Neutral Citation Number: [2025] CIGC (FSD) 98

Cause No: FSD 2025-0028 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

BETWEEN:

(1) IGCF GENERAL PARTNER LIMITED
(2) THE INFRASTRUCTURE AND GROWTH CAPITAL FUND L.P.

Plaintiffs

-and-

WHITE CRYSTALS LTD

Defendant

Appearances:	**Mr Tom Lowe KC of counsel instructed by Mr Conal Keane, Mr Niall Dodd and Mr Alan Quigley of Dillon Eustace for the Plaintiffs**
	Mr Iain Quirk KC of counsel instructed by Mr Jonathan Stroud and Ms Vered Mazin of Bedell Cristin Cayman Partnership for the Defendant
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**14 May 2025**
Reasons for decision:	**23 May 2025**
Judgment delivered:	**14 October 2025**

Contract—appropriate mechanism for dispute resolution where contract includes jurisdiction clause and arbitration agreement

Exempted limited partnership—whether claim by limited partner against general partner for alleged breach of duty is a derivative claim

Arbitration—whether a limited partner can maintain a claim against a general partner which is in liquidation

Arbitration—stay of court proceedings—whether approach to question of stay should be different if partnership in voluntary liquidation

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JUDGMENT

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Contents

A. Introduction

1. On 23 May 2025, following a hearing on 14 May 2025, I acceded to the Defendant's application by summons filed on 17 March 2025 and determined that these proceedings should be stayed in favour of an arbitration commenced on 5 February 2025 by White Crystals Ltd ("WCL") as claimant against

the Plaintiffs in this matter as respondents. As a consequence, I dismissed the Plaintiffs' interlocutory summons filed on 2 April 2025 for an interim injunction to restrain WCL from pursuing the arbitration pending determination of the Defendant's application for a stay of the proceedings.

2. I provided the following abbreviated reasons for my decision at that time:

> *"1. The [Second Plaintiff] is currently in voluntary winding up, not in any form of court supervised liquidation.*
>
> *2. Section 129 of the Companies Act does not exclude that the power to determine 'a question' may be subject to the operation of an arbitration agreement.*
>
> *3. The matters sought to be raised by the [Second Plaintiff] in the Cayman proceedings are substantively allegations about alleged breaches of the limited partnership deed by the Defendant. They are not matters directly related to the conduct of or working out of the winding up. They are not matters that are exclusively within the province of the Court to determine as part of a winding up.*
>
> *4. Clause 11.6 of the limited partnership deed does not override clause 11.8.*
>
> *5. The matters sought to be raised by the [Second Plaintiff] in the Cayman proceedings are all within the scope of the arbitration provision in clause 11.8 of the limited partnership deed.*
>
> *6. The claim in the arbitration by [the Defendant] and IDB is not a derivative claim against the [First Plaintiff], it is a direct claim for alleged breaches of the limited partnership deed, breach of fiduciary duty and breach of trust. The authorities relied on by the [Second Plaintiff] to the effect that a derivative claim cannot be maintained once a liquidator has been appointed because the complainant has an alternative remedy do not apply.*
>
> *7. The relief sought by [the Defendant] and IDB within the arbitration does not impermissibly trespass upon the role of the court in respect of a winding up.*
>
> *8. The fact that other limited partners have not joined in as claimants in the arbitration is likely to have the result that they are not bound by any award, and may make the utility of the arbitration limited in terms of the relief that the arbitration can order. However, that is not a reason to refuse to enforce the arbitration agreement."*

I now return to this matter to provide my fully reasoned judgment for those decisions. I am grateful to the parties for their patience in awaiting this judgment.

B. Background and parties

3. The following is a necessarily abbreviated summary of the background to the summonses that are for determination. The disputes between the parties are wide ranging and factually complex, but the finer details of those complaints are not directly relevant to my task in respect of the two summonses before me.

4. The Second Plaintiff ("the Fund") is an investment fund, structured as a Cayman exempted limited partnership under the Exempted Limited Partnership Act ("the ELPA"). The First Plaintiff ("the GP") is the general partner of the Fund, and is a Cayman registered exempted company. WCL, the Defendant, is a limited partner in the Fund. It is accepted by the parties that WCL is controlled by the Al Jomaih family. WCL has a small stake in the Fund, said by the Plaintiffs to be 0.5%.

5. The Fund's governing document is an Amended and Restated Deed of Limited Partnership dated 30 September 2007 ("the LP Deed"). The LP Deed provides in clause 2.4 that the term of the Fund is 10 years from the initial closing date, with the GP having discretion to extend the term by up to 2 years *"to facilitate the orderly winding up"* of the Fund. It is common ground that the 12-year extended term of the Fund expired by no later than 31 December 2018. There was initially a dispute whether the Fund is now in voluntary liquidation but, by the time of the hearing of the summonses, it was common ground that the Fund has been in voluntary liquidation since 31 December 2018 at the latest. Nevertheless, the Fund has still not been wound up and it still owns valuable assets including an interest in KES Power Limited ("KESP"), which owns shares in an electricity generating and supply company in Pakistan, and a legal claim against KPMG in Dubai, where it has obtained judgment for approximately US $231 million, but where KPMG has pursued a number of appeals so that the judgment is apparently not yet final and binding.

6. The LP Deed contains a non-exclusive jurisdiction provision in clause 11.6 in favour of the Cayman Islands and an arbitration agreement in clause 11.8 requiring arbitration of disputes under the auspices of the LCIA. WCL has commenced an arbitration before the LCIA. In response, the GP has initiated the current proceedings. WCL seeks to stay the proceedings and the GP seeks an interim injunction to restrain WCL from pursuing the arbitration. The primary issues between the parties concern the interrelationship between the jurisdiction and arbitration clauses in the LP Deed and the impact of the voluntary winding up of the Fund on WCL's ability to seek a stay of the court proceedings in favour of arbitration.

7. There is also a dispute between the parties as to the validity of certain amendments to the terms of the LP Deed that were apparently approved on 21 October 2024 by a majority of the limited partners. That is not something that I need to resolve for the purpose of determining the current summonses but the nature of the amendments is relevant to some aspects of the parties' arguments. The

amendments to the LP Deed purport to limit the ability of the limited partners to seek information regarding the management of the Fund and to empower the GP to forfeit limited partners' interests in the Fund if they act contrary to its interests. They do not seek to modify clauses 11.6 or 11.8 of the LP Deed. One of WCL's complaints appears to be that the GP promulgated the amendments to the LP Deed in October 2024 to further the interests of Sage Venture Group Ltd ("Sage") and Mr Chishty, its ultimate beneficial owner, over those of the other limited partners, in breach of the GP's fiduciary duties to the limited partners.

8. The overall backdrop to this matter is the collapse of the Abraaj group of companies in 2018 amid allegations of fraud and mismanagement by Mr Arif Naqvi, who was the founder and CEO of the Abraaj group, and his associates, and the working out of the liquidations of a number of Abraaj group entities. The parties to this action or their proxies are involved in multiple different proceedings before the Grand Court and in other jurisdictions and fora concerning KESP and the Fund's interest in it.

9. The broader disputes between the parties and their proxies concern the sale in late 2022 and resulting control of subsidiaries of the Fund, which own a substantial interest in KESP. In August 2022, Sage concluded an agreement with the liquidators of Abraaj Investment Management Ltd ("AIML") to acquire a majority interest in the GP, and thus obtained control of the GP, and also acquired certain other interests and rights, including ownership of some of the limited partner interests in the Fund and the sole voting share in the subsidiary through which KESP was owned. In proceeding with the sale to Sage, AIML's liquidators rejected a bid on behalf of the Al Jomaih family, who were already minority shareholders in KESP. The sale to Sage was approved by a judge of the Grand Court in November 2022.

10. Within a few days of the approval and the completion of the transaction, two entities aligned with the Al Jomiah family obtained an *ex parte* injunction from the High Court of Sindh in Karachi, Pakistan, to restrain Sage from exercising its newly acquired shareholder rights to appoint directors of KESP on the ground that the sale to Sage involved a change of control, contrary to the requirements of various corporate governance agreements. This generated an application to the Grand Court by entities aligned with the GP for an anti-suit injunction against the plaintiffs in the Pakistan proceedings. On 30 January 2023, Segal J granted an interim anti-suit injunction, and on 20 July 2023

he gave final judgment confirming the anti-suit injunction. The Court of Appeal dismissed an appeal against that decision on 2 July 2024.

11. On 26 May 2023, WCL applied to the GP pursuant to the LP Deed and section 22 of the ELPA to inspect the Fund's books and records. WCL followed up on 4 June 2023 with a detailed list of questions regarding the transaction with Sage and the background to it. The GP resisted providing a substantive response. In light of this, WCL commenced an arbitration against the GP on 21 June 2023, pursuant to clause 11.8 of the LP Deed for a ruling on its entitlement to documents and information pursuant to the LP Deed ("the First LCIA Arbitration"). The GP participated in the First LCIA Arbitration, albeit its position before me is that it accepted the LCIA tribunal's jurisdiction solely for the purpose of that dispute and not for any wider purposes.

12. The GP argued, and continues to argue, that WCL's owners were motivated to make its documents and information requests by the failure of the Al Jomiah family's bid for the Fund's subsidiary through which KESP was owned, and by Segal J's grant of the anti-suit injunction, with a view to supporting their attempts to undo the sale to Sage. The GP also asserted to the tribunal hearing the First LCIA Arbitration that WCL intended to breach its duty of confidentiality in respect of any information provided and to use that information for ulterior purposes. The Fund's and the GP's position in their skeleton argument in respect of the stay application is that:

> *"32. … the Original Shareholders brazenly deployed WCL against the Plaintiffs to cause as much damage to the Fund as possible through deliberately burdensome information and documentation requests and a plethora of unsubstantiated allegations, framed as 'concerns', about certain commercial decisions of the GP."*

13. The award in respect of the First LCIA Arbitration records that WCL had some doubts that it could properly utilise the arbitration to pursue a claim for relief under section 22 of the ELPA. It therefore commenced proceedings before the Grand Court for that relief, but the parties rapidly agreed that the statutory claim could be brought within the First LCIA Arbitration, in parallel with WCL's claim for documents and information pursuant to clause 9.1 of the LP Deed and WCL discontinued the court action.

14. On 13 December 2023, the tribunal in the First LCIA Arbitration upheld WCL's complaints under the LP Deed and the ELPA and ordered that the GP should provide WCL with access to the documents

and information that it sought within 5 days. The GP did not comply with the award. WCL brought proceedings in England and in the Cayman Islands to enforce the award. Cockerill J (as she then was) sitting in the Commercial Court made an enforcement order in England on 17 January 2024. In the Cayman Islands, Ramsay-Hale CJ granted permission on the papers on 5 January 2024 for WCL to enforce the award as a judgment. The GP then applied to set aside that order and to impose additional confidentiality obligations on WCL and limitations on its use of the documents and information to be provided. Ramsay-Hale CJ noted that the GP had not challenged the LCIA tribunal's jurisdiction nor had it challenged the enforceability of the award. On 2 February 2024, Ramsay-Hale CJ rejected the GP's position and upheld her decision to give WCL leave to enforce the award as a judgment without any additional constraints (*ex tempore* judgment perfected on 2 April 2024).

15. Following that decision, on 7 February 2024, the GP wrote to WCL indicating that it had uploaded documents to a data room and responding to a number of the information requests that WCL had previously made. However, WCL complained that the GP had failed properly to comply with the award and the enforcement orders, for example in its letter dated 8 May 2024.

16. On 9 August 2024, WCL made a second request for documents and information, raising a number of new matters, which WCL alleged arose out of new information that it had obtained or concerning different aspects of the GP's and Sage's behaviour. The GP responded on 27 September 2024 and made a number of complaints about WCL's requests and wider conduct.

C. The Second LCIA Arbitration and the current proceedings

17. On 5 February 2025, WCL and Islamic Development Bank ("IDB"), another limited partner in the Fund, commenced a second LCIA arbitration against the GP and against Sage ("the Second LCIA Arbitration"). It is this arbitration that has given rise to the current proceedings. Notably, the Plaintiffs have not joined Sage as a co-plaintiff (or defendant) and they have not joined IDB as a defendant in these proceedings. There is thus a mismatch between the parties to the Second LCIA Arbitration and the parties to these proceedings.

18. In the Second LCIA Arbitration, WCL and IDB claim that Mr Chishty and Sage have been causing the GP to manage the Fund in a way that benefits Mr Chishty's interests at the expense of the rest of

the limited partners and have conspired with the GP to do so. WCL and IDB allege that these actions involve breaches of the LP Deed, breaches of fiduciary duty and breaches of trust by the GP. WCL and IDB also complain that the GP has not properly complied with the terms of the award in the First LCIA Arbitration and the enforcement orders made in England and in the Cayman Islands. In broad terms, WCL and IDB allege that:

18.1 the GP has engaged in self-dealing transactions, including uncommercial share distributions and financing arrangements in favour of Sage;

18.2 the GP has blocked WCL and IDB from having access to the Fund's financial records and has failed to act in the best interests of the limited partners;

18.3 the GP improperly obtained a US $4 million loan from AsiaPak, a company owned by Mr Chishty, at excessive interest rates, putting the Fund's assets at risk; and

18.4 the GP has manipulated control over the Pakistan power companies, including withholding distributions to limited partners.

19. As regards Sage, WCL and IDB allege that it conspired with the GP and participated in the GP's alleged breaches of trust and breaches of the fiduciary duties that it owed to the limited partners.

20. The GP vehemently objects to the Second LCIA Arbitration and to WCL's and IDB's complaints. The GP and the Fund commenced these proceedings by a writ filed on 18 February 2025, just under two weeks after the Request for Arbitration was filed, seeking to prevent WCL from pursuing the Second LCIA Arbitration. The Plaintiffs' claim is for:

20.1 A declaration that WCL has breached section 14(1) of the ELPA, which prohibits a limited partner from being involved in the conduct of the partnership's business.

20.2 A declaration that WCL has breached section 33(1) and section 33(3) of the ELPA, which prohibit a limited partner from being involved in legal proceedings involving the partnership, unless the general partner(s) have failed to do so without cause.

20.3 A declaration that WCL has breached certain provisions in the LP Deed.

20.4 A declaration as to the extent of WCL's right to information and documents pursuant to section 22 of the ELPA.

20.5 A declaration that the GP is not liable to WCL or to the Fund in respect of the claims made by WCL in the Second LCIA arbitration.

20.6 A permanent injunction restraining WCL from breaching the LP Deed and the ELPA, including a mandatory order requiring WCL to terminate two sets of legal proceedings it has initiated and also the Second LCIA arbitration, without any costs to the GP and the Fund.

20.7 Damages and/or equitable compensation.

20.8 Any appropriate further orders pursuant to section 129 of the Companies Act (2025 Revision) as applied by section 36(3)(d) of the ELPA.

21. The Fund and the GP argue that WCL and its controlling minds are acting *mala fides* in commencing and pursuing the Second LCIA Arbitration. The Fund and the GP's position, as summarised in their skeleton argument before me is that:

> *"3. The Plaintiffs contend that the Second Arbitration is an improperly commenced arbitral proceeding which forms part of a pattern of vexatious and oppressive conduct on the part of WCL that is clearly in breach of its obligations under the LP Deed by which it is bound by the Cayman statutory regime that governs the Fund, its limited partners and the GP. …*
> *9. The GP maintains that the Second Arbitration is a vexatious and oppressive abuse of process …*
> *42. The GP considers the [request for arbitration] to be part of abusive conduct on the part of WCL, to damage the economic interests of the Fund and to seek to frustrate and obstruct the [sale to Sage] following the Al Jomaih Group's unsuccessful attempt to acquire SPV 21's interest in KESP. These actions constitute breaches of WCL's obligations as a limited partner both in contract and under statute by interfering in the Fund's management and business and in the winding up process which the GP is conducting."*

D. Plaintiffs' preliminary objection to WCL's evidence

22. Mr Lowe raises as a preliminary objection that the evidence relied on by WCL is largely inadmissible. This is because it is contained in affidavits sworn by attorneys, who, Mr Lowe says, cannot possibly have personal knowledge of the matters in question. Mr Lowe submits that this affidavit evidence therefore breaches GCR O.41, r.5(3), which states that:

> *"(3) An affidavit sworn by an attorney shall not be admissible in any cause or matter unless the attorney has direct personal knowledge of the facts and matters to which the attorney deposes and does not appear as advocate in the cause or matter."*

23. Mr Lowe notes that this Rule is local to the Cayman Islands, i.e. it does not have an equivalent rule in the *Rules of the Supreme Court of England and Wales 1965*. He argues that it was introduced in the Cayman Islands to deal with the abuse of having lawyers, often based offshore, swear affidavits instead of their clients doing so. He draws my attention to the judgment of Kawaley J in *Torchlight GP Limited v Millinium Asset Services PTY Limited* [2018] 1 CILR 244, where the learned judge accepted a similar submission from Mr Lowe and said at paragraph [83]:

> *"… This rule is an important one because it is designed to ensure that the court has reliable evidence before it based on the experience that lawyers receiving instructions from clients in other jurisdictions are particularly vulnerable to being pressed to quickly file important evidence on a distant substantive witness's behalf. Left unchecked, this will mean the best available evidence is not placed before the court and averments which clients may not be willing to swear to are indirectly verified by a legal representative."*

24. In *Torchlight*, the evidence in question had been sworn by an attorney-at-law to support an *ex parte* application for leave to serve out. The evidence had subsequently been confirmed by an affidavit sworn by a director of the plaintiff company. Kawaley J stated that, in the absence of such a confirmatory affidavit, he would probably have set aside the relevant orders giving leave to serve out. Instead, he penalised the plaintiff in respect of the costs of arguing the issue up to the date when the second affidavit was sworn.

25. I accept the general thrust of Mr Lowe's argument. It is important that parties comply with the various requirements of GCR O.41 generally, and with GCR O.41, r.5(3) specifically, to ensure that the court is presented with the best evidence available and in the most efficient way possible. However, in this case, much of the affidavit evidence that has been filed on both sides is not germane to the questions that I have to determine (or is simply comment on the documents and argument). The issues raised by WCL's summons largely turn on the documents exhibited by the witnesses. I have kept Mr Lowe's submission in mind, but I do not consider that the question of admissibility of the evidence provides an answer to the issues for determination.

E. Relationship between clause 11.6 and clause 11.8 of the LP Deed

26. The LP Deed includes both a governing law and jurisdiction clause and also an arbitration agreement. The parties disagree on the interaction between and overall effect of these two provisions. Clause 11.6

of the LP Deed addresses law and jurisdiction, and clause 11.8 contains the arbitration agreement. They state:

> *"**11.6 Governing Law***
> *This Deed and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the Cayman Islands and the parties submit to the non-exclusive jurisdiction of the courts in the Cayman Islands.*
>
> *...*
>
> ***11.8 Arbitration***
> *Disputes shall be submitted to a panel of three arbitrators and the fees and expenses of such arbitrators shall be paid equally by the parties to the dispute. The arbitration proceedings shall be held in London, England and the arbitrators shall render their decision in writing, stating the reasons for their decision, within ninety (90) days after the notice or [sic] arbitration. The language in which such arbitration shall be conducted (and any decision which shall be rendered pursuant thereto) shall be English. Such arbitration proceedings shall follow the rules of the London Court of International Arbitration."*

27. Mr Lowe submits that, on a proper analysis of clauses 11.6 and 11.8 of the LP Deed, clause 11.6 addresses disputes regarding the governance and construction of the LP Deed and provides that the appropriate tribunal to determine such matters should be the courts and preferably the Grand Court. He says that such disputes, which affect all of the limited partners collectively, fall outside the arbitration agreement in clause 11.8. He argues that it is only disputes which are peculiar to one partner that should be referred to arbitration in accordance with clause 11.8. Mr Lowe says that the claims that WCL is advancing in the Second LCIA Arbitration are derivative claims, which fall within the scope of clause 11.6 and not within clause 11.8.

28. In response to this argument, Mr Quirk does not accept the allocation of different types of disputes between the court and an arbitral tribunal propounded by Mr Lowe. He argues that the non-exclusive jurisdiction provision in clause 11.6 of the LP Deed does not detract from the wide scope of the arbitration agreement in clause 11.8. He submits that jurisdiction clauses, particularly where they are non-exclusive, are interpreted so as not to impede or otherwise prejudice a mandatory arbitration agreement, even if such a clause will thereafter perform little to no practical function.

29. I agree with Mr Quirk's stance on this point, which is supported by two English cases to which he drew my attention, namely *Ace Capital Ltd v CMS Energy Corp* [2008] EWHC 1843 (Comm) and *Surrey CC v Suez Recycling and Recovery Surrey Ltd* [2021] EWHC 2015 (TCC), and the cases cited within those two judgments.

30. In *Ace Capital Ltd v CMS Energy Corp*, the insurance policies giving rise to the dispute contained an arbitration clause mandating arbitration in London administered by the LCIA. However, they also included a jurisdiction clause requiring the underwriters to submit to the jurisdiction of a court within the United States if they failed to pay a claim and to abide by the final determination of that court. The policies also provided for service of proceedings on the underwriters at an address in New York. A dispute arose which was within the scope of the arbitration clause. Christopher Clarke J described the central issue at paragraph [11] as being whether the insured was entitled nonetheless to sue the underwriters in Michigan.

31. At paragraphs [68]-[69], the learned judge discussed the judgments of Steyn J (as he then was) in *Paul Smith v H & S International Holding Inc* [1991] 2 Lloyd's Rep 127, of Gloster J (as she then was) in *Axa Re v Ace Global Markets Ltd* [2006] 1 Lloyd's Rep 682 and of Moore-Bick J (as he then was) in *Shell International plc v Coral Oil Co Ltd* [1999] 1 Lloyd's Rep 127. In *Paul Smith* and *Axa*, the court treated the arbitration clause as a self-contained agreement, and the jurisdiction clause as addressing the curial law governing the conduct of the arbitration. Moore-Bick J reached a similar conclusion in *Shell International*. Christopher Clarke J explained at paragraph [70] that:

> *"70. These cases all illustrate the principle that the contract must be read as a whole and every effort should be made to give effect to all of its clauses. The meaning of one clause may be affected by the content of other clauses in the agreement. A clause should not be rejected unless manifestly inconsistent with or repugnant to the rest of the agreement. It is only if this cannot successfully be done that the Court will treat a clause that has been specifically agreed as prevailing over an incorporated standard term …"*

32. Turning to the case before him, Christopher Clarke J noted that there is a strong legal policy in both the UK and the United States in favour of arbitration, which was the context against which the clauses were agreed, and that the presumption is that rational business people are likely to have intended that any dispute arising out of their relationship should be decided by the same tribunal. Christopher Clarke J explained at paragraph [81]-[82] that:

> *"81. The arbitration clause in the present case does not exclude any particular grievances from arbitration. On the contrary it provides that all disputes arising under, out of, or in relation to the policy shall be arbitrated. In those circumstances the law's policy in favour of arbitration provides a strong impetus (i) not to read the Service of Suit clause as removing from the scope of arbitration, at the option of the assured, the sort of disputed claim most likely to arise under a policy, i.e. for payment; and (ii) to confine the clause so as to not to give the assured an option to have determined in any court of the Union the merits of disputes which the parties agreed to have determined by LCIA arbitration.*

> *82. Such an interpretation still leaves the Service of Suit clause with meaningful scope. It enables the assured to found jurisdiction in any US Court, including its home court, to declare the arbitrable nature of the dispute, to compel arbitration, to declare the validity of an award, to enforce an award, or to confirm the jurisdiction of US courts on the merits in the event that the parties agree to dispense with arbitration. Use of the clause for those purposes would not detract from the arbitration clause. …"*

33. Christopher Clarke J concluded that the arbitration clause should be given full effect and that doing so did not render the separate jurisdiction provision of no utility.

34. *Surrey CC v Suez Recycling and Recovery Surrey Ltd* is a decision of Alexander Nissen QC sitting as a Deputy Judge of the High Court. The parties had concluded a contract including an English law and exclusive jurisdiction clause. The parties later agreed a variation to the contract that added a detailed arbitration clause, but they did not delete the jurisdiction clause. The judge had to determine what was the applicable dispute resolution mechanism. In reaching his conclusion, Mr Nissen cited a passage in the judgment of Cooke J in *Sul America Cia Nacional de Seguros SA & Others v Enesa Engenharia S.A. & Others* [2012] 1 Lloyd's Rep 275. Cooke J summarised Christopher Clarke J's analysis in *Ace Capital Ltd* set out earlier in this judgment and then continued at paragraphs [49]-[50]:

> *"49. In the present case, on the construction that I have held, all disputes or differences can be and must be referred to arbitration under the terms of Condition 12, but if that is so, what is left of the exclusive jurisdiction of the courts of Brazil under Condition 7? The answer is very little in practice – much the same as found by Christopher Clarke J in paragraph 82 of the* ACE *decision. It enables the parties to found jurisdiction in a court in Brazil to declare the arbitrable nature of the dispute, to compel arbitration, to declare the validity of the award, to enforce the award, or to confirm the jurisdiction of the Brazilian courts on the merits in the event that the parties agree to dispense with arbitration. It specifically operates to prevent the parties proceeding in another court on the merits. Use of the Condition 7 rights for these purposes does not detract from the arbitration clause but gives them meaning. Furthermore, enforcement in Brazil against Brazilian parties is self-evidently a realistic possibility.*
>
> *50. The effect is, of course, to give priority to the arbitration clause over the exclusive jurisdiction clause but there is no other way of reconciling the two. To give full width to the exclusive jurisdiction clause would be to exclude the right to arbitrate altogether. The only other option would be to allow both the right to litigate in Brazil and the right to arbitrate to run in tandem, with the potential for a race to judgment between the two. That, for the reasons already given, is a most unlikely construction of the parties' intentions, as all the authorities indicate."*

35. Mr Nissen continued with a survey of a number of other English cases where similar issues had arisen and distilled the cases into the following principles at paragraph [77] of his judgment, which I gratefully adopt:

35.1 The exercise is one of contractual construction. Where possible, the Court should strive to give effect to an arbitration clause in the presence of a competing jurisdiction clause. It has latitude to do so where there is infelicitous drafting but cannot do so where the clauses are in direct conflict with each other and are wholly irreconcilable, so that no sense whatever can be given to the intention of the parties.

35.2 Unless they expressly and clearly say otherwise, there is a strong presumption that parties are assumed to have agreed on a single tribunal for the determination of all their disputes, at least when there is only one agreement between them. Dispute resolution clauses require certainty so parties know where they should go when a dispute arises.

35.3 Where there are two agreements each containing different provisions for dispute resolution, the outcome may depend on the nature of the second agreement and its relationship to the first. A second agreement which varies the first one will probably be regarded differently from a second agreement which makes a clean break from the first one. The desire for one-stop shopping means that, where possible, the clauses should be regarded as mutually exclusive in their scope of application, rather than overlapping. However, some degree of fragmentation may be inherent in what has been agreed, in which case the centre of gravity of a given dispute will be relevant.

35.4 Where a contract contains a hierarchy or conflicts clause, there should be no predisposition to find or not find a conflict between two clauses. The ordinary rules of construction should first be deployed and only if those result in a conclusion that the two provisions are irreconcilable is recourse to the conflicts clause required.

36. In my judgment, Mr Quirk is correct that the arbitration agreement in clause 11.8 of the LP Deed can be reconciled with the jurisdiction provision in clause 11.6. As in *Ace Capital* and *Sul America Cia Nacional de Seguros*, it is possible to give effect to the arbitration agreement without completely rejecting clause 11.6 of the LP Deed or making it otiose. Clause 11.6 of the LP Deed is non-exclusive: it therefore clearly contemplates that disputes may be determined in some other forum. The arbitration agreement in clause 11.8 applies to *"disputes"* without limitation. The Cayman Islands has a similar pro-arbitration policy and applies the same presumption as in England that sensible businesspeople are likely to have intended that their disputes should be decided by the same tribunal. Those factors point away from construing clause 11.6 as limiting the ambit of the arbitration agreement, and instead

point towards giving the arbitration agreement primacy over the jurisdiction clause. The jurisdiction clause continues to have utility in providing for recourse to the Grand Court to determine whether a dispute is arbitrable, to compel arbitration, to declare the validity of an award, to enforce an award, or to confirm the jurisdiction of the courts to make a determination on the merits in the event that the parties agree to dispense with arbitration.

F. Is WCL's claim in the Second LCIA Arbitration a derivative claim?

37. On behalf of the Fund, Mr Lowe argues that WCL is in reality purporting to make derivative claims against the GP in the Second LCIA Arbitration on behalf of all of the Fund's limited partners, where WCL and IDB have very small interests in the Fund (approximately 3% in total) and where the reliefs sought impinge on the rights and interests of the other limited partners without the vast majority of them supporting or being a party to the Second LCIA Arbitration. He says that the court should not or would not permit WCL to do so if WCL had followed the proper procedure for obtaining authority to pursue a derivative claim.

38. Mr Lowe relies on the terms of the Request for Arbitration as the foundation for his argument that WCL is making a derivative claim. Paragraph 4 of the Request for Arbitration states:

> *"The Claimants are Limited Partners in the IGCF Fund. They have brought this arbitration in the interests of the entire IGCF Fund and to protect the collective interests of all Limited Partners in the IGCF Fund including by preventing the IGCF GP from acting in breach of the LP Deed and its duty to act in good faith at all times."*

39. Mr Lowe argues that in the Request for Arbitration, WCL and IDB seek: (a) a number of declarations in respect of impugned transactions relating to the Fund; (b) orders compelling the GP to provide, and to grant access to, information and documentation relating to the Fund; and (c) an order requiring the GP to wind up the Fund. He bluntly asserts in his skeleton argument that the relief sought, if granted, would bind or affect the interests of the Fund and all limited partners and is thus *"plainly derivative in nature"*.

40. In his oral submissions, Mr Lowe expanded upon this position. First, he argued that section 33(3) of the ELPA creates a statutory equivalent to a derivative claim at common law, in that it expressly states

that a limited partner may bring an action on behalf of the partnership if the general partner with authority to do so has *"failed or refused"* to institute proceedings without cause.

41. Mr Lowe then referred me to the rule in *Foss v Harbottle* (1843) 2 Hare 461, and the exception to it allowing a derivative claim to be brought where the alleged wrongdoers are in control and would prevent the company from pursuing its claim. He also took me through the judgment in *Prudential Assurance Co Ltd v Newman Industries Ltd (No.2)* [1982] 1 Ch 204, and the review in *Prudential Assurance* of a number of cases where claims were pursued against directors of companies. Mr Lowe submits that the ability to bring such claims is derived from trust and partnership principles and, on that basis, says that by analogy a claim against a general partner will always be derivative in nature because it is brought to reconstitute the statutory trust of the exempted limited partnership's assets held by the general partner on behalf of the limited partners. He argues that the fact that the court is dealing with a claim against a limited partnership rather than a company makes no difference: whether a claim is to recover money or assets that belong to a trust, a statutory trust or a company, it is still a derivative claim in the sense that the claim belongs to the partnership but is being pursued by a beneficiary, limited partner or shareholder for the benefit of the trust or company.

42. Mr Quirk responds that section 33(3) of the ELPA, by its terms, is concerned with claims that the general partner ought to be bringing against third parties but has failed or refused to pursue. It has no application to a claim by a limited partner against the general partner because the general partner could never sue itself, and therefore cannot *"fail or refuse"* to bring such a claim. The claims that WCL and IDB are bringing in the Second LCIA Arbitration are thus not claims under section 33(3) of the ELPA at all. He relies on *Kuwait Ports Authority v Williams* [2024] UKPC 32 to support his argument that the purpose of section 33(3) of the ELPA is to permit derivative claims to be made in an exempted limited partnership situation. He maintains that the concept of derivative claims is a red herring in this case because WCL's and IDB's claims are against the GP itself for breaches of the LP Deed, breaches of trust and breaches of fiduciary duty, which the GP could never bring, whether under section 33(3) of the ELPA or at all.

43. Finally, Mr Quirk explains that the wording in paragraph 4 of the Request for Arbitration about which Mr Lowe complains, namely *"[t]he Claimants … have brought this arbitration in the interests of the entire IGCF Fund and to protect the collective interests of all Limited Partners"*, was included in

order to head off the risk that the GP would say that WCL and IDB are acting against the interests of the Fund and therefore contrary to clause 8.5 of the recently amended LP Deed, and that the GP is therefore entitled to forfeit WCL's and IDB's interests in the Fund.

44. This arises because, following its revision on 21 October 2024, clause 8.5 of the LP Deed now includes the following provisions:

> *"**8.5 Provision of Information and Documents and Limited Partners Acting Against the Interests of the Partnership, the Other partners or any Actual Investment***
>
> *Each Limited Partner shall not act against the interests of the Partnership, the other Partners or any actual Investment and shall take such actions and provide such information or documents relating to themselves and/or their direct or indirect legal and beneficial owners or account holders that are requested from time to time by the General Partner and which are considered by the General Partner, in its absolute discretion, to be necessary or desirable to comply with the legal, regulatory or tax obligations of the Partnership or the General Partner or any related person. Each Limited Partner shall take the actions and provide the information or documents requested in accordance with this Article within such period as may be specified in the relevant request. In the event that any Limited Partner (i) fails to comply with any request made in accordance with this Article within the specified period or (ii) acts against the interests of the Partnership, the other Partners or any actual Investment (as may be determined in the sole opinion of the General Partner), the General Partner shall have full authority to take all or any of the following actions with respect to such Limited Partner:*
>
> *(a) to transfer the Partnership Interest of such Limited Partner to any person selected by the General Partner on such terms and in such manner as the General Partner may, in its absolute discretion, determine and without the General Partner being answerable for any loss occasioned by such transfer;*
>
> *(b) to reduce, eliminate or forfeit the Partnership Interest of such Limited Partner's or any rights of the defaulting partner under this Agreement;*
>
> *(c) to subordinate the Partnership Interest of such Limited Partner to the Partnership Interests of other Limited Partners who have not failed to so comply; or*
>
> *(d) exercising any other remedy or consequence available under any applicable laws. …"*

The clause goes on to say that each limited partner gives the GP full power to act as its attorney to achieve all of the above. Mr Quirk described this in oral submissions as an extraordinary provision, the validity of which would need to be considered within the arbitration.

45. Further, Mr Quirk refers me to the Statement of Claim in the Second LCIA Arbitration dated 30 April 2025, which expressly pleads that:

> *"4. The Claimants are Limited Partners in the IGCF Fund. They have brought this Arbitration in the interests of the entire IGCF Fund and to protect their own interests in the IGCF Fund, including by preventing the IGCF GP from acting in breach of the LP Deed and its duty to act in good faith at all times. In addition to protecting the value of the Claimants' interests in the IGCF Fund, this arbitration will also benefit all Limited Partners.* ***For the avoidance of doubt, this***

> ***arbitration is not brought on a derivative basis. The Claimants are not seeking to bring a claim on behalf of the Fund.****"* (emphasis added)

46. In response to a question from the Court, Mr Quirk said that since the Second LCIA Arbitration is a private contractual dispute resolution mechanism, the eventual award cannot be binding on any other limited partners or third parties who are not parties to the arbitration. He relies on this to support WCL's argument that its claims in the Second LCIA Arbitration are not derivative in nature.

47. In *Kuwait Ports Authority v Williams* Lord Hamblen explained at paragraph [35] that the important distinctions between exempted limited partnerships and companies mean that little assistance can be derived from the case law regarding the fraud on the minority exception to the rule in *Foss v Harbottle*. He identified these significant differences as follows:

> *"(1) An ELP has no separate legal personality.*
>
> *(2) A company's articles of association constitute a contract between the company and its members, but no contractual relationship exists between an ELP and its constituent partners. The rights and obligations of the partners in an ELP are governed by a contract between the partners and a statutory trust.*
>
> *(3) The directors of a company owe fiduciary duties to the company alone and not to the company's shareholders, whilst the general partner of an ELP owes fiduciary duties to all the ELP's limited partners.*
>
> *(4) The directors of a company are treated as trustees in respect of the company's assets which are under their control, holding them for the company rather than for its shareholders. In contrast, the general partner of an ELP holds the ELP's assets on trust for all the limited partners.*
>
> *(5) When a wrong is done to a company, it is the company, not its shareholders, that suffers loss. When a wrong is done to an ELP, its constituent partners suffer loss directly: the ELP itself does not suffer any loss that is separate or distinct from the partners' loss.*
>
> *(6) A majority of shareholders in a company generally have a range of rights and powers, including the power to remove or replace directors and to pass a special resolution requiring a company to bring legal proceedings. A majority of limited partners in an ELP do not have an equivalent power; faced with a general partner who refuses to bring proceedings on behalf of an ELP without cause, their only recourse is to bring a derivative claim.*
>
> *(7) The fraud on the minority exception concerns control over the bringing of proceedings by the majority shareholders. No such issue arises as between limited partners. As this case illustrates, the majority of limited partners may be seeking to bring the derivative claim."*

48. In my judgment:

    48.1 Section 33(3) of the ELPA is intended to provide a statutory equivalent to the common law derivative claim, which is not available in respect of an exempted limited partnership for the reasons explained by Lord Hamblen. A wrong done to an exempted limited partnership causes loss directly to the individual limited partners, who therefore have a direct claim against the

wrongdoer for their individual loss, albeit the general partner is empowered as their trustee to bring the claim against the third party wrongdoer on their behalf. There is no question of the exempted limited partnership, which has no separate legal personality from the limited partners, suffering its own loss for which the general partner might sue directly. Section 33(3) of the ELPA provides a statutory mechanism for the limited partners to pursue their claims where the general partner, as their trustee, fails or refuses without cause to do so.

48.2 Section 33(3) of the ELPA is directed at claims against third parties; it simply does not and cannot apply to claims by limited partners against the general partner because where the wrong is done by the general partner itself, the general partner would never be able to pursue the cause of action against itself, so the contingent ability of the limited partners to do so under section 33(3) of the ELPA does not arise.

48.3 Claims by limited partners against the general partner will usually be for alleged breaches of the partnership deed, the ELPA or the fiduciary duties owed by the general partner to the individual limited partner. These are claims that are vested directly in the limited partner and which the limited partner is legally entitled to bring in its own name against the general partner. The limited partner is not bringing such a claim on behalf of some other entity, including the exempted limited partnership. The fact that other limited partners might obtain a benefit directly or indirectly, for example through an order that the general partner give an account of the conduct of the exempted limited partnership's business, does not alter the analysis.

49. After I delivered my short reasons for my decision to the parties on 23 May 2025, the GP sought to re-open this issue and referred me to the Court of Appeal's judgment in *Kuwait Ports Authority v Port Link GP Ltd* (unreported, 20/01/23) at paragraphs 38, 59-60, 63-34 and 145. The GP submitted that:

> *"Pursuant to* Kuwait Ports*, an exempted limited partnership can claim against its general partner for breach of the general partner's fiduciary and other obligations, with a limited partner having the ability to bring a derivative claim against the general partner in respect of such breaches. A limited partner may also bring a direct claim against the general partner for breach of fiduciary and other duties but, even in a direct claim, the relief sought will inevitably be ordered on a global basis in respect of the exempted limited partnership and affect its limited partners as a whole. In this regard, only the Court has jurisdiction to make orders in respect of a partnership account which binds the exempted limited partnership and all limited partners."*

50. I have read the paragraphs in *Kuwait Ports Authority* identified by the GP. I do not consider that what the Court of Appeal has said in those paragraphs supports the GP's submission. I do not read those

paragraphs of the Court of Appeal's judgment as saying that a claim by a limited partner against the general partner is a derivative claim, as the GP asserts. The Court of Appeal was careful not to reach any conclusion on that point. What the Court of Appeal did was to explain that certain remedies that a limited partner might seek could only be obtained for the benefit of the exempted limited partnership as a whole. The Court of Appeal's decision does not lead to the conclusion that a limited partner's claim against the general partner is a derivative claim.

G. Would WCL be permitted to bring a derivative claim?

51. If WCL's and IDB's claims are properly to be characterised as derivative claims, as Mr Lowe contends, then he argues that WCL and IDB would have to go through the mechanism identified in *Kuwait Ports Authority v Williams* at paragraph [85] to obtain authority to pursue those derivative claims. He submits that it would be for the Court to authorise them to bring such claims, and that an arbitral tribunal could not do so. He concludes that the Court would refuse to authorise WCL and IDB to pursue a derivative claim. He says that this is because WCL and IDB would have to show special circumstances, in other words that they do not have an alternative remedy, that their claims have a solid foundation and give rise to serious issues to be tried, and that they are acting in good faith with no ulterior motive, and they could not do so.

52. Mr Lowe complains that there is no basis for suggesting that the tribunal in the Second LCIA Arbitration would have jurisdiction to make that decision. He continues that, in any event, WCL and IDB have not pleaded any such case and nor have they put any evidence before the court to show that there are special circumstances to justify allowing them to bring their claims and that they are acting *bona fide* and without an ulterior motive.

53. Relying on *Konamaneni v Rolls Royce Industrial Power (India) Ltd* [2002] 1 W.L.R. 1269 at paragraph [28], Mr Lowe submits that because permission to pursue a derivative claim involves the exercise of the court's equitable discretion, the court will not allow a derivative action to be pursued in an inequitable manner so as to produce an injustice. He says that if properly asked to consider authorising WCL to bring a derivative claim then the court would refuse to do so on this basis too. Mr Lowe refers to WCL only having an interest of approximately 0.5% of the committed capital in the Fund and says that the court would draw the inference from that that WCL is pursuing its

complaints not for a *bona fide* reason but because it has other motives, linked to the wider disputes between the parties and their proxies concerning the Sage transaction, and not related to WCL's position as a limited partner in the Fund.

54. In light of his position that WCL's claim is not a derivative claim, Mr Quirk did not address me on this point in oral argument and it was not covered in WCL's skeleton argument.

55. I accept Mr Lowe's argument that, if correctly characterised as a derivative claim, then WCL and IDB would need to obtain court approval to pursue their claims, which they have not sought. This would provide a reason to refuse the stay of the current proceedings that WCL seeks. However, as my conclusion is that WCL's claim is not a derivative claim, this is not a bar to WCL continuing to pursue its claims in the Second LCIA Arbitration.

H. Can a limited partner maintain a derivative claim, or any claim more generally, once a liquidator of the GP has been appointed?

56. The GP's position on this point is that it is clear from English authorities that a plaintiff cannot bring a derivative claim once a liquidator of a company has been appointed. This is because the alleged wrongdoers are no longer in control; the plaintiff can request the liquidator to pursue the claim and the plaintiff can go to the court for directions, for example to remove the liquidator, if the liquidator does not.

57. Mr Lowe relies firstly on *Fargro Ltd v Godfroy* [1986] 1 W.L.R. 1134 where Walton J said at 1136, at B-E:

> *"But once the company goes into liquidation the situation is completely changed, because one no longer has a board, or indeed a shareholders' meeting, which is in any sense in control of the activities of the company of any description, let alone its litigation. Here, what has happened is that the liquidator is now the person in whom that right is vested. Now, that being the case, the plaintiff can take a variety of courses. The plaintiff can ask the liquidator to bring the action in the name of the company. Doubtless, as in virtually all cases, the liquidator will require an indemnity from the persons who wish to set the company in motion against all the costs, including, of course, the costs of the defendant, which he may have to incur in bringing that action. The liquidator may ask for unreasonable terms or, on the other hand, the liquidator may be unwilling to bring the action, and under those circumstances it is always possible for the shareholders who wish the action to be brought to go to the court asking for an order either that the liquidator bring the action in the name of the company or, more usually, that they are given the right to bring the*

> *action in the name of the company, of course, against the usual type of indemnity, which will, if there is any difficulty about the matter, be settled by the court. …"*

58. Walton J continued at 1137, letter B-C:

> *"So that is a course which it has always been open for the plaintiff in the present case to take and we know from the correspondence that they have been having with the liquidator that the liquidator, subject of course to proper indemnities, has no objection whatsoever to the action being brought by himself in the name of company.*
>
> *Now, as a matter of logic, it seems to me quite clear that that being the situation and the plaintiff no longer being subject to the veto of the third defendant as the other equal shareholder, the reason for any exception to the rule in* Foss v. Harbottle*, 2 Hare 461 disappears."*

59. Secondly, Mr Lowe refers to ***Barrett v Duckett*** [1995] BCC 362, a decision of the English Court of Appeal allowing the defendant's appeal and striking out a derivative claim. The defendant had presented a winding up petition before the plaintiff issued her writ. The plaintiff opposed the winding up. The Court of Appeal concluded that, in the *"unusual"* circumstances facing the court, the plaintiff did have an alternative remedy through the winding up proceedings, which should be allowed to proceed in preference to the plaintiff's writ action. The unusual circumstances included that: (a) the plaintiff did not have funds to pursue her claim, whilst the company did have some funds which a liquidator could use to pursue the claims in question; (b) the Court of Appeal considered that a winding up was more likely to return some economic value to shareholders; and (c) the Court of Appeal was concerned about the plaintiff's motives and thought that it would be better that an independent liquidator should determine whether or not to pursue the intended claims.

60. Relying on this case, Mr Lowe argues that the imminent prospect of a liquidation is sufficient to justify refusing permission to bring a derivative claim. That seems to me to overstate the position. The imminent prospect of a *court supervised* liquidation *may* be sufficient to justify striking out or refusing permission to pursue a derivative claim, but it will depend on the factual circumstances. As the Court of Appeal stressed in ***Barrett***, that was an unusual case.

61. Mr Lowe also relies on ***Re Core VCT*** [2019] BCC 845 and ***Fakhry v Pagden*** [2021] BCC 46 addressing the situation under the English Companies Act 2006. In particular, he submits that David Richards LJ's description of the position in a members voluntary liquidation at paragraph [66] of ***Fakhry*** provides a useful analogy with the position of a limited partner in an exempted limited partnership.

62. Based on these authorities, Mr Lowe argues that WCL has an alternative remedy for its derivative claim, namely an application to the court under section 129 of the Companies Act (2025 Revision), as made available to the Fund by section 36(3)(d) of the ELPA, for the court to determine any question arising in the liquidation.

63. Mr Lowe says that this remedy is available because the Fund is in voluntary liquidation. He contends that the court has supervisory jurisdiction in respect of matters relating to the winding up of the Fund. Mr Lowe relies on section 36(3)(g) of the ELPA and the interpretation of that section by Kawaley J in *Africa Investments LLC v One Thousand & One Voices Africa Fund I Investors Ltd* (unreported 24/04/24).

64. Section 36(3)(g) of the ELPA is in the following terms:

> *"(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 5 of the Companies Act (2025 Revision) and the Companies Winding Up Rules (2023 Consolidation) shall apply to the winding up of an exempted limited partnership and for this purpose —*
>
> *...*
>
> *(g) on application by a partner, creditor or liquidator, the court may make orders and give directions for the winding up and dissolution of an exempted limited partnership as may be just and equitable."*

65. In *Africa Investments LLC*, Kawaley J had to consider the scope of section 36(3)(g) of the ELPA in the course of determining whether he had jurisdiction under section 36(13) to appoint alternative liquidators in place of a liquidating agent appointed voluntarily. As regards section 36(3)(g), he concluded that:

> *"23. ... section 36(3)(g) is intended to confer on the Court a general power to supervise voluntary liquidations. It may properly be viewed as, in effect, a freestanding subsection within section 36 rather than as a sub-paragraph of subsection (3), limited by that subsection's prefatory words."*

66. Mr Quirk responds that there is no authority that a limited partner cannot bring a claim under section 33(3) of the ELPA (or a derivative claim more widely) while an exempted limited partnership is being wound up. He says that the ELPA does not include any provision to that effect, and the English authorities on which Mr Lowe relies are all in the context of companies and inapt when considering an exempted limited partnership.

67. Mr Quirk points out that in *Africa Investments LLC*, the general partner had sought to commence a claim before the courts of New York, in breach of a jurisdiction agreement in the partnership deed. The case did not concern whether an arbitration agreement would be enforced by the court. Unsurprisingly, Kawaley J considered that the Grand Court was the appropriate court to appoint a liquidator over a Cayman Islands fund, not the courts of New York.

68. Thirdly, Mr Quirk argues that the language of section 36(3)(g) of the ELPA is permissive, rather than mandatory, such that it does not oust the ability of the limited partners to pursue arbitration and to enforce an arbitration agreement by obtaining a stay of parallel court proceedings.

69. Mr Quirk is correct that there is no authority directly on this point. Whilst it is superficially attractive to say that the approach in respect to derivative claims brought by a company, as exemplified by *Fargro*, can be transferred to the situation of an exempted limited partnership, I consider that that leads to an illogical and irrational outcome.

70. It is important to bear in mind the significant differences between a company and an exempted limited partnership, as identified by Lord Hamblen in *Kuwait Ports Authority v Williams* at paragraph [35] of his speech, set out earlier in this judgment. The result of those differences is that the only scope for a limited partner to bring a derivative claim is when the limited partner sues a third party, exercising the power granted by section 33(3) of the ELPA, because the general partner has failed or refused to do so. If the exempted limited partnership is or becomes insolvent, then it will be the general partner which is put into liquidation: see Parker J in *Re Padma Fund L.P.* [2021] 2 CILR 556; or the general partner may itself be or become insolvent and go into liquidation. In either case, the third party could argue that the limited partner should not be permitted to pursue the claim and conduct of the claim should be taken over by the liquidator of the general partner. It is an open question whether the court would do so or simply allow the limited partner to continue with the claim.

71. But the position regarding a limited partner's claim against the general partner is quite different. First, it is not a derivative claim, for the reasons I have already expressed, so that the legal policy embodied in *Fargro* does not apply. Secondly, and practically, if the limited partner were to be required to surrender their claim against the general partner to the liquidator of the general partner, which is the

effect of Mr Lowe's argument, then that again results in the impermissible situation of the general partner, acting by its liquidator, being obliged to sue itself. This is not legally or practically feasible.

72. I therefore reject Mr Lowe's submission that the appointment of a liquidator over the general partner of an exempted limited partnership has the result that a limited partner cannot continue to pursue its claims against the general partner and must cede those claims to the liquidator of the general partner.

I. Jurisdictional basis for WCL's application

73. WCL's summons relies on both section 9 of the Arbitration Act (2012 Revision) and section 4 of the Foreign Arbitral Awards Enforcement Act (1997 Revision) ("FAAEA") as grounds for the court granting a stay of these proceedings.

74. As a preliminary point, Mr Lowe criticises WCL's reliance on section 9 of the Arbitration Act on the basis that section 3(1) of that Act expressly states that the Act applies where the seat of the arbitration is in the Islands, in other words that the Act applies to domestic arbitrations only. Against this, the Court of Appeal has accepted in other cases without demur that the Arbitration Act applies to foreign arbitrations, for example in respect of interim measures under section 43 or Part VIII of the Act. It may be that this is on the basis that section 3(2) of the Act extends its application to arbitrations under any other enactment, except where the Act is inconsistent with the law, rules or procedure authorised by the other enactment or where the other enactment provides otherwise.

75. This is an interesting point. However, I do not need to decide it because WCL also relies on section 4 of the FAAEA, which clearly does apply in this case. It provides:

> *"4. If any party to an arbitration agreement … commences any legal proceedings in any court against any other party to the agreement … in respect of any matter agreed to be referred, any party to the proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings; and the court, unless satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings."*

J. General principles regarding a stay of proceedings in favour of arbitration

76. The relevant law in this area has recently been reviewed by the Privy Council, on appeal from the Court of Appeal of the Cayman Islands, and by the UK Supreme Court in *FamilyMart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holding Corp* [2023] UKPC 33 and *Republic of Mozambique v Privinvest Shipbuilding SAL (Holding)* [2023] UKSC 32 respectively. The judgments were handed down on the same day and are clearly intended to be complementary.

77. In addition, the parties referred me to *Fiona Trust v Privalov* [2007] UKHL 40 and *Ren Ci v Nebula (Cayman) Ltd* (unreported, 16/02/23), amongst other cases.

78. I was taken to extensive passages from these cases during the course of oral argument. I will not recite them in full here but will focus on those passages which I consider set out the principles to be applied. I start with the speech of Lord Hodge in *FamilyMart*:

> *"58. The court in considering such an application [for a stay] adopts a two-stage process. First, the court must determine what the matters are which the parties have raised or foreseeably will raise in the court proceedings, and, secondly, the court must determine in relation to each such matter whether it falls within the scope of the arbitration agreement. …*
>
> *59. The court must ascertain the substance of the dispute or disputes between the parties. This involves looking at the claimant's pleadings but not being overly respectful to the formulations in those pleadings which may be aimed at avoiding a reference to arbitration. It involves also a consideration of the defences, if any, which may be skeletal as the defendant seeks a reference to arbitration, and the court should also take into account all reasonably foreseeable defences to the claim or part of the claim. …*
>
> *…*
>
> *61. Thirdly, in the Board's view, a 'matter' is a substantial issue that is legally relevant to a claim or a defence, or foreseeable defence, in the legal proceedings, and is susceptible to be determined by an arbitrator as a discrete dispute. If the 'matter' is not an essential element of the claim or of a relevant defence, it is not a matter in respect of which the legal proceedings are brought. … a 'matter' requiring a stay does not extend to an issue that is peripheral or tangential to the subject matter of the legal proceedings. … a 'matter' is something more than a mere issue or question that might fall for decision in the court proceedings or in the arbitral proceedings.*
>
> *…*
>
> *64. No judicial formula encapsulating the meaning of 'matter' should be treated as if it were a statutory text. A court facing an application for a stay under section 4 of the FAAEA should approach the question in a practical and common-sense way. The court must respect the agreement of the parties to arbitrate their disputes. An agreement to arbitrate a dispute is an agreement not to resolve that dispute in court proceedings. Thus, any substantial matter in the legal proceedings, which is relevant to the claim or foreseeable defence, and which is within the scope of the arbitration agreement, will give rise to a mandatory stay of the legal proceedings pro tanto on the application of one of the parties. … the procedural complexity caused by a reference to arbitration does not of itself render a matter non-arbitrable … That does not mean*

> *that procedural complexity is irrelevant in all circumstances because the court, when addressing an application to stay legal proceedings to enable the determination of a dispute by arbitration, should be careful to prevent an abuse of process. … the court could refuse an otherwise mandatory stay if the applicant has no real or proper purpose for seeking the stay. That could include not only an application for a stay in relation to issues that were peripheral to the legal proceedings but also an application that amounted to an abuse of process. … There may be circumstances in which a party seeks a stay for an improper purpose and it would be contrary to justice if the court could not act to prevent an abuse of process.*
>
> *65. Fourthly, the exercise involving a judicial evaluation of the substance and relevance of the 'matter' entails a matter of judgment and the application of common sense. It is not a mechanistic exercise. It is not sufficient merely to identify that an issue is capable of constituting a dispute or difference within the scope of an arbitration agreement without carrying out an evaluation of whether the issue is reasonably substantial and whether it is relevant to the outcome of the legal proceedings of which a party seeks a stay. ….*
>
> *66. The approach to the word 'matter' in section 4 of the FAAEA set out in paras 59-65 above may involve the fragmentation of the parties' disputes with some matters being determined by an arbitral panel and other matters being resolved by the court. Such fragmentation may on occasion be inconvenient to one or more of the parties to the court proceedings. Rational businesspeople may as a general rule prefer that their disputes are determined in the same forum: see Lord Hoffmann in* Fiona Trust & Holding Corpn v Privalov *[2007] UKHL 40; [2007] Bus LR 1719 ('Fiona Trust'), paras 5-8. An arbitration agreement may be interpreted generously to achieve that end if the court can ascertain that as the parties' commercial purpose and the wording of the agreement can bear that meaning. But, where, on a proper interpretation of the arbitration agreement, the parties have contracted to refer to arbitration disputes which do not extend to all the matters raised in the legal proceedings, giving effect to the parties' contract will involve fragmentation of the disputes. The disadvantages caused by such fragmentation can be mitigated by effective case management by both the court and the arbitral panel."*

79. Lord Hodge's reference to Lord Hoffman's speech in *Fiona Trust v Privalov* [2007] UKHL 40 is to the well-known statements:

> *"5. … Arbitration is consensual. It depends upon the intention of the parties as expressed in their agreement. Only the agreement can tell you what kind of disputes they intended to submit to arbitration. But the meaning which parties intended to express by the words which they used will be affected by the commercial background and the reader's understanding of the purpose for which the agreement was made. Businessmen in particular are assumed to have entered into agreements to achieve some rational commercial purpose and an understanding of this purpose will influence the way in which one interprets their language.*
>
> *6. In approaching the question of construction, it is therefore necessary to inquire into the purpose of the arbitration clause. As to this, I think there can be no doubt. The parties have entered into a relationship, an agreement or what is alleged to be an agreement or what appears on its face to be an agreement, which may give rise to disputes. They want those disputes decided by a tribunal which they have chosen, commonly on the grounds of such matters as its neutrality, expertise and privacy, the availability of legal services at the seat of the arbitration and the unobtrusive efficiency of its supervisory law. Particularly in the case of international contracts, they want a quick and efficient adjudication and do not want to take the risks of delay and, in too many cases, partiality, in proceedings before a national jurisdiction.*
>
> *7. If one accepts that this is the purpose of an arbitration clause, its construction must be influenced by whether the parties, as rational businessmen, were likely to have intended that only some of the questions arising out of their relationship were to be submitted to arbitration and*

> *others were to be decided by national courts. Could they have intended that the question of whether the contract was repudiated should be decided by arbitration but the question of whether it was induced by misrepresentation should be decided by a court? If, as appears to be generally accepted, there is no rational basis upon which businessmen would be likely to wish to have questions of the validity or enforceability of the contract decided by one tribunal and questions about its performance decided by another, one would need to find very clear language before deciding that they must have had such an intention.*
>
> *...*
>
> *13. In my opinion the construction of an arbitration clause should start from the assumption that the parties, as rational businessmen, are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal. The clause should be construed in accordance with this presumption unless the language makes it clear that certain questions were intended to be excluded from the arbitrator's jurisdiction. As Longmore LJ remarked, at para 17: 'if any businessman did want to exclude disputes about the validity of a contract, it would be comparatively easy to say so.'"*

80. I draw attention to Lord Hope's additional comment in *Fiona Trust*:

> *"28 ... As Bingham LJ said in* Ashville Investments Ltd v Elmer Contractors Ltd *[1989] QB 488, 517, one should be slow to attribute to reasonable parties an intention that there should in any foreseeable eventuality be two sets of proceedings. If the parties have confidence in their chosen jurisdiction for one purpose, why should they not have confidence in it for the other? Why, having chosen their jurisdiction for one purpose, should they leave the question which court is to have jurisdiction for the other purpose unspoken, with all the risks that this may give rise to? For them, everything is to be gained by avoiding litigation in two different jurisdictions. The same approach applies to the arbitration clause."*

81. Mr Quirk also relied on the judgment of Doyle J in *Ren Ci v Nebula (Cayman) Ltd* (unreported, 16/02/23). Doyle J robustly applied *Fiona Trust* to the question whether the parties had intended to bifurcate their dispute resolution mechanisms. He went on to address the position where the arbitral tribunal could not grant the relief sought, as follows:

> *"83. [Counsel] submitted that as the Plaintiffs' claims included a claim for rectification of D1's register of members and directors and such relief could only be granted by the court ... this was an additional reason as to why the court should conclude that the claims in the pleadings are not within the scope of the arbitration provisions in this case. As the law presently stands there is nothing in this submission and I can dismiss it briefly, again engaging the valuable assistance of Foxton J who at paragraph 61 of* NDK v HUO *stated:*
>
> > *'The fact that NDK has claimed relief in court of a kind which could not be obtained from the arbitrators (in particular rectification of the register of members) does not have the result that the matters raised in the Cyprus Proceedings fall outside the LCIA Arbitration Agreement. In some cases, the inability to obtain relief of a particular kind from the parties' chosen tribunal is simply a 'practical consequence' of their choice ... Where the availability of a particular form of statutory relief from the court cannot be (or has not been) precluded by an agreement to arbitrate the underlying dispute, then it is possible to adopt a bifurcated approach, in which the relevant facts are determined by the parties' chosen tribunal, and relief then sought from the court on the basis of the arbitrators' determination…'*

Foxton J at paragraph 70 added:

> *'… the fact that the arbitration tribunal does not itself have power to grant part of the relief sought, by altering the terms of the register of members of a company so as to give effect to its determination, does not render the underlying dispute non-arbitrable, albeit it may require the successful party to bring court proceedings for the purpose of giving effect to the arbitral determination in that context…'"*

82. This point was similarly addressed by the Privy Council in *FamilyMart* at paragraph 78:

> *"78. In* WDR Delaware *Foster J summarised his conclusion on this matter at para 164:*
>
> > *'With the exception of that part of the present proceeding which involves the Court forming an opinion as to whether the plaintiffs are entitled to a winding up order, the questions of fact and law which mark out the substantive controversy between the parties in this proceeding are all matters which are capable of resolution by arbitration. Any award or awards which determine those matters will be taken into account when the Court comes to consider whether a winding up order should be made. If, at the end of the arbitral process, the award or awards do not address satisfactorily or comprehensively all of the grounds relied upon by the plaintiffs in support of their claims for relief made in the present proceeding, then it will be open to them to supplement or explain the terms of the relevant award or awards by evidence. The process by which that would be done is the everyday process of applying the law of evidence.'*
>
> *The Board agrees as a general rule with this approach to discrete matters which involve inter partes disputes in the context of a winding up application. Matters, such as whether one party has breached its obligations under a shareholders' agreement or whether equitable rights arising out of the relationship between the parties have been flouted, are arbitrable in the context of an application to wind up a company on the just and equitable ground and the arbitration agreement is not inoperative because the arbitral tribunal cannot make a winding up order."*

83. I apply the above principles in determining whether or not to stay these proceedings pro tanto.

K. Should the proceedings be stayed in favour of the Second LCIA Arbitration?

84. As Lord Hodge stated in *FamilyMart* at paragraph [58], the starting point is to consider what are the matters of substance raised or foreseeably likely to be raised in the court proceedings – I emphasise here that the focus is on the content of the court proceedings not the subject matter of the arbitration. Once the matters of substance have been identified, the court can consider whether they fall within the scope of the arbitration clause, and whether a stay of the proceedings should be ordered in favour of arbitration. The court should try to avoid fragmentation of disputes, but a proper construction of the parties' agreement may lead to the result that fragmentation cannot be avoided.

85. I have summarised the GP's claims earlier in this judgment. Briefly, they are for declarations that WCL has breached the ELPA and the LP Deed, mainly on the basis that WCL has improperly

interfered with the management of the Fund; declarations as to the information and documents regarding the Fund to which WCL is properly entitled; declarations that the GP is not liable to WCL in respect of the claims for breach of the LP Deed, breach of trust and breach of fiduciary duty asserted in the Second LCIA Arbitration; and for a permanent injunction to restrain WCL from breaching the LP Deed and the ELPA and an anti-suit injunction to restrain WCL from continuing with the Second LCIA Arbitration and two other court actions. Tagged onto the end of the GP's claim is a prayer for any other orders pursuant to section 129 of the Companies Act that the court considers appropriate.

86. The GP's complaints are all complaints about WCL's conduct as a limited partner. They clearly fall within the broad scope of the arbitration agreement in clause 11.8 of the LP Deed, which simply refers to *"disputes"*. Moreover, the GP's complaints are of precisely the nature that Lord Hodge described in paragraph [78] of *FamilyMart* as being arbitrable, namely disputes whether one party has breached its obligations under a shareholders' agreement (in this case the equivalent sources being the LP Deed and ELPA), or whether equitable rights arising out of the relationship of the parties have been flouted.

87. Mr Quirk argues that the case is squarely within the principles set out in *FamilyMart* and *Fiona Trust*. He relies on *Ren Ci* and *FamilyMart* to support the proposition that the inability of the arbitral tribunal to grant every aspect of the relief ultimately sought is no reason to refuse a stay of proceedings in favour of arbitration. Mr Quirk submits that all of WCL's claims are within the scope of the arbitration clause, even if the parties need to come back to the court once the award is made for the court to order relief that is outside the powers of the tribunal to grant.

88. Mr Lowe accepts that in *FamilyMart*, the Privy Council state that an *inter partes* dispute which is within the scope of a binding arbitration agreement and is an essential precursor to the determination of a winding up petition should be stayed in favour of arbitration.

89. If it were not for the fact that the Fund is currently in voluntary liquidation, I would have absolutely no hesitation in staying the current proceedings in favour of the Second LCIA Arbitration, directly applying section 4 of the FAAEA and the guidance from *FamilyMart* and *Ren Ci*.

    89.1 The claims in the proceedings concern matters within the scope of the arbitration agreement in clause 11.8 of the LP Deed, about which there are real disputes between the parties.

    89.2 WCL has not taken any step in the proceedings apart from applying to stay the proceedings.

89.3 The arbitration agreement in clause 11.8 of the LP Deed is not null and void, inoperative or incapable of being performed.

89.4 The fact that the arbitral tribunal does not itself have power to grant part of the relief sought in respect of the winding up of the Fund does not make the underlying disputes non-arbitrable. Instead, the parties may need to bring the matter back to the Grand Court once an award has been obtained for the court to give effect to or to make appropriate consequential orders based on the tribunal's award.

90. I would also be inclined to this conclusion by the fact that the Plaintiffs have not sought to restrain IDB from continuing with the Second LCIA Arbitration, with the result that that arbitration will proceed nonetheless. It is strongly preferable that there is not a multiplicity of proceedings with the concomitant risk of inconsistent decisions.

91. The fact that other limited partners have not joined as claimants (or defendants) in the Second LCIA Arbitration is likely to have the result that they are not bound by any award. This may make the utility of the Second LCIA Arbitration limited in terms of the relief that the tribunal can order. However, it will be necessary to see how matters develop before the tribunal and it is not a reason to refuse to enforce the arbitration agreement and stay the court proceedings.

92. The question is then whether the fact that the Fund is in voluntary liquidation should lead to a different result.

L. Does the fact that the Fund is in voluntary liquidation lead to a different result?

93. Mr Quirk makes the point that, despite the Fund being in voluntary winding up when the First LCIA Arbitration was commenced, the GP did not seek to rely on the fact of the voluntary winding up as a basis for saying that the tribunal did not have jurisdiction, as it now seeks to do. This is not just a forensic point since the question of jurisdiction is fundamental: the parties cannot confer jurisdiction by agreement if there is a legal bar to it. In addition, Mr Quirk notes that if the GP's view was that arbitration was no longer a dispute resolution mechanism that should be open to the limited partners, then it could have amended the LP Deed in October 2024 to delete clause 11.8 but it did not, implying that it considered at that time that the clause still had utility.

94. Secondly, Mr Quirk notes that the Second LCIA Arbitration is also brought by IDB, but the Fund and the GP have not joined IDB to these proceedings and have not brought separate proceedings against IDB to restrain it from pursuing the Second LCIA Arbitration. Mr Quirk argues that I should therefore proceed on the basis that the Second LCIA Arbitration will go forward at least as far as IDB's claim is concerned, whatever decision I make regarding WCL. He submits that when exercising my discretion regarding any stay, I should lean in favour of allowing the disputes to be determined in one forum, to avoid a multiplicity of proceedings and the risk of inconsistent decisions, and that this factor adds to the arguments in favour of granting a stay.

95. Mr Lowe's position on behalf of the GP is that none of *FamilyMart*, *Mozambique*, *Fiona Trust* and *Ren Ci* are to the point. He submits that *FamilyMart* and *Mozambique* focus on what amounts to a *"matter"* for the purpose of determining whether or not there is a matter in dispute, and what constitutes a *"matter"* that is susceptible to be determined by an arbitrator and therefore justifies a stay of court proceedings in favour of arbitration. Mr Lowe submits that none of these cases was dealing with a situation where the entity in question was already within a liquidation process. His submission is that the fact that the Fund is now in voluntary liquidation wholly overrides the parties' agreement to refer their disputes to arbitration because, once in voluntary liquidation, the court is exercising the broad supervisory jurisdiction over the Fund under section 36(3)(g) of the ELPA as explained by Kawaley J in *Africa Investments LLC*, and any questions regarding the Fund should be determined by the court by way of an application under section 129 of the Companies Act.

96. As regards IDB's involvement in the Second LCIA Arbitration, Mr Lowe coyly says at paragraph 38 of his skeleton argument that:

> *"38. The GP considers that IDB is also in breach of the LP Deed and the Exempted Limited Partnership Act (2025 Revision) … in joining the Second Arbitration as a co-claimant. However, given that the GP believes that WCL procured IDB to join it as a co-claimant, if WCL's application is refused, the GP believes it will be able to resolve IDB's issues and has sought constructive engagement with IDB."*

97. The *"constructive engagement"* referenced is a series of letters from the GP or its attorneys to IDB, which are in evidence, seeking to persuade IDB to abandon its claims in the Second LCIA Arbitration. The GP's evidence is that IDB has not responded to these letters. Instead, IDB continues to be represented by the same attorneys who act for WCL, suggesting that it intends to take a similar line

to WCL. Thus, the GP does not have any substantive answer to WCL's point that the Second LCIA Arbitration will proceed on IDB's claim, whatever happens with WCL's claim.

98. I accept that section 36(3)(d) of the ELPA makes section 129 of the Companies Act available where there is a voluntary winding up of an exempted limited partnership, and that section 129 allows the voluntary liquidator or any contributory (or a limited partner in the context of an exempted limited partnership) to apply to the court to determine *"any question arising in the voluntary winding up"* or to exercise any power which the court might exercise if the winding up were proceeding under court supervision. The difficulty with Mr Lowe's argument regarding the current status of the Fund is that it is only in voluntary liquidation. The court has not made any order under section 36(3)(g) of the ELPA equivalent to a supervision order under the Companies Act and CWR. The court is not actively supervising any aspect of the ongoing voluntary liquidation of the Fund and, until the issue of the writ in this matter, after WCL had commenced the Second LCIA Arbitration, the court had not been asked by anyone to do so or to determine any question in the voluntary winding up.

99. I am not satisfied that the issues that WCL and IDB have raised in the Second LCIA Arbitration and the claims against them that the GP wishes to pursue, as set out in its Statement of Claim in these proceedings, are properly described as *"any question[s] arising in the voluntary winding up"*. They are not questions: they are full-blown arguments between the parties. Given the broad terms of the arbitration agreement, and applying the guidance from Lord Hoffman in *Fiona Trust*, my view is that a neutral bystander, and also the GP and the limited partners, if asked at the time that they entered into the LP Deed whether claims and cross-claims similar to those now advanced by WCL and the GP were intended to be covered by the arbitration agreement in clause 11.8 in circumstances where the Fund was being voluntarily wound up at the expiry of its term, or should be addressed by the court under section 129 of the Companies Act, would have responded that they had agreed to arbitration.

100. In addition, section 129 is permissive in its language, using *"may"*, not mandatory, *"must"*. In my judgment, and having regard to the authorities to which I have referred, the ability for the GP or a limited partner to apply to the court under section 129 of the Companies Act for the court to determine a question arising in the voluntary winding up does not exclude the continuing availability to the parties of recourse to the arbitration agreement in clause 11.8 of the LP Deed. WCL is therefore entitled to seek a stay of these proceedings in favour of the Second LCIA Arbitration.

101. That is not to say, as Mr Lowe argues, that the court is authorising the Second LCIA Arbitration to conduct the winding up of the Fund. As is now well established in the authorities, where relief is sought which only the court can grant, the arbitral tribunal can and should be permitted to make all relevant factual findings and to grant any relief that is within its remit. Once it has done so, the parties can bring the matter back to the court for the court to make the orders and to grant the relief that is exclusively within its jurisdiction.

102. I do not consider that the tribunal conducting the Second LCIA Arbitration will be trespassing on the jurisdiction of the court to supervise the voluntary winding up of the Fund if it is permitted to determine WCL's claims or the substance of the GP's claims as set out in its writ and Statement of Claim, and the matter then returns to the Grand Court for it to make any necessary orders or grant relief concerning the winding up.

M. Should the court refuse to stay the proceedings because the Second LCIA Arbitration is an abuse?

103. Mr Lowe relies on *FamilyMart* and *Mozambique* to argue that the court should now be more circumspect than was previously the case in determining that a case should be stayed in favour of arbitration: see for example, paragraph [64] of Lord Hodge's speech in *FamilyMart*. Mr Lowe submits that the Privy Council and Supreme Court have taken a less pro-arbitration approach than was previously applied in England and the Cayman Islands by indicating that the court should not stay a court proceeding on the basis of an arbitration where the arbitration would be useless or the stay would be an abuse because the arbitration is useless or improperly brought. He says that the court can also take into account whether the applicant is not pursuing a legitimate goal by the arbitration, and whether they are pursuing relief that they cannot or should not be allowed to obtain.

104. This is correct in principle. In this case, it is not apparent that the Second LCIA Arbitration would be useless or has been improperly brought. There are numerous allegations and counter-allegations about which side is acting in bad faith. Whilst these arguments were canvassed at length in the evidence put before me, I was not addressed in oral argument on this material and it is not dealt with in any detail in the parties' skeleton arguments. It seems to me that it would be an impossible task to try to determine on an interlocutory basis and on affidavit evidence alone that WCL is pursuing the Second

LCIA Arbitration in bad faith and is not pursuing a legitimate goal. In addition, it would risk impermissibly embarking on a mini-trial. I therefore do not consider that I should refrain from ordering a stay of the proceedings for this reason.

N. Conclusion

105. Whilst I have addressed the issues in a slightly different order in this judgment from the order I adopted on 23 May 2025, I reiterate my reasons for ordering a stay of these proceedings in favour of the Second LCIA Arbitration, namely:

105.1 Clause 11.6 of the LP Deed does not override the arbitration agreement in clause 11.8.

105.2 WCL's and IDB's claims in the arbitration are not derivative claims against the GP, they are direct claims for alleged breaches of the LP Deed, breaches of fiduciary duty and breaches of trust.

105.3 WCL and IDB are not prevented from pursuing their claims against the GP by reason of the fact that the Fund is in voluntary liquidation.

105.4 The matters that the GP raises in the court proceedings are substantively allegations about alleged breaches of the LP Deed by WCL. They are not matters directly related to the conduct of or working out of the winding up. They are not matters that are exclusively within the province of the Court to determine as part of a winding up.

105.5 The matters that the GP raises in the court proceedings are all within the scope of the arbitration provision in clause 11.8 of the LP Deed.

105.6 The proceedings should be stayed in favour of the Second LCIA Arbitration.

105.7 This is not affected by the fact that other limited partners have not joined as claimants (or defendants) in the Second LCIA Arbitration, so that they are not bound by any award and potentially limiting the utility of the arbitration in terms of the relief that the tribunal can order.

105.8 This is also not affected by the fact that the Fund is in voluntary liquidation.

105.9 Section 129 of the Companies Act does not have the effect that the Court must necessarily deal with the determination of any *"question"* within the voluntary liquidation. Recourse may still be had to a subsisting arbitration agreement.

105.10 The relief sought by WCL and IDB within the arbitration does not impermissibly trespass upon the role of the court in respect of a winding up.

106. In the circumstances, I dismiss the Plaintiffs' application for an interim injunction to restrain WCL from continuing to pursue the Second LCIA Arbitration pending determination of WCL's application for a stay of the proceedings.

Dated 14 October 2025

THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT