NEUTRAL CITATION NUMBER: [2026] CIGC (FSD) 6

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 270 OF 2025 (DDJ)

IN THE MATTER OF THE ARBITRATION ACT (2012 REVISION)

AND IN THE MATTER OF AN ARBITRATION BETWEEN (1) D (2) B, AS CLAIMANTS AND RESPONDENTS TO COUNTERCLAIM AND A, AS RESPONDENT AND COUNTERCLAIMANT

BETWEEN

A

Plaintiff

AND

(1) B

(2) C

Defendants

Before:	The Hon. Justice David Doyle
Appearances:	Andrew Ayres KC instructed by Nour Khaleq and Laura Labunet of Ogier (Cayman) LLP for A Tom Weisselberg KC instructed by Reece Jones of McGrath Tonner LLP for B and by Malachi Sweetman and Ryan Hallett of Maples and Calder (Cayman) LLP for C
Heard:	21 January 2026
Determination delivered:	21 January 2026
Draft transcript of Judgment circulated:	29 January 2026
Transcript of Judgment approved:	2 February 2026

Determination of application for relief pursuant to section 54 of the Arbitration Act 2012 – principles of international arbitration

JUDGMENT

Introduction

1. This case raises important issues as to the interaction between arbitration proceedings and foreign court intervention.

The *ex parte* Originating Summons dated 25 September 2025

2. By *ex parte* Originating Summons dated 25 September 2025 (the "Originating Summons") the Plaintiff (A) applied for urgent relief including orders:

   (1) restraining the Defendants from dealing with assets;

   (2) requiring the Defendants to exercise their rights to ensure the proceeds of any sale affecting a certain Group are passed up the structure to the Defendants;

   (3) requiring the Defendants to give at least 21 days written notice prior to any dealings affecting a certain company;

   (4) requiring the Defendants to provide disclosure of certain information including (i) the way in which that company is held (ii) the documents governing the structure and (iii) the limited partnership agreement for a fund ("Fund II");

   (5) requiring the Defendants to give 14 days' written notice and supporting information and documents of any payment or transaction at above US$100,000.

3. By Summons dated 25 September 2025 the Plaintiff sought an order until after the Return Date in terms of the relief sought in the *ex parte* Originating Summons, "further or other" unspecified relief and provision for costs.

The hearing on 26 September 2025

4. There was some initial urgency in respect of the *ex parte* Originating Summons as it was indicated that a transaction was due to complete on 30 September 2025. I made an order on 26 September 2025 pursuant to section 54 of the Arbitration Act 2012 that the Defendants shall exercise all rights that are available to them to ensure the proceeds of any sale affecting a certain Group are not disposed of or otherwise utilised (other than in the ordinary course of business) without leave of the tribunal seized of the arbitration (the "Tribunal") or the court.

5. I did not make certain of the other orders requested by A.

6. An unapproved transcript of the judgment I delivered on 26 September 2025 appears at pages 2704-2706 of the bundles.

7. In that transcript I comment that A sought wide ranging *ex parte* relief but it had sensibly not proceeded with some of that relief *ex parte*. I noted the Tribunal's Procedural Order Number 5 dated 24 September 2025 ("PO5").

8. I stated I was satisfied that it was in the interests of justice to grant the Plaintiff Applicant some urgent relief but not all the relief it requested.

9. I referred to *Minsheng* CICA judgment 28 March 2024; 2024 (1) CILR 308 and the principles of foreign arbitration. At the end of the short *ex tempore* judgment on that Friday afternoon I added:

> "Before leaving this judgment, I note the final paragraph of the Arbitral Tribunal's Procedural Order, number 5, 24 September 2025 "the Arbitral Tribunal is able and willing – if so requested by either Party – to decide upon any requests for interim measures within short periods of time.
>
> I keep a mind open to persuasion, but now that this urgent situation has been dealt with, I would respectfully suggest that any other necessary interim relief should, in the first instance, be by way of an application to the Tribunal and should be a matter for determination by the Tribunal. I nevertheless set a return date in the event that the Defendants seek to overturn the limited relief I granted today, which in the main reflects the undertakings offered in correspondence by McGrath Tonner."

10. During the hearing on 26 September 2025 I asked Mr Ayres why A had not gone to the Tribunal for relief. His response was to refer to PO5 and submit that any order of the Tribunal would need "Court enforceability in order to be effective". I commented that A could have gone in June (A having been aware from "around 26 May of the potential" transaction) or earlier in September and sought to enforce any relief thereafter. I referred to paragraph 11 of PO5 and indicated that the Tribunal were seized of the arbitration with all the background and were going to finally determine the issues. I pressed Mr Ayres for an explanation as to why A did not go to the Tribunal a long time ago. Mr Ayres submitted that the Tribunal would not provide "the most effective remedy".

11. The return date I set was 10am on 14 October 2025.

The developments after the 26 September 2025 hearing

12. On 13 October 2025 at the request of the parties I made a consent order adjourning the return date to 13 November 2025. At the request of the parties I made a further consent order on 11 November 2025 adjourning the return date to 21 January 2026.

13. I note the correspondence in respect of the adjourned return dates but find that after September 2025 there was no genuine urgency in respect of the additional relief claimed by the Plaintiff.

14. McGrath Tonner (for B) wrote to Ogier (for A) by letter dated 22 October 2025 indicating that a return date was only necessary if the Defendants wished to apply to set aside the *ex parte* order and their client did not intend to do so. Importantly they added that A had failed to confirm why an application for interim relief to the Court would be appropriate in light of the Court's indication at the *ex parte* hearing that any such relief should, in the first instance, be sought before the Tribunal. They also added that their client objected to any attempt by A to proceed with the Return Date hearing in order to seek additional relief from the Court (without first going before the Tribunal).

The foreign arbitration

15. I should set the foreign arbitration proceedings in context.

16. There is in the bundle a Request for Arbitration by D as Claimant and A [with an "s"] as Respondent dated 20 November 2023.

17. A by application dated 9 January 2024 in the arbitration proceedings, which are taking place in a country outside the Cayman Islands, sought to join in B as a respondent to a counterclaim and in its Answer to the Request for Arbitration dated 24 March 2024 rejected the Claimants' claims and made a counterclaim.

18. It appears that on 11 September 2024 the Tribunal issued an Interim Award on Jurisdiction joining B to the arbitration proceedings. C is not a party to the arbitration but A understands that C is a subsidiary of B.

19. In PO5 the Tribunal in respect of "Claimant's and CR2's Request for Protective Order" noted at paragraph 1 that it had "in principle, the competence to issue an interim measure". At paragraph 2 it stated that "An arbitral tribunal may, at the request of a party, order interim or conservatory measures …".

20. From paragraph 4 it appears that the requests were aimed at preventing A [again stated to be with an "s"], the "Arbitration Respondent" from commencing proceedings in the Cayman Islands seeking interim, conservatory or final relief that relates to the arbitration. At paragraph 6 the Tribunal stated that it could see no legal basis on which it could prohibit the Arbitration Respondent from seeking interim relief from state courts – be it in [the local arbitration jurisdiction] or any other jurisdiction.

21. At paragraph 8 (footnotes omitted) the Tribunal noted that:

> "… decisions by arbitral tribunals in regard to interim measures do not offer the same level of protection as by state courts because interim measures issued by an arbitral tribunal require a declaration of enforceability. In contrast, interim measures issued by state courts are enforceable in their own right so that proceedings before the state court may, on a case-by-case basis, lead to more efficient protection."

22. At paragraph 9 the Tribunal dismissed requests 1 to 4 (which appeared to seek to prevent the Arbitration Respondent from seeking interim relief from state courts in the Cayman Islands or elsewhere).

23. At paragraph 10 the Tribunal dismissed request 5 and noted that there had been no request for security for costs.

24. At paragraph 11 of PO5 in general terms the Tribunal added:

> "However, the Arbitral Tribunal is able and willing – if so requested by either Party – to decide upon any requests for interim measures within short periods of time."

25. In the arbitration proceedings there has been an exchange of detailed pleadings.

26. I note that the Tribunal was asked by A to order the disclosure of the Fund II limited partnership agreement (it will be recalled that the Summons dated 25 September 2025, the proceedings presently before this court, sought similar relief).

27. In a document annexed to Procedural Order No 3 ("PO3") at paragraph 8 there is a request for various documents including "… Fund II LP's (sic) Limited Partnership Agreement". It is recorded that such request is "Denied on the grounds that … Taken together, the Request amounts to an impermissible "*fishing expedition*" – a mere request for information rather than for clearly identified documents – which the Arbitral Tribunal considers an inappropriate basis for ordering document production."

28. It appears that there has been no attempt by A to persuade the Tribunal to reconsider that decision.

29. I am told that the merits hearing for the arbitration is listed for 26 to 30 January 2026.

30. The arbitration commenced as long ago as 20 November 2023. The Tribunal has been dealing with this arbitration for years. The Cayman legal proceedings commenced on 25 September 2025. I have been dealing with them, amongst many other pressing judicial commitments, for just a few days.

31. A wrote to the Tribunal seeking "clarification" of PO5 by way of a letter dated 10 December 2025. In that letter it said that the Cayman return date had been "adjourned by consent of the parties to 21 January 2026". Reference was made to the comments I made in my *ex tempore* judgment of 26 September 2025. There was a specific request at C7(4) as to whether:

> "The Arbitral Tribunal is content, consistent with the above, for the Cayman Grand Court to determine the issues currently before it as it sees fit".

32. By letter dated 15 December 2025 the "Claimant and [B]" referred to the "Respondent's submissions dated December 10, 2025". They complained at B4 of the "Respondent's latest procedural manoeuvre." At B7 it is added that the "Respondent's application before the Cayman Grand Court seeks to subvert this Arbitration, for example, by requesting document production from [B] that the Tribunal expressly rejected in its Procedural Order No 3 dated June 2, 2025". They requested the Tribunal to reject the request for "clarifications" regarding PO5.

33. By Procedural Order No 6 dated 16 December 2025 ("PO6") the Tribunal rejected the "Respondent's Request for Clarification …". At paragraph 3 however the Tribunal added:

> "… a party has the free choice to apply for interim relief to either any competent national court or the constituted arbitral tribunal … It is entirely up to the applicant to select the appropriate forum for its application for interim relief and not for an arbitral tribunal to intervene with this choice …".

Why did A not go back to the Tribunal?

34. Smellie JA in *Minsheng* at [73] referred to the need for "special reasons for a foreign court's intervention" and at [79] commented that where access to the tribunal is available (as in this case) the burden will be on the party applying to explain why it was not taken.

35. What are A's explanations as to why, especially after the indication in my judgment on 26 September 2025, it did not apply to the Tribunal for interim measures?

36. A refers to PO5 and the first affirmation of FM of 26 September 2025 which it says confirms that while interim relief is technically available from the Tribunal, such relief "cannot be enforced directly but additionally requires separate enforceability proceedings before a state court". A says that this explains its decision to seek interim measures from the Grand Court against Cayman-incorporated entities (one of whom is not a party to the arbitration) (paragraph 16 of the Plaintiff's skeleton argument). B is a party to the arbitration and A understands that C is B's subsidiary.

37. The Plaintiff submits that PO5, considered as a whole, confirms its entitlement to seek relief from a local court, and there is no requirement to apply to the Tribunal first (consistent with the approach in *Minsheng*) (paragraph 17 of the Plaintiff's skeleton argument).

38. A refers to its letter to the Tribunal dated 10 December 2025 and PO6 indicating that a party has a free choice to apply to either any competent national court or the constituted arbitral tribunal and it was up to an applicant to select the appropriate forum for its application for interim relief and not for an arbitral tribunal to intervene with its choice (paragraph 17 of the Plaintiff's skeleton argument).

39. A suggests that this is a clear statement that A is entitled to seek the assistance of the Grand Court and the Grand Court would not be interfering with the jurisdiction or functions of the Tribunal if it (not the Tribunal) adjudicated on the Plaintiff's request for injunctive relief (paragraph 18 of the Plaintiff's skeleton argument).

40. A adds that it is appropriate for the court to grant further relief and make ancillary orders needed to police and/or give effect to the Order made on 26 September 2025. A adds that seeking such relief from the Tribunal would be counter-intuitive, given that the underlying order was made by the Grand Court, and any order made by the Tribunal would require enforcement under section 52 of the Arbitration Act 2012, thus necessitating an application to this court in any event (paragraph 18 of A's skeleton argument).

41. I asked Mr Ayres, who appeared for A, to direct the court to the evidence before the court which explained why A had not, after the September hearing in the Grand Court, gone to the Tribunal for further interim measures. The best that he could come up with was paragraphs 16 and 17 of a document titled the "second affidavit of [MA]" affirmed on 18 December 2025. Paragraph 16 simply reads:

> "The Plaintiff considers that seeking relief from the Court, including the additional relief to police the Ex Parte Order and make it more effective, was expressly contemplated by the Tribunal in [PO5] …".

Paragraph 17 states that "as a consequence of the judge's observation and the letters from McGrath Tonner and Maples" the Plaintiff instructed lawyers to send a letter to the Tribunal on 10 December 2025 seeking "clarifications" in respect of PO5.

The Law

42. Prior to reaching my decision I had considered the relevant law.

43. The Originating Summons sought relief pursuant to section 54 of the Arbitration Act 2012 ("Section 54") which provides as follows:

"**Court-ordered interim measures**

54. (1) A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their seat of arbitration is in the Islands, as it has in relation to the proceedings in court.

(2) The court shall exercise those powers in accordance with its own procedures and in consideration of the specific principles of international arbitration."

44. Section 54 was considered by Segal J in *Leed Education Holdings Limited v Minsheng Vocational Education Company Limited* (FSD unreported judgment delivered 3 August 2023) and by the Court of Appeal 2024 (1) CILR 308 ("*Minsheng*"). The appeal was dismissed.

45. Segal J at first instance referred to "Section 54 – its interpretation and effect" at [87] to [98]. I note in particular the following informative comments:

(1) "As a matter of discretion, when deciding whether to grant interim remedies and what kind of interim remedy to grant, the Court is required to have regard and give particular weight to the international arbitration context … It is clear that Section 54 gives the Court a broad discretion and it would be wrong to try to confine it by formulating a too-rigid test for its application." ([88])

(2) "… the need to limit Court intervention and not to interfere with the arbitration process save where there is a clear basis for doing so is a principle underlying the Arbitration Act 2012 …" ([89])

(3) "… the role of courts in international arbitrations is and should be limited … the general approach of the courts is generally regarded … as being to reinforce the reference to arbitration and render any award effective. In other words, the court should only award interim measures where they will support and promote arbitration proceedings." ([106])

46. At [107] Segal J refers to *Redfern & Hunter: Law and Practice of Commercial Arbitration (seventh edition)* at 7.18 and emphasises, amongst others, the following comments:

> "… Is there any need for national courts to be involved in the arbitral process? The answer in almost every case is 'no' … There may be times, however, when the involvement of a national court is necessary in order to ensure the proper conduct of the arbitration. It may become necessary, for instance, to ask the competent court to assist in taking evidence or to make an order for the preservation of property that is the subject of the dispute or to enforce tribunal-ordered interim measures."

47. At [108] Segal J felt it noteworthy that Section 54 did not impose any particular pre-conditions (such as the need to apply to the arbitral tribunal first) "on the jurisdiction or a party's right to apply to the Court."

48. At [109] Segal J refers to the comment in *Redfern and Hunter* at 7.34 that "it would be appropriate to apply first to that tribunal or emergency arbitrator unless international enforcement may be required."

49. At [110] Segal J states:

> "The need to be cautious before granting interim remedies to a party to an arbitration flows from the policy (and I would say principle of international arbitrations) of limited curial intervention. The arbitral process must be fully respected and given priority (a policy of Arbitration First is adopted). Parties ought not to be allowed to bypass seeking interim measures from the arbitral tribunal merely because curial assistance is conceivably available. Rather, in my view, help from the Court is to be sought only when relief from the arbitral tribunal is inappropriate, ineffective or incapable of securing the particular form of relief sought."

50. At [113] Segal J, on the basis that an interim injunction could not have been obtained in accordance with the arbitral rules and provided urgency could be established and the failure to grant an injunction would cause irreparable harm, was "satisfied that the absence of a prior application within or related to the PRC Arbitration does not prevent this Court granting the injunction sought by the Plaintiffs."

