NEUTRAL CITATION NUMBER: [2026] CIGC (FSD) 40

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 155 OF 2022 (DDJ)

IN THE MATTER OF SECTION 238 OF THE COMPANIES ACT (AS REVISED)

AND IN THE MATTER OF 51JOB, INC.

Before:	The Hon. Justice David Doyle
Appearances:	Mac Imrie KC and Richard Boulton KC instructed by Malachi Sweetman, Adrian Davey and Daniel Johnstone of Maples and Calder (Cayman) LLP on behalf of 51job, Inc. Matthew Morrison KC instructed by Zachary Hoskin and Matthew Harders of Collas Crill LLP, Christopher Easdon and George Connolly of Campbells LLP and Rupert Bell and Patrick McConvey of Walkers (Cayman) LLP for the CCCW Dissenters Tom Lowe KC instructed by Mark Ffrancon Dowds and Tom Stuart of Carey Olsen for the Carey Olsen Dissenters No appearances by or on behalf of Verition Multi-Strategy Master Fund Ltd
Heard:	15 and 16 April 2026

Draft judgment circulated: 14 May 2026

Judgment delivered: 21 May 2026

Determination and reasons for determination of various consequential issues arising following the delivery of a judgment on 24 November 2025 in respect of the determination of the fair value of shares of a company pursuant to section 238 of the Companies Act (2025 Revision) including issues in respect of costs and the recoverability or otherwise of non-admitted foreign lawyers, whether the costs liability should be on the joint and several basis or on the several basis, any payments to dissenting shareholders, any repayments from dissenting shareholders, interim payments, fair rate of interest and stays

JUDGMENT

Introduction

1. On 24 November 2025 I delivered a judgment (the "Judgment") determining that the fair value of the dissenting shareholders' ordinary shares in 51job, Inc (the "Company") was US$31.11 per share and by order dated 16 January 2026 (the "Fair Value Order") made an order to that effect. There was a flurry of activity once the Judgment was delivered with a lot of emails and some applications being filed raising various issues for determination by the Court. The issues of costs, issues in respect of any payments to dissenting shareholders, the issue of any repayments in respect of the balance between the interim payments previously received by any dissenting shareholders from the Company and the fair value as determined by the court, the determination of the fair rate of interest and any applications for a stay were stated to be "subject of a further Order".

2. I adopt the definitions specified in the Judgment.

3. On 2 February 2026 I made a directions order in respect of:

   (1) the Repayment and Interest Entitlement Summons of the Company;

   (2) the Stay Summons of Dissenters numbered 1-49 in the Schedule to the Order; and

   (3) the Costs Summons of the Company,

and they were listed to be heard jointly at a single hearing over 2 days commencing at 10am on 15 April 2026.

4. Subsequent to that Order Dissenters 1-49 (the "Represented Dissenters") by way of a summons dated 27 February 2026 (the Represented Dissenters' Costs Stay Summons) applied for an order that any order made on the Costs Summons be stayed until the determination of the appeal.

5. On 15 and 16 April 2026 I heard oral submissions from experienced attorneys on behalf of the Company, the CCCW Dissenters (numbered 24-49 with Collas Crill representing dissenters numbered 24-44, Walkers representing dissenters numbered 45-47 and Campbells representing dissenters numbered 48-49) and the Carey Olsen Dissenters (numbered 1-23).

6. Prior to the hearing, at the hearing and thereafter I considered the written submissions of the Company and dissenters numbered 1-49.

7. In the Judgment at paragraph 959 I gave the following indication (subject to the consideration of any submissions to the contrary to be filed within 28 days):

> "I am minded to order that the Dissenters pay the costs of the Company such costs to be taxed in default of agreement on the standard basis."

8. In the Order made on 2 February 2026 the Dissenters, as defined in Schedule 1 including dissenter number 50 namely Multi-Strategy Master Fund Ltd ("Verition"), were given an opportunity to file evidence and written submissions and the hearing was specified as starting at 10am on 15 April 2026.

9. Verition was one of the Dissenters. It did not file any evidence, written submissions or make any oral submissions.

10. It is true that the Company only sought costs orders against dissenting shareholders numbered 1-49 but "AND TO: Appleby, Attorneys for Dissenter 50" appears at the foot of the Costs Summons of the Company.

11. At paragraph 9.1 of the written submissions of the CCCW Dissenters dated 7 April 2026 it was submitted that the only fair appointment of liability for the Company's costs is for the CCCW and Carey Olsen Dissenters and Verition to be severally liable for a pro rata share of the Company's

costs, calculated by reference to such dissenters' holding of dissented shares in the Company. At footnote 4 the CCCW Dissenters added: "Verition has been given notice of the CCCW Dissenters' intention to seek an order in this form via its attorneys, Appleby, and invited to appear at the Consequential Hearing on this point if it wishes to oppose the making of such an order …". By letter dated 7 April 2026 (pages 132-133 of Exhibit GCC-6) the CCCW Dissenters' attorneys wrote to Appleby, the attorneys for Verition, indicating that they considered that any orders the Court may make in connection with the Costs Summons "ought to apply to Verition as well". It was indicated that absent agreement the CCCW Dissenters intended to raise the issue with the Court at the Consequential Hearing, which they duly did.

12. On 16 April 2026 I made decisions on certain issues placed before the Court for determination and reserved judgment on others.

13. I reserved judgment on the Repayment and Interest Entitlement Summons noting that fresh arguments not foreshadowed in the skeleton argument had been presented orally.

14. In respect of costs, I made an order that the dissenters (including Verition) should pay the Company's costs of and incidental to the proceedings to be taxed on the standard basis if not agreed. Such liability to be on the several basis apportioned pro rata according to each dissenters' holding of dissented shares in the Company. I ordered that the taxation process be stayed pending the determination of the appeals.

15. In respect of interest on costs I noted that there did not appear to be any real dispute that the Company was at least entitled to interest at 2.375% per annum from the date of the costs order. It was however seriously disputed that the Company was entitled to it from the date it paid the costs. A further authority (*Perry v Lopag Trust Reg,* FSD unreported judgment of Segal J delivered on 1 December 2020) had been handed up after the luncheon adjournment on 16 April 2026 and I needed time to reflect on it and the other arguments presented, so I reserved judgment on the issue of interest on costs.

16. I also reserved judgment in respect of the issue in respect of the recoverability of the costs of unadmitted foreign lawyers. I indicated that I had taken that issue into account in dealing with the issue in respect of an interim payment. The Company sought an interim payment in the sum of US$12.25 million.

17. In respect of the Company's application for an interim payment I made an order that the dissenters (including Verition) should pay to the Company the sum of US$7 million as an interim payment on account of costs and stated, for the avoidance of any doubt, that such liability was on the several basis. I stayed the payment of such amount to the Company on the basis that it is paid into Court or otherwise secured on the same or substantially similar terms as agreed in the consent orders that had been brought to the Court's attention during the hearing.

18. I should add that during the hearing, reference was made to a consent order between the Company and dissenters numbered 1, 2, 3, 4, 5, 7, 8, 9, 11, 12, 14 and 23 that the Judgment and Fair Value Order be stayed on conditions and the Company would not, without further order, seek to enforce the Judgment or Fair Value Order against any of such dissenters including by presentation of a winding up petition or the institution of any other process which would or may have equivalent effect. The conditions included the requirement to pay within 21 days into a designated Court account an amount specified in the schedule. There were further consent orders in respect of a stay subject to conditions agreed between the Company and dissenters numbered 6, 10, 13, 15, 17, 18, 19, 20, 21, 22, 24, 25, 27, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 48, 49, 45, 46, 47, 26, 28, 31, 16.

19. I now give reasons for the decisions I arrived at on 16 April 2026 and make decisions and give reasons in respect of the issues upon which I reserved judgment.

Determinations and reasons

20. There were six main issues before the court:

(1) Should the dissenters forthwith repay to the Company the difference between the amounts received by them as interim payments and the amounts determined as the fair value of their shares and a fair rate of interest and, if so, what directions should be made in respect of the determination of a fair rate of interest?

(2) Should costs be on the joint and several basis or the several basis?

(3) From what date should interest run on costs?

(4) Can and if so should the court disapply O.62, r18(1) of the Grand Court Rules ("GCR") in respect of the costs of unadmitted foreign lawyers?

(5) Should the taxation process be stayed pending the determination of the appeal to the Court of Appeal?

(6) Should an interim payment on account of costs be awarded, and if so, in what amount, and should it be stayed pending the determination of the appeal, on conditions?

Issue (1) The repayment issue

21. The determination of the repayment issue turns on the interpretation of the interim payment deed dated 26 September 2022 (the "Interim Payment Deed") between the Company and dissenters numbered 1-49 and Order 29 of the GCR. I was informed that Verition had entered into a separate but identical deed.

22. In this case there was no Court order requiring the payment of an interim payment. The parties arrived at an agreement by way of the Interim Payment Deeds.

23. The recitals to the Interim Payment Deed placed before the court record in effect that the parties have agreed that the Company will make an interim payment to each of the dissenters numbered 1-49 at US$56.38 per share "pursuant to the terms of this Deed". Clause 1.5 provides that "Clause and paragraph headings are inserted for ease of reference only and shall not affect construction."

24. The following appears on pages 4-5 of the Interim Payment Deed:

> "4. Interim Payment in accordance with the Grand Court Rules
>
> The Parties agree to treat the Interim Payment as being made in accordance with Order 29 rule 12 of the Cayman Islands Grand Court Rules 1995 (2022 Consolidation) and no Party shall object to the validity of the Interim Payment on the basis that no application or order for Interim Payment was brought or made under Order 29.

5. Repayment

The Company shall not seek repayment of the Interim Payment (in part or in full) (or seek to vary or discharge its terms) otherwise than in accordance with this provision. If, upon the hearing of the Appraisal Proceeding, the Grand Court makes an order (the "Order") in respect of the Shares in an amount that is less than the Interim Payment paid to the Dissenting Shareholders in accordance with this Deed, then, subject to any stay of the Order, the difference between the amount specified in the Order and the Interim Payment (the "Difference") shall be repaid forthwith by the Dissenting Shareholders to the Company. The Difference shall be repaid together with interest at a rate to be determined (if not agreed) in the same manner as the Grand Court would determine the fair rate of interest under Section 238(11) of the Act.

6. The Dissenting Shareholders not to seek further interim payment

The Dissenting Shareholders waive any and all rights to apply to the Grand Court (or any Court in the Cayman Islands or in any other jurisdiction) for any additional interim payment in the Appraisal Proceeding, unless the valuation experts of both the Company and Dissenting Shareholders, following the exchange of their supplemental valuation reports in the Appraisal Proceeding, opine that the fair value of the Dissenting Shareholders' shares is higher than US$56.38 per share."

25. Clause 18 of the Interim Payment Deed provides that "it shall be governed by and construed in accordance with the laws of the Cayman Islands without reference to any choice of law rules that might require a different contractual law apply".

26. Order 29 rule 12 of the GCR provides that if on hearing an application under rule 10 the Court is satisfied on certain points, the Court may order the defendant to make an interim payment of such amount as it thinks just. Order 29 rule 10(1) of the GCR provides that the plaintiff may, at any time after the writ has been served on a defendant and the time limited for the defendant to acknowledge service has expired, apply to the Court for an order requiring the defendant to make an interim payment.

27. Order 29 rule 17 of the GCR provides that where a defendant has been ordered to make an interim payment or has in fact made an interim payment, whether voluntarily or pursuant to an order, the Court may, in giving or making final judgment or order or granting the plaintiff leave to discontinue the plaintiff's action or to withdraw the claim in respect of which the interim payment has been made, or at any other stage of the proceedings on the application of any party, make an order with respect to the interim payment as may be just, and in particular an order for the repayment by the plaintiff of all or part of the interim payment.

28. Order 29 rule 18 of the GCR provides that the preceding rules in Part II shall apply with the necessary modifications, to any counterclaim or proceeding otherwise other than by writ, where one party seeks an order for an interim payment to be made by another.

29. I do not accept the Company's submission that Clause 4 of the Interim Payment Deed "necessarily engages all of the provisions of GCR O.29." It plainly does not. It simply provides that the parties agree to treat the interim payment as being made in accordance with Order 29 rule 12 and no party shall object to the validity of the interim payment on the basis that no application or order for an interim payment was brought or made under Order 29. This clause appears to have been expressly inserted to shut out any jurisdictional arguments being raised that the Interim Payment Deed was invalid because no application had been made under Order 29 as had occurred in respect of a consent order in *Trina Solar* (FSD unreported judgment of Segal J delivered on 18 July 2017).

30. I note also that Clause 5 expressly refers to the words "this provision" rather than "this Deed" and clause 5 makes no reference to Order 29 rule 17, or to Order 29 at all.

31. I agree with the CCCW Dissenters that the clear and unambiguous wording of Clause 5 makes clear that the Company's right to obtain repayment of the interim payments and interest thereon are exclusively contractual and the Company would need to commence separate proceedings based upon the Interim Payment Deed and cannot properly obtain an order from this Court at this stage as a matter consequential upon the Judgment.

32. The Company referred to *Qihoo 360 Technology Co Ltd* (FSD unreported judgment of Quin J delivered on 26 January 2017). I note the decision at [66] that interim payments pursuant to GCR Order 29 rule 10 and 12(c) are available in section 238 proceedings commenced by petition. I do

not think that authority assists the Company in this case. The issue before me depends on the proper construction of the Interim Payment Deed and Order 29.

33. I was also referred to Ingrid Mangatal J's judgment in *Qunar* (FSD unreported judgment delivered on 8 August 2017). In that case there was a summons for an interim payment and orders were made. Despite Quin J's judgment in *Qihoo,* counsel for the Company sought to argue that the Court had no jurisdiction to make an interim payment in section 238 cases. In a passage relied upon by counsel, Mangatal J at [48] dealt with a submission in effect that even after fair value had been determined, if the Company does not act upon it the dissenters would have to file another suit by stating that such "seems impractical and unnecessary. It would have the undesirable consequence of multiplicity of law suits and increased costs, which is not a commercially desirable result … In my judgment, the overriding objective of dealing with cases justly plainly favours substance over form." I should add for the sake of completeness that Mangatal J's judgment was upheld by the Court of Appeal and the Judgment is reported at 2018(1) CILR 625. The Court of Appeal agreed that the court had jurisdiction in section 238 cases to make interim payment orders. Neither Quin J nor Mangatal J were dealing with the issue that I am presently dealing with. Although the judgments are of interest and I can understand the decisions they made in the cases before them, they do not assist me in respect of the issue presently before the court for decision in respect of the Interim Payment Deed.

34. Although I fully appreciate the desirability, where possible and appropriate, of avoiding multiplicity of proceedings and the undesirability of incurring unnecessary costs, I do not feel it appropriate, at this stage, to in effect summarily determine what is in effect a contractual dispute between the parties. I have concluded that I must respect the express and clear terms of the parties' agreement in respect of interim payments and repayments. The parties in turn must respect the need for separate substantive proceedings on the Interim Payment Deed if there is a genuine dispute on its terms as there so plainly is in this case. There is no proper, fair or just shortcut in the particular circumstances of this case.

35. Counsel referred to Parker J's judgment in *FGL Holdings* (FSD unreported judgment delivered on 19 April 2023). In that case at [49] Parker J referred to the interim payment that had been negotiated and agreed in that case, and the Court accepted that the dissenters had received more by way of interim payment than the fair value ruling provided for.

36. At [50] Parker J referred to the specific Deed setting out the terms on which the interim payment was made in that case. This was all in the context of the consideration of the costs position, with Parker J noting at [69] that "the interim payment is a costs protection mechanism for the Company … Either party could refer the Court to the Deed and the amount of the payment as part of any future costs arguments depending on the outcome of the trial …".

37. At [70] Parker J added:

> "The Court also accepts Mr Imrie KC's submission that had an interim payment been made into Court, then at the conclusion of the trial under normal procedures, $11.06 a share would have been paid out to the Dissenters, and seven cents a share would have been returned to the Company, and all of the costs incurred after the date that the payment had been made, are very likely to have been ordered in favour of the Company, the paying party."

38. Although of general interest, Parker J's judgment in *FGL* does not assist in respect of the precise point presently before this Court for determination.

39. At the early stage, when I was reading into this matter in preparation for the hearing on 15 April 2026 and read Order 29 rule 17, my initial thought was that this may give the Court jurisdiction when an interim payment had been made "voluntarily" (as in this case), to make an order for the repayment by the dissenters of the difference due under the Interim Payment Deed. Mr Morrison KC however persuaded me that it was not as simple and straightforward as that.

40. In summary I accept the submissions of Mr Morrison KC on this immediate repayment point. I do not feel it appropriate for this Court on a summary basis to make an order for the immediate repayment of the difference. This is principally for two reasons. Firstly, the parties have in effect contracted out of Order 29. They have expressly agreed that the Company shall not seek repayment of the difference "otherwise than in accordance with this provision" (i.e. Clause 5 of the Interim Payment Deed). If the dissenters decline to make immediate repayment "forthwith" then it is for the Company to take separate proceedings for the enforcement of the Interim Payment Deed. It is not for this Court to make an order under Order 29 rule 17 outwith the provision agreed by the Company and the dissenters. Secondly, Clause 5 expressly refers to the forthwith repayment being

"subject to any stay of the Order". The Fair Value Order is presently stayed pending the appeals. In such circumstances it would be wrong to require the repayment of the difference forthwith.

41. I should add that even if I had been persuaded that this Court had and should exercise jurisdiction to make a forthwith repayment order of the difference I would have stayed such order pending the appeal.

42. For the reasons given I do not grant an order that the dissenters should forthwith repay the difference. As I do not make such an order it is not necessary to determine the issue of interest on any such forthwith repayment or directions in that respect.

Issue (2) Should costs be on the joint and several basis or the several basis?

43. I answered this question on 16 April 2026. Costs should be on the several basis. I now provide my reasons.

44. Counsel referred to the judgment of Birt JA in *Sina Corporation* 2023 (2) CILR 474. I note that at [33 (iv)] Birt JA emphasised that in concluding that a several order was appropriate in that case he was "not seeking to lay down any guidance for future cases. The allocation of costs is very much a discretionary decision for the trial judge who has the feel of the case and such decisions are very much fact specific." The Carey Olsen Dissenters were quite wrong to state in effect at paragraphs 39 and 42 of their skeleton argument dated 7 April 2026 that the several and pro-rata approach was "mandated" (i.e. required, commanded or instructed) by the Court of Appeal in *Sina*. It was not.

45. At [33] Birt JA had concluded that the fair order in *Sina* was that costs be awarded against the dissenters on a several basis. The Court of Appeal had not "mandated" such an approach in all section 238 cases. The Court of Appeal had been at pains to stress that it was not seeking to lay down any guidance, let alone mandates, for future cases.

46. At [36] Birt JA noted that both sets of dissenters had submitted that if the costs liability was to be several, each dissenter should be liable pro rata to its holding of dissented shares in the company and the company had not commented on that proposal. At [37] Birt JA stated: "I agree this is an entirely fair proposal and I would so order." Moses JA and Field JA agreed.

47. In the case presently before me, certain dissenters instructed different law firms, groups of dissenters instructed different leading counsel, certain dissenters adopted different positions and advanced distinct arguments and made distinct points. The Carey Olsen Dissenters ran a distinct case with their own leading counsel, their own skeleton arguments, oral submissions and written submissions and made distinct arguments in respect of valuation. In this case there were 50 dissenters with varying sizes of shareholdings.

48. Many of the arguments raised by the two different groups of dissenters, whilst having largely common issues, included different submissions and different areas of cross-examination and emphasis.

49. Some of the dissenters hold relatively small shareholdings so that the risk of potentially being liable for all the costs of all dissenters would act as a disincentive to seeking fair value and participating in section 238 proceedings. Anything other than an order on a several basis would create potentially serious access to justice issues in section 238 cases.

50. The individual dissenters claims in this case vary enormously in value. It is far from fair, just and proportionate that each single claimant however relatively small their personal stake in the outcome of the section 238 proceedings, should be jointly liable for what inevitably will be huge costs running into millions of dollars.

51. Determination of the appropriate basis of liability for costs in section 238 cases amongst the dissenters turns on what is just and fair in all the circumstances.

52. Although I accept that costs awards are acutely fact sensitive as Nugee J stated in *Rowe v Ingenious Media Holdings PLC* [2020] EWHC 235 (Ch) at [22]:

> "Costs as I have said are always discretionary, but on a question like this there is much to be said for uniformity of practice where possible, not only because like cases should as a matter of principle be treated alike but also because it helps the parties if costs are relatively predictable."

I respectfully concur, especially in section 238 cases.

53. At [41] it seemed to Nugee J that it was fairer that the risks to a party of participating in the litigation should be proportionate to their reward that he or she might obtain from the litigation:

> "The notion that someone who invested £36,000 (and who, if successful, might recover compensation, whether for loss of investment, penalties or interest, commensurate with that) should contribute to the common venture exactly the same as someone who invested £10.5m (and whose compensation if successful would be very much larger accordingly) seems to me plainly unfair on the most basic principles of equity."

54. I did not ignore Parker J's judgment in *FGL Holdings* (FSD unreported judgment delivered on 19 April 2023) especially at [123] and [124] but having considered the English case law and the Court of Appeal's judgment in *Sina*, and the facts and circumstances of the case presently before the Court, I was not persuaded that joint and several liability for the Company's costs would be a fair outcome in this particular case. The potential risk of the Company having to pursue numerous different entities in respect of the recovery of costs on a several liability basis did not persuade me that a joint and several costs order was more just or fair than a several costs order.

55. Over 30 years ago now in *Ward v Guinness Mahon PLC* [1996] 1 W.L.R 894, Sir Thomas Bingham MR (whose mother's family were entirely Manx) was persuaded in all the circumstances of that case that it was appropriate to make an order that the liability of the individual plaintiffs be limited to the proportionate share of the overall costs and that such liability should be several and not joint, at page 901 noting that:

> "It appears to me that the defendant is no worse off under such an order than if it had been sued to judgment by 99 plaintiffs, although it is fair to add, given the sums involved (many of which are quite small) that such an event would appear extremely unlikely."

56. I agree that it is just and fair that Verition should bear a share of the costs. It is fairer that its liability should be on a several basis rather than a joint and several basis. It would be wrong for Verition to be a party to the proceedings (and actively pursuing an appeal) and only be subject to the upside rather than the downside of litigation. Moreover it would be unfair to leave it simply to the Company as to who it thinks should be subject to a several liability costs order. That would be

open to abuse in that the Company could just seek to proceed against one dissenter, the dissenter it thought had the biggest pockets.

57. In my judgment, for the reasons provided, fairness, justice and proportionality in respect of the situation faced by the court in the case presently before it demanded the imposition of a costs liability on the several basis rather than a joint and several basis.

Issue (3) The interest issue

58. The next issue for determination is from what date should interest run on costs?

59. The Company seeks an order that dissenters numbered 1-49 pay the Company interest on its costs at the prescribed rate of 2.375% or such other rate as the court considers appropriate, with such interest to accrue from the dates of payment of such costs until payment is received from dissenters numbered 1-49.

60. The Company says that the order is sought pursuant to section 238(14) and GCR Order 62 rule 4(7)(g) which provides that the court may order "interest on costs (at the prescribed rate for Cayman Island dollars) from or until a certain date, including a date before judgment". GCR order 62 rule 3(4) provides that references to $ means Cayman Island dollars but shall be interpreted to include the United States dollar equivalent. GCR Order 62 rule 3(5) provides that bills of costs may be drawn up either in Cayman Islands dollars or United States dollars. Legal fees in this case have either been incurred in US$ or converted to US$ for the purposes of the costs claim.

61. The Company in its written submissions dated 7 April 2026 only spends one short paragraph to support its claims for interest running from the date such costs were paid by the Company rather from date of the order, and makes no reference to any evidence in support. At paragraph 77 the Company simply says:

> "The practice of awarding interest on costs has been commonplace in the Cayman Islands for many years, including by the Court of Appeal in *Trina* [footnote 48 Maso Capital Investments Limited & Anor v Trina Solar Limited (Unreported, Court of Appeal, 4 August 2023) at §35 … See also, Primeo Fund litigation in the Court of Appeal in 2019 (see [2019]

> CICA J1018-1)] … In any event, while there is a good reason to award interest – the Company has been out of its money – there is no good reason not to do so."

62. In *Trina* (CICA 4 August 2023), where an application for costs and a stay were determined on the papers, Birt JA at [34] referred to the application by dissenting shareholders for interest on their costs at the prescribed rate of 2.375% per annum from the date of payment by the dissenting shareholders to the attorneys until date of payment. Birt JA recorded that the company in that case accepted that interest may be payable should either party be awarded costs and did not comment on the suggested starting date referred to by the dissenting shareholders. Birt JA concluded at [35]:

> "In the circumstances, I agree that interest should be payable and would order that it should be paid at the rate of 2.375% per annum and should run from the date of payment by the Dissenting Shareholders to their attorneys until the date of payment by the Company."

63. It appears that it was not argued and Birt JA in effect proceeded on the basis that the application was not opposed and none of the relevant law was referred to. It is apparent that Birt JA was not endeavouring to lay down any rule or legal principle that in such cases interest must always run from the date of payment rather than from the date of the relevant order.

64. In *Primeo* (CICA unreported judgment dated 13 June 2019 and released on 15 November 2019) at [16] Field JA stated:

> "We are also of the opinion that, following taxation of the costs, Primeo should pay interest on the costs awarded at the rate of 2.375% per annum from the date the costs were incurred by the Respondents."

65. Again the judgment does not refer to any relevant law nor does it purport to be laying down any general principle that interest should always or normally run from date of payment.

66. After the short luncheon adjournment on 16 April 2026 Mr Imrie handed up *Perry v Lopag Trust Reg.* (FSD unreported judgment of Segal J delivered on 1 December 2020) which bought the total of the number of authorities for the Consequential Hearing to 83. In that judgment Segal J dealt with what he described as "The Pre-Judgment Interest Issue". At [73] he noted that the trustees

sought an order that the plaintiffs pay to the trustees interest on their costs at the rate of 2.375% until the date of payment, in accordance with the Judgment Debts (Rates of Interest) Rules 2012.

67. Segal J at [74] referred to GCR Order 62 rule 4(7)(g) which he felt was consistent with CPR 44.2(6)(g) in England and Wales. Segal J also referred to the comments of Langley J in *Amoco (UK) Exploration Co v British American Offshore Ltd (No 2)* [2002] BLR 135 QBD (Comm Ct) where he said the court ordered that interest on costs should run from a date prior to the judgment to recognise the reality of when the costs were actually incurred. Langley J felt, at least in substantial proceedings involving commercial interests of significance both in balance sheet and reputational terms, that it may well be appropriate to award interest on costs under the relevant English rule where substantial sums have inevitably been expended perhaps a year or more before the award of costs is made and interest begins to run on it under the general rule. Langley J had no difficulty in accepting that the costs claimed had to be financed and paid over a substantial period of time.

68. Segal J also referred to reliance by the trustees on an extract from *Cook on Costs* (2018 edition) at paragraph 32.5 to the effect that the authorities showed that the court has a broad discretion. While the "incipitur rule" (that interest runs from the date of judgment) may be appropriate in the majority of cases, there is nothing that requires the court to find any exceptional circumstances to depart from it when exercising its discretion under the relevant rule to award interest on costs on a date before judgment. Clarke J in *Fattal v Walbrook Trustees (Jersey) Ltd* [2009] EWHC 1674 stated "the most important criterion is that any order should reflect what justice requires and it is in the pursuit of that goal which should inform the exercise of the discretion."

69. Segal J, with his usual admirable thoroughness, at [84] also referred to a passage from Peter Hurst's *Civil Costs* (6th ed. 2018 at 662) to the effect that the purpose of the power of the court to order interest on costs including pre-judgment interest is to compensate a party who has been deprived of the use of his money and who has had to borrow money to pay for legal fees. The court's discretion is at large. In exercising the discretion, the court conducts a general appraisal of the position having regard to what is reasonable for both the paying and receiving parties.

70. Segal J at [85] expressed himself satisfied that the court had "jurisdiction to make an order that interest on costs runs from a date before judgment including the date on which the costs were incurred and paid by the receiving party."

71. Segal J recorded at [85] that the parties seeking pre-judgment interest had not set out in any detail the reasons why it was appropriate to claim pre-judgment interest in the case before him but added:

> "… it seems to me that the evidence does support and justify the making of such an order. This has been lengthy, complex and expensive litigation which has required the Trustees to fund their costs by entering into a third party funding agreement with its attendant costs and charges (the details of which have not been provided in evidence) and they and the Fifth Defendant (and the Plaintiffs) have, to the extent that they have previously paid their costs, been out of pocket for some time. In all the circumstances, I have concluded that the proper order is that interest on costs should be charged at the rate sought by the Trustees, being a rate of 2.375% per annum, from the date on which the relevant receiving party with the benefit of an order for costs (the Trustees, the Fifth Defendant or the Plaintiffs) paid the relevant costs until the date of service of the certificate of taxation, in accordance with the 1995 Rules. Thereafter, judgment interest will then run at the same rate until the date of payment."

72. The CCCW Dissenters at paragraph 167 of their written submissions dated 7 April 2026 say that the fact sensitive inquiry in respect of interest should be conducted by the Taxing Officer and no procedural rule requires the court to determine the question at this juncture. At paragraph 168 they say there is no evidential basis for the Company's application for an order of this nature.

73. The CCCW Dissenters refer to an English authority on what they describe as "the identical rule under the English CPR", namely *Adcock & Ors v Blemain Finance Ltd* [2022] EWHC 3280 (SCCO). In that case Costs Judge Whalan at [28] was not satisfied in the particular circumstances of that case that the claimants should be entitled to recover pre-judgment interest incurred pursuant to funding loans. Judge Whalan accepted that undoubtedly the court has discretion to award pre-judgment interest. He felt it was clear that the incipitur rule (that interest runs from the date of judgment) constitutes the default position and that pre-judgment interest should only be awarded where justice requires departure from this general rule. Judge Whalan stated that it was important to avoid awarding interest from different dates and/or on different items or components of a costs assessment. He agreed with a submission that the discretion "should be exercised on a "broad

brush" basis". It was clear to Judge Whalan that on the facts of the cases before him that "justice does not require a departure from the general rule". Importantly he added:

> "Although I am dealing effectively with a large number of cases against a common Defendant and citing an identical cause of action under the Consumer Credit Act, it is not large commercial litigation or, indeed, a multiparty action … the judgment sums and costs claimed per case are necessarily modest … No costs assessment provides a complete indemnity to the receiving party, but I am satisfied that the application of the general rule and, in turn, a rejection of the claimants' claims for pre-judgment interest, constitutes a just outcome for the Claimants in these cases."

74. Section 238 cases would normally fall within the category of "large commercial litigation". I know of no section 238 case where the amounts awarded and the costs claimed could accurately be described as "necessarily modest."

75. Although the legal and evidential basis was not articulated in detail (as such was not required to be) it is noteworthy that in two recent cases the Court of Appeal have ordered interest to run from the date the costs were paid by those in receipt of a costs order.

76. In *Al Jomaih Power Limited v IGCF SPV 21 Limited* [2026] CICA (Civil) 4 Birt JA stated:

> "(v) Interest
>
> 47. Under GCR O.62, r.4(7)(g), the court may award interest upon any costs order. SPV 21 applies for an order that interest be paid at 2.375% per annum on its costs of the appeal from the date when it paid those costs until reimbursement by the Appellants pursuant to the costs order. The Appellants submit that it is not necessary to award interest when the court is ordering an interim payment.
>
> 48. It may be some time before taxation is carried out and I see no reason why interest should not be ordered. Parker J stated in *Ritchie Capital* (supra) at [44]:

> "*… The guiding principle is that the paying party should normally provide reimbursement of costs incurred which should include a figure for interest on costs already paid …*"

49. I would therefore award interest at 2.375% per annum as applied for by SPV 21, but would clarify that the sum paid by way of interim payment pursuant to the above order of the court should be applied sequentially to the costs paid out by SPV 21, starting with the earlier costs incurred. In this way interest will cease to run on the earliest costs first."

77. At [50 (v)] Birt JA summarised the position as follows:

> "The Appellants shall pay interest at the rate of 2.375% per annum on the costs of the appeal from the date on which those costs were paid out by SPV 21 until reimbursement by the Appellants pursuant to the order at (i) above, provided that the sum of US$106,000 shall be applied sequentially to the costs incurred by the Appellants starting with those earliest incurred."

78. More recently in *Al Jomaih Power Limited v IGCF SPV 21 Limited* [2026] CICA (Civ) 9 Field JA in delivering a judgment on costs on the papers at [53] stated:

> "*Interest*
>
> 53. In my judgment, the Appellants are entitled to an order for the payment by the Respondent of interest at 2.375% per annum on their costs of the appeal and below from the date when they paid those costs until reimbursement pursuant to the costs order made herein. For the avoidance of doubt, the sum paid by way of interim payment must be applied sequentially to the costs paid out by the Appellants, starting with the earliest costs incurred, so that interest will cease to run on the earliest costs first."

79. Field JA at [54] helpfully summarised his conclusions and at [54 (5)] stated:

> "The Respondent must pay interest at the rate of 2.375% per annum on the costs of the appeal awarded to the Appellants from the date when they paid those costs until reimbursement pursuant to the costs order made herein."

80. The CCCW Dissenters refer to the House of Lords decision in *Hunt v Douglas* [1988] 3 WLR 975 but that rare appeal on costs to the final court of appeal in England and Wales did not concern the issue of pre-judgment interest and I find it of no assistance on the issue presently before the court for determination.

81. The CCCW Dissenters at paragraph 171 of their written submissions submitted that the Company had "not demonstrated any reason to justify other than interest on costs running from the date of the judgment in which the Court stated it would be ordering the Dissenters to pay the Company's costs. Accordingly, if the Court is minded to determine the issue at the consequential hearing, that is the order which should be made."

82. In my judgment the justice of this case requires that the Company have in its favour an order that the dissenters shall pay to the Company interest on its costs at the prescribed rate of 2.375% with such interest to accrue from the dates of payment of such costs by the Company until payment is received. For the avoidance of doubt the sum paid in due course by way of interim payment must be applied sequentially to the costs paid out by the Company, starting with the earliest costs incurred, so that interest will cease to run on the earliest costs first.

83. I arrive at my discretionary conclusion as to the date from which interest shall run for a number of reasons including the following:

(1) such a conclusion reflects what justice requires;

(2) these were proceedings that were commenced on 15 July 2022;

(3) they were, as most section 238 cases are, hard fought involving a great amount of time and huge costs;

(4) they were substantial, complex and very high value and stakes proceedings;

(5) substantial sums were inevitably spent on costs from July 2022 onwards over a three year period;

(6) the money spent on costs could have been invested in something more productive if it had not been spent on costs;

(7) the Company has been deprived of the use of such money for a long period of time; and

(8) the justice of this case requires that the Company have in its favour the interest order it seeks.

Issue (4) Can and if so, should the court disapply GCR Order 62 rule 18(1) in respect of the costs of unadmitted foreign lawyers?

84. In the Costs Summons of the Company at paragraph 1.4 the Company seeks an order that in the taxation of the Company's costs it "be permitted to recover the reasonable costs incurred by, and in instructing, foreign lawyers (including paralegals) and the provisions of the Grand Court Rules, Order 62 Rule 18(1), (4), and (6) shall accordingly be disapplied."

85. At paragraph 84 of its written submissions dated 7 April 2026 the Company states that it seeks an order that it be permitted to recover its reasonable cost of incurring instructing foreign lawyers and the Company submitted that such an order is warranted given:

(1) The court has the jurisdiction to award foreign lawyer's fees in appropriate circumstances, be it pursuant to section 238(14) of the Companies Act (as revised) or by way of a disapplication of GCR order 62 rule 18; and

(2) In the circumstances of this case, such an award would be equitable given (a) the nature of this proceeding was such that the Company needed to engage foreign lawyers; and (b) that the dissenters were aware that the Company had engaged foreign lawyers (and in fact encouraged the Company to engage more foreign lawyers to complete its discovery).

86. Section 238(14) of the Companies Act (as revised) provides:

> "The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances …"

87. Order 62 rule 18 of the GCR concerns foreign lawyers and expressly provides:

> "(1) Work done by foreign lawyers may be recovered on taxation under these rules on the standard basis provided that (a) the foreign lawyer has been temporarily admitted as an attorney; and (b) the work was done after the foreign lawyer was admitted …
>
> (4) Work done by local attorneys for the purpose of instructing foreign lawyers and vice versa shall be disallowed …
>
> (6) Time spent and disbursements incurred in respect of written and oral communication between foreign lawyers and local attorneys will be disallowed."

88. There is nothing in the GCR giving the court the power to disapply or dispense with these requirements.

89. In *Al Jomaih Power Limited v IGCF SPV 21 Limited* [2026] CICA (Civil) 4 one of the parties (SPV21) sought to recover the fees of junior English counsel who had not been admitted. The Court of Appeal dealt with the issues on the papers and permitted recovery even though costs were only ordered on the standard basis.

90. It was common ground in that case that the court had power to dispense with order 62 rule 18(1) (the "sub-rule"). At [14] Birt JA expressly noted that it was "common ground between the parties that, even where costs are awarded on the standard basis (as is the position following our decision above), the costs of a foreign lawyer may be recovered on taxation despite the fact that the foreign lawyer has not been temporarily admitted provided the court dispenses with this requirement."

91. At [15] Birt JA added:

> "As it is common ground and given the need for a proportionate approach, I proceed on that basis. However, by reference to the authorities to which we have been referred, there

> does not seem to be any decision of this court on the point and it is not clear to me that the position agreed by counsel in this case is necessarily correct."

92. Despite the jurisdictional uncertainty Birt JA was willing to proceed on an essentially pragmatic proportionate basis as the parties were in agreement that dispensation was a possibility open to the court.

93. Birt JA referred to various authorities decided by Parker J and Kawaley J and at [23] politely commented that "the reasoning in support of the existence of a jurisdiction to grant such dispensation, despite the apparently clear wording of the sub-rule, is somewhat sparse." At [26] Birt JA added:

> "I am not expressing a view on the merits of the point one way or the other. I simply highlight that, on the basis of the authorities to which we have been referred – and there may of course be others of which we are not aware – the existence of such jurisdiction remains an open question for authoritative resolution in a future case."

94. Birt JA was at [27] content to consider the case on the agreed basis that the court may dispense with the requirement of temporary admission and accordingly allow the recovery of the costs of foreign lawyers on the standard basis even where there has been no temporary admission.

95. At [39] Birt JA held that the fees of the unadmitted English junior counsel were in principle recoverable upon the taxation on the standard basis. Birt JA at [29] had referred to and accepted the policy considerations mentioned by Smellie CJ (as he then was) *In re limited admission* 2015 (2) CILR 338 at [24]-[25] that there was a need to protect the local profession from undue competition but at [34] Birt JA added:

> "… it is equally important for the reputation and standing of the Cayman Islands as an international finance centre where it is suitable to conduct business, that litigation is handled promptly, effectively and professionally."

96. A few months later the point arose again in *IGCF SPV 21 Limited v Al Jomaih Power Limited* [2026] CICA (Civ) 9 and this time the Court of Appeal grasped the jurisdictional nettle (as it had

to as the point was not agreed between the parties) and came to a determination on whether the court had jurisdiction to dispense with the requirement of the sub-rule.

97. At [24] Field JA found that:

> "The costs of the appeal and the proceedings in the Grand Court to be awarded to the Appellants should be taxed on the standard basis and not the indemnity basis."

98. Field JA undertook a comprehensive review of the previous authorities and at [40] stated that "the manifest purpose of the rule" was "to protect attorneys admitted to practice in the Cayman Islands from competition posed by non-admitted foreign lawyers" adding his opinion that:

> "It prohibits the inclusion within an award of costs on the standard basis the costs of work done by a foreign lawyer when he or she was not admitted as an attorney in Cayman, subject only to there being an express rule within the GCR or contained in a statute that allows for the sub-rule to be in (sic) dispensed with in defined circumstances."

99. At [41] Field JA stated that he was unaware of "a power to dispense provided by statute or other regulation passed by the legislature" and neither side had cited such a power provided by statute or regulation.

100. At [42] Field JA found that:

> "… the Appellants are not entitled to recover the costs they incurred in respect of work done by the foreign lawyers they employed when those lawyers were not temporarily admitted as attorneys."

101. The Company, in the case before me, seemed to suggest that the court has a very wide jurisdiction in respect of costs and under section 238(14) can make any costs order it "deems equitable in the circumstances". In my judgment section 238(14) does not give the court a costs "free for all" in section 238 cases. Section 238(14) does not exist in a vacuum. The intention in enacting section 238(14) was not to exclude the GCR. The court's discretion in respect of costs in section 238 cases is governed by the GCR. In *Qihoo 360 Technology Co Ltd* (FSD unreported judgment delivered

on 26 January 2017), an authority referred to by the Company albeit on a different point, Quin J at [70] referred to the introduction of section 238 and added:

> "If the intention had been to exclude the GCR, it would have a perfectly simple exercise to amend GCR O.1 r2(5) to add a carve-out provision. This could simply have read "these rules shall not apply to petitions governing the rights of dissenting shareholders pursuant to the new s238 of the Companies Law". No such carve-out provision was inserted into GCR O.1 r2 and, therefore, the GCR must apply to s238 petitions."

102. As Rix JA pithily put it in *Qunar* 2018 (1) CILR 625 at [39]:

> "… s238 is not a self-contained code …"

103. In my judgment section 238(14) does not provide this court with power to dispense with or to disapply the requirements of Order 62 rule 18. There is no primary or secondary legislation which permits this court to disapply Order 62 rule 18. Accordingly I dismiss the Company's application that Order 62 rule 18(1), (4) and (6) be "disapplied".

Issue (5) – Should the taxation process be stayed pending the determination of the appeal to the Court of Appeal?

104. On 16 April 2026 I indicated my decision that the taxation process should be stayed pending the determination of the appeal to the Court of Appeal.

105. In arriving at that decision I had considered the general relevant law in respect of stays pending appeals. See [48] of Birt JA's judgment in *Maso Capital Investments Limited v Trina Solar Limited* CICA judgment delivered 4 August 2023 applying *Re Aquapoint LP* (FSD unreported judgment delivered on 5 October 2022) at [20]. Field JA in *IGCF SPV 21 Limited v Al Jomaih Power Limited* [2025] CICA (Civ) 001 at [65] also referred to the summary of principles on the granting of a stay pending appeal as provided in *Aquapoint*. The overriding feature is what is in the interests of justice.

106. I accept that where a court has issued a judgment against a party and ordered that party to pay costs the filing of an appeal by that party against the judgment does not automatically mean that such

costs order cannot be enforced pending appeal. Indeed absent good grounds for a stay the usual position would be that the costs order can be enforced prior to the determination of the appeal. One

can see an example of similar principles at play in *Trina Solar Limited* (CICA unreported judgment delivered on 4 August 2023) an authority relied upon by Mr Imrie. In that case as is clear from [51] of Birt JA's judgment the sole reason relied upon by the company in support of its application for a stay was that the costs of a proposed hearing before the Grand Court would be wasted if the appeal to the Privy Council was successful. At [52] Birt JA felt that "this is insufficient to justify a stay". Each case however must be decided on its own facts and circumstances and this is especially so in the context of orders in respect of costs and stays.

107. I was not persuaded that a stay should be granted because of the dissenters' concerns over the risk of irrecoverability.

108. I was more impressed by the dissenters' arguments to the effect that the taxation process was "going to be a very large forensic exercise" and would, if not suspended, distract the dissenters from their preparation for the appeal which was to be heard (albeit only provisionally allocated at that stage) towards the end of July 2026 (i.e. just a couple of months away from April). Mr Lowe KC stressed that the diversion of resources would be very substantial and he added that it was not unusual in a large case especially where the appeal had been brought on very quickly with the cooperation of the parties for a large taxation to be deferred.

109. The taxation process in this case will be an intense, complex, time-consuming process. I thought it best that the dissenters not be distracted by the taxation process at this stage and their resources not be diverted to the taxation process. I was informed that the appeal hearing had been provisionally listed for a special sitting at the end of July 2026. Preparation for that appeal would also be a complex, intense, and time-consuming process. The interests of justice, in my judgment, required that the taxation process be stayed in the meantime.

110. Albeit in a different context and at a different stage of different proceedings Field JA in *Primeo Fund (in official liquidation)* (CICA unreported ruling on costs released on 15 November 2019) at [17] stated:

> "We further order that taxation of the costs awarded should be delayed until 6 months after the determination of Primeo's appeal to the Privy Council."

111. The 9 page ruling does not state why and I cite it merely to confirm that delaying or staying the taxation process pending appeal is not unprecedented.

Issue (6) – Should an interim payment on account of costs be awarded and if so in what amount and should it be stayed pending the determination of the appeal on conditions?

112. On 16 April 2026 I referred to the interesting issues which arose in connection with the costs of foreign lawyers. At that stage Field JA's judgment in *IGCF* had not been delivered. I was however conscious of Birt JA's serious reservations in *Al Jomaih* as to the lack of jurisdiction to dispense with or disapply the relevant requirements imposed by Order 62 rule 18 and took that into account when arriving at the figure in respect of the interim payment on account of costs. The cautious and conservative figure I arrived at was US$7 million. I ordered that the dissenters pay to the Company that sum as an interim payment on account of costs and that such liability be on the several basis. I also stayed the payment of such amount to the Company on condition that it is paid into court or otherwise secured on the same or substantially similar terms as agreed in the consent orders that had been brought to my attention throughout the hearing.

113. In *Al Jomaih* [2026] CICA (Civil) 4 Birt JA also considered the position in respect of an interim payment on account of costs which the appellants had sensibly accepted should be ordered. At [40] Birt JA stated:

> "Given the statement of principle by Kawaley J in *Al Sadik v Investcorp Bank BSC* [2019] (2) CILR 585 at [25], approved by this court at [52] of *Scully Royalty* [2022 (1) CILR 572] (supra), this was an inevitable and correct concession."

114. At [41] of *Al Jomaih* Birt JA added:

> "When assessing the amount of an interim payment, the court is not concerned to determine the irreducible minimum that is likely to be awarded following taxation but to make a reasonable estimate of what is likely to be awarded and in doing so to take a conservative approach allowing for reductions upon taxation; see [26]-[27] of *Al Sadik*."

115. In *Scully Royalty Limited v Raiffeisen Bank* 2022 (1) CILR 572 Birt JA at [52] referred to the application for an immediate interim payment on account of costs. At [53] reference was made to GCR Order 62 rule 4 (7)(h) and the court's ability to make an order that a party must pay "a reasonable sum on account of costs, such sum to be assessed summarily." At [54] Birt JA added that the "principles to be applied in this jurisdiction in relation to interim payments were helpfully summarised by Kawaley, J" in *Al Sadik*.

116. At [25](h) of *Al Sadik* Kawaley J stated that (references omitted) "one recognized and significant reason for not ordering an interim payment on account of costs is the need to avoid stifling an appeal … Another is that the application for an interim payment should not be a disproportionate proceeding … Another circumstance which may displace the assumption that an interim payment on account of costs should be made is the mere fact of the pendency of an appeal, although the primary considerations might relate to the need to suspend any order (or secure repayment) rather than whether or not an order should be made."

117. At [25](i) of *Al Sadik* Kawaley J added:

> "A summary assessment of the appropriate interim payment amount must obviously be possible and sufficient supporting material (e.g. a draft bill of costs or a breakdown of incurred costs) must be placed before the court …"

118. Birt JA in *Al Jomaih* at [44] stated:

> "44. Assessing the amount of an interim payment of costs is not the occasion for a detailed examination of the claimed costs; on the contrary a broad-brush approach is appropriate. In my judgment, an interim payment of 50% of the claimed costs in this case builds in a substantial cushion against future reductions on taxation. The points made by the Appellants can of course be made to the taxing officer in due course and he will decide whether they are valid or not but, in my judgment, they do not suggest that an interim payment of 50% is too high."

119. The Company sought the sum of US$12.25 million by way of an interim payment on account of costs which it said represented less than half of the US$27.85 million that it has estimated, with the

assistance of Masters Legal Costs Services (Cayman) Ltd, it is entitled to recover on a taxation on the standard basis. The Company within the figure claimed also sought costs in respect of instructing non-Cayman Islands admitted foreign lawyers.

120. The Carey Olsen Dissenters and the CCCW Dissenters opposed the application for the interim payment on account of costs. The Carey Olsen Dissenters submitted that a "minimum safe" approach could not support anything close to US$12.25 million. They added that an interim payment of that magnitude carried a real risk of overpayment and would give rise to "obvious practical injustice" if the claimed costs were substantially reduced on taxation.

121. The CCCW Dissenters highlighted the fact that the Company was claiming very substantial levels of foreign lawyers' fees. They referred to the Schedule of Costs and fees of US$4,866,763.97 (Maples Hong Kong US$1,336,984; Maples Ireland US$1,824,228.89 and Lang Yue US$1,705,551.08) and the fact that the Company would be seeking further costs regarding the engagement of US lawyers in respect of the section 1782 proceedings.

122. The CCCW Dissenters submitted that both the total claimed costs, and the interim payment were patently excessive and because of this and what they described as the "opacity of the claim costs" the Court could not confidently order an interim payment or at least could not make an interim payment in an amount of anything near the magnitude sought by the Company.

123. The CCCW Dissenters accepted that the Court was not conducting a taxation of costs but highlighted the concerns attached in a schedule. I considered that schedule, and in particular the sections entitled "Opacity of the Company's claimed costs", "Instances of obviously excessive fees" and "Duplicative and irrecoverable expert and discovery costs".

124. I considered the evidence provided in respect of costs in detail together with the various objections and concerns expressed. Disregarding the fees claimed in respect of unadmitted foreign attorneys and taking into account the relevant rules in respect of costs I had the confidence to cautiously and conservatively arrive at the much-reduced figure of US$7 million as an interim payment. Such figure built in a substantial cushion of comfort against future reductions on taxation.

125. As the parties recognised it was not for this Court to undertake a detailed taxation process but I had taken into account the submissions made on behalf of the dissenters in respect of the amounts claimed. They will be able to present their concerns in due course to the Taxing Officer.

126. Taking the required broad-brush approach, I was confident and comfortable that a figure of US$7 million was a safe figure to specify as the amount of the interim payment.

127. In the particular circumstances of this case having made an interim payment order I also felt it fair and just to stay the enforcement of such order on condition that within 21 days it is paid into Court or otherwise secured on the same or substantially similar terms as agreed in the other consent orders placed before the Court.

Orders

128. The parties should email to my PA within 7 days of the delivery of this judgment a draft order (agreed as to form and content) reflecting the determinations contained in this judgment not already covered in previous orders.

129. I am grateful to the attorneys for their continuing assistance to the Court.

David Doyle

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THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT