Neutral Citation Number: [2025] CIGC (FSD) 113

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO. 237 of 2023 (IKJ)

BETWEEN

(1) ABRAAJ SPV 108 LIMITED
(2) ABRAAJ SPV 127 LIMITED

AND

IGCF SPV 21 LIMITED

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO. 262 of 2023 (NSJ)

BETWEEN

(1) SHAN-E-ABBAS ASHARY
(2) AL-JOMAIH POWER LIMITED
(3) DENHAM INVESTMENTS LTD

AND

(1) KES POWER LIMITED
(2) IGCF SPV 21 LIMITED
(3) KP CORPORATE DIRECTOR LIMITED
(4) MARK SKELTON LIMITED
(5) SHAHERYAR ARSHAD CHISHTY
(6) SAMEER ARSHAD CHISHTY
(7) DARIN DANIEL BAUR
(8) ADEEB AHMAD

Appearances:	**Mr Niall Dodd, Mr Conal Keane and Mr Alan Quigley of Dillon Eustace Cayman** **Mr Iain Quirk KC instructed by Mr Jonathan Stroud and Ms Vered Mazin of Bedell Cristin** **Ms Clare Stanley KC instructed by Mr Barnaby Gowrie, Ms Jamie Brislane and Ms Lauren Vernon from Walkers (Cayman) LLP]**
Before:	**The Honourable Justice Segal**
Heard:	**4 November 2025**
Draft Ruling:	**14 November 2025**
Final Ruling:	**28 November 2025**

NOTE OF RULING

Introduction

1. On 4 November 2025, I heard an application (the ***Discovery Application***) by the Second and the Fourth to Eighth Defendants (the ***SPV 21 Defendants***) in FSD 262 of 2023 (the ***Ashary Proceedings***) seeking orders relating to what they claimed to be the defective discovery conducted to date by the plaintiffs in the Ashary Proceedings (the ***Ashary Plaintiffs***). I set out below, with brief reasons, the decisions I have made in relation to the Discovery Application and attach the form of order that I intend to make.

2. I also heard applications for case management directions in relation to the further procedural steps to take place up to the trial of both the Ashary Proceedings and FSD 237 of 2023 (the ***SPV 21 Proceedings***) and as regards the conduct of and date for listing the trial(s) in both actions. I also set out below, once again with brief reasons, the decisions I have made.

3. At the hearing, Mr Niall Dodd of Dillon Eustace appeared for the SPV 21 Defendants and IGCF SPV 21 Limited (***SPV 21***) as the defendant in the SPV 21 Proceedings, Mr Iain Quirk KC appeared for the Ashary Plaintiffs (instructed by Bedell Cristin) and Ms

Clare Stanley KC appeared for Abraaj SPV 108 Limited and Abraaj SPV 127 Limited (the ***Abraaj Parties***) (instructed by Walkers (Cayman) LLP).

The Discovery Application

4. I reject the submission that Mr Stroud's First Affidavit (***Stroud 1***) is inadmissible. GCR O.41, r.5(2) permits an affidavit to be sworn by an attorney for the purpose of being used in an interlocutory proceeding which contains statements of information and belief with the sources and grounds, thereof. In my view, Stroud 1 complies with this sub-rule.

5. However, in my view the account given by Mr Stroud in Stroud 1 of the discovery exercise and process conducted by the Ashary Plaintiffs and their legal advisers in response to the questions raised by the SPV 21 Defendants is insufficiently particularised. The SPV 21 Defendants have raised, in particular in Dillon Eustace's letter dated 23 July 2025 to Bedell Cristin (the ***Dillon Eustace Letter***), a number of legitimate concerns regarding the adequacy of the discovery process which required a response which adequately explained the process that had been used and the grounds on which those conducting the discovery exercise believed it to be compliant with the obligations of the Plaintiffs under GCR O.24 and the Discovery Protocol.

6. The SPV 21 Defendants had identified six main issues:

   (a). The small number of emails and documents relating to the Critical Period which suggested that emails had been omitted and an insufficient number of emails had been discovered.

   (b). The failure to list emails from Steptoe indicated that there were missing documents.

   (c). The fact that all emails disclosed appeared to have been sent to or by Mr Ashary indicated that only his email server had been searched and that the servers of the other custodians listed in the Discovery Protocol had not been searched.

(d). The assertion of privilege in relation to a large proportion of the listed documents (123 documents had been withheld) was insufficiently particularised and overly broad.

(e). A number of documents which were said to be subject to common interest privilege and which had been withheld as a result had in fact already been discovered in the related SPV21 Proceedings.

(f). The discovery exercise had been undertaken on the assumption that the limited pool of documents that had been collected for the purpose of discovery in the English proceedings (the ***English Proceedings***) was sufficient for the purposes of the Cayman proceedings and would contain all documents relevant to, and to be discovered in, the Cayman proceedings.

7. In my view, Mr Stroud's evidence in response was inadequate.

(a). While, as Mr Quirk pointed out, there is no requirement for evidence in relation to the discovery process to be given by the responsible partner in the Cayman Islands law firm on record in the proceedings, I would usually expect that partner to swear the relevant affidavit as the senior attorney with responsibility for overseeing the discovery process. The responsible attorney at the relevant firm, which I take to be the partner or lead partner dealing with the matter, has a duty to the court to ensure that as far as is possible full and proper disclosure of all relevant documents is made. Where issues are reasonably raised about the conduct of discovery that partner should step-up and provide to the court a full and clear account of what has been done and explain not only that they are satisfied but why they are satisfied that the discovery exercise has been properly conducted. I take Mr Keane's Fourth Affidavit to be a good example of a reasonably detailed account of the discovery process.

(b). Mr Quirk for the first time at the hearing explained that there was a good reason why in this case the responsible partner had not given evidence. This was because GCR O.41, r.5(3) stipulated that an affidavit should not be sworn by an attorney who appears as advocate in the cause or matter. Mr. Quirk said that the responsible

partner at Bedell Cristin (Ms Hatfield) had decided that it would not be appropriate for her to swear the requisite affidavit because she might need to appear in the proceedings including on this application if for any reason Mr. Quirk was unable to do so. I accept that this is a good and sufficient reason but in my view, this should have been explained to the SPV 21 Defendants and the court at an early stage when the SPV 21 Defendants first raised a concern about the responsible partner at Bedell Cristin having failed to give evidence.

(c). The Cayman Islands attorney (partner) at the law firm on record in the proceedings remains subject to the duty I have referred to even where an onshore law firm is actively involved in the proceedings and playing a key co-ordinating role for the attorneys/law firms' common client. The Cayman attorney cannot abdicate his/her responsibilities by simply leaving the discovery process to the onshore law firm and accepting the results without investigation or some checking. I accept, as Mr Quirk submitted, that the level of involvement of the Cayman attorneys will depend on the circumstances of the case and what is reasonable in those circumstances having regard to the justifiable need to adopt a proportionate approach to avoid unnecessary expense and duplication of work (and to act in accordance with the overriding objective). But the Cayman attorneys need, at a minimum, at the outset to review the proposed design and operation of the discovery process and satisfy themselves that it is in accordance with the (distinct and separate) requirements of the law and procedural rules of this jurisdiction and subsequently to review the output and results of the process (if appropriate only in general terms and at a high level by interrogating and questioning the onshore law firm that has run the mechanics of the discovery process) to the same purpose.

(d). Mr Quirk said this during his oral submissions (see page 90 of the transcript):

> *"One is that what is reasonable will of course depend on the circumstances of the case. Where what is happening is that there is an international law firm which is carrying out that exercise, and an international law firm which has been involved throughout and over the multitude of different disputes, and your Lordship will have seen that in other contexts, then the degree to which it is reasonable to rely on that entity to conduct the search is different to if one was simply relying on a lay client in a foreign jurisdiction. That sentiment is expressed in the cases that are cited at paragraphs 28 and 29 of my learned friend's skeleton, the cases of Renova and Attorney General v*

> *Carbonneau are making exactly that point. It's an obvious point. But bearing that in mind, it was reasonable for Bedell to rely on Steptoe, to run those search terms, to review for relevance, and to filter for privilege. And there was nothing, I suggest, that was improper about that in any sense. What's then said in Mr Stroud's witness statement, affidavit, I'm sorry, is that there was a full and proper discovery review exercise undertaken by Steptoe on behalf of the plaintiffs. Those are his words. I'm quoting from his [affidavit]at paragraph 26. Now, my learned friend says: well, there's nothing behind that to tell me − to explain why on what basis that was reached. But we're dealing here with two very well-established law firms, very experienced lawyers on both sides on both sides, i.e. Steptoe and Bedell, and ordinarily, one would take at face value the assertion made that Mr Stroud at Bedell had satisfied himself that a full and proper discovery review exercise was undertaken. But, my Lord, I would go further than that and say,*
> *given that what is relied − how this was conducted was by an international law firm, i.e. Steptoe, the degree to which there needed to be hand−holding by Bedell was very much less than would be required if, as I say, it was a lay client in a far−flung destination, and that the court can have confidence in the confirmation which is given by Mr Stroud, unless there were reasons to doubt it. And in the present case, I submit there are absolutely no reasons to doubt that what he says is correct at all."*

(e). The main problem is that Mr Stroud's evidence strongly indicates that in this case Bedell Cristin simply handed over the design and running of the discovery process to Steptoe. He said at [9] that "*Given that Steptoe had already collected the Plaintiffs' documents in the English Proceedings and was undertaking a related exercise in parallel it was sensible and efficient for Steptoe to also undertake the discovery exercise in these Proceedings*." He made the same point using the same language at [10]: "*Steptoe are familiar with these Proceedings and Leigh Mallon (Mr Mallon), the Partner at Steptoe with day-to-day conduct of a number of related disputes, has previously filed four affidavits in these Proceedings. Steptoe had access to their own Relativity platform to undertake the document review. It was therefore sensible and efficient for the discovery exercise to be undertaken by Steptoe to avoid the duplication of work and costs*." Mr Stroud does refer at [1] to the "*discovery exercise [being] overseen*" by Steptoe and at [26] to the discovery review process to be "*led by Steptoe*" but he nowhere identifies and explains the involvement of anyone from his firm in the process and in my view gives the clear impression that he is merely reporting back on what has been done by Steptoe and what Steptoe have been allowed to get on with, without any oversight or active involvement from Bedell Cristin (Mr Stroud goes on to report on what he has been informed by Steptoe: see e.g. [27]). If, in fact, attorneys from Bedell Cristin had

had a role in checking that the process was properly designed and operated, then he should have said so.

(f). It is also noticeable that despite being the partner in the onshore law firm with direct responsibility for the discovery process and despite having previously filed affidavits in these proceedings, as Mr Stroud noted, Mr Mallon did not himself file an affidavit setting out what had been done and the involvement of Bedell Cristin.

8. As regards the first issue, based on what he had been told by "*the Plaintiffs*" (he did not identify precisely with whom he had spoken on particular topics), Mr Stroud said that the small number of emails discovered relating to the Critical Period was unsurprising given that the Plaintiffs "*do not ordinarily exchange a large number of emails in the course of their business …. particularly … in periods of urgency in which phone calls and in person meetings are more efficient*"; that the Second Plaintiff is a special purpose vehicle; that the Plaintiffs do not have the benefit of well-preserved mailboxes equivalent to those maintained by employees of large professional firms, such as A&M (the SPV 21 Defendants' first and third nominated custodians as set out in the Discovery Protocol are employed by A&M) and the fact that the SPV 21 Defendants had discovered only six internal communications for the Critical Period from outside of the mailboxes of the A&M custodians. He also said that the Plaintiffs were only able to "*search the documents held by the Plaintiffs' custodians listed in the Discovery Protocol to the extent that those documents are in the possession, custody or control of the Plaintiffs [so that they could not] for example, obtain access to personal e-mail accounts or accounts held in respect of third-party companies*." I must confess to finding this explanation opaque and unclear but Mr Quirk during his oral submissions clarified the issue. A number of the Plaintiffs' custodians (as identified in the Discovery Protocol) were not employed by any of the Plaintiffs so that they were unable to compel them to deliver up and produce relevant documents. Many of these custodians are only employees or officers of KESP. But in the absence of further details identifying who had said what to Mr Stroud and particulars to support why so few emails had been discovered (for example a confirmation from a relevant named individual that they had not sent any or many emails during the Critical Period and if there were limitations or deficiencies in the email systems maintained by the Plaintiffs as compared with those maintained by firms such as A&M what they were) these general explanations are not helpful or persuasive. The same can be said for the

unparticularised reference to the apparent problems in being able to compel or obtain the delivery up of documents from the custodians who, as I understand it, the Plaintiffs had themselves identified and agreed should be included in the Discovery Protocol. There is no explanation as to why they were included without obtaining a prior confirmation that they would provide documents or what requests had been made to them and what responses had been received and whether there was any arrangement which any of the Plaintiffs could have relied on to press the custodians to produce documents.

9. There was no explanation as to why emails from Steptoe had not been listed.

10. Mr Stroud also did not explain which custodians had been asked to provide documents and which had done so. He did say that "*the Plaintiffs confirm that they have obtained and provided discovery of all documents within their possession, custody or control"* and gave a brief summary of the process followed by Steptoe. At [27] of Stroud 1 he said that "*I am informed by Steptoe that the Steptoe team reviewed a total of 3,832 documents for relevance, privilege and confidentiality in the process of preparing the Plaintiffs' discovery. I am informed by Steptoe that each document was reviewed at first instance by a member of the Steptoe team. I am informed by Steptoe that documents that were coded as relevant to an Issue for Discovery were then re-reviewed for relevance, privilege and confidentiality by a member of the Steptoe team. I am similarly informed that every document from the review set was reviewed manually, without the assistance of active learning models or any form of technology-assisted-review. In co-ordination with Bedell, the Plaintiffs' document production was completed by Steptoe's internal e-discovery team. In light of Steptoe's experience with the Proceedings and its familiarity with the Plaintiffs' obligations to provide discovery in the Proceedings, it was reasonable for Bedell to not re-review the production in advance of producing it to the SPV 21 Defendants*." This is helpful but once again of limited assistance because of the failure to provide particulars. Mr Stroud does not say precisely who gave him this information, how the custodians were approached and by whom, what the custodians were asked to provide, whether *all* the custodians were asked to provided documents/emails, which custodians provided access to all their relevant documents/emails and which did not and where they did not provide all their documents/emails, why not and what response they provided. It is helpful to compare Mr Stroud's approach with that of Mr Keane. First, he was the partner responsible for overseeing the discovery process and he confirmed that

he had overseen each and every step in the process. His views were not second hand. Secondly, he explained each of the main steps that had been taken (see [9]-[16] of Keane 1). I note in particular his confirmation (at [12]) that the independent tech team "*were given unrestricted access to the relevant inboxes by the SPV 21 Defendants' custodians and copied all emails within the inboxes and databases to the Relativity Workspace*."

11. As regards privilege issues, the SPV 21 Defendants have raised a number of reasonable and legitimate questions which need to be, but which have not yet been, answered. Dillon Eustace pointed out in the Dillon Eustace Letter that 123 documents had been withheld on the basis of privilege and/or confidentiality. Mr Quigley in Quigley 2 said that the Plaintiffs had withheld 87 of the documents listed in Tab 1 (entitled "*Document List*") of the Excel spreadsheet scheduled to the Plaintiffs' List and 53 of the documents listed in Tab 2 (entitled "*TBC-Lit Priv*"). Where privilege was relied on, the spreadsheet just identified the type of privilege claimed (litigation privilege, attorney-client privilege and common interest privilege). The sender and recipient of the email was identified together with the subject line of the email.

12. Dillon Eustace also set out at some length a number of concerns as to the justification for the privilege claims. In particular, (a) litigation privilege had been claimed in respect of internal emails sent in December 2022 and an email from Mr Farooki to Mr Ashary dated 25 January 2023 when the English Proceedings had not been commenced until March 2023 and these proceedings had only been commenced in September 2023; (b) emails dated 2 December 2022, 12 December 2022, 6 June 2023 and 30 May 2023 from Mr Farooki to Mr Ashary had been withheld on the basis of attorney-client privilege when neither were legal advisers; (c) some of the emails between Mr Hutchison/EY and the Plaintiffs/their representatives sent in June and July 2023, which had been withheld on the basis of common interest privilege and were relevant in these proceedings, had already been discovered in the SPV 21 Proceedings: (d) an email from Mr Farooki to Mr Ashary dated 13 May 2023 had been withheld on the basis of confidentiality, which alone did not justify a refusal to discover the document; (e) internal emails sent on 19 September 2022 had been withheld on the basis of attorney-client privilege and litigation privilege but none of the parties were lawyers and the emails were sent well in advance of the commencement of the English or these proceedings; (f) an email from Mr Farooki to Mr Ashary dated 16 December 2022 had been withheld on the basis of litigation

privilege and confidentiality and once again this was sent well in advance of the commencement of the English or these proceedings and confidentiality was insufficient on its own to justify the email being withheld; and (h) an email sent by Mr Sakowski of EY on 17 December 2022 had been withheld on the basis that it was a without prejudice communication but it was unclear how a communication sent well in advance of the commencement of the English Proceedings could have been sent for the purpose of negotiations. Dillon Eustace had noted that documents had been withheld in their entirety rather than redacted and asked for confirmation that each of the 123 documents had been reviewed and that Bedell Cristin were satisfied that there was a proper basis for withholding the entirety of each of the documents concerned.

13. But I do agree with Mr Quirk that the Plaintiffs' claim that Mr Stroud's evidence indicated that the discovery exercise had been undertaken on the basis that only the pool of documents collected for the purpose of discovery in the English Proceedings would be searched as part of the discovery process in the Cayman proceedings is unjustified. I do not read Mr Stroud as saying this. But Mr Stroud has not helped himself or the Plaintiffs by only providing a generalised and incomplete account of the discovery process that the Plaintiffs did adopt and implement.

14. In these circumstances, further explanations by, and confirmations from, the Ashary Plaintiffs and their legal advisers regarding the discovery process are required. In my view the following is required:

(a). The responsible partner (which I take to be Mr Mallon) or another partner at Steptoe (the ***Steptoe Partner***) should review (the ***Review***) the discovery process already undertaken, without the need to redo all of it, in order to check and satisfy himself/herself that the discovery process has been adequate for the purpose of identifying all documents which the Ashary Plaintiffs are required to discover in these proceedings and properly conducted so as to ensure that, so far as possible, no documents subject to the Ashary Plaintiffs' discovery obligations have been omitted.

(b). The Steptoe Partner should then (within 21 days of the date of the order made to give effect to this Ruling or such other date as may be agreed by all parties or

ordered by the Court) swear and file an affidavit (or make an affirmation) (the ***Steptoe Affidavit***) confirming that the Review has been completed and describing the main steps taken by Steptoe on behalf of the Plaintiffs for the purpose of fulfilling the Ashary Plaintiffs' obligation to give discovery in accordance with GCR O.24, r.1(1) and the Discovery Protocol and in particular shall:

(i) confirm that each of the Ashary Plaintiffs' custodians (listed at numbers 8 to 15 at paragraph 3 of the agreed Discovery Protocol) was contacted and asked to provide access to their email accounts and other relevant databases;

(ii) indicate whether each of those custodians provided such access and as regards those custodians who declined to give such access, set out their explanation for declining to do so and what steps the Ashary Plaintiffs took by way of a response and assess whether there was a basis for requiring those custodians to provide such access;

(iii) as regards the emails or other documents to which the Ashary Plaintiffs were given access, explain the total number of emails that were collected before any review or filtering and explain the review process adopted in sufficient detail to enable the SPV 21 Defendants to understand whether the emails and documents were uploaded to a document management system for review, what search terms and filters were used to review the emails or other documents or otherwise how the emails or other documents were searched for relevance (including relevance to the Discovery Issues) and how many documents were identified as being relevant before being filtered for privilege; and

(iv). confirm the process by which the emails or other documents were reviewed for the purpose of identifying which documents (and which parts of documents) were privileged.

(c). The responsible partner at Bedell Cristin, the Plaintiffs' Cayman attorneys on record in the Ashary Proceedings, should swear and file an affidavit (or make an

affirmation) (the ***Bedell Cristin Affidavit***) within 7 days of the filing of the Steptoe Affidavit confirming:

(i). the steps that she/he or colleagues in Bedell Cristin have taken to supervise the discovery process conducted by Steptoe and to check that it is appropriate and sufficient having regard to the rules governing discovery in this jurisdiction and in particular to check that it is sufficient and adequate for the purpose of identifying all documents which the Ashary Plaintiffs are required to discover in these proceedings and has been properly conducted so as to ensure that, so far as possible, no documents subject to the Ashary Plaintiffs' discovery obligations have been omitted; and

(ii). that having undertaken such supervision and taken such steps, and after having received a report from Steptoe as to the result of the Review, she/he is satisfied that the discovery process as explained and conducted by Steptoe was, and is, appropriate and sufficient having regard to the rules governing discovery in this jurisdiction and sufficient and adequate for the purpose of identifying all documents which the Ashary Plaintiffs are required to discover in these proceedings and for ensuring that, so far as possible, no documents subject to the Ashary Plaintiffs' discovery obligations have been omitted.

15. If as a result of the Review, or comments and input from Bedell Cristin, the Ashary Plaintiffs conclude that they need to amend the discovery previously given, they must file and verify (within 14 days of the filing of the Bedell Cristin Affidavit) an amended list of documents and if they conclude that they need to amend their claims to privilege in respect of the whole or part of such documents (and that some documents may be discovered with the privileged parts redacted) they will amend their privilege claims.

16. The SPV 21 Defendants also sought an order that the Ashary Plaintiffs make and serve a list of the documents which are, or have been, in their possession, custody or power relating to their alleged communications and relationship with Mr Arif Naqvi since 1 July 2022. The SPV 21 Defendants argued that the alleged relationship between Al Jomaih Power Limited and Denham Investments Ltd (together the ***Original Shareholders***) and Mr Naqvi was relevant to the Ashary Proceedings because it assisted in establishing the

Original Shareholders' (and Mr Ashary's) motives for challenging the decision making of the KESP board in relation to whether to instruct Fieldfisher as English solicitors for KESP to advise on the English Proceedings against KESP commenced by Sage Venture Group Limited (***Sage***) and AIML (and the decision making of the sole director of the corporate director of SPV 21 to exercise SPV 21's power to remove KP Corporate Director Limited (***KPC***) as a director of KESP).

17. The SPV 21 Defendants' concern was that the Ashary Plaintiffs had been acting in conjunction with and with a view to promoting their separate interests and the interests of Mr Naqvi by seeking improperly to oppose, interfere with and challenge the transaction (the ***Sage Transaction***) between Sage and the JOLs of AIML pursuant to which Sage agreed to purchase the sole voting share in SPV 21, AIML's 75.5% shareholding in IGCF GP and AIML's rights in respect of a debt said to be payable by KESP to AIML (the ***KESP Payable***). It is accepted by all parties that the Sage Transaction has resulted in a dispute, manifested in multiple sets of proceedings, between AIML/Sage/SPV 21 and the Original Shareholders (*the* ***Sage Dispute***) of which the Ashary Proceedings are said to be an example. The core dispute in the Ashary Proceedings relates to the decision making of the KESP board (and of the sole director of the corporate director of SPV 21) in relation to the removal of KPC and whether to instruct Fieldfisher as English solicitors for KESP to advise on the English Proceedings to recover the KESP Payable. The SPV 21 Defendants claimed that there was evidence that the Ashary Plaintiffs' approach to the question of whether KESP was liable to pay the KESP Payable and as to how to respond to the English Proceedings changed after the asserted meeting and discussions with Mr Naqvi. Further, the existence and nature of discussions between the Original Shareholders and Mr Naqvi were clearly relevant to issue 5 identified in the Discovery Protocol, namely "*What was the understanding and belief of the Original Shareholders' [KESP] directors as at 12-19 June 2023 as to i. whether the KESP Payable was a debt due and owing by KESP; ii whether there was a valid defence to the claim brought against KESP in the English Proceedings; iii what was in the best interests of KESP?*"

18. To establish that the Original Shareholders had been in discussions with Mr Naqvi the SPV 21 Defendants primarily relied on an email dated 13 May 2023 from Mr Farooki (who is the Chief Portfolio Manager of Al Jomaih Power Limited and who had been a

KESP director nominated by Al Jomaih Power Limited) to Mr Ashary (the ***May Email***). They also relied on the fact that Steptoe was acting for both the Original Shareholders and Mr Naqvi in the proceedings in England relating to the KESP Payable. The SPV 21 Defendants accepted that the May Email had been discovered by the Ashary Plaintiffs and was part of an email chain between Mr Ashary and Mr Farooki that started with an email from Mr Ashary forwarding an email from Mr Skelton dated 11 May 2023 headed "*Without Prejudice and subject to contract*." In that email Mr Skelton had said that he was setting out an outline "*of a comprehensive [Sage/Original Shareholders/SPV21/KESP] Settlement … [provided] in good faith toward reaching a solution for KESP and [K-Electric] where all the shareholders are aligned in creating value at KE and at KESP*." In the May Email, Mr Farooki discussed his understanding of the "*game plan*" of the Sage/AIML/SPV 21 group and that a "*legal battle*" would be needed. Mr Farooki referred to his "*meeting with AN*" and to the fact that a strategy paper was being formulated.

19. The SPV 21 Defendants' position had been set out, in particular, in Mr Skelton's First Affidavit (see [49]-[65]). Mr Skelton said that the May Email was evidence and demonstrative of ulterior motives on the part of the Ashary Plaintiffs and that they had not been acting and had not brought the Ashary Proceedings to promote the interests of KESP. Mr Skelton said that the motivation of both the SPV 21 Defendants and the Ashary Plaintiffs was in issue. This was because the Statement of Claim in the Ashary Proceedings put in issue the purpose of, and motivation behind, (a) the action taken by Mr Skelton as chairman of the KESP board, SPV 21's removal of KPC and appointment of Mr Ahmad, and (b) the decision made by the Fourth to Eighth Defendants to vote against the appointment of Fieldfisher to advise KESP. The Ashary Plaintiffs claimed that the SPV 21 Defendants were acting "*to secure an ulterior advantage as against the Original Shareholders in relation to the Sage Dispute and to improperly apply pressure to the Original Shareholders generally [to settle the Sage Dispute]* …" ([80] of the Statement of Claim). The Ashary Plaintiffs had asserted that the SPV 21 Defendants were acting for an improper purpose. The SPV 21 Defendants argued that the Ashary Plaintiffs' case was based on claims that (a) the only proper course of action in the circumstances having regard to the interests of KESP was to appoint English solicitors because there were, or could be, grounds for defending the English Proceedings and disputing KESP's liability to pay the KESP Payable, and (b) that they (the Ashary Plaintiffs) believed that

there were such grounds and that this is why they wished KESP to instruct Fieldfisher and why they were acting for a proper purpose. At [46] of the Statement of Claim, the Ashary Plaintiffs had averred that they believe that "*KESP has a bona fide defence to any claim to the [KESP Payable]*." Evidence that the true and real reason for the appointment of Fieldfisher and seeking to defend the English Proceedings was to gain leverage in, and for the purpose of conducting, the Sage Dispute would contradict and undermine this claim.

20. The SPV 21 Defendants argued that the Ashary Plaintiffs were required to discover the May Email because it was at least a train of enquiry document that might lead to a train of inquiry that would identify other documents containing information which may enable the SPV 21 Defendants to advance their own case and damage the Ashary Plaintiffs' case.

21. The Ashary Plaintiffs said that (a) it was impermissible for the SPV 21 Defendants to rely on the May Email since it was privileged and had been discovered in error, such that privilege had not been waived – and that without such evidence the SPV 21 Defendants had no, or an insufficient, basis for their claim that there had been discussions or a relationship between the Original Shareholders and Mr Naqvi, and (b) in any event, the SPV 21 Defendants had embarked on a fishing expedition since the existence of any such relationship was not relevant to any issue in the Ashary Proceedings so that the Ashary Plaintiffs did, and could not have, an obligation to disclose documents in their possession, custody or power relating to such discussions or relationship. The focus of the Ashary Proceedings was on the motives and state of mind of the SPV 21 Defendants whose actions were being challenged and not on the motivation and state of mind of the Ashary Plaintiffs. Any discussions between the Original Shareholders and Mr Naqvi, if they had taken place, regarding the wider dispute with Sage, were irrelevant and could not shed light on why the SPV 21 Defendants had done what they did.

22. The Ashary Plaintiffs argued that the May Email was protected by litigation privilege and had been produced in discovery in error. In Bedell Cristin's letter dated 30 October 2025 to Dillon Eustace, Bedell Cristin said that:

> *"2. ..... The [May Email was] sent for the stated purpose of suggesting legal proceedings be commenced. It was also sent at a time when the proceedings between SPV 21 and [the Original Shareholders] in relation to SPV 21's application for an anti-suit injunction from [this Court] had already commenced. Therefore [the May Email] was plainly made for the sole or dominant purpose of conducting existing and contemplated litigation and so is protected by litigation privilege.*
>
> *4. The [Ashary Plaintiffs] did not intend to waive that privilege ... [The May Email] was inadvertently disclosed by mistake by way of not being redacted prior to the email chain (of which it is part) being produced as part of discovery ..."*

23. The Ashary Plaintiffs said that the SPV 21 Defendants' application was based on pure speculation. They had not established that there was a basis for concluding that the Original Shareholders had been in discussions with Mr Naqvi (the May Email had only referred to "*AN*" and it was not established who that was) or that any such discussions would have touched on, or related to, conduct and action which was the subject of the Ashary Proceedings. Mr Naqvi had not been referred to in the Statement of Claim and had only been mentioned in passing in the background section of the SPV 21 Defendant\s' Defence. Mr Naqvi's name was not included in the keywords in the Discovery Protocol because he was irrelevant to the issues in dispute.

24. It seems to me that the Ashary Plaintiffs' claim of litigation privilege is unsustainable. It is well established that it is not enough for a party to show that proceedings were reasonably anticipated or in contemplation. They must also show that the relevant communication was for the dominant purpose of either enabling legal advice to be sought or given and/or seeking or obtaining evidence or information to be used in or in connection with such anticipated or contemplated litigation. The exchange between Mr Farooki and Mr Ashary in the May Email, certainly in the parts that record Mr Farooki's meeting with AN, was clearly not made for any such purpose. Mr Farooki was confirming his view that negotiations were not going to produce the desired result, that litigation was going to be necessary and that his discussions with AN had confirmed (given him further impetus on) this approach. I can see that a document which set out Steptoe's advice as to litigation strategy or was produced for the purpose of providing input to Steptoe in connection with the development by Steptoe of advice on litigation strategy would be protected at least by litigation privilege (and perhaps also legal advice privilege) but that is not the position here.

25. The Ashary Proceedings raise a number of key factual disputes and issues. In particular, what if any restrictions or implied terms qualified SPV 21's right to remove a KESP director it had previously nominated (and appoint Mr Ahmad) and was the purported removal of KPC by SPV 21 (and appointment of Mr Ahmad) on 18 June 2023 effected in breach of any such restrictions or terms because SPV 21's causative or predominant purpose was to secure an ulterior advantage in the Sage Dispute; was the 19 June meeting a valid meeting of the KESP board, was Mr Skelton entitled to vote the proxies he held and was the Fieldfisher Resolution passed; and did the SPV 21 Defendants act in breach of their duty as KESP directors by voting against the Fieldfisher Resolution because it was "*plainly in KESP's interests to appoint lawyers to advise and represent it in the English Proceedings*" ([76.1] of the Statement of Claim).

26. I can see the force of the Ashary Plaintiffs argument that the focus of the Ashary Proceedings is the motives and state of mind of the SPV 21 Defendants whose actions were being challenged and not on the motivation and state of mind of the Ashary Plaintiffs. But, as I have noted, the Ashary Plaintiffs have asserted that it was plainly in the interests of KESP to obtain legal advice as to, and probably to defend, the English Proceedings and the SPV 21 Defendants have disputed and put in issue whether the Ashary Plaintiffs' justification for this view and their position was reasonable and genuinely held. The SPV 21 Defendants say that, while they cannot plead to the internal beliefs of the Ashary Plaintiffs, they are not aware of the Ashary Plaintiffs ever having suggested that there was a *bona fide* defence to the claim in respect of the KESP Payable or that there could be such a defence. It is implicit in this defence that the SPV 21 Defendants assert that the claim that there was a *bona fide* defence to, and a proper basis for, defending the English Proceedings could not have been genuinely made and that the Original Shareholders' directors must have been acting for some other purpose when voting for the Fieldfisher Resolution and their challenge to the conduct of the SPV 21 Defendants is therefore flawed. The SPV 21 Defendants also assert that the Original Shareholders have maintained a campaign of interference with the Sage Transaction and it is at least implicit in their defence that the actions of the Original Shareholders and their directors in relation to the Fieldfisher Resolution and the removal of KPC were part of this campaign and not based on a *bona fide* view as to what was in KESP's interests. Evidence that the Original Shareholders were acting with Mr Naqvi and that Mr Naqvi wished to challenge or interfere with the Sage Transaction would provide some evidence

to support the SPV 21 Defendant's defence and challenge to the Ashary Plaintiffs' claim that there was a proper basis, and that they believed there was a proper basis, for KESP to defend the English Proceedings.

27. The May Email does not contain evidence that the Original Shareholders discussed with Mr Naqvi the subject matter of the Ashary Proceedings (the decision making by the KESP board regarding the English Proceedings or the KESP Payable), that Mr Naqvi sought to influence the decision making and actions of the Original Shareholders or that an arrangement or agreement was reached as to what action the Original Shareholders should take nor does it indicate the timeframe within which discussions took place. I also accept that the reference to *"AN"* could be to someone other than Mr Naqvi although that seems inherently unlikely. But it does indicate that representatives of at least one of the Original Shareholders were probably discussing with Mr Naqvi the dispute with Sage and the need for litigation against Sage and those who were controlled by, or acting for, it. It is possible to infer that they probably discussed what steps might, or should be, taken and how to conduct and cooperate in managing the dispute. The discussions that took place around the time of the KESP board meetings in June 2023 might well throw light on the Ashary Plaintiffs' reasons for wishing to resist and defend the English Proceedings and whether they considered at the time that there was a *bona fide* basis for doing so.

28. It therefore seems to me that the SPV 21 Defendants are right to say that the May Email constitutes a chain of inquiry email and that it should be disclosed together with other related documents which it is reasonable to suppose will probably contain relevant information which will directly or indirectly enable the SPV 21 Defendants to damage the Ashary Plaintiffs' case and advance their own. It seems to me that the standard of proof of relevance in *Peruvian Guano* is satisfied in relation to some documents. The SPV 21 Defendants have sought an order requiring the Ashary Plaintiffs to make and serve a list of the documents which are or have been in their possession, custody or power relating to correspondence, communications and involvement with Mr Naqvi since 1 July 2022 with an affidavit verifying this list. The date range and the scope of the required discovery seem to me to be too wide and disproportionate in light of the issue which the SPV 21 Defendants have legitimately identified and raised. In my view, the Ashary Plaintiffs should be required to discover (and provide a list of) documents recording or relating to any discussions which they or those acting for them had with Mr Naqvi in the

period of April-June 2023 regarding the need for or action to be taken to enable KESP to defend any proceedings to enforce the KESP Payable, and to influence or direct the decision making as to the composition of the KESP board, for the purpose of, or as a means for, challenging or interfering with the implementation of the Sage Transaction and the exercise of Sage's direct or indirect rights in relation to SPV 21. I am not satisfied that wider discovery is justified having regard to the ultimate relevance of Mr Naqvi's possible involvement or necessity for the fair disposal of the Ashary Proceedings. It also seems to me important not to permit the SPV 21 Defendants to engage in a fishing expedition looking for documents which might be used in, and for the purposes of, the wider Sage Dispute to embarrass or prejudice the Ashary Plaintiffs.

The SPV 21 Proceedings – discovery issues

29. In the SPV 21 Proceedings, the Abraaj Parties sought, by way of a case management direction pursuant to GCR O.25, r.3(h), an order in effect declaring that five issues (the ***Additional Issues***) were properly to be treated as issues in dispute in the SPV 21 Proceedings (despite the fact that the annex to the Court's discovery order dated 7 April 2025 (the ***April Order***) setting out the agreed categories of documents by reference to which discovery was to be made did not specifically include categories that referred to such further issues) and that SPV 21 now be required to file and serve a further list of documents relevant to these issues (the ***Additional Issues***). The Abraaj Parties argued that discovery of documents relevant to the Additional Issues was clearly required by the April Order which preserved SPV 21's general discovery obligations under GCR O.24.

30. The first Additional Issue was whether or not Sage has had an indirect and derivative controlling stake in SPV 21. The Abraaj Parties submitted that was an issue in dispute on the pleadings. In [32] of the Amended Statement of Claim, it was averred that "*Since [August 2022] ... Sage has controlled SPV 26, and through that ownership, it has had control of SPV 21 ...*" In the Amended Defence at [23] it was said that *"... Sage does not control SPV 21 ...*" and at [24.3] that "*It is denied that Sage has acquired a majority interest in IGCF Fund*."

31. The second Additional Issue was whether SPV 21 had acted or is acting in the interests of the general partner of IGCF and/or Sage. At [51(b)] of the Amended Statement of

Claim it is averred that the true purpose of the removal of KPC was "*To replace KP Corporate Director with a person who would vote against the ... Resolution, and/or would prefer the interests of Sage to those of KESP*." This was put in issue in the Amended Defence at [39.2].

32. The third Additional Issue was whether Mr McDonald, the sole director of the corporate director of SPV 21, had acted on the instructions of Mr Skelton and/or other persons acting in the interests of Sage. This was in the pleadings in the Amended Reply at [24].

33. The fourth Additional Issue was whether the purported removal was made in furtherance of the interests of IGCF SPV 26 and/or Sage. In the Amended Statement of Claim at [52(a)], it is averred that removal was made for that purpose and SPV 21 joined issue with that claim at [40] of the Amended Defence.

34. Finally, the fifth Additional Issue was what considerations SPV 21 took into account in removing KPC including whether it considered the interests and wishes of IGCF GP, SPV 26 and/or Sage. This is dealt with at [52(d)] of the Amended Statement of Claim and denied at [40] of the Amended Defence.

35. The Abraaj Parties submitted that discovery on the Additional Issues was clearly required pursuant to the April Order which required that the Parties make discovery "*in accordance with the agreed categories of documents annexed at Schedule 1 of this Order [the **Agreed Categories of Documents**] and otherwise in accordance with [GCR] Order 24 ..... in relation to any additional issues in dispute in the SPV 21 Proceeding*." Schedule 1 had made it clear that the parties remained subject to the general discovery obligations pursuant to GCR O.24. The Abraaj Parties argued that the Additional Issues were clearly "*additional issues in dispute*." They were issues that arose on the face of the pleadings and were highly material to the dispute and discovery was necessary for fairly disposing of the SPV 21 Proceedings. While it was open to SPV 21 to attenuate its discovery obligations, it should have made an application under GCR O.24, r.8 but it had failed to do so. The terms of the April Order required discovery of the documents relevant to the Additional Issues and no application had been made by SPV 21 to amend it.

36. SPV 21 said that the Abraaj Parties' application was very late and had been made without a proper application supported by evidence being filed. It should therefore be dismissed for that reason alone. In any event, they argued that SPV 21's discovery in relation to what SPV 21 referred to as "*issues*" 8-10 in the Agreed Categories of Documents already covered and had produced documents responsive to the Additional Issues. Further, the Additional Issues were improperly formulated to justify an order for further or specific discovery.

37. SPV 21 referred to issues 8-10. Issue 8 covered "*All documents including communications, exchanged between [SPV 21] and/or its director and/or Casey McDonald and/or Mark Sketon and/or Sage and/or AsiaPak and/or KESP Directors regarding the KESP Receivable*" (including various sub-categories). Issue 9 covered "*all documents including contemporaneous notes and memoranda relating to any of the following: (a) the 12 June Board Meeting; (b) the 19 June Board Meeting; (c) any meetings and/or telephone calls regarding the 12 June and/or 19 June meetings; (d) any meetings and/or calls relating to the [English Proceedings], the appointment of lawyers in England in respect of the [English Proceedings or the claim relating to the KESP Payable], the removal of [KPC] and/or any other of the SPV 21 Directors and/or KESP Directors; (e) the approach of the [Original Shareholders] and/or the [Original Shareholders' directors] in respect of the [English Proceedings] the KESP Payable and or the 12 June/19 June meetings*" (and issue 9 referred to various documents which were non-exhaustively to be treated included). Issue 10 covered "*all documents … relating to any arrangements and/or agreements between Casey McDonald and/or Mark Skelton and/or Sage and/or AsiaPak and/or between any of the directors appointed to the [KESP board] by SPV 21 in relation to the agenda of the 12 June and/or 19 June meetings, the voting arrangements at such meetings, the removal of [KPC], [the English Proceedings] and/or the KESP Receivable*."

38. SPV 21 also submitted that as regards the first Additional Issue, the question of a hypothetical and generalised control of SPV 21 was not relevant to the SPV 21 Proceedings. The key question for determination in the SPV 21 Proceedings was whether SPV 21 had been entitled to remove KPC and all of the documents relating to that issue had already been discovered. As regards the second Additional Issue, SPV 21 argued that this was not an issue for discovery. It was formulated as a general question and was not

limited to the issues in the SPV 21 Proceedings or any of the specific actions of SPV 21 referred to in the pleadings. The issue was so widely drafted that it was impossible to identify which documents would fall within its scope. The third Additional Issue suffered from the same difficulty and was incapable of being an issue for discovery as it was too vague. It was once again impossible to identify which documents would be responsive and covered. SPV 21 submitted that it had already discovered the communications between Mr McDonald, Sage, AsiaPak, Mr Skelton and the SPV 21 nominees so that no further discovery was necessary or appropriate. As regards the fourth and fifth Additional Issues, they were questions rather than discovery issues which were to be answered on the basis of the documents which demonstrated why the power was exercised to remove KPC. Such documents had already been discovered.

39. The basis for, and timing of, the Abraaj Parties' request that discovery be given by reference to the Additional Issues was first set out in Walkers' letter to Dillon Eustace dated 16 October 2025. Dillon Eustace replied on 21 October 2025, and Walkers responded on 26 October 2025. I have noted the points raised in the correspondence.

40. In their letter of 16 October, Walkers said that they were raising these matters at that point because they had "*only recently become aware of the existence of specific, highly relevant documents which [SPV 21] ought to have discovered* ...". Walkers said that they had "*recently been provided with*" the documents (but did not say when or how or respond to a question from Dillon Eustace as to who had given the documents to the Abraaj Parties as they were confidential). These documents were side letters to the SPA between AIML and Sage which related to how the sole voting share in SPV 21 was to be held following the closing of the Sage Transaction and included an obligation on AIML to exercise any rights relating to that share and generally deal with that share in accordance with Sage's written instructions. The Abraaj Parties said that these documents were clearly relevant to Sage's control of SPV 21 which was an issue in the SPV 21 Proceedings. Walkers noted that they had previously proposed that a further category of documents (category 11) be added to the Agreed Category of Documents which would have catered for and covered the Additional Issues, but that SPV 21 had not agreed to its inclusion. Walkers requested that SPV 21 now make further discovery by reference to category 11. Category 11 is drafted differently from the drafting of the

Additional Issues in the draft order filed by the Abraaj Parties but covers the same subject-matter.

41. Dillon Eustace had, in addition to complaining of the lateness of the request, argued that facts and details relating the acquisition of the voting share in SPV 21 were not relevant to the core issues in the SPV 21 Proceedings. The principal issue was how the parties acted, and their entitlement to act as they did, in relation to decision making by, and the appointment of, directors to the board of KESP. The factual references to Sage and the Sage Transaction in the pleadings were merely by way of background. They also said that the communications between the directors of KESP including Shaheryar Chishty, Sameer Chishty and Darin Baur had been discovered and were responsive to category 11.

42. It is clear that the Court has the power to make the order sought by the Abraaj Parties. GCR O.25, r.3(h) requires the Court when hearing a summons for directions to "*consider (if necessary of its own motion) whether any order should be made or direction given in respect of ..... orders pursuant to O.24 relating to discovery*." There is no need for a separate application to be filed.

43. This does not mean that the Abraaj Parties were absolved from filing affidavit evidence at least to the extent that they relied on factual matters in support of their application. The Abraaj Parties argued, as I understand it, that identifying the Additional Issues simply required a review of the pleadings so that evidence was not required. However, there are clearly factual disputes as to the extent to which it is necessary to require SPV 21 to give further discovery by reference to the Additional Issues in view of the documents that it has already discovered.

44. There is also a factual question as to whether the Abraaj Parties can justify the lateness of the application they have made by reference to the facts and circumstances surrounding their recent acquisition of the side letters. No evidence has been adduced in relation to this.

45. Despite this, it seems to me that, insofar as the Abraaj Parties have raised and identified a gap in SPV 21's discovery to date which needs to be filled at this stage in order to

ensure that all documents that need to be produced for disposing fairly of the SPV 21 Proceedings have been discovered, the Court should make a suitable order. It is clearly important that any disputes and open issues relating to discovery are dealt with at this stage since the Court is now being asked to give directions to trial and disputes regarding discovery at a later stage will only cause disruption to the procedural timetable to be laid down and additional cost.

46. It seems to me that one of the important issues in the SPV 21 Proceedings is who made the decision on behalf of SPV 21 to cause SPV 21 to remove KPC, the reason why those making the decision on behalf of SPV 21 chose to do so and the facts and matters they took into account when making that decision, and what they understood to be the purpose and benefits of removing KPC. It is clearly relevant to an assessment of these facts and matters whether those making decisions and acting on behalf of SPV 21 included Sage (for example because it was able to give directions in relation to the sole voting share in SPV 21) and whether Mr McDonald, SPV 21's sole director, acted and considered that he was required to act or make decisions on behalf of SPV 21 in accordance with directions from, and the wishes of, Sage. It is clear that the pleadings put in issue the question of whether SPV 21 was at the relevant time under the "*control*" of Sage and whether those making decisions for, and on behalf of, SPV 21 acted on instructions from Sage or those acting for it or with a view to promoting the interests of Sage.

47. The further issues in my view can be formulated as follows, in a manner that more succinctly and precisely reflects the issues in dispute as identified in the pleadings (the ***New Sage Issue***): *Did Sage have and exercise control (directly or indirectly) of SPV 21 so as to require or cause SPV 21 (or its director) to remove KPC and did Mr McDonald as the sole director of SPV 21 act (when making decisions for SPV 21 in relation to the removal of KPC) on the instructions of Sage or any person acting for or on behalf of Sage, or for the purpose of benefitting and in order to benefit or in the interests of Sage.* I do not consider that it is necessary or appropriate to use the five separate paragraphs proposed by the Abraaj Parties since they are too broad and imprecise, and the relevant issues can be stated more briefly. I do not see that there should or can be any real problems for SPV 21 in identifying which, and working out whether, documents in its possession, custody or power are relevant to the issues as so expressed.

48. In my view, it is in the circumstances necessary and appropriate to direct that SPV 21 give discovery by reference to the New Sage Issue so as to discover all documents including emails and other communications in its possession, custody or power which relate to the New Sage Issue, to the extent not already discovered. SPV 21 should not be required to provide further discovery of documents already listed and produced. Since no evidence was adduced at the CMC as to precisely which of the documents already listed and produced by SPV 21 could properly be said to be responsive to the New Sage Issue and as to the extent to which there are further documents still to be produced, it will (at least in the first instance) be for SPV 21 and its counsel to review the discovery made to date and decide whether it is necessary to add further documents to SPV 21's list of documents. SPV 21 and the Abraaj Parties should seek to agree the date by which SPV 21 is to complete this further review and provide its updated list (and further production of documents if new documents are listed). The Abraaj Parties proposed 2 December 2025 in their draft order but before determining whether this is appropriate, I would wish to hear from SPV 21 as to how long it considers it needs. I hope that the parties can reach agreement on this issue without the need for a further decision by the Court but if they prove unable to reach agreement on dates within 7 days of the date of the order made to give effect to this judgment, they should write to the Court to explain what each proposes and I shall determine the issue.

49. I also accept and consider, in light of correspondence with the parties after this Ruling was distributed in draft, that documents should be discovered, in response to [48] of the Amended Statement of Claim, that relate to the issue of whether Mr Skelton encouraged Mr McDonald to act so as, or gave directions to him (a) to ensure that Mr Hutchison caused KPC to vote against the Proposed Resolution or (b) to pressure or cause KPC to vote against the Proposed Resolution or (c) to use KPC as a pawn in the disputes between Sage and the Original Shareholders. These documents appear to be already covered by issue 10 ("*All documents, including correspondence by email and text and all call notes relating to any arrangements and/or agreements between Casey McDonald and/or Mark Skelton …… in relation to the agenda of 12 June and/or 19 June meetings, the voting arrangements at such meetings, the removal of KP Corporate Director, the English Claim and/or the KESP Receivable*"). However, I can see that it might be said that the reference to "*arrangements*" does not, on a narrow reading, cover encouragement or directions to act in a particular manner in relation to voting on the

Proposed Resolution and therefore I will permit the following wording to be added at the end of issue 10 by way of clarification (the : "*For the avoidance of doubt this category of documents shall include all documents (including correspondence by email and text and call notes) which relate to any encouragement or directions given by Mr Skelton to Mr McDonald in relation to voting at the 12 June or 19 June meetings including any encouragement or instructions to put pressure on Mr Hutchison or KPC, or to procure KPC, to vote against the Proposed Resolution."* SPV 21 should also be directed to give discovery by reference to issue 10 as so clarified, once again though only to the extent that it has not already discovered the relevant documents.

Joint or separate trials and the procedural timetable to trial

50. It does seem to me that, on balance, a joint trial is justified in the circumstances. There is clearly a substantial albeit not a complete overlap as regards the events which fall to be considered and as to the key witnesses who will need to give evidence and be cross-examined at trial. While the details of the evidence and the identity of the witnesses is not yet finally settled, it is clear and there appears to be general consensus as to who the key witnesses will be (in particular Mr Skelton, Mr McDonald, Mr Hutchison and Mr Ashary) and that their evidence will be needed in, and relevant to, both sets of proceedings. There will be considerable savings of costs and Court time if the two sets of proceedings are tried together although it will also be necessary, as the parties have already contemplated, to structure the trial so as to allow the separate issues to be dealt with appropriately so that the parties who are not involved need not attend that part of the trial. There should be no difficulties in achieving this.

51. As I understand it, there was no opposition to a joint trial although the Abraaj Parties wished to reserve the right to apply for a separate trial of the SPV 21 Proceedings if the timetable to a joint trial was not observed and there were further delays in the Ashary Proceedings.

52. I agree that it would be of assistance to all parties if a trial window could now be settled to identify the dates on which it is expected that the trial will take place. This will involve some guesswork because it will not be possible to be definitive regarding the trial time estimate and the precise dates for the listing until all the evidence has been filed and it is

clear that all pre-trial procedural matters are agreed but it currently seems as though the consensus is that a joint trial will require no more than up to ten days (8 sitting days and 2 pre-reading days). I suggest that an 11-day estimate is used out of an abundance of caution for current purposes. I am currently available either in May 2026 during the weeks commencing 4 and 11 May or July 2026 in the weeks commencing 20 and 27 July 2026. I do not consider that there is a material difference between these dates. I would like the parties to discuss and seek to agree the procedural timetable for the filing of witness statements and for the PTR/CMC (I agree that this should occur roughly six weeks before the projected start of the trial). It seems to me that if the procedural timetable shows, as it seems to me that it should, that the two sets of proceedings will be ready for trial in May, then an 11-day window in the dates I have given should be adopted. I appreciate that this is likely to give Mr Chapman KC difficulties because of his other commitments and this is very unfortunate but if that turns out to be the case the SPV 21 Defendants and SPV 21 will have sufficient time to instruct an alternative leader and thereby minimise the prejudice they will suffer. Every effort would need to be made to ensure that the joint trial could take place within the agreed/settled window although if problems and delays occur there should be liberty to apply and revisit the timetable and I accept that the Abraaj Parties should be able to apply for a separate trial of the SPV 21 Proceedings if there are material delays in the Ashary Proceedings and such a trial could be held much earlier.

Forms of order

53. I would be grateful if the parties could discuss and seek to agree forms of order to give effect to the decisions I have made, including in relation to costs. If agreement is not possible, the parties should file their proposed draft orders with the Court within 14 days of the date on which this judgment is handed down and I will then decide the open issues on the papers.

The Hon. Justice Segal
Judge of the Grand Court, Cayman Islands
28 November 2025