51. At [114] Segal J comments that "the need for international enforcement is accepted, as a matter of settled practice in international arbitrations, as a justification for applying first to an appropriate foreign court. The foreign court will be appropriate if it sits in the jurisdiction in which assets in dispute are located so that its orders can readily and easily be enforced against or in relation to those assets without the need to establish a proper basis for enforcing an interim remedy granted in the foreign arbitration."

52. At [116] Segal J refers to the Hong Kong arbitration and the rules permitting interim remedies to be granted by a Hong Kong arbitral tribunal. Segal J continued:

> "I have considered whether the Plaintiffs' failure to apply to the Hong Kong arbitral tribunal should disentitle them from being granted, or be a significant factor weighing against the granting of, the injunction. I have concluded that while it is a factor to be taken into account the Plaintiffs had a reasonable justification in this case for not applying to the Hong Kong arbitral tribunal".

Segal J referred to the risk of delays.

53. At [117] Segal J stated:

> "But in my view it does not follow from the conclusion that an urgent application to this Court was reasonable and justified in the circumstances that the Court should grant an injunction that continues irrespective of the view of the CIETAC arbitral tribunal once constituted or without further reference at least to that tribunal. It seems to me that the principle of limited curial intervention and of the Court acting in aid of and with respect for the primary adjudicative role of the arbitral tribunal requires that in an exceptional case like this, where it has not been possible to apply to the CIETAC arbitral tribunal for an interim remedy or for permission to apply for interim injunctive relief from this Court, the Plaintiffs should be required to undertake (as a condition to the grant of the injunction) that they will promptly (and within a time period to be agreed between the parties or as ordered by me following receipt of submissions as to what is a reasonable time for making the application) apply to the CIETAC arbitral tribunal for permission to continue to rely on the relief so granted (if such an application can be made within the PRC Arbitration) and that

the injunction should contain a statement that it will cease to have effect (and the Plaintiffs must apply for it to be discharged) if such permission is not obtained. This approach balances the need to ensure that the Plaintiffs are properly protected against the grave harm that, as I explain below, they are likely to suffer if the injunction is not granted now against the need to ensure and respect the primacy of the PRC Arbitration. Such a term or provision to be included in the injunction is of course broadly analogous in effect to section 43(2) of the Arbitration Act 2012 ("*An order of the court under this section shall cease to have effect in whole or in part if the arbitral tribunal or any such arbitral tribunal or person having power to act in relation to the subject matter of the order makes an order to which the order of the court relates*").

54. It is interesting to note in passing further provisions of section 43 of the Arbitration Act 2012 (which appears in Part VII – Arbitral Proceedings rather than Part VIII – Interim Measures and Preliminary Orders within which Section 54 appears):

> "(3) If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.
>
> (4) If the case is not one of urgency, the court shall act only on the application of a party to the arbitral proceedings (upon notice to the other parties and to the tribunal) made with the permission of the tribunal or the agreement in writing of the other parties.
>
> (5) In any case, the court shall act only if or to the extent that the arbitral tribunal vested by the parties with power in that regard has no power or is unable for the time being to act effectively."

55. These provisions do underline however that a court is normally only called upon for assistance in urgent cases or in cases where the arbitrator has no power or is unable to act effectively, absent permission of the tribunal or the agreement in writing of the parties.

56. Segal J at [134] commented that the form of injunction he proposed to make "ensures that the applicable principles of international arbitration, and that the primacy of the relevant arbitration, are respected …".

57. The appeal against Segal J's order was dismissed. Smellie JA gave the lead judgment and Birt JA and Goldring P agreed with it.

58. At [50] and [51] Smellie JA referred to sections 43 and 54 of the Arbitration Act 2012 noting at [49] that section 3 (3) (c) of the Act provides that in matters governed by the Act the court should not intervene except as provided in the Act.

59. At [56] Smellie JA referred to "the uncontroversial proposition that the jurisdiction vested in the courts by s54 of the Act, is purely ancillary to the arbitration in support of which the application is made … the court should not intervene in arbitration proceedings except as allowed by the Act itself."

60. At [57] Smellie JA quoted from English case law in respect of the purpose of the jurisdiction for the grant of interim measures:

> "The whole purpose of giving the court power to make such orders is to assist the arbitral process in cases of urgency before there is an arbitration on foot … Of course, in any case where the court is called upon to exercise the power, it must take great care not to usurp the arbitral process …".

61. At [60] Smellie JA accepted as uncontroversial as a general proposition that "arbitration is a consensual agreement between parties to submit their disputes to arbitration, based upon the parties' choice of forum for the determination of their rights *inter se* and for the resolution of their dispute, as well as the concomitant heavy burden of persuasion upon a party seeking to displace that choice by recourse to a foreign court … a foreign court should never grant an interim measure which, in effect, would usurp the jurisdiction of the arbitrator." Smellie JA accepted that such strictures apply to the powers under Section 54.

62. At [73] Smellie JA referred to Section 54 and stated:

> "Whether or not the court will intervene in the exercise of its concurrent jurisdiction depends on the circumstances of the case … given that the parties had chosen to arbitrate … there must be special reasons for a foreign court's intervention, one of which … could be where the arbitral tribunal (or a court at the seat of the arbitration) does not have the power to grant the necessary relief …".

63. At [79] Smellie JA provided a useful summary of the applicable principles of international arbitration and made, amongst others, the following points:

(1) The jurisdiction vested by Section 54 is open textured and uncategorised in nature. The jurisdiction allows the issuance of interim measures in support of arbitrations taking place in other jurisdictions as necessary to meet the needs of modern international arbitration practice. While it will be exercised (like that vested by s43 in relation to a local arbitration) as ancillary to the arbitral proceedings, the jurisdiction is not codified like that vested by s43 but is comprised of the other statutory powers (such as section 11 and 11A of the Grand Court Act) as well as the general inherent or common law powers of the court to grant interim relief.

(2) But first and foremost, in the exercise of the powers vested, it must be remembered that they are indeed ancillary powers and must be exercised with caution. The policy of the Act and a principle of international arbitration is that there should be limited curial (i.e. court) intervention. Parties ought not to be allowed to bypass the arbitral tribunal to seek interim measures from the court merely because curial assistance is conceivably available. Accordingly, the powers are to be used only as needed for the purpose of assisting the foreign arbitral proceedings. An order must not usurp the powers of the tribunal. The purpose of an order must be to facilitate the arbitration (e.g. by the grant of interim measures for the compulsion of evidence) or the enforcement of an award, paying due regard to the fact that the parties have elected arbitration rather than court proceedings for the resolution of their dispute.

(3) Subject to the foregoing, there is no hard and fast requirement that a party must first apply to the arbitral tribunal itself or to a court at the seat of the arbitration for an interim measure,

before applying under Section 54, still less any suggestion that there is an obligation to first apply in a parallel arbitral proceeding or to the court at the seal of such a proceeding.

(4) While, if access to the arbitral tribunal or the courts at the seat of the arbitration is available, the burden will be on the party applying to explain why it was not taken, the Section 54 powers may nonetheless be exercised in appropriate circumstances, such as in cases of urgency or where it is shown that the arbitral tribunal or foreign court (as the case might be) would not have the power to grant the interim measure or measures particularly needed.

(5) A requirement of Section 54 (and another settled principle of international arbitration) is that there must be a sufficient connection between the interim measures sought and the foreign arbitration they purport to assist.

(6) The need for international enforcement is accepted, as a matter of settled practice in international arbitration, as a justification for applying first to an appropriate foreign court. The foreign court will be appropriate if it sits in the jurisdiction in which assets are located so that its orders can readily and easily be enforced against or in relation to those assets without the need to establish a proper basis for enforcing an interim measure (as distinct from a final award) granted in the foreign arbitration.

(7) While an order under Section 54 could be obtained also as against a third party to arbitral proceedings, it would follow from all the foregoing that such order is likely to be refused where the arbitral tribunal is already duly constituted and the application has either not been brought before it or has been refused by it or by a court at the seat of arbitration. Otherwise, an order against a third party is also a matter for the exercise of discretion by the Cayman court as a foreign court pursuant to Section 54.

(8) As regards any presumptive obligation to first seek relief from an emergency arbitrator, unless that is otherwise required by Emergency Arbitration Rules which bind the parties, it will be open to the claimant to decide whether to apply to the court (either at the seat or abroad as circumstances might require) instead of "passing the baton" to an emergency arbitrator, in the event that interim measures are required prior to the constitution of the arbitral tribunal.

Determination

64. I confirm I have considered the bundles placed before the court and in particular the helpful skeleton arguments, the oral submissions and the evidence. I am most grateful to counsel for their assistance to the court. As I previously indicated I have another hearing at 2.30pm and it is now after 1.45pm so I will have to keep these comments short.

65. This court is here primarily to assist the Tribunal. The merits hearing for the arbitration is, I am told, listed for 26 to 30 January 2026.

66. In the apparently urgent circumstances that arose in September 2025, this court, albeit with some reluctance, granted some very limited *ex parte* relief which, from memory, mirrored an undertaking the Defendants were prepared to give.

67. The court noted PO5 and expressly indicated that if further interim relief was required the Plaintiff should, in the first instance, apply to the Tribunal and such application should be a matter for determination by the Tribunal.

68. I have revisited PO5 today at the request of Mr Ayres, who appears for the Plaintiff.

69. I note also that McGrath Tonner (attorneys for the First Defendant) in correspondence on 22 October 2025 reminded the Plaintiff of the court's indication requiring it to go to the Tribunal first.

70. The Plaintiff did not act upon the court's clear indication by making any applications before the Tribunal for further interim measures.

71. Instead, it made an application by way of a letter dated 10 December 2025 after it had received the Dr N's affidavit of 4 December 2025. I note the Tribunal's response in PO6.

72. I note that the Plaintiff was seeking relief before the court today which was not provided for in its application before the Court (see in particular paragraph 5 of the Plaintiff's draft Order).

73. I note also that the Plaintiff was seeking an order from this court that the limited partnership agreement of Fund II be disclosed (see paragraph 4c of the Plaintiff's draft Order) when the Tribunal had expressly rejected a similar request (see Annex 2 to PO3 paragraph 8 "the Request

amounts to an impermissible "*fishing expedition*"") albeit in a different context as emphasised by Mr Ayres in his oral submissions for the Plaintiff.

74. When this matter first arose on 25 September 2025 it was apparently urgent. I made an order on 26 September 2025. The return date was set for 14 October 2025. At the request of the parties I made a consent order adjourning the return date to 13 November 2025 and then to 21 January 2026. In fairness I do note the correspondence and the court's lack of availability in the run up to the Christmas and New Year period.

75. I have considered the relevant law including *Minsheng* at first instance and on appeal.

76. I do not say there is any legal requirement for an applicant always to go first to the arbitral tribunal but in the circumstances of this case I am not persuaded that it is appropriate, at this stage, to grant the further relief requested by the Plaintiff.

77. The Tribunal has been dealing with this case since November 2023 and I have only been exposed to it for a couple of days. The Tribunal is much better placed than this court to consider whether and if so what further interim measures should be granted in respect of the parties before it.

78. I note all that Mr Ayres has had to write and say about why the Plaintiff has come back to the court. See for example paragraphs 16, 17 and 18 of the Plaintiff's skeleton argument and I note also paragraphs 16 and 17 of MA's second affidavit sworn on 18 December 2025 which appear at pages 160-161 of the bundle and I note the affirmation of FM.

79. I do not find the explanations as to why the Plaintiffs did not go back to the Tribunal satisfactory or convincing. I am not convinced that this court should step in further at this stage without first requiring applications to the Tribunal.

80. As I stated on 26 September 2025 if the Plaintiff wishes further interim relief it should in the first instance make an application to the Tribunal. If the Tribunal makes interim measures this court stands ready, where appropriate and subject to any necessary safeguards, to assist.

81. It is in these circumstances that I am content to make an order substantially in terms of the Defendants' draft attached to an email of 20 January 2026 at 3.10pm which includes a continuation of the relief I granted on 26 September 2025 but not the further relief requested by the Plaintiff.

82. That is my judgment in respect of this matter.

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT