Neutral Citation Number: [2025] CIGC (FSD) 39

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 79 OF 2022 (DDJ)

IN THE MATTER OF THE COMPANIES ACT (2026 REVISION)
AND IN THE MATTER OF POSITION MOBILE LTD SEZC

Before:	The Hon. Justice David Doyle
Heard:	On the papers
Draft Judgment circulated:	26 May 2026
Judgment delivered:	28 May 2026

Consideration of various applications for costs

JUDGMENT

Introduction

1. On 17 February 2026 after a 10 day trial I delivered a judgment (the "Judgment") in which it was held that the threshold for a just and equitable winding up order had been crossed. I concluded that a buyout order was the appropriate form of relief and I required the attorneys to file directions leading to a hearing to determine the appropriate figure at which the Petitioner's shares should be purchased if agreement could not be reached ([3]). At [458] I stated that if the position on costs could not be agreed then concise written submissions should be filed and I indicated that I was minded to determine any issues such as costs, if necessary, on the papers without a further hearing.

2. On 24 February 2026, I made an order consequent upon the conclusion in the Judgment.

3. By order dated 21 April 2026 a 3 day hearing to determine the buyout quantum issue was set for 10, 11 and 13 November 2026.

4. In this judgment I use the same defined terms as in the Judgment.

Documentation considered

5. I have considered:

   (1) The Petitioner's written Submissions on Costs dated 17 March 2026 and an authorities bundle together with the email dated 18 March 2026 in respect of "footnote 4" (an error I think for footnote 3) to delete the reference to "US$" and insert "CNY". The amount in the footnote is stated to be the equivalent of approximately US$1.5 billion;

   (2) The Respondents' written Submissions on Costs dated 17 March 2026 and an authorities bundle;

   (3) The Petitioner's written Reply Submissions on Costs dated 31 March 2026 and a supplementary authority bundle;

   (4) The Respondents' written Reply Submissions on Costs dated 31 March 2026.

6. Although no leave was sought or granted the Petitioner also filed two affidavits which I have considered:

   (1) the first affidavit of David Dinner sworn on 17 March 2026 together with exhibit in respect of the decision to instruct foreign junior counsel;

   (2) the second affidavit of Cody Mahaffey sworn on 17 March 2026 in respect of correspondence and the scope of the Petitioner's costs claim.

7. By email dated 21 April 2026 Dentons referred to the judgment of the Court of Appeal in *Al Jomaih Power Limited v IGCF SPV 21 Limited* [2026] CICA (Civ) 9 and stated that this judgment "binds the Learned Judge on the question of recovery of Mr Anson-Holland's fees" and noted that the Petitioner accepts "the authoritative nature of the decision over the issue of recovery of Mr Anson-Holland's fees in all the circumstances."

The position of the parties

8. The Petitioner seeks an order that (1) the Respondents pay the Petitioner's costs of and incidental to the Petition to be taxed on the standard basis if not agreed; (2) the Respondents make an interim payment on account of costs in the sum of US$1.5 million to be paid within 14 days of the date of the court's order; (3) interest on costs at the rate of 2.375 per cent per annum, calculated daily from the date the relevant costs were paid by the Petitioner to the date of payment by the Respondents (or the date of any subsequent order giving rise to a right of set-off, whichever occurs first). The Petitioner estimates its total costs at approximately US$3 million.

9. The Petitioner submits that the court should not reserve the costs of the trial pending determination of the buyout trial simply because the Respondent made a without prejudice save as to costs offer during the proceedings which cannot be assessed until quantum is known. *Langer v McKeown* [2022] 1 WLR 1255 (EWCA) and *Rogers v Wills* [2025] EWHC 1711 (Ch) are relied upon.

10. The Respondents submit that there has been a split trial with only liability determined at this stage. They add that during the course of the proceedings they made without prejudice save as to costs offers to settle the proceedings on terms which provided for the Respondents to acquire

the Petitioner's shares in the Company for a certain price. The reasonableness of those offers, and the Petitioner's rejection of the same, can only be assessed once the quantum of the court-ordered buyout is known. The Respondents say that at this stage of the litigation, until such time as quantum has been determined, the court can be told of the offer but not its terms. The Respondents submit that the only appropriate order to be made at this stage is to reserve costs until the outcome on quantum is known.

11. The Respondents say that unless and until the quantum of the court ordered buyout is determined, it remains unknown whether or not the Petitioner will beat the offer. The Respondents add that if it fails to do so, that is a highly relevant consideration on the appropriate costs order to be made in relation to the costs arising from the Judgment.

Determination

12. The parties have referred to some rules and caselaw from England and Wales. The detailed position as to costs is not identical in England and in the Cayman Islands so great care needs to be taken in the consideration of English authorities in this area. I do not ignore the parties' detailed and somewhat intense arguments on the English rules and caselaw (including *Langer v McKeown* [2022] 1 WLR 1255 (EWCA)) but at the heart of my approach to the costs issues presently before this court sitting in the Cayman Islands are the provisions of the Grand Court Rules and local caselaw from the Cayman Islands and also the fundamental principle, of special relevance in respect of costs, that each case must be considered and determined on its own facts and circumstances.

13. Section 24 (1)(b) of the Judicature Act (2021 Revision) (the "Judicature Act") provides that subject to the provisions of the Judicature Act or any other Act and to rules of court, the costs of and incidental to all court proceedings in the Grand Court shall be in the discretion of the court. Section 24(3) of the Judicature Act provides that the court shall have full power to determine by whom and to what extent the costs are to be paid.

14. Order 22 rule 14 of the Grand Court Rules (2023 Revision) ("GCR") provides:

> "**Written offers "without prejudice save as to costs" (O.22, r.14)**
>
> 14. (1) A party to proceedings may at any time make a written offer to any other

party to those proceedings which is expressed to be "without prejudice save as to costs" and which relates to any issue in the proceedings.

(2) Where an offer is made under paragraph (1), the fact that such an offer has been made shall not be communicated to the Court until the question of costs falls to be decided and the Court shall take into account any offer which has been brought to its attention when making an order for costs.

Provided that the Court shall not take such offer into account if, at the time it is made, the party making it could have protected that party's position as to costs by means of a payment into Court under Order 22."

15. Order 22 rule 1(1) of the GCR permits in any action for a debt or damages a defendant to make a payment into court.

16. The preamble to the GCR specifies that the overriding objective is to enable the court to deal with every case in a just, expeditious and economical way. The court is directed to seek to give effect to the overriding objective whenever it (a) applies, or exercises any discretion given to it by the GCR or (b) interprets the meaning of any Rule.

17. Order 62 rule 4(2) of the GCR provides that the overriding objective of Order 62 is that "a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by the successful party in conducting that proceeding in an economical, expeditious and proper manner unless otherwise ordered by the Court". Order 62 rule 3(1) of the GCR unless the context otherwise requires defines "proceedings" as including any cause or matter or any step in any cause or matter and any appeal and any step in any appeal.

18. Order 62 rule 4(5) of the GCR provides that if the court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings the court shall order the costs to follow the event, except when it appears to the court that in all the circumstances of the case some other order should be made as to the whole or any part of the costs.

19. The position as to costs in liquidation proceedings in the Cayman Islands is referred to in Order 24 Part II of the Companies Winding Up Rules (2023 Consolidation) ("CWR"). Order 24 rule 7(1) of the CWR defines costs as "the reasonable legal fees and expenses incurred by a person

in conducting or participating in a liquidation proceeding in an economical, expeditious and proper manner."

20. Order 24 rule 8 of the CWR sets out some general rules as to costs. One of them (in Order 24 rule 8(2)(b)) is that where the court has directed (as in this case) that the winding up petition be treated as *inter partes* proceedings between one or more members the general rule is that none of the costs should be paid out of the assets of the company "and the unsuccessful parties should pay the costs of the successful party, such costs to be taxed on the standard basis unless agreed."

21. Order 24 rule 8(4) of the CWR provides that the court shall make orders for costs in accordance with the general rules specified in Order 24 rule 8 unless it is satisfied that there are exceptional and special circumstances which justify making some other order or no order as to costs.

22. I accept that the starting presumption that costs follow the event can be displaced where the successful party has unreasonably refused a "without prejudice save as to costs" offer to settle the litigation.

23. The fact that an offer without prejudice save as to costs has been made has been brought to my attention but not the date of it or the contents of it. It seems to be common ground however that such an offer has been made.

24. Henderson J in *G v G* 2010 (1) CILR 365, albeit in the context of a family case, referred to an offer marked "without prejudice save as to costs" (referred to in England as a *Calderbank* offer) at 371 and the need for *Calderbank* offers to "have teeth in order for them to be effective". Henderson J also referred to the requirement for the court to take account of *Calderbank* offers in exercising its discretion as to costs. At page 372 Henderson J referred to the "very wide discretion in the court in awarding costs" and "the *Calderbank* offer should influence but not govern the exercise of discretion … But the starting point in a case where there has been an offer is that, *prima facie*, if the applicant receives no more or less than the offer made, she/he is at risk not only of not being awarded costs, but also of paying the costs of the other party after communication of the offer and a reasonable time to consider it …".

25. In my judgment in the particular circumstances of this case the safest and most just course of action would be to reserve my determination of costs until after the determination of the buyout quantum hearing which is due to take place in the relatively near future and that is the course I take.

26. The "proceeding" in this case is the "proceeding" commenced by the winding up petition. I have concluded that a buyout order is the appropriate order to make but have not yet determined the amount.

27. The determination and a consideration of the without prejudice save as to costs offer which has been made may significantly impact on the just costs order in respect of the "proceeding" to date. It is not appropriate for me to see that offer until after the determination of the buyout quantum hearing.

28. I will therefore reserve my determination of the costs to date and the costs in respect of the buyout quantum hearing until after the determination of the buyout quantum hearing. That is the safest and most just course to take in the particular circumstances of this case.

29. The attorneys are to email to my PA before 3pm on 1 June a draft order (agreed as to form and content) reflecting the determination contained in this judgment.

David Doyle

_____

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT