Sponsor on 5 November 2024. Mr Collingwood points out that no Blue Gold entity was formally a party to the WEA. The executed version of the WEA included section 1.2 in the precise terms requested by White & Case on behalf of the Plaintiffs. The list of the shareholders in Perception SPAC, referred to in section 1.2 and which was set out in Schedule A to the WEA, included both of the Plaintiffs. It listed RCF Sponsor as the holder of 3,903,125 shares (including 2,000,000 shares which RCF Sponsor had conditionally agreed in the SPA that it would forfeit) and S&R Capital as the holder of 162,500 shares.

### *B.5 Blue Gold's Form F-4 Registration Statement*

24. On 3 February 2025, Blue Gold filed a seventh amendment to the Form F-4 Registration Statement that it had previously filed with the SEC, including a revised draft proxy statement/prospectus. The revised draft proxy statement/prospectus states at page 53:

> *"***The Blue Gold Limited Class A Ordinary Shares being issued in the Business Combination (other than to the shareholders of Perception Capital) are subject to lock-up. If a large number of shares are sold in the public market, the sales could reduce the**

> **trading price of the Blue Gold Limited Class A Ordinary Shares and impede Blue Gold Limited's ability to raise future capital.**
>
> *The Proposed Charter limits the transfer of the Blue Gold Limited Class A Ordinary Shares issued in the Business Combination (other than those issued to former shareholders of Perception Capital). […]"*

A similar statement is made at page 202 of the proxy statement/prospectus, under the heading *"Transfer of ordinary shares"*:

> *"[…] the Proposed Charter limits the transfer of the ordinary shares issued in the Business Combination (other than those issued to former shareholders of Perception Capital)."*

The Plaintiffs were shareholders in *"Perception Capital"*, which was the term used in the Form F-4 Registration Statement to reference Perception SPAC.

### *B.6 Blue Gold's Articles of Association*

25. Blue Gold's restated Memorandum and Articles of Association dated 10 June 2025, and effective from 24 June 2025, define *"Unrestricted Shares*" in Article 2 as:

> *"Class A Ordinary Shares that are: (i) issued to holders of shares in Perception that are not redeemed in the Business Combination; and (ii) previously Restricted Shares that have been released from lock-up pursuant to Article 39;"*

26. Blue Gold draws my attention in addition to Articles 8, 15, 18, 30, 31 and 39, which it contends are relevant to the determination of the preliminary issues. Those Articles provide as follows:

> *"8. The Directors may impose such restrictions as they think necessary on the offer and sale of any Shares.*
>
> *[…]*
>
> *15. Subject to the provisions of the Memorandum and to any direction that may be given by the Company in general meeting and, where applicable, the rules and regulations of the Designated Stock Exchange, the SEC and/or any other competent regulatory authority or otherwise under Applicable Law, without prejudice to any rights attached to any existing Shares, the Directors may allot, issue, grant options over or otherwise dispose of Shares (including fractions of a Share) with or without preferred, deferred or other rights or restrictions, whether in regard to dividend, voting, return of capital or otherwise and to such persons, at such times and on such other terms as they think proper, and may also (subject to the Companies Act and these Articles) vary such rights, and for such purposes the Directors may reserve an appropriate number of Shares for the time being unissued.*
>
> *[…]*
>
> *18. Subject to Article 30, the Directors, or the Shareholders by Ordinary Resolution, may authorise the division of Shares into any number of Classes and sub-classes and Series and sub-series and the different Classes and sub-classes and Series and subseries shall be authorised, established and designated (or re-designated as the case may be) and the variations in the*

*relative rights (including, without limitation, voting, dividend and redemption rights), restrictions, preferences, privileges and payment obligations as between the different Classes and Series (if any) may be fixed and determined by the Directors or the Shareholders by Ordinary Resolution.*

*[…]*

*30. If at any time the share capital of the Company is divided into different Classes of Shares, the rights attached to any Class (unless otherwise provided by the terms of issue of the Shares of that Class) may, whether or not the Company is being wound up, be varied without the consent of the holders of the issued Shares of that Class where such variation is considered by the Directors not to have a material adverse effect upon such rights; otherwise, any such variation shall be made only with the consent in writing of the holders of not less than a majority of the issued Shares of that Class, or with the approval of a resolution passed by a majority of the votes cast at a separate meeting of the holders of the Shares of that Class. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any such variation may not have a material adverse effect, to obtain consent from the holders of Shares of the relevant Class. To any such meeting, all the provisions of these Articles relating to general meetings shall apply mutatis mutandis, except that the necessary quorum shall be any one or more persons holding or representing by proxy not less than a majority of the issued Shares of that Class (provided that, if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum).*

*31. For the purposes of a separate Class meeting, the Directors may treat two or more or all of the Classes of Shares as forming one Class of Shares if the Directors consider that such Classes of Shares would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes of Shares.*

*[…]*

*"39. Restricted Shares shall be subject to lock-up unless and until released from lock-up in accordance with this Article 39.*

*Restricted Shares shall be released from lock-up as follows:*

*(a) five percent (5%) of the Restricted Shares shall be released from lock-up immediately upon the Registration;*

*(b) an additional five percent (5%) of the Restricted Shares shall be released from lock-up on each month following the Registration; provided that, in each such month, the volume weighted-average trading price of the Class A Ordinary Shares on the Designated Stock Exchange is greater than ten dollars ($10.00) per Share for at least twenty (20) out of the applicable number of trading days of that month;*

*(c) all remaining Restricted Shares shall be released from lock-up on the earlier to occur of:*

*(i) the Directors, in their sole and absolute discretion, resolving to release such Restricted Shares from lock-up;*

*(ii) the volume weighted-average trading price of the Class A Ordinary Shares on the Designated Stock Exchange exceeding twenty dollars ($20.00) for at least sixty (60) out of any ninety (90) day period; or*

*(iii) the second anniversary of the consummation of the Business Combination.*

*Each release of Restricted Shares from lock-up pursuant to the foregoing clauses (a) through (c) shall:*

*(d) apply to each holder of Restricted Shares for the time being on a pro rata basis (to be determined by reference to the number of Restricted Shares held by each such holder relative to the total number of Restricted Shares held by all such holders); and*

> *(e) occur automatically without the need for any further action by the Directors upon the occurrence of the relevant circumstances, and (if applicable) the satisfaction of the relevant conditions, specified above.*
>
> *Additionally, and without limiting the foregoing provisions of this Article 39, the Directors shall have the power, at any time and from to time, to release from lock-up Restricted Shares held by one or more Shareholders in their sole and absolute discretion. As used in this Article 39, "**lock-up**" means that the Restricted Shares shall not be capable of, and shall be restricted from, being transferred unless and until such Restricted Shares are released from lock-up in accordance with this Article 39."*

***B.7 The evolution of the dispute regarding the Plaintiffs' shares***

27. The final version of the business combination agreement was approved by Perception SPAC shareholders on 12 March 2025. On 24 June 2025, Blue Gold's Restated Memorandum and Articles of Association came into force. The business combination agreement closed on Thursday 26 June 2025, including the exchange of the Plaintiffs' shares in Perception SPAC for new shares in Blue Gold.

28. The dispute between the Plaintiffs and Blue Gold quickly emerged following the closing. At 11:33 am on Friday 27 June 2025, Mr Shah wrote by email to Mr Gaenzle and Mr Tan to congratulate them on completing the de-SPAC. He continued by asking them to provide copies of the instruction letters that Perception Partners had sent to CST, by which he must have meant the letters referred to in the exchange of emails in September 2024 that Perception Partners were to send to CST indicating that the Plaintiffs' shares should be freely tradeable.

29. At 1:10 pm on 27 June 2025, Mr Smith, now at Perkins Coie, wrote to Ms Guilfoyle and to Nelson Mullins complaining that CST was asserting to the Plaintiffs that their shares in Blue Gold were restricted. Mr Smith sought to arrange a call as soon as possible to discuss the situation and asked who was dealing with the matter at Nelson Mullins.

30. At 1:28 pm on 27 June 2025, Mr Smith wrote by email to Mr Gaenzle and Mr Tan, and including Mr Shah, stating that CST was asserting that the Plaintiffs' shares were restricted. He complained that this was *"obviously contrary to what was agreed"* and said that he would like to resolve this as soon as possible. He asked for copies of the letters to CST and noted that the people who had been

involved at Nelson Mullins had moved firms and that no one now at Nelson Mullins appeared to know anything about the matter.

31. At 1:52 pm on 27 June 2025, Mr Smith wrote to Ms Guilfoyle by email following up on his email sent at 1:10 pm stating that he had been told by Mr Tucker that Loeb & Loeb had instructed CST that the Plaintiff's shares were restricted. Mr Smith asked for a copy of the instruction letter.

32. At 1:58 pm on 27 June 2025, Ms Guilfoyle replied that Mr Smith's email was not accurate. She suggested that he should contact Mayer Brown, who she said were representing Blue Gold, and she copied in Ms Walsh and Mr Hirshberg.

33. At 2:23 pm on 27 June 2025, Mr Smith replied to Ms Guilfoyle's email indicating that he had spoken with Mr Hirshberg, who had told him that it was Loeb & Loeb who had submitted the instruction letter and had instructed CST that the Plaintiffs' shares were restricted. He asked Ms Guilfoyle to call him as soon as possible. It is unclear from the evidence whether any discussion took place between Mr Smith and Ms Guilfoyle, and the parties have not adduced any evidence from either of them.

34. At 9:50 pm on 27 June 2025, Mr Smith wrote directly to Mr Cavaghan, Mr Tan and Mr Gaenzle, copied to Ms Pinedo at Mayer Brown. Mr Smith complained that the Plaintiffs had been expecting to receive unrestricted shares, but that CST had informed them that the shares were restricted. Mr Smith said that the SPA required that the Plaintiffs' shares were unrestricted and drew attention to Blue Gold's Form F-4 Registration Statement which he said also reflected this. He asked for an explanation why Blue Gold had instructed CST to put a restriction on the Plaintiffs' shares and said that the Plaintiffs wished to access their shares immediately.

35. On 30 June 2025, Perkins Coie on behalf of the Plaintiffs wrote to Ms Pinedo at Mayer Brown on behalf of Blue Gold. Perkins Coie complained that the Plaintiffs' shares were being treated as restricted whereas, applying the terms of Blue Gold's Articles of Association, they should be unrestricted. Perkins Coie wrote:

> *"Unrestricted Shares are defined under the Charter as* 'Class A Ordinary Shares that are: (i) issued to holders of shares in Perception that are not redeemed in the Business Combination; and (ii) previously Restricted Shares that have been released from lock-up pursuant to Article 39.'
>
> *The [Plaintiffs'] Shares unambiguously satisfy prong (i) of the definition of Unrestricted Shares. The [Plaintiffs] held shares in the SPAC that were not redeemed in the Business Combination and were exchanged for Class A ordinary shares of the Company."*

Perkins Coie complained that Blue Gold's position contradicted its statements in its Form F-4 and in shareholder communications and argued that Blue Gold was estopped from contending that the Plaintiffs' shares were restricted. Perkins Coie demanded that Blue Gold instruct CST to remove the restriction on the Plaintiffs' shares and to release the shares to the Plaintiffs by 5:00 pm on 1 July 2025 or provide an explanation for its position. Mayer Brown did not reply.

36. At 2:32 pm on 1 July 2025, Mr Tucker for Blue Gold sent an email to Mr Smith and Ms Guilfoyle, copying various others, in which he said:

> *"Elliott,*
>
> *We went back through the notes, it was very definitely intended that all of the sponsor shares were supposed to be locked up. We are not sure why the wording is ambiguous. The sponsor shares had been locked and had waived redemption rights so people felt the language worked.*
>
> *However, I have spoken with Andrew, and he is willing to lift the lock-up in return for some type of orderly marketing agreement on the shares so that the stock price doesn't get adversely affected by your shares coming on to the market.*
>
> *Is that something you can live with?"*

I infer that Mr Tucker's reference to "Andrew" was to Mr Andrew Cavaghan of Blue Gold.

37. Mr Smith responded at 11:06 am on Wednesday 2 July 2025 as follows:

> *"Andy,*
>
> *Our clients had multiple direct conversation with Perception that they would not agree to i) sign a lockup or ii) have their shares be subject to any transfer restrictions post-closing. The disclosure in the F-4 and the language in the charter are actually totally unambiguous on that, notwithstanding whatever was intended by your client.*
>
> *Perception is well aware that the availability of freely tradable shares at closing was a key negotiating factor in the agreements between our clients and Perception.*
>
> *With respect to an orderly selldown, RCF has fiduciary obligations to its LPs to maximize the value of its assets and therefore is incentivized to maintain an elevated share price, but it is not willing to sign any contractual restriction on its ability to sell."*

38. On 8 July 2025, RCF Sponsor wrote directly to Blue Gold repeating the Plaintiffs' complaints about the treatment of their shares in Blue Gold as restricted. RCF Sponsor indicated that the Plaintiffs

had relied on their shares being unrestricted in agreeing to support the de-SPAC transaction and to forgo redemption of their shares. RCF Sponsor demanded that Blue Gold's board of directors immediately instruct CST to confirm that the Plaintiffs' shares were unrestricted. There was no response from Blue Gold.

39. On 11 July 2025, Conyers Dill & Pearman LLP sent a letter before action to Mayer Brown demanding confirmation by 16 July 2025 that the Plaintiffs' shares were unrestricted or an explanation why Blue Gold contended, against the factual background set out in Conyers' letter and which I have summarised, that the Plaintiffs' shares were restricted.

40. On 18 July 2025, Conyers wrote directly to Blue Gold at its registered office in the Cayman Islands threatening proceedings unless Blue Gold confirmed by 5:00 pm on 21 July 2025 that it would take all necessary steps to designate the Plaintiffs' shares as unrestricted and to release the shares to the Plaintiffs.

41. On 23 July 2025, Conyers wrote to Mourant Ozannes (Cayman) LLP, who appear to have been instructed by Blue Gold by that stage. Conyers complained that they had not received any response to their letters of 11 and 18 July 2025 and repeated their demand that Blue Gold take steps to designate the Plaintiffs' shares as unrestricted and to release the shares to the Plaintiffs. Conyers stated that the Plaintiffs would commence proceedings on 25 July 2025 if not.

42. However, Quinn Emanuel, as Blue Gold's litigation attorneys, had in fact replied on 16 July 2025 to Conyers' letter dated 11 July 2025, although it appears that that reply was not received by Conyers or was overlooked at the time. Quinn Emanuel asserted in their letter that:

> *"Your demand is premised upon an erroneous understanding of the definition of* 'Unrestricted Shares' *in Article 8. That Article defines Unrestricted Shares as Class A Ordinary Shares* 'issued to holders of shares in Perception that are not redeemed in the Business Combination.' *By its own terms, Article 8 applies only to shares that could have been redeemed in the business combination but were not. It does not apply to RCF's shares because RCF had no right to redeem its shares in the business combination. Only public shareholders had that right. Article 8 simply makes clear that public shareholders of Perception who chose not to redeem their shares in the business combination would have freely tradeable BGL shares following it."*

Quinn Emanuel continued in their letter:

> *"As your client knows, it is the universal practice for sponsor shares (such as RCF's) to be locked-up following a deSPAC transaction to prevent concentrated selling from leading to market collapse. The Company's articles of association are intended to safeguard the interests of all shareholders (including RCF) by initially restricting the transfer of all BGL shares (except those received by the former public shareholders of Perception) and relaxing those restrictions over time. BGL is obligated to interpret the Company's articles accordingly."*

Quinn Emanuel closed by offering to discuss commercial solutions, provided that they would keep the market for the shares in Blue Gold stable. The Plaintiffs rejected this invitation.

## C. The procedural history and the claims made in these proceedings

### *C.1 The procedural history*

43. The Plaintiffs filed their originating summons on 28 July 2025 seeking declarations that their shares in Blue Gold are Unrestricted Shares, as defined in Blue Gold's Articles of Association, and an order that Blue Gold direct CST to release the Plaintiffs' shares into the Plaintiffs' brokerage accounts.

44. On 8 August 2025, Blue Gold acknowledged service indicating an intention to defend the claim. Blue Gold's evidence in response to the originating summons was therefore due to be served by 25 August 2025. On 20 August 2025, Blue Gold obtained from the Plaintiffs an agreed extension for its evidence to 8 September 2025, on the basis that it needed more time to collate documents and gather information regarding the negotiations, to which it said it had not been a party. Shortly thereafter, on 29 August 2025, Blue Gold's directors gave notice of an extraordinary general meeting to be held on 8 September 2025 for the primary purpose of amending Blue Gold's Articles of Association to insert a new Article 39, the effect of which would be that all Class A shares meeting certain criteria, which would include the Plaintiffs' shares, would be treated as Restricted Shares as defined in Blue Gold's Articles of Association.

45. In response, by a summons filed on 4 September 2025, the Plaintiffs applied *ex parte* on notice for an injunction to restrain Blue Gold from proceeding with the EGM or any other EGM that was called for the purpose of varying the rights attached to any class of shares in Blue Gold. The Plaintiffs complained that the EGM was designed to pre-empt the originating summons and that it

was improperly called because the directors had failed to obtain written approval from a majority of the class of shareholders affected by the proposed change, as required by Article 30 of Blue Gold's Articles of Association. The Plaintiffs also complained about the timing of Blue Gold's request for an extension of time for its evidence, and that Blue Gold appeared to have used that request as a strategy to give Blue Gold's directors time to call the EGM.

46. I heard the Plaintiffs' summons on 5 September 2025 and granted an injunction broadly in the terms sought by the Plaintiffs for the reasons set out in my judgment: [2025] CIGC (FSD) 94. I record that Blue Gold had changed its Cayman attorneys either one or two days before the hearing and did not attend.

47. The parties were then unable to agree a listing date for a summons for directions that had been filed by Blue Gold, with the result that I listed the matter for a mention on 22 September 2025 in order to fix a hearing date. In the event, with some general indications from the court in response to the parties' explanations of their positions, the parties were able to agree a consent order for directions following that hearing. Of significance, the proceedings were ordered to continue as if commenced by writ, with a timetable for the Plaintiffs' Statement of Claim, Blue Gold's Defence, a Reply and the provision I have set out at the beginning of this judgment for the trial of three preliminary issues.

### *C.2 The Plaintiffs' claims*

48. On 6 October 2025, the Plaintiffs served their Statement of Claim. In broad summary, the Plaintiffs' case is that it was a key aspect of the negotiations and terms of the SPA, and the various ensuing transactions, that their shares in Blue Gold following the de-SPAC, would be unrestricted and not subject to any lock-up arrangement so that the Plaintiffs, and the other former directors and officers who had retained shares and warrants in Perception SPAC, would be free to sell those shares at any time without any restriction. The Plaintiffs assert that if this had not been agreed, they would not have entered into the WEA as they had voting control of the shares in Perception SPAC, and the business combination with Blue Gold Holdings Ltd and Blue Gold could not have proceeded.

49. The Plaintiffs allege in their Statement of Claim that their shares in Blue Gold are Unrestricted Shares on a proper construction of Blue Gold's Articles of Association; that there was a collateral contract involving all the parties with the effect that the Plaintiffs' shares in Blue Gold would be unrestricted; and/or that Blue Gold is estopped from treating the Plaintiffs' shares as restricted. The Plaintiffs plead that Blue Gold's directors breached the collateral contract by instructing CST to apply a restriction to the Plaintiffs' shares.

50. As regards the EGM, the Plaintiffs allege that Blue Gold's directors breached their fiduciary duties in calling the EGM. The Plaintiffs assert that Blue Gold cannot change the Plaintiffs' class rights without the approval of a majority of the class in question and aver that Blue Gold has not obtained such majority approval.

51. The Plaintiffs plead that they have suffered significant damage because they intended to sell their shares in Blue Gold from 27 June 2025 onwards, immediately following completion of the de-SPAC. Whilst the Plaintiffs have not pleaded their case as to loss, it appears inferentially from the Statement of Claim that the First Plaintiff's claim is likely to be for between about US $100 million to $200 million, and the Second Plaintiff's claim is likely to be for around US $8.5 million, based on their respective share ownership in Blue Gold. This rough assessment, in the First Plaintiff's case, is subject to whether it is obliged to forfeit 2 million shares pursuant to the SPA, and is based on a pleaded share price of US $62 per share on 27 June 2025 and US $9.59 per share on 3 October 2025. In addition, it ignores that 5% of the Plaintiffs' shareholding would become unrestricted each month in any event under Article 39 of Blue Gold's Articles of Association and would be available for the Plaintiffs to sell as a result. Notwithstanding these imperfections, this estimate provides a useful indication of the potential value the Plaintiffs' claims.

### *C.3 Blue Gold's defence and counterclaim*

52. On 23 October 2025, Blue Gold served its Defence and Counterclaim. Amongst other things, Blue Gold alleges in paragraph 7 that:

> *"7. As a matter of recognised customary business practice and/or standard investment practice in the use (and listing) of SPACs:*

> *[…]*
>
> *7.3 The shares held by the sponsor and the sellers are subject to restrictions for a period of time following a deSPAC transaction, in order to prevent a concentrated sale by the holders of such shares which flooding would cause a collapse in the market for the shares."*

Blue Gold disputes the Plaintiffs' construction of its Articles of Association. It pleads that the Plaintiffs' shares are restricted, which it alleges:

> *"8. […] is in accordance with the wording of the [Articles of Association] their scheme, commercial common sense and standard industry practice in respect of those who create the SPAC and take founder shares."*

Blue Gold asserts that:

> *"34. On the proper construction of the [Articles of Association],* 'Unrestricted Shares' *are defined as Class A Ordinary Shares that had been acquired in the Perception SPAC IPO with a right to redeem for cash in connection with the Business Combination, but in respect of which the public shareholder did not exercise that right to redeem.*
>
> *35. In the premises, paragraph 21 is denied. The Plaintiffs were not public shareholders and had not acquired their shares in the Perception SPAC IPO. The Plaintiffs' shares did not have a right to redeem which the Plaintiffs did not exercise."*

53. Blue Gold denies that it was a party to the WEA or to any understanding that the Plaintiffs' shares would be unrestricted and denies that it made any representations that the Plaintiffs' shares would be unrestricted. In relation to the Form F-4 Registration Statement, Blue Gold pleads that:

> *"29. […] the references to* 'shareholders in Perception Capital' *and* 'former shareholders in Perception Capital' *were (in accordance with customary business practice and/or standard investment practice) to the members of the public who invested in the Perception SPAC under the IPO and not to the sponsor or RCF as former sponsor."*

54. Blue Gold denies that it acted in breach of any collateral contract, the existence of which it also denies, and denies that its directors acted in breach of their fiduciary duty in calling the EGM and proposing the resolution to insert the new Article 39. It avers that the directors considered in good faith that this was necessary in the best interests of Blue Gold and its shareholders as a whole. It asserts that over 80% of its shareholders have indicated support for the resolution.

55. Blue Gold also raises what is, in essence, a causation point, in that it alleges that the Plaintiffs would have proceeded in any event because their only alternative was the liquidation of RCF SPAC / Perception SPAC, with a consequent loss to them of their investment of US $16,675,000.

56. Finally, by way of counterclaim, Blue Gold pleads that the First Plaintiff is not entitled to be registered as the owner of the 2 million shares that RCF Sponsor had conditionally agreed in the SPA to forfeit. Blue Gold seeks rectification of its share register to correct this.

### *C.4 The Plaintiffs' reply and defence to counterclaim*

57. In their Reply and Defence to Counterclaim, filed on 30 October 2025:

    57.1 The Plaintiffs deny that they were a sponsor of Perception SPAC with the consequence, they allege, that many of Blue Gold's contentions fall away.

    57.2 The First Plaintiff denies that it is obliged to forfeit the 2 million shares because of Perception Partners' failure to comply with the requirements for that provision in the SPA to come into force.

    57.3 The Plaintiffs assert that they had already written off the US $16,675,000 that they had invested in RCF SPAC by the time of the SPA and valued their investment in RCF SPAC at US $629,000. They say that they only supported the proposed de-SPAC in order to preserve the possibility of generating some return: accordingly, the Plaintiffs maintain that they would have voted against the de-SPAC if their shares were to be restricted.

    57.4 Moreover, the Plaintiffs assert that Perception Partners and Blue Gold Holdings Ltd would have had to write off significant expenses if they had not obtained the Plaintiffs' agreement. Seemingly, the Plaintiffs intend to argue that Perception Partners and Blue Gold Holdings Ltd were willing to go ahead despite the Plaintiffs' shares <u>not</u> being restricted to avoid losing the value of their own investment.

58. In addition, the Plaintiffs challenge Blue Gold's assertion that Nelson Mullins were acting for Blue Gold Holdings Ltd alone. The Plaintiffs aver that Nelson Mullins also acted for Blue Gold; alternatively, the Plaintiffs claim that Nelson Mullins and Loeb & Loeb had apparent authority to act on behalf of Blue Gold in making the representations that the Plaintiffs' shares in Blue Gold would be unrestricted, on which the Plaintiffs relied.

## D. The evidence relied upon in respect of the preliminary issues

59. The directions order provides for sequential service of affidavit evidence. It does not provide for oral evidence or cross-examination on the affidavits, and none of the parties applied for leave to adduce oral evidence or to cross-examine deponents. The Plaintiffs rely upon four affidavits sworn by Mr Shah. Blue Gold relies upon an affidavit sworn by Mr Cavaghan. In addition, Blue Gold served an affirmation of Ms Candice Beaumont, an independent non-executive director of Blue Gold, which seeks to give opinion evidence as to industry practice regarding SPACs. She bases this evidence on more than 10 years asserted experience working in investment business and provides a CV to bolster her credentials to give such evidence. This is notwithstanding that the order for directions did not give leave to adduce or rely upon any expert evidence.

60. Mr Ayres objects to Ms Beaumont's evidence on the grounds that: (a) it is expert opinion evidence, not evidence of fact, for which Blue Gold has not sought or obtained leave; (b) Blue Gold has no right to adduce Ms Beaumont's evidence without obtaining leave or the Plaintiffs' consent; (c) it is not independent, because Ms Beaumont is a director of Blue Gold and an indirect shareholder in Blue Gold, and she therefore has a financial interest in the outcome of this litigation; (d) Ms Beaumont's evidence fails to comply with the requirements of the FSD User Guide; (e) Ms Beaumont's exhibit includes documents to which she does not refer and which appear to be irrelevant; and (f) her evidence is irrelevant to the issues because it addresses what she says is *"usual practice"* rather than the factual question whether the Plaintiffs' shares are subject to restriction in light of the specific dealings between the parties.

61. Mr Collingwood responds that much of Ms Beaumont's evidence is common ground. He asserts that there is no clear dividing line between factual evidence and expert evidence and relies upon *MAD Atelier International BV v Manès* [2021] EWHC 1899 (Comm) and earlier cases to support an argument that witnesses of fact may be permitted to give opinion evidence that relates to their factual evidence.

62. In my judgment, Mr Ayres' criticisms of Ms Beaumont's evidence are all valid. I do not accept Mr Collingwood's arguments in response. Ms Beaumont's evidence is clearly expert opinion evidence

and cannot be characterised in any other way. Whether or not Ms Beaumont's evidence is largely common ground, permission to adduce it should have been sought and obtained and was not. Further, I do not consider that *MAD Atelier* and the other cases on which Mr Collingwood relies change the position: Ms Beaumont does not give technical factual evidence, to which her opinion evidence is an adjunct or can be said to relate. There is no suggestion that Ms Beaumont was involved in the discussions or decisions regarding the status of the Plaintiffs' shares in Blue Gold in connection with the de-SPAC. Her affirmation is entirely opinion evidence and she gives no relevant factual evidence at all. Nevertheless, notwithstanding all of these flaws, I have addressed her evidence in the course of my analysis of the construction of Blue Gold's Articles of Association.

## E. Post-hearing matters

63. Following the hearing on 20-21 November 2025, I noted that articles of association of Cayman Islands companies are not available to the public from the Registry, unlike in the United Kingdom, and asked Mr Collingwood whether this affected his reliance upon *Ventura Capital GP Ltd v DnaNudge Ltd* [2024] 1 BCLC 263 in relation to the first preliminary issue, as discussed in the following section of this judgment. Unfortunately, this query generated a long-tail of further submissions from the parties.

63.1 On 1 December 2025, Blue Gold filed supplemental submissions and two new authorities concerning the first preliminary issue.

63.2 On 8 December 2025, the Plaintiffs filed responsive supplemental submissions.

63.3 On 10 December 2025, Blue Gold wrote to correct what it said was a factual error in the Plaintiffs' supplemental submissions.

63.4 On 23 December 2025, Blue Gold wrote again to make further representations in response to a point made in the Plaintiffs' supplemental submissions, which Blue Gold said was a new point.

63.5 On 9 January 2026, the Plaintiffs sent a lengthy email responding to Blue Gold's emails of 10 and 23 December 2025, which they said raised points concerning the second preliminary

issue, and setting out their analysis of the number of shares within the affected class depending on various assumptions.

63.6 On 15 January 2026, Blue Gold wrote complaining that the Plaintiffs' further submissions were inappropriate and inviting the court to adopt Mr Cavaghan's evidence as to the number of shares within the affected class.

## F. Preliminary issue (1) – On a proper construction of Blue Gold's Articles of Association, are the Plaintiffs' shares restricted or unrestricted?

64. Mr Collingwood, in his skeleton argument, warns me that:

> *"4. The Court is faced with a challenging task in order to approach [the trial of the preliminary issues] in a principled manner and avoid contaminating its decision on the Preliminary Issues by inadmissible content concerning PP's claims. However, it is submitted that the Court must seek rigorously to maintain that distinction."*

I bear this in mind in reaching my conclusions on the three preliminary issues.

### *F.1 The relevant law*

65. It is common ground between the parties that the principles concerning the construction of Articles of Association are the same as those applicable to the construction of contracts more generally except that no account should be taken of the facts and circumstances known or assumed by the parties at the time that the document was created. This is because the Articles of Association apply to a fluctuating body of members who acquire shares in the company from time to time, some of whom may have no knowledge of the circumstances which applied when the Articles were adopted or amended.

66. Both counsel refer me to the judgment in the English Court of Appeal decision in *Ventura Capital GP Ltd v DnaNudge Ltd* [2024] 1 BCLC 263, where Snowden LJ, as he then was, surveyed in some detail the English and Privy Council authorities on the relevant principles of interpretation and the implication of terms in the construction of contracts generally, and the interpretation of Articles of Association more specifically.

67. Lord Justice Snowden's review encompassed *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50, *Re Sigma Finance Corp* [2008] EWCA Civ 1303, *Arnold v Britton* [2015] UKSC 36 and *Wood v Capita Insurance Services Ltd* [2017] UKSC 24 amongst others. Adopting Lord Neuberger's elaboration in *Arnold v Britton*, the starting point is that the court must focus on the meaning of the relevant words in their documentary, factual and commercial context. The meaning of the words in question has to be assessed in light of: (i) the natural and ordinary meaning of the clause as a whole; (ii) any other relevant provisions of the document; (iii) the overall purpose of the clause and the document; (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed; and (v) commercial common sense; but (vi) disregarding subjective evidence of any party's intentions.

68. Turning to the question of the approach to construing Articles of Association, Snowden LJ said this:

> *"[49] Most of the factors identified by Lord Neuberger in* Arnold *and the principles outlined in the cases that have followed it are equally applicable to the interpretation of articles of association of a company which have the force of a contract between the members by reason of s.33 of the Companies Act 2006. The exception is Lord Neuberger's factor (iv) – the facts and circumstances known or assumed by the parties at the time that the document was executed – often called the factual background or matrix.*
>
> *[50] The articles of association of a company apply to the potentially fluctuating body of members who acquire shares in a company, some of whom may have no knowledge of the circumstances which applied when the articles were adopted or amended. The articles are also publicly registered at the Companies Registry, where they are available to those who wish to deal with the company, who may also have no specific knowledge of the background to the adoption or alteration of the articles. For these reasons, and in contrast to the approach when interpreting ordinary commercial contracts, the relevant background facts for the purposes of interpretation of articles of association must be very limited […]"*

69. Lord Justice Snowden then cited his own first instance judgment in *Re Euro Accessories Ltd* [2021] EWHC 47 (Ch), which had been relied upon by the trial judge in *Ventura Capital*:

> *"34. The result is that the process of interpretation to arrive at the true meaning of a provision in a company's articles of association must concentrate on the natural and ordinary meaning of the words used, when viewed in light of the scheme and purpose of the articles in general, any extrinsic facts about the company or its membership that would reasonably be ascertainable by any reader of the company's constitution and public filings at Companies House, and commercial common sense."*

70. In this respect, I consider that there is no difference of principle between the law of the Cayman Islands and the law of England and Wales, and I apply the approach described by Snowden LJ in

*Ventura Capital GP Ltd v DnaNudge Ltd*. However, the factual position in the Cayman Islands is significantly different from England and Wales in that the Articles of Association of a Cayman Islands incorporated company are not publicly available from the Registry and are only available to existing members. On the other hand, for any Cayman Islands incorporated company that is listed in the United States, the Articles of Association and many other documents concerning the company will almost inevitably be publicly available through the SEC as a result of information disclosure requirements in that country.

### *F.2 The arguments and analysis*

71. The starting point is therefore the wording of Blue Gold's Articles of Association. As well as defining "Company" to mean Blue Gold, Article 2 includes the following relevant definitions:

> *"2. In these Articles, the following words and expressions shall have the meanings set out below save where the context otherwise requires:*
>
> | | |
> |---|---|
> | *Class A Ordinary Share* | *a Class A ordinary share of a par value of US$0.0001 in the share capital of the Company;* |
> | *BGHL* | *Blue Gold Holdings Limited, a private company limited by shares, formed under the laws of England and Wales;* |
> | *Business Combination* | *the business combination among the Company, Perception and BGHL pursuant to the Business Combination Agreement;* |
> | *Business Combination Agreement* | *the second amended and restated business combination agreement dated 12 June 2024 by and among Perception, the Company and BGHL, as amended, supplemented or otherwise modified from time to time;* |
> | *Perception* | *Perception Capital Corp. IV, an exempted company incorporated under the laws of the Cayman Islands;* |
> | *Restricted Shares* | *the Class A Ordinary Shares issued in the Business Combination, other than the Unrestricted Shares;* |
> | *Treasury Shares* | *Shares that were previously issued but were purchased, redeemed, surrendered or otherwise acquired by the Company and not cancelled;* |
> | *Unrestricted Shares* | *Class A Ordinary Shares that are: (i) issued to holders of shares in Perception that are not redeemed in the Business Combination; and (ii) previously Restricted Shares that have been released from lock-up pursuant to Article 39;"* |

72. Mr Collingwood submits that the natural and ordinary meaning of *"shares in Perception that are not redeemed in the Business Combination"* in the definition of Unrestricted Shares is shares in Perception SPAC that had an *entitlement to redeem* which was not exercised. He argues that the distinguishing feature is the implicit absence of a *right to redeem*. He adds that the words *"that are not redeemed in the Business Combination"* would be redundant otherwise. He seeks to support this argument by reference to what Blue Gold says is the commercial context, commercial reality and commercial commonsense.

73. The Plaintiffs' case is that the definition of Unrestricted Shares is clear and unambiguous, and should be given its literal meaning, which is simply: any shares in Blue Gold issued to former shareholders in Perception SPAC that have not been redeemed as part of the business combination.

74. Mr Collingwood argues that the relevant commercial context that supports Blue Gold's position starts with the general nature of SPACs that I have summarised at the outset of this judgment. However, he adds an additional asserted general feature of SPACs, namely that immediately following the de-SPAC, the number of shares in public circulation is usually low compared to the shares owned by the sponsor and the SPAC target (or "seller"), so that it is general practice that sponsors and sellers are subject to restrictions for a period following the de-SPAC to prevent a concentrated sale by such persons causing a collapse of market price and adversely affecting public investors. He contends that without such lock-up restrictions, it would be difficult to attract participants and investors in SPACs.

75. Secondly, Mr Collingwood submits that the commercial reality is that the Plaintiffs' shares would have been issued subject to restriction while RCF Sponsor was acting as sponsor, and there is nothing in Blue Gold's Articles of Association to change that situation.

76. Thirdly, Mr Collingwood says that it makes no commercial sense that a sponsor or former sponsor, having acquired its shares for a nominal sum, can cash in all of its shares at a vastly increased

market price as a result of the de-SPAC, with a depressing impact on the price for public shareholders.

77. Mr Collingwood adds that, if the Plaintiffs are right, then all of the shares issued to other holders of shares in Perception SPAC would also be unrestricted. This would result in all sponsor-related shares, including shares owned by Perception Partners, being Unrestricted Shares. He asserts that this does not make commercial sense. He says that there is no rational distinction between the position of sponsors on the one hand and other insiders on the other, nor any commercial reason why the former should be permitted to trade their shares.

