



Neutral Citation Number: [2025] CIGC (FSD) 88

Cause No: FSD 2025-0037 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

BETWEEN

**(1) AL JOMAIH POWER LIMITED
(2) DENHAM INVESTMENT LIMITED**

Plaintiffs

-and-

**(1) IGCF SPV 21 LIMITED
(2) KES POWER LIMITED**

Defendants

Appearances: Mr Jonathan Stroud and Ms Vered Mazin of Bedell Cristin for the Plaintiffs
Mr Conal Keane, Mr Niall Dodd and Mr Alan Quigley of Dillon Eustace for the First Defendant
The Second Defendant was not represented and did not appear

Before: The Honourable Justice Jalil Asif KC

Heard: On the papers

Judgment delivered: 1 September 2025

Costs—basis of taxation—whether to order taxation forthwith—whether to permit recovery of fees of overseas attorneys— amount of any payment on account of costs

JUDGMENT

A. Costs issues to be addressed

1. This is my decision on costs in respect of the substantive application which I decided on 9 June 2025. My judgment dated 31 July 2025 provides the relevant background and should be read with this judgment: see *Al Jomaih Power Ltd v IGCF SPV 21 Ltd* [2025] CIGC (FSD) 74. I adopt the abbreviations used in that judgment.
2. By the order dated 9 June 2025, I directed that the Plaintiffs should pay SPV21's costs on a basis to be determined and should also make a payment on account of SPV21's costs in a sum to be determined. I required the Plaintiffs and SPV21 to attempt to agree the amount of costs to be paid and the amount of any payment on account. In default of agreement, I directed the parties to file written submissions and any evidence on which they relied to enable me to deal with the outstanding questions of costs on the papers, which, in the event, they have done.
3. I must therefore now decide the following primary issues:
 - 3.1 What is the appropriate basis for taxation of SPV21's costs, namely the standard basis or the indemnity basis?
 - 3.2 Should I disapply GCR O.62, r.18(1) so that SPV21 is able to recover the fees payable: (a) to leading counsel for work done before his limited admission in the Cayman Islands; and (b) for junior counsel based in London, who worked on the matter without ever being admitted in the Cayman Islands?
 - 3.3 Should I order a taxation of SPV21's costs forthwith?
 - 3.4 What sum, if any, should I order as a payment on account of costs pending taxation?

4. In addition, SPV21 invites me to penalise the Plaintiffs in respect of the costs of an affidavit sworn in support of the Plaintiffs' summons by the Plaintiffs' solicitor based in London. I will come back to this point at the end of this judgment.

B. What is the appropriate basis for any taxation of SPV21's costs?

5. The principles are well known. The general rule is that costs should be payable on the standard basis. However, GCR O.62, r.4(11) gives the court discretion to award costs on the indemnity basis if it is satisfied that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably, or negligently. In *The Armand Hammer Foundation, Inc. v. Hammer International Foundation & Ors* (unreported, 06/11/24, FSD 2023-0113 (JAJ)), relied upon by both sides in different respects, I indicated at [16] that the focus should be on the test as set out in the Rules, and that decisions in other cases are best seen as examples rather than providing specific guidance:

"16. In my judgment, the starting point and the ending point is the wording of GCR O.62, r.4(11). In order to obtain an order for costs on the indemnity basis, the applicant must persuade the Court that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably or negligently. The Court should not seek to apply a gloss to the plain words of the Rule. The cases cited seem to me to provide examples of the kinds of considerations that the Court might take into account in a particular case and the kinds of situations where an order for indemnity costs may be appropriate. But, ultimately, each case must be considered individually and a decision made whether or not the threshold test in the Rules has been met, before the Court then considers how to exercise its discretion as to costs. Whether or not the proceedings have been conducted improperly, unreasonably or negligently is much easier to determine in the context of the particular case before the Court than trying to describe those characteristics in the abstract."

6. It does not automatically follow where the jurisdiction under the Rules has been established that an order for indemnity costs will be made. The court still has a real discretion as to the basis of taxation to be ordered and must decide how to exercise its discretion. Richards J in *Koa Capital L.P. & Anor. v. China Index Holdings Limited* (unreported, 20/04/23, FSD 2022-0235 (CRJ)) provides a helpful reminder of the kinds of circumstances where the court may be willing to make an order for indemnity costs:

"16. ... Indemnity costs may be awarded where:
a) There is something in the conduct or circumstances to take the case outside the norm.

b) *There is some element of a party's conduct of a case which deserves some mark of disapproval. Advancing a case which is unlikely to succeed, or which fails is insufficient to justify an award of indemnity costs.*

c) *If the conduct falls short of moral condemnation, it would need to be unreasonable to a high degree to justify an award of indemnity costs. Unreasonable in this context does not mean wrong or misguided in hindsight.*

d) *One example of improper and unreasonable conduct which would justify an award of indemnity costs would be to pursue a speculative or weak case with the intention to embarrass the opposite party.”*

7. Going back to *The Armand Hammer Foundation, Inc. v. Hammer International Foundation & Ors.*, it is also worth stressing, as was said at [4], that an order for indemnity costs is compensatory, not punitive: it does not allow the receiving party to recover costs that were unreasonably incurred or unreasonable in amount, it simply reverses the burden of proof as to the reasonableness of individual fee items claimed and disapplies the requirement of proportionality. The effect of an award of indemnity costs is therefore more closely to reimburse the receiving party for the actual costs that they incurred in the proceedings. Punishment of the paying party is not a relevant consideration to determining the basis of taxation of costs.

8. The Plaintiffs submit that there is nothing out of the norm about their application for an injunction, and that costs should therefore be payable on the standard basis. They rely on the judgment of Parker J in *Re Jian Ying Ourgame High Growth Investment Fund* (unreported, 27/01/23, FSD 2021-0255 (RPJ)) to support their submissions that:

- *the usual costs order made against an unsuccessful party is that costs are taxed on the standard basis;*
- *only in exceptional cases should the Court exercise its discretionary jurisdiction to order costs on the indemnity basis;*
- *it is not enough that a party has conducted its case unreasonably. It must have advanced a case ‘outside the usual cut and thrust of litigation which may be viewed at the time (without hindsight) to be without merit, speculative or weak’ and that ‘there needs to be some conduct or circumstance which takes the case of the ordinary which warrants an order for indemnity costs’.*

9. The Plaintiffs also rely on the well-known statement of Henderson J in *Bennett v Attorney General* [2010] 1 CILR 478 that:

“6. Advancing a [case] which is merely weak or unlikely to succeed is to be distinguished from maintaining a [case] which is manifestly hopeless. The latter can be characterized as unreasonable. The former is a regular occurrence with which every barrister will be familiar.

Many litigants, even after receiving a warning from their legal advisers that the claim or defence is likely to fail, prefer to have that determination made by the court. That is not, in the typical case, unreasonable. Weak cases will succeed from time to time. The litigant is entitled to prefer a judicial determination based upon all of the evidence over the predictions of his advisers which are limited, as they usually are, by not having observed the other side's witnesses under cross-examination. There are also cases which are hopeless and which appear that way to anyone with the requisite legal training. It is open to a judge to determine that it was unreasonable to bring such a claim or advance such a defence. The usual result of such a finding is that the unsuccessful party will pay costs on the indemnity basis."

10. The Plaintiffs say that:
 - 10.1 the injunction application was properly arguable and the fact that it did not succeed is not a reason to order indemnity costs;
 - 10.2 the court did not make any finding of dishonesty, bad faith or abuse against the Plaintiffs;
 - 10.3 to the extent that there was any procedural delay by the Plaintiffs, that must be seen against the background of complex multi-jurisdictional disputes involving multiple proceedings, and was not characterised by the court as an abuse and does not justify indemnity costs; and
 - 10.4 there was no procedural misconduct by the Plaintiffs.

11. I disagree with the Plaintiffs' submissions. In my judgment there are a number of features about the Plaintiffs' application for an injunction that drive me to the conclusion that costs on the indemnity basis is the appropriate order in this case.

12. As SPV21 complains, the Plaintiffs' application for an interim injunction was not just weak but was hopeless and should have been seen to be hopeless. It was therefore unreasonable for the Plaintiffs to have pursued the application. The reasons for this conclusion were addressed in my substantive judgment. In summary, those are:
 - 12.1 There was no real prospect of the Plaintiffs obtaining the final relief that they currently seek in the injunction proceedings, and so there was no real prospect of the court granting an interim injunction in those same terms.
 - 12.2 There was no realistic possibility of SPV21 causing KEL to act contrary to its own interests and wrongfully to prefer the interests of SPV21 and/or Mr Chishty in the manner advanced by the Plaintiffs as the basis for needing the injunction. This was because of the presence on KEL's

board of the Plaintiffs' own nominated directors and independent directors, such that the directors nominated by SPV21 were not and never would be an overall majority.

- 12.3 As a result, there was no real prospect of loss being caused to the Plaintiffs by any wrongful act of SPV21.
- 12.4 Even if there were a risk of the Plaintiffs suffering some loss caused by a wrongful act of SPV21 in some way, the fact that KEL is a publicly listed company in Pakistan has the result that any such loss is likely to be capable of quantification, so that the Plaintiffs could not and would not succeed in showing that they were likely to suffer uncompensatable loss, which is a necessary requirement for the grant of an interim injunction.
- 12.5 The Plaintiffs were seeking equitable relief from the court when they themselves were deliberate breakers of the very contract on which they relied. They did not have any reasonable justification for such conduct. The only explanation proffered was the statement by Mr Farooki that there were “[a] large number of parties – including a listed company incorporated in Pakistan, regulators within Pakistan and the Government of Pakistan itself”, and an alleged desire to avoid “the proceedings [being] fragmented across many jurisdictions.” This does not withstand scrutiny.
- (a) Whether the proceedings were commenced in Pakistan or the Cayman Islands, the same parties would have to be joined, unless the Plaintiffs opted to bring multiple actions in different countries.
 - (b) It was within the Plaintiffs' control whether they commenced one action involving all the relevant defendants or multiple actions in different countries.
 - (c) However, if the Plaintiffs had commenced multiple actions in different countries, it is highly likely that the various defendants would promptly have made applications to stay in favour of the most convenient forum in which all the claims could be determined together, to avoid the risk of inconsistent judgments.
 - (d) Given the terms of the contractual documents, it was at least reasonably likely that the Grand Court would be determined to be the most appropriate forum.
- 12.6 The inference to be drawn is that the Plaintiffs wished to avoid commencing proceedings before the Grand Court and applying to that court for an injunction because the court would be

unlikely to exercise its discretion to grant an interim injunction in the Plaintiffs' favour, and the Plaintiffs knew or thought that was likely to be the outcome.

12.7 Finally, although it did not form part of my reasons for dismissing the Plaintiffs' summons, the affidavit of Mr Mallon, on which the Plaintiffs primarily relied, was largely inadmissible for the reasons considered later in this judgment. There was therefore, formally, little or no admissible evidence to support the summons.

13. SPV21 complains further about the Plaintiffs' conduct, as follows:

13.1 the Plaintiffs deliberately chose to commence proceedings before the High Court in Pakistan in clear breach of clause 25.2 of the KESP SHA and did so on an *ex parte* basis so that SPV21 had no opportunity to present its position to that court;

13.2 the Plaintiffs made the unsupported assertion that the independent directors of KEL would just vote with the majority of the board, rather than complying with their fiduciary duties as directors; and

13.3 the evidential basis for the application to the High Court in Pakistan was untrue and has not been advanced by the Plaintiffs outside the Pakistan proceedings, in particular, the Plaintiffs alleged that SPV21 had "*manipulated*" the Grand Court and had failed to disclose relevant matters in the context of the joint official liquidators' application for sanction to conclude the transaction with Sage, when SPV21 was not a party to the insolvency proceedings and did not take part in the sanction hearing.

SPV21 did not take me through the evidence in detail to make good these complaints. Whilst there may be merit in them, I do not take them into account in making my decision on the basis of taxation of SPV21's costs.

14. However, I do consider that the issue of procedural delay and the Plaintiffs' conduct is relevant. As I indicated in my substantive judgment, the Plaintiffs have delayed at key points in the conduct of this matter, and the wider Cayman proceedings, or have not taken obvious reasonable steps, generating the inference that they have acted for strategic reasons with a view to holding onto the Pakistan injunction for as long as possible in the face of their likely failure to obtain similar relief from the Grand Court in the Cayman Islands.

- 14.1 Once SPV21 applied to the Grand Court for anti-suit relief, which was the almost inevitable consequence of the Plaintiffs choosing to obtain an injunction in Pakistan, the Plaintiffs did not make any fresh application for injunctive relief in the Cayman Islands to replace the Pakistan injunction. This would have been an obvious step, and the most efficient way to address SPV21's jurisdictional complaint, and would have made the anti-suit proceedings and the appeals therefrom otiose.
- 14.2 Instead, the Plaintiffs have sought for more than two and a half years to contest the making of the anti-suit injunction, incurring costs and taking time that did not need to be expended on either side, and taking up finite court resources unnecessarily.
- 14.3 Throughout that period, the Plaintiffs have not made any fresh application for injunctive relief in the Cayman Islands to replace the Pakistan injunction, despite the findings of the Grand Court (on 30 January 2023 and 20 July 2023) and the Court of Appeal (2 July 2024) that they should have pursued their claim in the Cayman Islands.
- 14.4 The Plaintiffs then failed to comply with their undertaking to the Court of Appeal to issue and pursue the application to the Grand Court for the injunction "*without delay*". They appear to have been prompted finally to file the summons on 26 February 2025 by SPV21's application to the Court of Appeal a few days earlier to lift the stay on the anti-suit injunction taking effect.
- 14.5 Having filed their application on 26 February 2025, the Plaintiffs made limited attempts to expedite the hearing of the application and were seemingly content for it not to be determined until 9 June 2025, the day before the stay granted by the Court of Appeal was due to expire. I appreciate that there were some difficulties with the availability of SPV21's leading counsel that contributed to the timing of the listing, but it is notable that the Plaintiffs did not apply for the hearing to be expedited or apply to fix an earlier date without regard to the availability of SPV21's leading counsel.
- 14.6 As SPV21 pointed out during the hearing of the Plaintiffs' application, even at the hearing of the Plaintiffs' summons, the Plaintiffs were not intending to give up the Pakistan injunction. Instead, their position was that they should be permitted to hold onto the Pakistan injunction until any injunction granted by the Grand Court was recognised in Pakistan: this despite the fact that SPV21 is a Cayman Islands incorporated company and would therefore be directly bound by any orders of the Grand Court.

C. Should I allow recovery of fees payable to non-admitted attorneys?

15. SPV21 accepts that the general rule is that work done by foreign attorneys is not recoverable on the standard basis unless they have been granted limited admission and, in that case, only work that has been done after their admission can be claimed: see GCR O.62, r.18(1). That limitation on recoverability does not apply where costs are awarded on the indemnity basis. However, even where the standard basis is applied, the court has discretion to disapply GCR O.62, r.18(1), particularly where the work done by a foreign lawyer is not duplicative and does not fall foul of the principle in GCR O.62, r.18(7) that the paying party should not have to pay more because the receiving party has used a foreign lawyer. SPV21 relies on a number of cases in support of that proposition, including: *Re Principal Investing Fund I Ltd* (unreported, 27/07/23, FSD 268, 269 and 270 of 2021 (IKJ)), *Ritchie Capital Management LLC v Lancelot Investors Fund Ltd* (unreported, 04/03/21, FSD 88 of 2019 (RPJ)) and *Re Grand State Investments Ltd* (unreported, 17/03/23, FSD 11 of 2021 (RPJ)).
16. In this case, Mr Chapman KC was granted limited admission on 5 June 2025 for the hearing on 9 June 2025. However, Mr Chapman did some of the preparatory work for the hearing before he was admitted. In addition, a senior junior counsel in Mr Chapman's chambers, Mr Scott Allen, also worked on the matter without SPV21 applying for his limited admission.
17. SPV21's justifications for allowing recovery of these fees are that:
- 17.1 there were delays in obtaining Mr Chapman's work permit, which had a knock-on effect on the timing of his limited admission;
- 17.2 the work that Mr Chapman did before his limited admission was necessary for the proper preparation of the argument for the hearing of the Plaintiffs' summons, whenever it was done, and so recoverability should not be impacted by the delay in Mr Chapman's limited admission;
- 17.3 the workload on this matter required more staff than the Cayman Islands office of Dillon Eustace was able to provide: Dillon Eustace has three fee earners in the Cayman Islands working in disputes, all of whom are already staffed to this matter, Dillon Eustace does not have other staff on island who could work on the matter;
- 17.4 Mr Allen has been involved in other aspects of the disputes between the parties and their proxies, and therefore already has relevant background knowledge of the facts and issues;

- 17.5 the work done by Mr Allen was that of a typical junior barrister supporting leading counsel, and was different in nature from that done by the attorneys at Dillon Eustace, and was not duplicative;
- 17.6 notwithstanding that Mr Allen is more than 20 years call, his hourly charging rate is lower than that allowed in the Cayman Islands for an attorney of up to 5 years PQE and is significantly lower than that of the fee earners at Dillon Eustace;
- 17.7 it was accordingly more efficient and cheaper for SPV21 to engage Mr Allen to work on the matter than for Dillon Eustace to use some of its litigation fee earners based in Ireland, which was the only other realistic option that was available.
18. The Plaintiffs did not make any submissions on whether I should allow SPV21 to recover fees payable to non-admitted attorneys. However, the evidence before me included a copy of a letter from Bedell Cristin to Dillon Eustace dated 29 July 2025 setting out the Plaintiffs' position that SPV21's need to use non-admitted attorneys was due to its failure to commence work on preparation for the hearing early enough, putting SPV21 under unnecessary time pressure. The Plaintiffs therefore contended that SPV21 should not be permitted to recover fees payable to non-admitted attorneys.
19. There is no principled basis to refuse to allow SPV21 to recover Mr Chapman's fees incurred in the days before his limited admission. As Dillon Eustace submitted, the work needed to be done, it needed to be done by Mr Chapman as the lead advocate, and the only reason that Mr Chapman's admission had not been progressed before that work commenced was because of delays with his work permit. I therefore allow SPV21 to recover Mr Chapman's fees for the period before his limited admission. This decision is irrespective of whether the basis for taxation of SPV21's costs is standard or indemnity basis.
20. I also accept SPV21's argument that the engagement of Mr Allen to assist with the work necessary to respond to the Plaintiffs' summons did not result in duplication of work, appears to have been done at significantly lower hourly rates and appears therefore to have been done more efficiently. Mr Allen's involvement does not fall foul of the overriding principle that the paying party should not pay more than if local lawyers had been engaged. Neither does it transgress the general principle that work should be done by Cayman Islands admitted attorneys rather than being done by non-admitted attorneys because Dillon Eustace did not have additional Cayman Islands admitted attorneys who

could work on the matter. I therefore consider it reasonable in all the circumstances for SPV21 to recover Mr Allen's fees on the indemnity basis taxation. If it were necessary to consider the position on a standard basis taxation, I would have reached the same conclusion.

D. Should I order a taxation of the First Defendant's costs forthwith?

21. SPV21 invites me to consider making an order that SPV21 be permitted to tax its costs of the injunction application forthwith. However, SPV21 does not address this topic in either of its skeleton arguments on costs beyond citing the guidance from *Fortunate Drift Ltd v Canterbury Securities Ltd* [2020] 2 CILR Note 5 set out below. The Plaintiffs do not make any submissions on the timing of taxation at all.
22. GCR O.62, r.9(1) provides that the costs of any proceedings should not generally be taxed until the conclusion of the proceedings. However, GCR O.62, r.9(2) gives the court discretion to depart from that principle. SPV21 relies on *Fortunate Drift Ltd v Canterbury Securities Ltd* [2020] 2 CILR Note 5 for the relevant approach. Kawaley J's review of the relevant authorities and distillation of the principles in his unreported judgment in that case repays attention. Nevertheless, for present purposes, it is sufficient to quote from the note in the Cayman Islands Law Reports, which summarises Kawaley J's judgment as follows:

"The general rule is that interlocutory costs should be taxed and payable at the end of the proceedings in which they arise and that exceptional circumstances are required to justify a departure from the usual approach ... Each case falls to be determined on its own facts. The following factors are likely to be relevant in many cases to a determination whether to order that interlocutory orders should be taxed and paid forthwith:

(i) whether the relevant interlocutory costs were incurred in relation to a discrete issue within the wider proceedings viewed as a whole;

(ii) whether the paying party has acted unreasonably in any relevant way in relation to the application to which the interlocutory costs order relates;

(iii) whether the proceedings as a whole have a long time to run; and

(iv) whether being required to pay the interlocutory costs forthwith before the end of the litigation would be for any reason unfair, having regard to the overriding objective of GCR O.62."

23. In the absence of detailed submissions from either side on this question, I am not willing to conclude that this is an exceptional case where taxation of SPV21's costs should take place forthwith. It is not clear that the Plaintiffs' application for an injunction is properly to be characterised as being a discrete issue given its substantial overlap with the substantive relief sought in the action. Secondly, it appears

that the proceedings as a whole are unlikely to have a long time to run. The issues on the Plaintiffs' claim for a permanent injunction are relatively straightforward and it should be possible to try the claim within 12-15 months at the outside. If I were to order taxation of the Defendant's costs on the summons for an interim injunction forthwith, there is a real risk that it would lead unnecessarily to two taxations having to take place within a short period of time, instead of one overall taxation.

E. What sum, if any, should I order as a payment on account of costs pending taxation?

24. SPV21's evidence is that it has incurred approximately US \$240,000 in responding to the Plaintiffs' summons. SPV21 seeks a payment on account of costs of US \$165,000 if taxation is ordered on the indemnity basis, or US \$95,000 if ordered on the standard basis, these figures being approximately 70% and 50% respectively of the total sum incurred by SPV21 and, in the latter case, ignoring the fees of Mr Chapman before his limited admission and those of Mr Allen.
25. SPV21 has provided a detailed breakdown of costs incurred, which I can summarise as follows (these figures are slightly different from those set out in SPV21's schedule due to rounding):

Fee earner		Total claimed	
Name	Hourly rate (USD)	Hours	Fees (USD)
Niall Dodd	700.00	34	23,597
Conal Keane	800.00	27	21,000
Alan Quigley	700.00 / 600.00	135	81,005
Dillon Eustace subtotal		196	125,602
Graham Chapman KC	1,072.00	83	88,440
Scott Allen	569.50	47	26,368
Counsel subtotal		130	114,808
Total		326	240,410

26. SPV21 reminds me of the principles set out in *Al Sadik v Investcorp Bank BSC* [2019] 2 CILR 585, as approved by the Court of Appeal in *Scully Royalty Ltd v Raiffeisen Bank International AG* [2022] 1 CILR 572, and in *The Armand Hammer Foundation, Inc v Hammer International Foundation* (unreported, 24/04/24, FSD 113 of 2023 (JAJ)), namely:

[2025] CIGC (FSD) 88: *Al Jomaih Power Limited v IGCF SPV 21 Ltd* (No.2)

- 26.1 the overall aim is to balance the injustice of the receiving party being kept out of money to which it is entitled against the risk of prejudice to the paying party from an overpayment;
- 26.2 the receiving party ought generally to be paid a sum on account of its costs as soon as possible, to avoid the injustice of having to wait until a taxation;
- 26.3 the court should identify a reasonable estimate of what is likely to be awarded, rather than trying to assess the irreducible minimum;
- 26.4 any payment on account of costs should be a reasonable sum, assessed by the court summarily, based on sufficient evidence as to the costs incurred, for example in the form of a draft bill of costs or a tabulation of costs incurred broken down as to fee earner and phases of work, as appropriate;
- 26.5 the summary assessment is not a taxation, and a line-by-line review of time entries is inappropriate (and such time entries are likely to be privileged and therefore not available to the court at this stage in any event), however the court should adopt a conservative approach, making allowance for the effect of a taxation on the overall figure to which the receiving party is likely to be entitled;
- 26.6 the general approach, in the absence of some unusual factor to take the case outside the norm, should be to discount the total costs figure by approximately 30% for a taxation on the indemnity basis and by about 50% for a taxation on the standard basis – this is preferable to trying to assess and apply the discount in two stages.
27. The Plaintiffs agree with the Defendant’s submissions as to the applicable law and practice. However, the Plaintiffs stress that there should not be a “one size fits all” approach to quantifying a payment on account of costs, and that every case must be determined on its own facts. The Plaintiffs submit that there is no principled basis to order, in effect, an automatic payment on account of 70% of the total costs claimed simply by reference to the fact that the Court has deemed it appropriate to order taxation on the indemnity basis.
28. As to the application of the principles in this case, the Plaintiffs make three broad complaints about the costs claimed by the Defendant. The first concerns the work done on Mr McDonald’s affidavit filed by the Defendant in response to that of Mr Mallon. The Plaintiffs say that there were clear deficiencies in Mr McDonald’s affidavit, such that a large portion of the costs incurred in preparing

it are irrecoverable. The Plaintiffs contend that this should be reflected in the quantification of the payment on account of costs and suggests that I should allow 25% of the costs claimed for that particular workstream, i.e. a reduction 75%.

29. The Plaintiffs' second complaint concerns staffing within Dillon Eustace. The Plaintiffs say that Dillon Eustace's team is inappropriately skewed towards senior attorneys, and that Dillon Eustace has failed to employ and to delegate work to suitable more junior staff as a result. The Plaintiffs note that the most junior member of Dillon Eustace's staff has more than 9 years post qualification experience, which the Plaintiffs argue is unreasonable.
30. Thirdly, the Plaintiffs complain that there appears to have been duplication of work, particularly in respect of the preparation of the Defendant's skeleton argument in opposition to the summons. The Plaintiffs point out that Dillon Eustace spent over 55 hours preparing a draft of the skeleton argument, and the counsel team then spent a further 30 hours on the draft skeleton argument. This equates to about 10 days' work in total, assuming an 8-hour working day.
31. The Plaintiffs therefore propose a reduction to the fees claimed of 20% to reflect the second and third failures about which the Plaintiffs complain.
32. Applying these proposed reductions, the Plaintiffs suggest that an appropriate figure for a payment on account of costs should be US \$115,000. This is a substantial increase from the offer that the Plaintiffs made in the letter from Bedell Cristin to Dillon Eustace dated 29 July 2025, which proposed a payment on account of US \$44,978, following, in effect, a "taxation-light" performed by Bedell Cristin.
33. There is some merit in the Plaintiffs' criticisms of Mr McDonald's affidavit, which, as I have indicated in the following section of this judgment, includes commentary and argument that it is not the role of a witness to provide. However, I also bear in mind that Mr McDonald was responding to the extensive passages in Mr Mallon's affidavit that make allegations that are irrelevant to the issues on the application for an injunction or contain commentary and argument. Whilst I agree that some specific reduction to the time spent on Mr McDonald's affidavit is appropriate at this stage, I do not agree with the Plaintiffs' submission that it should be reduced by 75%. In my view, an appropriate reduction

to the time spent on drafting Mr McDonald's affidavit for the purpose of determining the amount of a payment on account of costs is 20%.

34. I also consider that there is some merit in the Plaintiffs' criticisms that there was insufficient delegation of work, or rather that work was done at a level of fee-earner that was not justified. However, Dillon Eustace pointed out in response to the Plaintiffs' criticisms on the delegation aspect that Mr Quigley, who carried out the majority of the work on the file, charged an hourly rate that is less than the rate approved for attorneys of 1 to 5 years post qualification experience, despite being more than 9 years PQE. Thus, even if the work was done at a level of fee-earner that was more senior than appropriate, that does not have a financial impact on the level of fees that are likely to be approved on taxation in due course.
35. In the circumstances, I agree with Dillon Eustace that there does not therefore appear to be a financial consequence of the use of Mr Quigley to carry out the majority of the work on this matter, and a specific reduction to Dillon Eustace's fees for this reason, over and above the usual reduction of about 30% in total, is not appropriate.
36. Finally, I agree with the Plaintiffs' submission that an excessive amount of time appears to have been spent on preparing the Defendant's skeleton argument. In my view the time spent on that particular workstream should be reduced by 40% for the purpose of making an assessment of the appropriate payment on account of costs.
37. In determining the specific reductions that I have identified above, I have taken into account that there is likely to be some overlap with the rule of thumb reduction of 15% assumed to apply on any taxation on the indemnity basis.
38. Making further allowance for the additional reduction of about 15% that is generally applicable when assessing a payment on account of costs, in my judgment the appropriate sum for a payment on account of SPV21's costs is US \$150,000, which I consider takes an appropriately conservative approach to the amount of the payment on account that should be made and is a reasonable estimate of what is likely to be awarded following a taxation on the indemnity basis.

39. The Plaintiffs have submitted that I should allow them 21 days to make the payment on account. However, they have not provided any evidence regarding their financial position or ability to pay. The Plaintiffs appear to be well resourced and the figure that I have ordered is not a large one. I order that the Plaintiffs shall make the payment on account within 14 days.

F. Additional points on costs and evidence

40. As mentioned earlier in this judgment, SPV21 asks me to penalise the Plaintiffs in respect of the costs of Mr Mallon's affidavit evidence. The primary basis for SPV21's submission is that Mr Mallon's evidence is inadmissible because it breaches GCR O.41, r.5(3). That rule states:

“(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.”

41. SPV21 complains that Mr Mallon is the Plaintiffs' solicitor based in London and has no direct personal knowledge of the majority of the evidence contained in his affidavit. A cursory read through of the affidavit tends to support that submission.
42. In addition, SPV21 complains that Mr Mallon raises in his evidence a number of matters that concern the wider disputes between the parties and their proxies, but which are not relevant to the Plaintiffs' claim for alleged breach of the change of control provision in the KESP SHA and for an interim injunction. SPV21 says that although this material was irrelevant, it was still necessary for SPV21 to respond to it in SPV21's own evidence. Again, a brief read through Mr Mallon's affidavit tends to support SPV21's complaint – large parts of Mr Mallon's affidavit are not relevant evidence, but instead are irrelevant, or worse are commentary, argument and submission that should appear in a skeleton argument, not in an affidavit. However, this latter criticism can also be made of SPV21's own evidence.
43. If I had made an order for costs in the Plaintiffs' favour, I would have disallowed the costs of preparing Mr Mallon's affidavit because it is largely inadmissible, being prepared in breach of GCR O.41, r.5(3).
44. In addition, as indicated in the recent judgment in *Phoenix Commodities PVT Ltd v ICM SPC* [2025] CIGC (FSD) 68, I would also have considered directing the taxing officer to consider carefully

[2025] CIGC (FSD) 88: Al Jomaih Power Limited v IGCF SPV 21 Ltd (No.2)

whether reductions to the costs of Mr Mallon's affidavit and that of Mr McDonald should be made to reflect that large parts of both are not evidence, but are conjecture and submissions. However, as practitioners may not yet have taken on board what was said in that judgment, I refrain from doing so.

G. Disposal

45. For the reasons set out, I therefore make the following orders:

45.1 The Plaintiffs shall pay SPV21's costs on the indemnity basis.

45.2 I disapply GCR O.62, r.18(1) so that SPV21 is permitted to recover the fees of Mr Chapman KC before his limited admission and those of Mr Scott Allen notwithstanding that he was not admitted in the Cayman Islands.

45.3 The Plaintiffs shall make a payment on account of those costs in the sum of US \$150,000 within 14 days.

H. Costs

46. The Defendant suggests that the costs of this application for a payment on account should be encompassed within the costs order that I have already made. I do not agree. The costs of the Defendant's summons should be dealt with in the usual way. Subject to being informed of any relevant offers made by the parties which have not been included in the material already before me, my provisional view is that the appropriate order for costs on this summons is that the Plaintiffs should pay the Defendant's costs on the standard basis. If the parties consider that some other order would be more appropriate, then they should file short written submissions within 14 days.

Dated 1 September 2025



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

