
**Neutral Citation Number: [2025] CIGC (FSD) 106**

**Cause No: FSD 2025-0151 (JAJ)**

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

**IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2025 REVISION), THE COMPANIES ACT (2025 REVISION) AND THE PARTNERSHIP ACT (2025 REVISION)**

**AND IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.**

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| **Appearances:** | **Mr Andrew Scott KC of counsel instructed by Mr Liam Faulkner, Mr Hugo Farmer, Ms Yuan Wen and Mr Jordie Fienberg of Campbells LLP for the Petitioner**<br>**Mr Andrew Ayres KC of counsel instructed by Ms Shelley White and Ms Rebecca Moseley of Walkers for ATP III GP, Ltd** |
| **Before:** | **The Honourable Justice Jalil Asif KC** |
| **Heard:** | **31 October 2025** |
| **Ex tempore judgment delivered:** | **2 November 2025** |
| **Finalised judgment approved:** | **6 November 2025** |

*Exempted limited partnership—winding up on just and equitable basis—application of CWR O.3, r.12(1)(a) or (b) to winding up of exempted limited partnership—whether court can order petition to proceed against partnership or against general partner, with partnership as subject matter*

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# JUDGMENT

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1. This is my judgment on a novel point that has arisen in the course of a directions hearing in connection with this just and equitable winding up petition, which concerns an exempted limited partnership formed under the Exempted Limited Partnership Act.

2. The essential background is that the exempted limited partnership in this case operates in the life sciences or biotech space. The Petitioners are limited partners in the partnership and have contributed around 98% of the capital of the partnership. Dr Seth Harrison, a successful life sciences entrepreneur, has driven the research and development of the products and the portfolio companies developing them. He has contributed approximately 2% of the partnership's capital. There are a number of other limited partners who are said to have acquired minor partnership interests in the exempted limited partnership, apparently as employee incentives.

3. The general partner of the partnership, ATP III GP, Ltd, is a limited company owned and controlled or directed by Dr Harrison.

4. In recent months, the relationship between the individuals behind the Petitioners and Dr Harrison has broken down. I do not need to go into the reasons for that for the purposes of this judgment, but they have given rise to three sets of proceedings between the parties in which their disputes are being decided:

   4.1 a contractual dispute being tried in Delaware;

   4.2 a writ action commenced in the Cayman Islands, and seeking declaratory relief regarding the validity, or otherwise, of certain steps taken by the general partner in relation to capital calls; and

   4.3 these winding up proceedings.

5. In the winding up proceedings, the Petitioners seek the winding up of the partnership on the just and equitable basis. They assert that they have lost all confidence in Dr Harrison and the general partner. This is said to be due to:

   5.1 alleged mismanagement, prejudicial conduct, and a lack of probity in the conduct of the partnership's affairs.

   5.2 alleged conflicts of interest affecting the general partner through Dr Harrison's interest in it, and breach of fiduciary duty by the general partner;

   5.3 a loss of substratum in that the general partner is set on continuing to fund non-performing portfolio companies, contrary to the limited partners' legitimate expectation for the operation of the partnership; and

   5.4 a need for an investigation of the partnership's affairs.

6. Dr Harrison, and through him the general partner, strenuously disputes the Petitioners' claims and is determined to contest the allegations that have been made against them.

7. Due to the potential effect of the dispute on the ongoing operation and management of the portfolio companies, this winding up petition and the writ action have both been advanced on a compressed timetable and are due to be tried together in early January 2026, having been filed in early June 2025.

8. The issue that has arisen in the course of the summons for directions concerns how the petition is to be contested. The Petitioners seek an order under CWR O.3, r.12, as modified by section 36(3) of the Exempted Limited Partnership Act, that the petition be treated as an inter partes proceeding between the Petitioners and the general partner. The Petitioners say that that reflects the substance of the dispute.