78. I do not accept Blue Gold's case. I agree with Mr Ayres that the definition of Unrestricted Shares in Article 2 is not tied to whether or not the shares in question are redeemable. The definition is clear and unambiguous in identifying within the first category of Unrestricted Shares those shares in Blue Gold issued to holders of shares in Perception SPAC that were not redeemed as part of the business combination. In my judgment *"not redeemed in the Business Combination"* is a factual qualifier that simply excludes redeemed shares from the class of Unrestricted Shares. There is no need to add anything for that definition to make grammatical and commercial sense. I accept Mr Ayres' submission that if it were intended that Unrestricted Shares should have the meaning contended for by Blue Gold then it would have been simple to say *"*redeemable *Class A ordinary shares …"* in the definition.

79. Neither do I accept Mr Collingwood's argument that the words *"that are not redeemed in the Business Combination"* are redundant on the Plaintiffs' construction of Article 2. As Mr Ayres contends, those words are required in order to exclude as Unrestricted Shares those shares that were redeemed in the business combination but still exist because they have not been cancelled, defined in Article 2 as Treasury Shares. The additional words in the definition of Unrestricted Shares are not surplusage.

80. Further, so far as Blue Gold seeks to bring into account considerations of the commercial context, the commercial reality and commercial commonsense, in my judgment, those aspects of Blue

Gold's case are entirely answered by events in October 2024, as I have set out in paragraph 19 of this judgment. By way of recap:

80.1 Mr Tan of Perception Partners met with RCF Sponsor's representatives on 18 October 2024.

80.2 Mr Tan indicated that approximately 92.5% of the shareholders in Perception SPAC had agreed to lock-ups of their shares in Blue Gold.

80.3 Mr Tan sought, unsuccessfully, to persuade RCF Sponsor also to agree to a lock-up in respect of the shares that it was to acquire in Blue Gold.

80.4 In his slide deck for the meeting with RCF Sponsor, Mr Tan referenced the *"hard lessons"* that he said had been learned in de-SPAC trading dynamics. His purpose for seeking to persuade RCF Sponsor to agree to a lock-up arrangement was to avoid share *"dumping"*, with a negative effect on share price. He said dumping shares on closing *"has destroyed shareholder value time and time again"*. He said in terms *"we can be the exception to the rule"*.

81. First, Mr Tan's statements make clear that there is no universal practice that sponsor and seller shares are locked up in de-SPACs. That is amply demonstrated by his comment that dumping of shares following the close had destroyed value *"time and time again"*, and by his pitch that RCF Sponsor and Perception Partners could be the "*exception to the rule*". To the contrary, his contemporaneous statements clearly demonstrate that sponsor and/or seller shares may be subject to restrictions, if the sponsor and/or seller agrees to conclude a lock-up arrangement; but in the absence of such an agreement, they are free to sell their shares. It is this freedom to sell that must have been the foundation for Mr Tan's concerns about *"dumping"* and his reference to *"hard lessons"*. The *"hard lessons"* in question being the consequences of previous examples of unrestrained sponsors or sellers selling shares immediately following a de-SPAC and depressing the share price as a result.

82. Mr Collingwood submits that the commercial reality includes that sponsors and sellers should be restrained from selling shares before the end of the applicable lock-up period to protect the share price. It may be that many sponsors and sellers would recognise that it is in their commercial best

interests to agree to enter into such a lock-up agreement in order to persuade public investors to invest in the SPAC and to protect the share price in the period immediately following the de-SPAC, but that does not mean that they are limited in their ability to sell in the absence of a lock-up agreement. There is no suggestion by Mr Collingwood that there is any relevant regulatory requirement for a lock-up arrangement as part of a de-SPAC, and it seems to me that there must therefore be a free market for SPAC sponsors, sellers and investors to determine the terms on which their particular transaction will proceed.

83. Secondly, the fact that Mr Tan positively sought to persuade RCF Sponsor to enter into a lock-up arrangement and his pitch that RCF Sponsor and Perception Partners could be the exception to the rule are also inconsistent with the asserted existence of a universal practice. If there were such a universal practice, Mr Tan would not have needed to try to persuade RCF Sponsor to agree to a lock-up: he would simply have relied on the universal practice.

84. These aspects of Mr Tan's attempts to obtain RCF Sponsor's agreement to a lock-up arrangement in October 2024 directly contradict Ms Beaumont's opinion evidence of the existence of a universal practice that sponsor and seller shares are subject to a lock-up. I reject the substance of her evidence as a result, as well as rejecting her evidence because of the procedural issues that I have outlined earlier in this judgment.

85. Thirdly, I agree with Mr Collingwood that the consequence of the Plaintiffs' argument is that all shares in Blue Gold issued to holders of shares in Perception SPAC are Unrestricted Shares for the purpose of the Articles. However, it does not follow that those shares are freely alienable by all such shareholders. In this case, 92.5% of such shareholders agreed to separate lock-up arrangements outside the terms of the Articles of Association, which limit their ability to sell their shares. They concluded those lock-up agreements on terms that they must have considered to be commercially acceptable to them, and which were different as between two groups of such shareholders. They were contractually free to do so if they judged that to be in the best interests. In other cases where sponsors and/or sellers agree lock-up arrangements, there will be similar commercially negotiated restrictions on their ability to sell their shares. There is therefore no

trampling on commercial commonsense as a result of giving the definition of Unrestricted Shares in Article 2 its plain and obvious meaning.

86. In addition, the fact that the other shareholders in Perception SPAC had entered into two different forms of lock-up arrangements is another pointer against there being a universal practice that sponsor and seller shares are locked up in de-SPACs, otherwise they would all have entered into the same form of lock-up.

87. Fourthly, as to Mr Collingwood's submission that the Plaintiffs' shares would have been restricted if it had continued as sponsor and that nothing in Blue Gold's Articles of Association changed that position, that appears to be a matter of speculation. I was not shown the terms on which any de-SPAC with RCF Sponsor as sponsor would have proceeded, I infer because such terms were never negotiated as a result of RCF Sponsor's failure to identify a suitable target.

88. Fifthly, I do not accept the underlying assumption in Mr Collingwood's submission that it makes no commercial sense to allow a sponsor or former sponsor to cash in all of its shares at a vastly increased market price having acquired its shares "*for a nominal sum*". Blue Gold's own case is that RCF Sponsor had incurred US $16,675,000 in promoting RCF SPAC, the value of which it would have lost but for the business combination with Blue Gold. I do not consider that investment to be a nominal sum and there is nothing wrong, in principle, with RCF Sponsor recouping that investment by selling its shares following the de-SPAC and generating a profit if it is able to do so. It seems to me that that is an inherent part of the business model for forming and promoting SPACs.

89. Sixthly, Mr Ayres is right to point out that the definition of Restricted Shares refers to *"Class A Ordinary Shares issued in the Business Combination"* and that the Plaintiffs' shares were not issued in the Business Combination but were issued before the Business Combination, which is a fact admitted by Blue Gold, and which is another pointer against the Plaintiffs' shares being Restricted Shares.

90. Seventhly, if it is appropriate to look more widely than the Articles of Association in order to understand the commercial context surrounding Article 2, then in my judgment it is appropriate to

have regard to Blue Gold's Form F-4 Registration Statement. As an SEC filing, the Form F-4 Registration Statement is in the public domain and accessible to any person considering investing in Blue Gold and becoming bound by the terms of the Articles of Association. Moreover, it is an important document that most investors would wish to study before making a decision whether or not to invest. I therefore consider that, to the extent necessary, it falls within the kinds of external documents contemplated in *Ventura Capital GP Ltd v DnaNudge Ltd* as being permissible to consider when interpreting articles of association.

91. In this case, the Form F-4 Registration Statement provides some additional insight into and/or a cross-check on the intended purpose and effect of the definition of Unrestricted Shares in Article 2. As I have set out earlier in this judgment, Blue Gold's Form F-4 Registration Statement indicates that the intention was that Blue Gold shares issued to persons who were shareholders in Perception SPAC would not be restricted. The statement in Blue Gold's Form F-4 that such shares were excluded from the lock-up arrangements was repeated three times.

92. In the circumstances, I am wholly satisfied that, however one looks at it, there is no sound basis to accept Blue Gold's construction of the definition of Unrestricted Shares in Article 2 of its Articles and there is equally no plausible argument why the definition should not be given its plain and ordinary meaning, namely that any shares in Blue Gold issued to former shareholders in Perception SPAC that, as a matter of fact, were not redeemed as part of the business combination are Unrestricted Shares. There is no implicit requirement or implied qualification that the shares in question must have been capable of being redeemed.

93. I therefore determine that the answer to the first preliminary issue is that the Plaintiffs' Class A shares in Blue Gold are Unrestricted Shares.

## G. Preliminary issue (2) – For the purpose of Article 30 of the Articles, which shareholders are within the relevant class for the purpose of effecting the variation of the Articles set out in the Notice of Extraordinary General Meeting dated 29 August 2025?

### *G.1 What is the nature of the intended change or variation?*

94. Before considering the parties' arguments, it is useful to set out the nature of the intended changes to Blue Gold's Articles of Association. Article 39 is currently as follows:

> *"39. Restricted Shares shall be subject to lock-up unless and until released from lock-up in accordance with this Article 39.*
>
> *Restricted Shares shall be released from lock-up as follows:*
>
> *(a) five percent (5%) of the Restricted Shares shall be released from lock-up immediately upon the Registration;*
>
> *(b) an additional five percent (5%) of the Restricted Shares shall be released from lock-up on each month following the Registration; provided that, in each such month, the volume weighted-average trading price of the Class A Ordinary Shares on the Designated Stock Exchange is greater than ten dollars ($10.00) per Share for at least twenty (20) out of the applicable number of trading days of that month;*
>
> *(c) all remaining Restricted Shares shall be released from lock-up on the earlier to occur of:*
>
> *(i) the Directors, in their sole and absolute discretion, resolving to release such Restricted Shares from lock-up;*
>
> *(ii) the volume weighted-average trading price of the Class A Ordinary Shares on the Designated Stock Exchange exceeding twenty dollars ($20.00) for at least sixty (60) out of any ninety (90) day period; or*
>
> *(iii) the second anniversary of the consummation of the Business Combination.*
>
> *Each release of Restricted Shares from lock-up pursuant to the foregoing clauses (a) through (c) shall:*
>
> *(d) apply to each holder of Restricted Shares for the time being on a pro rata basis (to be determined by reference to the number of Restricted Shares held by each such holder relative to the total number of Restricted Shares held by all such holders); and*
>
> *(e) occur automatically without the need for any further action by the Directors upon the occurrence of the relevant circumstances, and (if applicable) the satisfaction of the relevant conditions, specified above.*
>
> *Additionally, and without limiting the foregoing provisions of this Article 39, the Directors shall have the power, at any time and from to time, to release from lock-up Restricted Shares held by one or more Shareholders in their sole and absolute discretion. As used in this Article 39, "**lock-up**" means that the Restricted Shares shall not be capable of, and shall be restricted from, being transferred unless and until such Restricted Shares are released from lock-up in accordance with this Article 39."*

95. The EGM resolution proposed by Blue Gold's directors and promoted by them would insert a new Article 39, renumber the existing Article 39 as Article 40, with consequential revisions, and renumber all subsequent Articles. The new Article 39 would be in the following terms:

> *"39. Notwithstanding anything to the contrary in these Articles, all Class A Ordinary Shares received by Perception shareholders in respect of Perception shares that were not redeemable in the Business Combination, and all Class A Ordinary Shares issuable upon exercise of any warrants issued or assumed by the Company in the Business Combination, shall be treated as Restricted Shares for purposes of Article 40."*

96. On the basis that I have found against Blue Gold on the proper construction of Unrestricted Shares, the second preliminary issue requires that I determine what is the composition of the relevant class that must give its approval under Article 30 to Blue Gold's members voting on the insertion of the new Article 39.

### *G.2 An anterior point*

97. Mr Collingwood seeks to raise an anterior point, namely that the change that would result from the insertion of the new Article 39 does not amount to a variation of class rights at all. He puts forward two reasons for this:

97.1 He contends that there is no variation of class rights at all because the effect of Article 39 is simply to move certain shareholders from one existing class to another existing class, and that the change does not involve any variation of the existing rights of those two classes.

97.2 He draws on the judgment of Buckley J, as he then was, in *Re Saltdean Estate Co Ltd* [1968] 1 WLR 1844 to caution that what may appear from one perspective to be a variation of class rights may simply be an application of the existing rights of the shareholders. Mr Collingwood says that Articles 8 and 15 of Blue Gold's Articles of Association already give Blue Gold's directors an existing right to add restrictions to the Plaintiffs' shares, so that the intended insertion of the new Article 39 and its consequence as regards the Plaintiffs' shares does not involve a variation of class rights at all, but is merely the implementation of the existing provisions of those two Articles.

98. Mr Ayres submits that I should confine myself to the three preliminary issues that I have ordered be tried now and resist the temptation to decide this different point raised by Mr Collingwood. In the course of preparing this judgment, I have considered carefully whether I should try to decide Mr Collingwood's anterior point. I have determined that I should not do so for two reasons. First, the point was not ordered to be tried as part of the preliminary issues and Blue Gold has not sought to amend or expand the preliminary issues to bring it into the arena at this stage of the proceedings. Secondly, I am not satisfied that I have heard fully developed submissions from Mr Ayres in response to this point. For example, this issue was not canvassed in the Plaintiffs' written skeleton argument, and the transcript and my note of the hearing show that Mr Ayres' oral submission on the meaning and effect of Article 8 was brief in the extreme, without any elaboration, and his oral submission on Article 15 was also somewhat condensed.

99. In my judgment it would be unfair to the parties to try to reach a conclusion on this question where it was not ordered to be tried as one of the preliminary issues and when I am not satisfied that I have heard full argument on it. The point will therefore fall to be determined at any future trial of the Plaintiffs' claim.

### *G.3 The nature of class rights*

100. Article 18 of Blue Gold's Articles of Association gives the directors and shareholders power to divide Blue Gold's shares into classes or sub-classes, or series or sub-series:

> *"18. Subject to Article 30, the Directors, or the Shareholders by Ordinary Resolution, may authorise the division of Shares into any number of Classes and sub-classes and Series and sub-series and the different Classes and sub-classes and Series and subseries shall be authorised, established and designated (or re-designated as the case may be) and the variations in the relative rights (including, without limitation, voting, dividend and redemption rights), restrictions, preferences, privileges and payment obligations as between the different Classes and Series (if any) may be fixed and determined by the Directors or the Shareholders by Ordinary Resolution."*

However, there is no suggestion that Blue Gold's directors have formally done so. My understanding is that the only shares in Blue Gold that have been issued are all designated as Class A shares.

101. Again, there is little between the parties on the applicable law on what may constitute class rights. Both counsel refer me to *Cumbrian Newspapers Group Ltd v Cumberland & Westmoreland Herald Newspaper & Printing Co Ltd* [1987] Ch 1. In that case, Scott J, as he then was, provided a careful analysis of class rights. At 15D-17A he said:

> *"Rights or benefits which may be contained in articles can be divided into three different categories. First, there are rights or benefits which are annexed to particular shares. Classic examples of rights of this character are dividend rights and rights to participate in surplus assets on a winding up. If articles provide that particular shares carry particular rights not enjoyed by the holders of other shares, it is easy to conclude that the rights are attached to a class of shares, for the purpose both of section 125 of the Act of 1985 and of article 4 of Table A. […]*
>
> *A second category of rights or benefits which may be contained in articles (although it may be that neither 'rights' nor 'benefits' is an apt description), would cover rights or benefits conferred on individuals not in the capacity of members or shareholders of the company but, for ulterior reasons, connected with the administration of the company's affairs or the conduct of its business.* Eley v Positive Government Security Life Assurance Co. Ltd. *(1875) 1 Ex.D. 20, was a case where the articles of the defendant company had included a provision that the plaintiff should be the company solicitor. The plaintiff sought to enforce that provision as a contract between himself and the company. He failed. The reasons why he failed are not here relevant, and I cite the case only to draw attention to an article which, on its terms, conferred a benefit on an individual but not in the capacity of member or shareholder of the company. It is, perhaps, obvious that rights or benefits in this category cannot be class rights. […]*
>
> *That leaves the third category. This category would cover rights or benefits that, although not attached to any particular shares, were nonetheless conferred on the beneficiary in the capacity of member or shareholder of the company. […] In* Bushell v Faith *(1969] 2 Ch. 438, affirmed by the House of Lords [1970] A.C. 1099, articles of association included a provision that on a resolution at a general meeting for the removal of any director from office, any shares held by that director should carry the right to three votes. The purpose of this provision was to prevent directors being removed from office by a simple majority of the members of the company. The validity of the article was upheld by the Court of Appeal and by the House of Lords; the reasons do not, for present purposes, matter. But the rights conferred by the article in question fall, in my view, firmly in this third category. They were not attached to any particular shares. On the other hand, they were conferred on the director/beneficiaries in their capacity as shareholders. The article created, in effect, two classes of shareholders-namely, shareholders who were for the time being directors, on the one hand, and shareholders who were not for the time being directors, on the other hand."*

102. *Palmer on Company Law* at paragraph 6.021 adds the editorial comment in respect of category 3 rights that:

> *"Such rights are treated as class rights and protected by the variation procedure, even though the shares themselves are identical in every way to the other shares in the company."*

In other words, it is not necessary formally to designate the shares in question differently from other shares in the company: the fact that certain shareholders have been granted rights or benefits as

shareholder is sufficient for the shares owned by those shareholders to be treated as a separate class from otherwise identical shares owned by other shareholders to whom similar rights or benefits have not been granted.

103. I note that in all of Scott J's examples the "right" in question was contained in the articles of association themselves. It was not contended before me that that is a requirement for class rights to come into existence. I am not clear whether that is because both counsel assume that to be the case, or because both counsel assume it is not a requirement. Without attempting to be definitive on the point, since I have not heard argument on it, it seems to me that there is no obvious reason for a requirement that a putative class right must be set out in the articles of association of the company in question. In particular, it is common for shareholder agreements to include provisions that have the effect of granting rights to certain classes of shareholders and I do not see an obvious reason in principle why those should not qualify as class rights that are subject to protection by the terms of the applicable articles of association. This is relevant in this case to the impact of the lock-up agreement on the composition of the affected class.

104. In this case, consideration of the terms of the proposed new Article 39 identifies the relevant class or classes of shares intended to be affected as *"all Class A Ordinary Shares received by Perception shareholders in respect of Perception shares that were not redeemable in the Business Combination, and all Class A Ordinary Shares issuable upon exercise of any warrants issued or assumed by the Company in the Business Combination"* with the addition that such shares must currently be unrestricted. This is because it is the status of unrestricted shares of those two kinds that will be altered by the intended change to Blue Gold's Articles of Association.

### *G.4 The requirement for approval by the majority of the affected class and who should be within the affected class*

105. Article 30 of Blue Gold's Articles of Association is in the following terms:

> *"30. If at any time the share capital of the Company is divided into different Classes of Shares, the rights attached to any Class (unless otherwise provided by the terms of issue of the Shares of that Class) may […] be varied without the consent of the holders of the issued Shares of that Class where such variation is considered by the Directors not to have a material adverse effect*

> *upon such rights; otherwise, any such variation shall be made only with the consent in writing of the holders of not less than a majority of the issued Shares of that Class, or with the approval of a resolution passed by a majority of the votes cast at a separate meeting of the holders of the Shares of that Class. […]"*

106. The written resolution of Blue Gold's directors to call the EGM dated 13 August 2025 recognised that the directors needed to comply with the requirements of Article 30. Paragraph 1.5(a) of the written resolution stated that:

> *"[…] the adoption of the Amended Articles would constitute an adverse modification of rights attaching to the class of shares comprised of those Class A ordinary shares of the Company that were received by shareholders of Perception Capital Corp. IV (Perception) in respect of shares of Perception that were not redeemable in the Business Combination (as defined in the Amended Articles) (such Class A ordinary shares, the Affected Shares);*
>
> *(b) as a result of the foregoing, it is proposed that the Company seek the consent of holders of not less than a majority of the Affected Shares for the purposes of Article 30 of the Articles […]"*

107. Mr Cavaghan's evidence is that Blue Gold sought written consents from the members of the affected class on 29 August 2025 and received written consents from Perception Partners and Blue Perception Capital LLP, which he says constitute a majority of the affected class. Blue Gold therefore contends that Article 30 has been complied with, and that Blue Gold is entitled to move the resolution to insert new Article 39 at the EGM.

108. The Plaintiffs raise a number of complaints about the process by which the written consents were solicited and obtained, most of which are potentially relevant to the third preliminary issue only. I therefore focus on the issue raised relevant to the second preliminary issue, which is whether Perception Partners and Blue Perception Capital LLP should be within the affected class for the purpose of determining whether Blue Gold has obtained written consent of a majority of the affected class.

109. As regards Perception Partners, I do not understand it to be disputed that Perception Partners acquired its shares in Blue Gold in exchange for shares that it had previously owned in Perception SPAC, which were not redeemable in the business combination. It is therefore *prima facie* within the affected class. However, Perception Partners' shares are subject to a lock-up agreement and so are not currently freely alienable until that lock-up expires. Whilst Mr Collingwood argues that the

Blue Gold parties waived the requirement for the lock-up as part of the closing arrangements of the business combination, I agree with Mr Ayres that the waiver in question was of the requirement to produce the lock-up agreement at closing of the de-SPAC, it did not affect the validity and force of the lock-up agreement that Perception Partners had already executed on 8 November 2024 and there is no evidence that that lock-up agreement has been rescinded or terminated.

110. As regards Perception Partners' shares that remain subject to lock-up, the implementation of the new Article 39 would therefore make no difference, so that there would be no alteration as to Perception Partners' ability to dispose of those shares. For that reason, I conclude that Perception Partners should only be treated as being within the affected class in relation to those of its shares that have exited the applicable lock-up pursuant to Article 39(a) or (b) or the specific terms of the lock-up agreement.

111. As regards Blue Perception Capital LLP, Mr Cavaghan asserts in his affidavit at paragraph 58 that its shares should be counted within the affected class. He says that this is because:

> *"58. […] Blue Perception Capital received those shares in respect of 2,000,000 Perception shares that were not redeemable in the Business Combination. Blue Perception Capital received these 2,000,000 Perception shares concurrent with the consummation of the Business Combination in lieu of repayment of a convertible promissory note that had been issued to Blue Perception Capital by the Perception SPAC."*

112. I accept Mr Ayres' criticism that Blue Gold has not exhibited a copy of Perception SPAC's share register immediately before the closing of the business combination, so that there is no evidence properly before me to prove that Blue Perception Capital LLP was in fact such a shareholder in Perception SPAC. In the circumstances, I have sought to draw such conclusions as I am able to from the evidence that is available.

113. The convertible promissory note in question was issued by Perception SPAC on 24 September 2024 and amended on 19 April 2025. I infer that Mr Cavaghan relies upon clause 17(b) of the promissory note, which provided for automatic conversion of the outstanding debt owed to Blue Perception

Capital LLP by Perception SPAC under the promissory note at the closing of the business combination. Clause 17(b) states:

> *"b. Conversion. Concurrent with the closing of the Business Combination, any amounts outstanding under this Note (or any portion thereof) will automatically convert into ordinary shares at a conversion price (the "Conversion Price") equal to $1.00 per share ("Conversion Shares"). The conversion shall be deemed to have been made immediately prior to the close of business on the date of the surrender of this Note and the person or persons entitled to receive the Conversion Shares upon such conversion shall be treated for all purposes as the record holder or holders of such Conversion Shares as of such date. Each such newly issued Conversion Share shall include a restricted legend that contemplates the same restrictions as the private placement warrants under the Amended and Restated Letter Agreement. For each Conversion Share issued, Perception shall instruct [RCF Sponsor] to surrender to [Perception SPAC] a corresponding number of ordinary shares. [Perception SPAC] agrees to amend its Registration Rights Agreement dated November 9, 2021 to provide that the Conversion Shares shall be Registrable Securities as defined therein."*

114. I do not consider that this supports Mr Cavaghan's assertion or Blue Gold's position. Clause 17(b) clearly provides that the debt-to-equity conversion is deemed to take place immediately before close of business on the date of surrender of the promissory note. In order for this to be effective, the surrender of the promissory note must take place contemporaneously with or following closing of the business combination. This is because before closing of the business combination, Blue Perception Capital LLP's only right was to repayment of the debt owed by Perception SPAC.

115. In my judgment, the conversion of the debt owed to Blue Perception Capital LLP under the promissory note to equity in Blue Gold therefore cannot have involved Blue Perception Capital LLP obtaining shares in Perception SPAC as an intermediate step. Instead, it simply obtained shares in Blue Gold directly by operation of the conversion. It was, therefore, not a shareholder in Perception SPAC before the closing occurred and is outside the affected class.

116. I am supported in that conclusion by the terms of the Second Restated and Amended Business Combination Agreement dated 12 June 2024, which indicates that the intended scheme of the overall business combination is inconsistent with Blue Gold's case. The Agreement provides in Recital H that:

> *"H. At least one day before the Blue Merger Effective Date, [Perception SPAC] and Perception Merger Sub intend to cause [Perception SPAC] to merge with and into Perception Merger Sub, with Perception Merger Sub […] being the surviving entity […]"*

Thus, the scheme of the business combination was that the merger of Perception SPAC with Blue Gold was to take place at least one day before the date fixed for the closing of the business combination and not contemporaneously with it, and that Perception SPAC would cease to exist at that time as a direct result of the merger. This reinforces that Blue Perception Capital LLP cannot have obtained shares in Perception SPAC as part of the automatic conversion of the promissory note upon closing of the business combination because Perception SPAC had already ceased to exist by then.

117. In any event, if Blue Perception Capital LLP were to be treated as having shares potentially within the affected class, then a proportion, if not all, of Blue Perception Capital LLP shares in Blue Gold would not qualify because any shares in Blue Gold that it obtained by way of automatic conversion under Clause 17(b) of the promissory note were expressly required to be restricted in the same way as the other restricted shares in Blue Gold. Thus, Blue Perception Capital LLP's shares in Blue Gold that have not already exited from lock-up would be restricted and their status would not be affected by the proposed new Article 39. Blue Perception Capital LLP therefore could only form part of the affected class to the extent that it now has unrestricted shares in Blue Gold.

118. Clause 2 of the promissory note gave Blue Perception Capital LLP a separate right to purchase up to 377,812.5 shares in Perception SPAC or its successor from Perception Partners in the 18 months *"from"* the closing of the business combination. Plainly, this does not include the period *before* the closing. Any shares in Blue Gold that Blue Perception Capital LLP acquired by this route must therefore also be outside the affected class. In addition, any such shares are required by clause 2 of the promissory note to be restricted, so they would be outside the affected class for that reason as well.

119. I have endeavoured to identify from the evidence who are the shareholders within the affected class whose written consent to the proposed variation of the Articles in the Notice of Extraordinary General Meeting dated 29 August 2025 is required by Article 30. Mr Cavaghan sets out in his affidavit the names and shareholdings of the persons he says are within the affected class, including Perception Partners and Blue Perception Capital LLP. He exhibits a list of Blue Gold's shareholders as of 19 August 2025 as the basis for his summary. The source of this list is not stated

and there is no information as to when and how the listed shareholders acquired their shares, and whether they were redeemable in the Business Combination. In addition, Mr Cavaghan exhibits a copy of Blue Gold's share register as maintained by CST and current as of 8 October 2025, which also does not provide information as to when and how the shares were obtained and whether they were redeemable in the Business Combination. The recorded shareholdings in these two documents are different in respect of the persons that Mr Cavaghan says are within the affected class, including as regards Blue Perception Capital LLP but not Perception Partners. Mr Cavaghan does not put forward any explanation for these differences nor why they do not apply to Perception Partners. In the circumstances, it is impossible for me to determine from these documents the identities of those shareholders who own shares that should be within the affected class, and how many of their shares are affected shares.

120. I assume, but it was not canvassed in argument, that Mr Cavaghan has excluded from his asserted membership of the affected class any public shareholders in Blue Gold who were previously shareholders in Perception SPAC on the basis that their shares in Perception SPAC were redeemable in the business combination, and so any shares in Blue Gold that they retain would not be affected by the new Article 39. If this assumption is incorrect, then it will have a consequential impact in that such shareholders should also be included in the affected class.

121. In the circumstances, the most that I can do by way of an answer to the second preliminary issue is to confirm that the Class A Ordinary Shares in Blue Gold in the affected class comprise: (a) all unrestricted shares owned at the relevant record date by persons who received those shares because they owned shares in Perception SPAC that were not redeemable in the Business Combination; and (b) all unrestricted Class A Ordinary Shares issued upon exercise of any warrants issued or assumed by Blue Gold in the Business Combination.

122. It is apparent from reviewing the shares registered to those persons whom Mr Cavaghan says should form the affected class that, if Perception Partners' shares and/or Blue Perception Capital LLP's shares are excluded, then the Plaintiffs and their affiliates appear to constitute a significant majority of the affected class, and did so on 19 August 2025.

123. If Blue Gold were to succeed on its counterclaim for rectification of its Register to remove the 2 million potentially forfeited shares registered to RCF Sponsor, then the court would have to consider to what extent that rectification should be retroactive. This and the factor of when and how many of Perception Partners' shares become unrestricted, may alter the outcome of the composition of the affected class, and who is able to carry the majority.

## H. Preliminary issue (3) – Whether consent in writing of the holders of a majority of the issued shares of the Affected Class has been given?

124. In light of my conclusion as to the proper composition of the affected class and based on the information as to Blue Gold's registered shareholders exhibited by Mr Cavaghan, the Plaintiffs and their affiliates formed a majority of the affected class on 19 August 2025, and so Blue Gold did not validly obtain consent in writing of a majority of the affected class, as required by Article 30 of Blue Gold's Articles of Association. Blue Gold cannot therefore proceed to a vote on the resolution proposed at the intended EGM.

## I. Grant of a permanent injunction or continuation of the interim injunction?

### *I.1 Grant of a permanent injunction?*

125. Mr Ayres argues that, if I were to reach the conclusions that I have done, then the Plaintiffs should be entitled to a permanent injunction to prevent Blue Gold from proceeding with any attempt to change the designation of the Plaintiffs' shares from unrestricted to restricted without their consent.

126. I do not agree. As I have indicated, on the limited material that I have seen regarding the identities of the holders of shares in the affected class and the number of shares that each appears to own, it is possible that Blue Gold might be able to command a majority of the affected class, particularly if 2 million of RCF Sponsor's shares are properly liable to be forfeited pursuant to the terms of the SPA and depending on the dates and proportions of Perception Partners' shares that have become unrestricted. In those circumstances, it would be wrong to grant a permanent injunction against

Blue Gold where it is possible that Blue Gold may be able to obtain written consent from a majority of the affected class of shares as time proceeds.

***I.2 Continuation of interim injunction – the law***

127. I therefore need to consider whether to continue the interim injunction on an *inter partes* basis. I remind myself, first, that the applicable factors to be taken into account are set out in *National Commercial Bank Jamaica Ltd v Olint Corp Ltd* [2009] UKPC 16 and affirmed by Mangatal J in *Xie v XIO GP Ltd* (unreported, 09/06/17) at paragraph 101, namely:

127.1 Is there a serious issue to be tried; do the Plaintiffs have a real prospect of succeeding in their claim for permanent injunctions at the trial?

127.2 If there is a serious issue to be tried; will the Plaintiffs be adequately compensated by damages for the loss they would have sustained as a result of Blue Gold proceeding to put the resolution to a vote at the EGM, and is the Defendant in a position to pay the damages?

127.3 If damages would not provide an adequate remedy for the Plaintiffs, if the Defendant were to succeed at trial, would it be adequately compensated under the Plaintiffs' undertaking as to damages? In practice, however, it is often difficult to tell whether either damages or the cross-undertaking will be an adequate remedy.

127.4 Where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, then the question of the balance of convenience arises.

127.5 Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo.

127.6 The court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other.

***I.3 Continuation of interim injunction – analysis***

128. As I have indicated earlier in this judgment, Mr Collingwood sought to raise the anterior question whether the intended insertion of the new Article 39 constituted a variation of class rights or was

merely the exercise by the directors of existing powers — ignoring for this purpose the directors' own view that they were embarked upon a process involving a variation of class rights. I consider that there is a serious issue to be tried on this question.

129. Secondly, there is a serious question whether the composition of the affected class may change over time, depending on when and how many currently restricted shares become unrestricted, so as to permit Blue Gold's directors to implement the insertion of the new Article 39 with the benefit of the written consent of the affected class.

130. Thirdly, Blue Gold has made a counterclaim for rectification of its share register to remove the 2 million shares currently recorded as being owned by RCF Sponsor that RCF Sponsor conditionally agreed in the SPA to forfeit. There is therefore a live issue as to the correct number of shares that should be registered to RCF Sponsor, which would also be likely to have a knock-on effect on any vote by the affected class if Blue Gold were to make another attempt in the future to change the status of the Plaintiffs' shares from unrestricted to restricted. I have not heard any evidence on this point and I do not know what the outcome will be.

131. In the circumstances, I consider that there are serious issues to be tried as to whether the Plaintiffs should be entitled to a permanent injunction to restrain Blue Gold from seeking to change the rights of the affected class without first having obtained written consent from a majority thereof pursuant to Article 30. Mr Collingwood's argument that the court cannot fetter the directors' ability to amend the Articles is nothing to the point. The issue is that they cannot do so without going through the proper internal procedure in Article 30, which is what they are currently attempting to do.

132. I am not satisfied that the Plaintiffs will be adequately compensated by an award of damages and that Blue Gold is likely to be in a position to pay the damages, in light of the estimate of the potential value of the claims that I have set out earlier in this judgment. In this regard, the evidence is that there is a serious question mark over Blue Gold's liquidity and value due to

disputes that have arisen with the Government of Ghana concerning the mining leases on which Blue Gold and its subsidiaries depend.

133. Given the total number of shares owned by the Plaintiffs and their affiliates, which appears to be about 4,250,000, and on the assumption that they sell all of those shares before trial, but it is determined at trial that Blue Gold should have been entitled to designate the majority or all of those shares as restricted, then the question will be whether the sale of those shares has had a depressive effect on Blue Gold's share price. It is publicly available information that Blue Gold's shares are currently trading at between about US $1.00 and $2.00. Even assuming a complete collapse in Blue Gold's share price as a result, the loss to Blue Gold (or its other investors) seems unlikely to exceed US $8,500,000, which it is highly likely that the Plaintiffs would be able to satisfy from their undertaking as to damages. This supports continuing the interim injunction in the Plaintiffs' favour.

134. Even if I were to conclude that it is unclear whether damages would be an adequate remedy to Blue Gold, I consider that the balance of convenience would come down firmly in favour of continuing the injunction until trial of the remaining issues.

135. In the circumstances, I conclude that I should continue the interim injunction until trial or further order.

136. However, I accept Mr Collingwood's complaint that the Plaintiffs must give cross-undertakings as to damages. Further, given that the effect of this judgment is that the shares of the Plaintiffs and their affiliates are unrestricted and should freely alienable, I consider that the Plaintiffs should in principle provide fortification of their undertakings because Blue Gold is unlikely to continue to have the option of enforcing against the shares owned by the Plaintiffs. I will hear counsel in due course to determine the amount of such fortification.

## J. Disposal

137. For the reasons I have set out in detail in this judgment, I determine the three preliminary issues ordered to be tried as follows:

137.1 The Plaintiffs' Class A shares in Blue Gold are Unrestricted Shares.

137.2 The class affected by the proposed insertion of new Article 39 comprises: (a) all unrestricted shares owned at the relevant record date by persons who received those shares because they owned shares in Perception SPAC that were not redeemable in the Business Combination; and (b) all unrestricted Class A Ordinary Shares issued upon exercise of any warrants issued or assumed by Blue Gold in the Business Combination.

137.3 Blue Gold did not obtain consent in writing of a majority of the affected class, as required by Article 30 of Blue Gold's Articles of Association, before calling the EGM to vote on the resolution to insert new Article 39. Blue Gold cannot validly proceed to a vote on that resolution before it has obtained written consent from the affected class.

138. Further, I will order that the existing interim injunction continue until trial of the remaining aspects of the Plaintiffs' claim and the Defendant's counterclaim or further order.

139. I will hear the parties further on the question of the amount of fortification of the undertakings in damages that the Plaintiffs should provide and on the question of costs.

**Dated 11 May 2026**

**THE HONOURABLE JUSTICE JALIL ASIF**
**JUDGE OF THE GRAND COURT**