9. The general partner resists such an order and contends that the petition should continue between the Petitioners and the exempted limited partnership. The importance of this point is the cost consequences that follow under CWR O.24, r.8. Section 36(3) of the Exempted Limited Partnership Act provides that:

> *"(3) Except to the extent that the provisions are not consistent with this Act, and in the event of any inconsistencies, this Act shall prevail, and subject to any express provisions of this Act to the contrary, the provisions of Part V of the Companies Act (2021 Revision) and the Companies Winding Up Rules, 2018 shall apply to the winding up of an exempted limited partnership and for this purpose —*
>
> *(a) references in Part V to a company shall include references to an exempted limited partnership;*
>
> *(b) the limited partners shall be treated as if they were shareholders of a company and references to contributories in Part V shall be construed accordingly, except that the application of the provisions shall not cause a limited partner to be subject to any greater liability than that limited partner would otherwise bear under this Act, but for the application of this paragraph;*
>
> *(c) references in Part V to a director or officer of a company shall include references to the general partner of an exempted limited partnership;"*

10. Part 3 of CWR O.3 concerns petitions presented by contributories, which, by virtue of section 36(3) of the Exempted Limited Partnership Act, is the analogue for the current situation.

11. CWR O.3, r.12 requires that at the hearing of the summons for directions, the court shall give directions as appropriate in respect of certain specified matters, including:

> *"(a) whether or not the company is properly able to participate in the proceeding or should be treated merely as the subject-matter of the proceeding;*
>
> *(b) whether the proceeding should be treated as a proceeding against the company or as an inter partes proceeding between one or more members of the company as petitioners and the other member or members of the company as respondents;"*

12. CWR O.24, r.8(2) states:

> *"(2) In the case of a contributory's winding up petition under Order 3, Part III, the general rules are that —*
>
> *(a) if the Court has directed that the company itself is properly able to participate in the proceeding, the general rule is that the costs of a successful petitioner be paid out of the assets of the company; or*
>
> *(b) if the Court has directed that the winding up petition be treated as an inter partes proceeding between one or more members of the other members or members of the company as respondents, the general rule is that none of the costs should be paid out of the assets of the company and the unsuccessful parties should pay the costs of the successful party, such costs to be taxed on the standard basis unless agreed."*

13. I interpose here that there is an obvious error in CWR O.24, r.8(2)(b). The wording *"between one or more members of the other members or members of the company as respondents"* makes no grammatical sense. By comparison with CWR O.3, r.12(b) it appears that two errors have crept into the drafting of CWR O.24, r.8(2)(b). The first is that the words *"company as petitioners and the"*

has been omitted after *"between one or more members of the"*. Secondly, an *"s"* has been wrongly added to *"member"* on the second occasion that it is used in subparagraph (b). In my judgment, I should treat CWR O.24, r.8(2)(b), as if it read:

> *"(b) if the Court has directed that the winding up petition be treated as an inter partes proceeding between one or more members of the* [company as petitioners and the] *other member*[**s**] *or members of the company as respondents, the general rule is that none of the costs should be paid out of the assets of the company and the unsuccessful parties should pay the costs of the successful party, such costs to be taxed on the standard basis unless agreed."*

Counsel agreed in the course of argument with this proposition and construction of CWR O.24 r.8(2)(b).

14. To resume my summary of the Rules, CWR O.24, r.8(2) thus determines the prima facie allocation of the costs of defending the petition, as between the petitioner on one side and the company or members of the company other than the petitioner, as appropriate, on the other.

15. The Petitioners in this case argue that this provision also applies to a winding up of an exempted limited partnership. Applying section 36(3)(a) and (b) of the Exempted Limited Partnership Act, they say that *"members of the company"* in the Companies Winding Up Rules becomes *"members of the exempted limited partnership"* and the members of an exempted limited partnership are the limited partners and the general partners together. Thus, the Petitioners say, there is a direct read over without any need to strain the statutory language. The court should therefore make an order on the summons for directions determining that the petition should proceed as a claim between the Petitioners and the general partner, with the exempted limited partnership as the subject matter of the petition.

16. The Petitioners support that approach to the construction of the Companies Winding Up Rules by arguing that the purpose of CWR O.24, r.8(2) is to apply the legal costs principle, namely that a company's money should not be spent on disputes between shareholders.

17. The Petitioners say that that principle applies wherever the real contest is between parties other than the company itself, for example between its members. The Petitioners say that the reason why that principle is engaged in the context of just and equitable winding up proceedings is because, as stated by Segal J in Re Uphold Limited (unreported, 16/02/23), just and equitable proceedings are:

> *"42. […] grounded on a dispute between the shareholder petitioner and those in control of the company where those in control have behaved in a way that is fundamentally inconsistent […]*

> *with the basis on which the shareholder subscribed for or purchased his / her shares so as to justify the termination of the corporate relationship. It is usually the case that those accused of misconduct should pay for the costs of defending the petition"*

18. The Petitioners argue it would be contrary to the legal costs principle for the general partner to use assets of the partnership, which are held overwhelmingly for the benefit of the Petitioners, to defend the petition by which the Petitioners seek to impugn the general partner's own conduct and other fiduciary failings. The Petitioners say this would effectively have the result that the Petitioners would end up funding both the pursuit of the claim and also its defence.

19. The general partner disputes the Petitioners' stance, based on the wording of section 36(3) of the Exempted Limited Partnership Act. The general partner submits that the Petitioners' approach is not permitted by section 36(3) of the Exempted Limited Partnership Act, so that I do not have jurisdiction to make the order sought by the Petitioners. The general partner's argument is as follows.

    19.1 The general partner says that by virtue of section 36(3)(a) and (b), *"company"* is to be read as *"exempted limited partnership"* and *"contributories"*, in other words, shareholders or members, is to be read as *"limited partners"*.

    19.2 The general partner argues that the reference in section 36(3)(c) to the general partner being assimilated to the position of a director of the company means that the general partner is <u>not</u> to be treated as a *"member"* for the purpose of CWR O.3, r.12, and CWR O.24, r.8.

    19.3 The general partner says in paragraph 16 of its skeleton argument:

> *"16. The choices under (a) and (b) are interdependent, and there are only two options: either (i) the Partnership is properly able to participate, and the proceeding should be treated as being against the Partnership; or (ii) the proceedings is an inter partes proceedings between different limited partners, and the Partnership is merely the subject-matter."*

    19.4 The general partner adds that the fact that there is a binary choice is clear from the structure of CWR O.24, r.8 which mirrors and follows the structure of CWR O.3, r.12.

    19.5 Therefore, the general partner argues, the only question that the court needs to ask is whether the proceedings should be treated as being between different limited partners, or as between limited partners and the exempted limited partnership itself.

20. The general partner submits that the Petitioner's construction requires that the meaning of *"members of the company"* in the Company Winding Up Rules sometimes means limited partners and sometimes means all of the partners in the exempted limited partnership, which the general partner submits indicates that the Petitioners' construction must be wrong.

21. The general partner says that Segal J's comments in *Re Uphold* are simply not relevant, as that case concerned the situation of a company, not an exempted limited partnership.

22. In response to the Petitioner's reliance on the legal costs principle, the general partner argues that there is no room for an argument based on principle where the Exempted Limited Partnership Act expressly requires the court to read the Companies Winding Up Rules in a particular way.

23. Relying on a dictum of Segal J in *Re China Shanshui Cement Group Limited* [2021] 1 CILR 253 at paragraph 39, the general partner submits that:

> *"39. A critical question is whether the company can show that it has a real interest independent of its shareholders in defending the petition (does the company have a separate interest to protect?). As Foster, J. said in* Freerider *(ibid., at para. 45), the court must decide whether the company has any independent interest in the dispute."*

In this case, I have to read *"company"* as *"limited partnership"*.

24. Finally, the general partner argues that even if the court has discretion to make an order under CWR O.3, r.12, the court should not exercise that discretion on the facts of this case. The general partner says that the exempted limited partnership has an independent interest in defending itself and continuing to exist because it has assets built up over many years that generate financial benefits for its limited partners, including 14 limited partners other than the Petitioners. Although that must be the case for many partnerships where disputes arise.

25. I agree with the Petitioners that the legal costs principle is an important one. As explained by Harman J in *Re A Company, ex parte Johnson* [1991] BCC 234, which was a case concerning an unfair prejudice petition under section 459 of the English Companies Act of 1985:

> *"The train of authority being well established, it seems to me quite clear that, if it is shown that directors of a company have been causing the company's money to be spent on financing the resistance either to a "pure" section 459 petition or, according to Plowman J in* Re A &BC Chewing Gum *and myself in* Re Hydrosan*, in financing the company's resistance to a member's winding-up petition based on the just and equitable ground, the court should prevent such*

> *expenditure. Such expenditure is a misfeasance, there is no excuse for it in law and it is not a question of an arguable case being raised showing that it might be right to permit misfeasances. Misfeasances are not matters that are permitted by the courts and there is no question of an arguable case at all."*

26. The Petitioners referred me to *Re Cybernaut Growth Fund LP* (unreported, 11/09/13), where the question of making an order under CWR O.3, r.12, and O.24, r.8 in respect of the winding up of an exempted limited partnership was dealt with by consent. Both parties before me accepted that, whilst it thus provides an example of a case where an order was made, the ability of the court to do so was not in issue and was not considered by either of the judges before whom the matter was listed. In my view, it therefore does not advance the argument.

27. In *Re Freerider Ltd* [2009] CILR 604, Foster J at paragraph 42 rejected the submission that what is now CWR O.3, r.12, was *ultra vires* the Insolvency Rules Committee because it was a legislative change or addition to the provisions of Part V of the Companies Act. He concluded that CWR O.3 r.12 is procedural in nature, giving effect to the legal costs principle, which he considered to be well established in law. In particular, he said, at paragraph 20:

> *"20. It is in this overall context that it seems to me the IRC are empowered by s.155(1)(a) of the Companies Law to make rules, in particular to enable the court giving directions to determine in its discretion in the particular circumstances which parties should most appropriately participate in winding-up proceedings brought under the Companies Law. In my view in the light of this, the relevant provisions of O.3, r.11(2)(a) and (b)* [now O.3, r.12(2)(a) and (b)] *are essentially procedural in nature and are directly related also to the provisions which the IRC is empowered to make and has properly made in relation to the costs of petitions. I do not think there can be any doubt that the IRC is empowered to make such costs rules.*
>
> *21. I also consider that it is probable that the members of the IRC were aware, or were made aware, of the English authorities in which the courts there have either restrained a company from active participation or refused a company permission to participate actively in a winding-up petition on the just and equitable basis and/or a petition under s.459 of the Companies Act 1985 and/or to do so at the expense of the company, when the reality is that the proceedings are in essence a dispute between shareholders and not a dispute with the company itself. […] Wickens, V.C. said* [in *Pickering v. Stephenson*] *(L.R. 14 Eq. at 340):*
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> > *'It seems to me that where a quasi partnership of this sort is divided into a majority and minority who differ on a question of internal administration, and litigation results from the difference, it is contrary to the spirit of the partnership to pay the expense of the litigation out of the general fund; and that this is independent of the question whether the majority is overwhelming or a bare majority.'"*

28. At paragraph 32, Foster J commented that the provisions of CWR O.3 r.12 are a mechanism to enable the court to determine at an early stage whether the legal costs principle is engaged. He said:

> *"32. I would comment in passing that the provisions of O.3, r.11(2)(a) and (b) of the Companies Winding Up Rules may perhaps be seen as a sort of mechanism of the kind referred to by Lindsay, J. in that they will enable determination by the court at any early stage in the proceedings by way of directions of whether or not it is procedurally appropriate and desirable, in the particular circumstances, for the company concerned to participate in the petition proceedings or whether it should be treated simply as the subject-matter."*

29. The Petitioners submit at paragraph 48 of their skeleton argument:

> *"48. In the context of petitions for the just and equitable winding up of an ELP it is often the case that: (i) the dispute is grounded on the general partner's conduct of the partnership's affairs and (ii) the general partner (and the general partner alone) has the ability to access and deploy partnership assets towards funding a defence of the petition. There is no reason for the Legal Costs Principle not to apply in that context to prevent a general partner from deploying partnership assets (i.e. trust assets) towards defending allegations of misconduct against it."*

30. In my view, that understates the position. Given the statutory roles of the general partner and the limited partners, as provided for by the Exempted Limited Partnership Act, namely that the limited partners have no role in the management of the exempt limited partnership and do not owe any duties to the partnership or to the other limited partners; whereas the general partner is responsible for the management of the exempted limited partnership and does owe fiduciary and other duties to the limited partners, it is hard to see how a just and equitable petition would ever involve parties other than one or more limited partners on one side and the general partner, and possibly an intermeddling limited partner, on the other.

31. This points against the general partner's submission that the proper construction of CWR O.3 r.12 is that it is directed at limited partner on limited partner disputes. This is because it is extremely difficult to contemplate circumstances giving rise to a just and equitable petition in which the dispute would arise between the limited partners and would arise in such a way that it does not involve the general partner, given that no duties owed are owed by limited partners to each other and limited partners have no roles in management, and that the general partner is the entity that owes duties to each limited partner and is responsible for management of the partnership.

32. In addition, I consider there is a conceptual flaw in the argument that the petition should proceed as a dispute between limited partners and the exempted limited partnership. This is because an exempted limited partnership does not have any separate legal personality from the limited partners and the general partner. Neither side appears fully to have grappled with the consequences of this in the arguments that they have advanced before me.

33. By referring to the exempted limited partnership throughout as being the appropriate respondent to the petition, in the absence of separate legal personality, the effect of the general partner's position is that the Petitioners should both pursue the petition and at the same time be respondents to the petition. That is neither legally nor procedurally possible. It would necessarily involve obvious and irreconcilable conflicts of interest for the Petitioners. It also flies in the face of section 33(1) of the Exempted Limited Partnership Act, which provides that:

> *"(1) Subject to subsection (3), legal proceedings by or against an exempted limited partnership may be instituted by or against any one or more of the general partners only, and a limited partner shall not be a party to or named in the proceedings."*

Subsection (3) deals with the situation where a general partner has failed to bring proceedings against a third party and a limited partner in those circumstances wishes to pursue that claim on behalf of the exempted limited partnership. So that subsection is irrelevant for the purpose of the debate before me.

34. If, as I consider must be correct, the exempted limited partnership cannot itself be a respondent to a just and equitable petition brought by a limited partner, and that only the general partner and any intermeddling limited partners can be the respondents, then it also follows that CWR O.24 r.8(a) cannot be operative as against an exempted limited partnership because the court will not and cannot direct that the exempted limited partnership itself can participate in the proceeding. This is because the exempted limited partnership does not have separate legal personality and the petitioning limited partner cannot also be a respondent. Thus, the respondents to a just and equitable petition can only be the general partner and any limited partners who have intermeddled or who wish to take an active role in defending the petition.

35. In principle, therefore, whilst I accept that there is substantial force in the Petitioners' argument that the legal costs principle should apply equally to just and equitable petitions in the context of the winding up of an exempted limited partnership, just as it applies to companies, I find it impossible to apply the manifestation of it in the CWR, given the legal nature of an exempted limited partnership and the consequences of that nature on the operation of the CWR as regards exempted limited partnerships.

36. In my judgment, this is a situation covered by the opening words of section 36(3) of the Exempted Limited Partnership Act, namely, *"except to the extent that the provisions are not consistent with*

*this Act and in the event of any inconsistencies, this Act shall prevail."* The Exempted Limited Partnership Act, which creates the legal structure of an exempted limited partnership, has created an animal that does not fit within the application of the relevant rules of the CWR. The provisions of CWR O.3, r.12, and O.24, r.8, in my judgment, are therefore inconsistent with the Exempted Limited Partnership Act, and the Exempted Limited Partnership Act must prevail.

37. I therefore accept that the Court cannot make an order under CWR O.3, r.12(a) or (b) in this case, although not for the reasons advanced by the general partner.

38. It also follows from my conclusion that the joint position of counsel in *Re Cybernaut Growth Fund LP* that the court can apply CWR O.3, r.12 in the context of an exempted limited partnership was incorrect, and that *Re Cybernaut Growth Fund LP* should not be treated as authority for that proposition.

39. As required by section 33(1) of the Exempted Limited Partnership Act, the petition must continue as between the Petitioners and the general partner.

40. Mr Ayres submitted that it is important not to confuse the question of the prima facie liability for costs, which in my judgment will always be with the general partner, and the general partner's right to indemnity under the limited partnership agreement governing the partnership for the costs it has incurred. I agree with Mr Ayres on this point. There is clearly going to be a dispute in this case whether the general partner is entitled to indemnity from the exempted limited partnership's assets for the costs of defending the just and equitable petition and also the Delaware and Cayman writ proceedings.

41. I do not intend to prejudge the outcome of that debate, which will turn upon the wording of the limited partnership agreement. However, it does seem fairly plain that the real disputes are between the two Petitioners on one side and the general partner on the other. This does not appear to be a case where the exempted limited partnership has its own position to put forward, even if that were legally and procedurally possible, which I do not consider it is for the reasons I have already set out.

42. If any of the other limited partners wish to participate in the proceedings, that is a matter for them. Their position as limited partners can be put forward by them as respondents if they have a different interest to advance although, given the procedural position of these proceedings and the approaching trial, any limited partners who wish to do so should make an application to be joined urgently.

43. Finally, I record that Mr Ayres was at pains to say that the general partner does not accept the Petitioners' criticisms, either of the general partner or of Dr Harrison, and that I should avoid forming a view that there is a "good" side and a "bad" side of the court. Mr Ayres said that the general partner and Dr Harrison are very keen to vindicate the position of the general partner.

44. I acknowledge that that is Dr Harrison's and the general partners' position. However, it seems to me that there is a real danger that the general partner is failing to heed the words of Kawaley J in *One Thousand and One Voices Africa Fund I LP* [2024] 1 CILR 371 at paragraphs 30 to 34. The learned judge said:

> *"30. […] The petitioner's case, in a nutshell, amounts to this. It would be inconsistent with elementary principles of winding-up law for the court not to replace the general partner when it has unarguably lost the trust and confidence of 97% of the economic stakeholders of the ELP, no matter what the reasons may be. There is no need for the court to consider the merits of the original complaints laid against the GP. That position appears to be an unassailable one.*
>
> *31. Section 36(13) of the Act confers an unfettered discretion on the court. […] The very fact that the GP does not apparently accept the fundamental principle that in a liquidation the wishes of the majority stakeholders prevail (assuming the opposition to the petition is maintained) appears to demonstrate the need for a fresh appointment.*
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> *32. Unfortunately, the opposition to the present petition has an all too familiar ring. The best way for a manager who has lost the confidence of the investors to demonstrate their probity is to step aside, demonstrating confidence that their impugned management of the fund will be vindicated by independent scrutiny. Instead, the importance of their continuing at the helm is apparently given priority over the wishes of the investors, and the recalcitrant manager claims to know better than the investors where their best commercial interests lie. Regrettably, whatever unique expertise the scorned manager truly possesses, the distinct impression is created that the determination to cling to office is motivated by self-interest at best, or the desire to forestall independent investigation into suspect dealings at worst.*
>
> *33. In the instant case it is admittedly extremely plausible that the GP's Mr. Jordaan has specialist knowledge of and unique contacts with the businesses the ELP has invested in. The appointment of independent liquidators would not necessarily preclude his expertise being deployed if this was demonstrably in the best interest of the investors as a whole."*

45. It is difficult not to observe the strong similarity between that case and this one on the material that I have seen so far but, as I have indicated, these are all matters that Dr Harrison, through the general

partner, wishes to contest. No doubt at the trial I will hear argument and evidence on both sides of the court in relation to the allegations that are made against Dr Harrison and the general partner by the Petitioners and the counter-allegations that are made by Dr Harrison and the general partner against the Petitioners, and I will make a final decision on the basis of the evidence and argument that I hear on that occasion. However, in doing so, both parties are likely to continue to incur very substantial costs that will have to be paid by the various parties, depending on the costs orders that are made.

46. As to the costs of arguing this issue before me, Mr Ayres contended that the general partner was the winner, albeit for different reasons than he had argued, and should have its costs. Mr Farmer addressed me on costs for the Petitioners and argued that costs should be reserved, which would be the usual outcome on a summons for directions.

47. I have concluded that the general partner has effectively been the winner on this particular issue; the Petitioners raised the specific issue of making an order under CWR O.3, r.12 and have not obtained what they were seeking, and it is right that general partner should have its costs of arguing this point on the summons for directions, to be taxed on the standard basis if not agreed. I do not consider it is appropriate to reserve the costs to the hearing of the petition.

**Dated 2 November 2025**

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