



GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD OF 2023 ()

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF KES POWER LIMITED

WINDING UP PETITION

TO: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of IGCF SPV 21 Limited of C/O Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman, Cayman Islands shows that:

Introduction

1. IGCF SPV 21 Limited (“**the Petitioner**”) respectfully seeks an order under section 92(e) of the Companies Act (2022 Revision) (“**the Companies Act**”) that KES Power Limited (“**KESP**” or “**the Company**”) be wound up on the basis that it is just and equitable to do so.
2. In summary, the grounds for this Petition are as follows:
 - a. breach of legitimate expectations;
 - b. functional deadlock;
 - c. breach of legal bargain;
 - d. breakdown of quasi-partnership; and

- e. loss of substratum (because the object of owning and exercising rights in KEL have been frustrated and are incapable now of being fulfilled effectively).

Relevant Entities

KESP

3. KESP is a company incorporated under the laws of the Cayman Islands whose registered office is at c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010 Cayman Islands.
4. The objects for which KESP was established are set out at clause 3 of the Amended and Restated Memorandum of Association dated 18 May 2009 (“**the KESP MA**”) and are restricted to the following:
 - “(a) *acquiring in one or more transactions shares (“Shares”) issued by Karachi Electric Supply Company Limited, a company existing under the laws of the Islamic Republic of Pakistan (“KESC”);*
 - “(b) *exercising any rights attached to Shares from time to time;*
 - “(c) *disposing of any Shares from time to time in one or more transactions;*
 - “(d) *making loans or otherwise providing finance to KESC;*
 - “(e) *issuing shares from time to time;*
 - “(f) *borrowing or otherwise incurring indebtedness for the purposes of acquiring Shares or making investments in KESC (including, without limitation, by way of loan or other accommodation) from time to time;*
 - “(g) *underwriting any rights issue proposed by KESC; and*
 - “(h) *entering into any agreements, documents or arrangements necessary, incidental or conducive to the accomplishment of the foregoing or to any of the transactions contemplated thereby.”*
5. As is apparent, the objects for which KESP was established are restricted to acquiring shares in KESC (as defined in the KESP MA) and exercising rights in relation thereto. KESP is not a trading entity.

6. KESP is the holder of 18,335,542,678 ordinary shares (representing 66.4%) of K-Electric Limited (formerly known as Karachi Electric Supply Company or ‘KESC’ in the KESP MA and hereafter referred to as “**KEL**”).

KEL

7. KEL is a Pakistani-incorporated utility company which supplies power to consumers in Karachi, Pakistan and elsewhere. It was formerly majority-owned by the Government of Pakistan.
8. On 14 November 2005, the Government of Pakistan entered into a Share Purchase Agreement and Subscription Agreement with KESP (“**the 2005 Agreement**”), pursuant to which it transferred a 73% stake of KEL to KESP.

The Petitioner

9. The Petitioner was incorporated in the Cayman Islands on 26 February 2008 as an exempted company limited by shares with registration number 205619.
10. The Petitioner was incorporated by ABRAAJ Investment Management Limited (“**AIML**”), a company now in liquidation, on behalf of The Infrastructure & Growth Capital Fund Limited Partnership (“**the Fund**”) for the purposes of acquiring an interest in KESP. AIML acted as investment manager to over 40 private equity funds in the Abraaj Group, with over 600 limited partners. The Abraaj group of companies is a collection of private equity funds which was formerly a major private equity investment group operated across markets in the Middle East and North Africa. AIML acted as the investment manager to the Fund until 31 May 2020 after which the Fund reverted to management by its General Partner, who holds the assets of the Fund on trust for the limited partners. AIML, acting now by its Joint Official Liquidators appointed on 11 September 2019¹, has disposed of management rights associated with the majority of former Abraaj group funds.
11. The Petitioner is the holder of 399,634,798 shares (representing 53.8%) of KESP.
12. The share capital of the Petitioner is US\$500,000,000 divided into one Voting Share of a par value of US\$1.00 and 499,999,999 Preferred Shares of a par value of US\$1.00

¹ Provisional liquidators were appointed over AIML on 18 June 2018.

each. The holder of the sole Voting Share in the Petitioner is AIML. The Preferred Shares are held by the following entities:

Preferred Shareholder	No. of Shares held
IGCF SPV 26 Limited	300,000,000
Abraaj SPV 109 Limited	2,000,000
Breeze SPV Limited	1
Abraaj SPV 108 Limited	81,000,000
Abraaj SPV 127 Limited	41,999,999

13. Until 22 January 2014, IGCF SPV 26 Limited (“**SPV 26**”), which is itself wholly owned by the Fund, held 100% of the Preferred Shares in the Petitioner. Thereafter, with the introduction of the new shareholders under a purported restructuring, SPV 26’s shareholding was allegedly reduced to 71% of the Preferred Shares in the Petitioner.
14. The General Partner of the Fund is the Infrastructure and Growth Capital Fund General Partner (“**IGCF GP**”)

The Original Shareholders

15. Al Jomaih Power Limited is a Cayman-registered entity, of 89 Nexus Way, Camana Bay, P.O. Box 31106, Grand Cayman, KY1-1205, Cayman Islands (“**Al Jomaih**”). It is believed to be a subsidiary of the Al Jomaih Group based in Saudi Arabia which has made investments in various sectors globally.
16. Al Jomaih is the holder of 205,573.19 shares (representing 27.7%) of KESP.
17. Denham Investment Ltd is a Cayman-registered entity, of (through its duly authorised representative) PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman

Islands (“**Denham**”). It is believed to be a subsidiary of National Industries Group of Kuwait (“**NIG**”), a construction company established in Kuwait in 1960.

18. Denham is the holder of 137,559.225 shares (representing 18.5%) of KESP.
19. Together, Al Jomaih and Denham (referred to together as the “**Original Shareholders**”) are the holders of 343,132.41 shares (representing 46.2%) of KESP.
20. KESP is effectively a joint venture vehicle in the way of a quasi-partnership between the Original Shareholders and the Petitioner (and ultimately the Fund) to invest in KEL.
21. Relations between the Petitioner and the Original Shareholders are governed by the terms of a Subscription Agreement and Shareholders Agreement relating to KESP dated 15 October 2008 (as amended) (the “**SHA**”). The SHA was amended on two occasions by a Deed of Amendment dated 30 April 2009 and by a Second Deed of Amendment dated 5 January 2021.
22. It was the common understanding of the Petitioner and the Original Shareholders in entering into the SHA that they would work collaboratively together to manage KESP and, through KESP, the investment in KEL. Paragraph (D) of the preamble to the 2008 SHA expressly provides that

“The parties have entered into this agreement to regulate their conduct in relation to the Company [KESP] and KESC [now KEL]”

White Crystals Ltd

23. White Crystals Ltd (“**WCL**”) is a Limited Partner in the Fund which has made a Capital Contribution representing 0.5% of the total sums invested by all Limited Partners.
24. Al Jomaih and / or its affiliates are the ultimate beneficial owners of WCL.

The SHA

25. The SHA governs the conduct of the parties in relation to KESP and KEL, including the composition and appointment process for the Board of Directors of each entity. KESP is effectively a single-purpose joint venture vehicle in the way of a quasi-

partnership between the Original Shareholders and the Petitioner (and ultimately the Fund) to invest in KEL and thereafter to manage that investment.

26. Pursuant to Clause 5.3 of the SHA, the Petitioner may appoint up to five directors to the Board of KESP while, pursuant to Clause 5.4 of the SHA, Al Jomaih may appoint three directors and Denham two to the Board of KESP. While the Original Shareholders have taken inconsistent positions, they appear to maintain that, as matters presently stand, no director has a casting vote on the Board of KESP.

27. Clause 5.7 (as amended) of the SHA provides

“Abraaj and the Original Shareholders shall procure that the directors of KESC [now KEL] to be nominated or appointed by the Company [KESP] shall comprise:

Five persons nominated by Abraaj (the Abraaj nominees); and

Four persons nominated jointly by the Original Shareholders (the Original Shareholder Nominees”.

28. “Abraaj” is defined in the SHA as the Petitioner.

29. Clause 17.1 of the SHA further provides:

“Each of the parties (other than the Company) undertakes to the others that it will exercise all powers and rights available to it as a director, officer, employer or shareholder in the Company (or in any other Group Company) in order to give effect to the provisions of this agreement and to ensure that the Company complies with its obligations under the agreement.”

30. Clause 25.2 (as amended) of the SHA provides:

“Any dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be settled by the English courts or the Grand Court of the Cayman Islands and those courts alone shall have exclusive jurisdiction to settle any such dispute.”

31. Clause 25.1 of the SHA provides that the SHA is governed by English law.

The Transaction

32. On 3 August 2022, AIML entered into a Share Purchase Agreement with a third party, Sage Venture Group Limited (“SVGL” or “Sage”) pursuant to which, *inter alia*, SVGL agreed to purchase the sole voting share in the Petitioner from AIML together with a 75.5% shareholding stake in IGCF General Partner Limited (“IGCF GP”), the General Partner of the Fund (“the Transaction”). Given that AIML, as seller, is subject to a winding up order of the Grand Court, the Transaction required sanction of the Grand Court which was granted on the application of the joint official liquidators of AIML by the Hon. Justice Segal. SVGL also acquired the remaining 24.5% shareholding in IGCF GP from its other shareholder such that it now holds 100% of the shares in IGCF GP.
33. After the Transaction was completed, SVGL subsequently made an offer to a number of Limited Partners of the Fund to buy their partnership stakes on a bi-lateral basis with each individual Limited Partner.
34. Since the Transaction was completed, KEL and KESP have engaged regularly with various regulatory bodies in Pakistan, including the Privatisation Commission, the Ministry of Privatisation and Investment, the Ministry of Energy (Power Division), the Pakistani National Electric Power Regulatory Authority, the Securities and Exchange Commission of Pakistan (the “SECP”) and the Competition Commission of Pakistan, and in the Cayman Islands.

The Original Shareholders’ prior awareness of the Transaction and related negotiations

35. Since the appointment of the AIML Official Liquidators, the Original Shareholders, and in particular their representative Mr Shan-Abbas Ashary (“Mr Ashary”), have been aware that AIML (in Official Liquidation) and the Fund were actively seeking a sale of their interests in the Petitioner and, through the Petitioner, the Company. The Original Shareholders were specifically made aware of the interest of SVGL’s owners in acquiring the interests of AIML and the Petitioner and the existence of ongoing negotiations and were invited to make proposals to purchase those interests if interested in doing so.

36. The Original Shareholders submitted an offer for 50% of the Petitioner's interest in KESP on or around 4 August 2022 (after the Transaction had been entered into) through TriCap Advisory, an entity in which Mr Ashary has an interest. The Petitioner responded to the offer highlighting several issues including the requirement for AIML to be involved in any transaction as the owner of the Voting Share in the Petitioner, commercial considerations including potential returns to Limited Partners and an ultimate resolution for the 50% stake not included in the offer (among other considerations).
37. Prior to the Transaction, the Petitioner sought to collaborate with the Original Shareholders in efforts to sell KESP's interest in KEL. KEL has been under a Public Announcement of Interest ("**PAI**") since 2016 when a Share Purchase Agreement was signed by KESP with Shanghai Electric Power Company Limited ("**Shanghai Electric**" or "**SEP**"). The completion of the Share Purchase Agreement was conditional on the completion of numerous mutual Conditions Precedent which have not been met. On 2 January 2020, SEP submitted a significantly altered Non-Binding Offer which was rejected by Mr Ashary on behalf of KESP. Subsequently, SEP made it clear that it would not be improving its non-binding offer. In recent weeks, following the Transaction, Mr Ashary appears to have sought to resurrect the interest of SEP in a potential acquisition of KESP's interest in KEL and/or to suggest that this interest exists (although he has not acknowledged or disclosed the full details of any contact he has had with SEP) to the Board of KESP or to the Petitioner.

The Original Shareholders' response to the Transaction

38. Since in or about the autumn of 2022 and following the sanction of the Transaction by the Grand Court, the Original Shareholders have expressed their dissatisfaction with the Transaction and taken various steps to seek to frustrate it and to prevent KESP from operating effectively, particularly as regards its investment in KEL. These steps have included:
 - a. Submitting their own alternative proposal to the Limited Partners of IGCF GP on 1 October 2022.
 - b. Writing to the Petitioner openly challenging the Transaction.

- c. Blocking attempts by the Petitioner to cause KESP to nominate candidates for vacancies on the Board of KEL in breach of clause 5.7 of the SHA.
- d. Causing KESP to be in breach of clause 5.7 of the SHA by failing to fill the vacancies on the Board of KEL.
- e. Issuing proceedings in Pakistan, *ex parte* without notice and in breach of clause 25.2 of the SHA, seeking to prevent KESP from nominating directors to the Board of KEL.
- f. Maintaining the proceedings in Pakistan once the breach of the SHA had been identified and notwithstanding the Grand Court granting the Petitioner interim injunctive relief on 1 February 2023 preventing the pursuit of the proceedings pending a final determination of the Petitioner's claim for permanent injunctive relief.
- g. Failing to comply or causing their nominated directors on the Board of KESP and/or KEL not to comply with regulatory requirements in Pakistan.
- h. Meeting and communicating with the government of Pakistan and government and regulatory entities with a view to causing those bodies to take steps to prevent the Petitioner appointing its nominees to the Board of KEL and/or to take steps to frustrate the Transaction.
- i. Causing its Board representatives on the Board of KESP to fail to attend or refuse to attend Board meetings of KESP.

Alternative Proposal

39. By letter dated 1 October 2022, the Al Jomaih Group and NIG who control the Original Shareholders, wrote an open letter to all of the Limited Partners of the Fund containing an alternative proposal to that sent by Sage despite the completion of the Transaction.

Open Challenge to the Transaction

40. By various letters dated sent in September and October 2022, attorneys acting for the Original Shareholders wrote to the Board of KESP alleging, *inter alia*, that the

Transaction was harmful to KESP and that its effect would be a change of control of the Petitioner in breach of clause 9.4 of the SHA.

41. Most recently, but after a period of substantial delay, Al Jomaih wrote to the Petitioner by letter dated 5 July 2023 (“**the AJ 5 July 2023 Letter**”) alleging in terms that the Transaction constitutes or involves an impermissible change of control of the Petitioner which constitutes a breach of the terms of the SHA. That letter also contains a number of other very serious allegations against the Petitioner and others said to be acting with or in combination with the Petitioner.

Blocking director appointments to the Board of KEL

42. In breach of clause 5.7 of the SHA, the Original Shareholders have blocked, and continue to block, the appointment of directors nominated by the Petitioner to the Board of KEL.
43. On 19 October 2022, the Petitioner notified the company secretary of KESP, Mr Nicholas Schwarzmiller (“**Mr Schwarzmiller**”), of changes in the directors it was contractually entitled to nominate in accordance with clause 5.7 of the SHA (as amended) with the replacement of Boudewijn Wentink and Khaqan Saadullah Khan with Shaheryar Chishty and Darin Baur. Mr Ashary subsequently wrote to Mr Schwarzmiller on the same day asking that he “*hold this nomination*” until a resolution of the KESP Board of Directors was passed. This was a marked change from the established and less formal practices of KESP whereby the Petitioner and the Original Shareholders would usually ratify each other’s nominations to fill casual vacancies in accordance with their obligations under the SHA after those nominations had been communicated to the company secretary of KEL in the same manner used by the Petitioner on 19 October 2022.
44. On 21 October 2022, the Original Shareholders issued the Pakistan Proceedings, as defined below, *ex parte* without notice and in breach of their obligations under the SHA (as amended).
45. On 8 November 2022, the SECP issued a Directive pursuant to section 125 of the Securities Act (2015) of Pakistan stating that there should be no changes made to the Board of KEL.

46. The ongoing failure by KEL to fill any vacancies on its Board in accordance with the SHA (as amended) constitutes a breach of section 155 of the Companies Act (2017) of Pakistan which is punishable by fine.
47. The ongoing failure by KEL to fill Board vacancies is having an ongoing adverse impact on the KEL, KESP and the Petitioner in the following ways:
- i. Legal expenses are being incurred in the defence of the Pakistan Proceedings together with further legal expenses to obtain regulatory advice to deal with queries from the SECP, the Pakistan Stock Exchange (“PSX”) and the Competition Commission of Pakistan;
 - ii. In or around 30 May 2023, a lender of KEL, FMO Bank, requested updated UBO / KYC information on KEL’s shareholders. The Petitioner replied to the Secretary of KEL, noting its ability to provide the information that had been requested. To the Petitioner’s knowledge, Mr Ashary has not responded and this failure is posing a serious and urgent risk to KEL’s future banking relationship with FMO Bank and hence the liquidity position and status of KEL as a going concern;
 - iii. Reputational damage has been caused from the very existence of the Pakistan Proceedings in the public domain and publishing of adverse media articles. This has led to the public share price of KEL plummeting;
 - iv. KEL is being delayed in advancing critical strategic initiatives which require Board support and direction, impacting on the financial success of the company which then indirectly has a financial impact on KESP, and through KESP, on its shareholders including the Petitioner; and
 - v. Legal expenses are being incurred in the prosecution of the Cayman Anti-Suit Proceedings (as defined below).

The Pakistan Proceedings

48. On or around 22 October 2022, the Original Shareholders issued *ex parte* proceedings in the High Court of Sindh in Karachi, Pakistan (“**the Pakistan Proceedings**”) against

the Petitioner, KESP and other parties. The proceedings were issued without any prior notice to the Petitioner or KESP.

49. The Petitioner is the First Defendant to the Pakistan Proceedings and the proceedings appear to focus on it and its attempts to cause KESP to make appointments to the Board of KEL. The Pakistan Proceedings were brought in response to an attempt by the Petitioner as set out above to cause KESP to appoint two new directors to the Board of KEL in accordance with the Petitioner's contractual rights and duties under the SHA following the Transaction.
50. The Pakistan Proceedings primarily contend that there are restrictions which continue to bind the Petitioner in relation to its ownership stake of KESP and which purportedly override the contractual terms of the SHA.
51. Paragraph 12 of the 'Suit for Declaration and Permanent Injunction', which is the originating process document, states

"The transfer of beneficial ownership / change in board or management control of the Defendant No. 4 (K-electric) is subject to Transfer Restrictions as detailed in the Share Purchase Agreement dated November 14, 2005."

52. Paragraph 13 states:

"Section 5.3 of the Share Purchase Agreement² further states the any change [sic] of control is conditional on national security clearance being obtained which as the sole discretion of the Defendant No. 5 (GoP), whom the Defendant No. 4 (K-electric) was acquired from in 2005."

53. The relief claimed in the Pakistan Proceedings includes declarations that "*all acts*" of the Petitioner "*in relation to the transfer of beneficial ownership/change in board or management control*" of KEL are "*null and void*" and that the nominations for the Board of KEL made by the Petitioner (that is pursuant to its contractual rights under the SHA) are "*illegal and without lawful authority*". The relief claimed also extends to a "*Permanent Injunction restraining [the Petitioner] ... from interfering with or in any manner attempting administration of affairs of [KEL]*".

² For the avoidance of doubt, this is not the SHA but the 2005 Agreement relating to the acquisition of shares in KEL.

54. The Original Shareholders did not purport to apply the same restrictions and requirements that they seek in the Pakistan Proceedings when changes were made in relation to their own ultimate beneficial ownership. The Original Shareholders have never disclosed their full ownership structure and when a KESP and shareholder organization chart which included details behind Al Jomaih Power was provided to the Original Shareholders for comment, the Original Shareholders responded stating that

“Your one-sided actions are detrimental to the interest of KESP and KE. We have already provided information on OS relevant to the reply to SECP and this information is available to KE. You, from SPV 21 side, may proceed to provide SPV 21 side of the information to KE without any mention of OS since this is not your domain”.

Further, the Original Shareholders did not object when AIML became the holder of the Sole Voting Share in the Petitioner. This further demonstrates the misconceived and opportunistic approach of the Original Shareholders. Moreover, the Original Shareholders have refused to answer reasonable requests to clarify and explain both (a) when they first became aware the AIML was holder of the Sole Voting Share in the Petitioner; and (b) the ultimate beneficial ownership of the Original Shareholders and the structure of that ownership.

55. The High Court of Sindh subsequently made an Order on the application of the Original Shareholders (which application was again made without notice to the Petitioner, KESP or KEL) which, *inter alia*, purports to injunct the Defendants (including the Company) from making any change to the Board of KEL.
56. The Suit contains numerous false statements and inaccuracies together with a number of very serious, vexatious and groundless allegations against the Petitioner. For example, the Suit asserts that the Petitioner is committing “*illegal acts*” “*in connivance*” with others (see paragraphs 24 and 25 of the Suit); is “*hijacking board and management control*” of KEL (paragraph 27, and see also paragraph 36); is seeking to “*disguise*” and/or “*manipulate*” the beneficial ownership of KEL (paragraph 30); and to “*secretly transfer the beneficial ownership*” of KEL and to “*evade Pakistani regulators*” (paragraph 31). These allegations are untrue. The Petitioner is doing no more and no

less than exercising and complying with its contractual rights and duties under the SHA and, in particular, clause 5.7.

57. Further, paragraph 34 of the Suit goes so far as to accuse the Petitioner (again falsely) of “*manipulating the Cayman Court*” and of failing to disclose relevant matters to the Court (see also paragraphs 30, 36 and 37). As regards this last allegation, as must be clear to the Original Shareholders, the Petitioner took no part in the Cayman proceedings which were brought by the joint official liquidators of AIML to seek sanction for the Transaction.
58. The injunction is still in force and all proceedings have been stayed in accordance with the Order of this Honourable Court on 1 February 2023 in the Cayman Anti-Suit Proceedings (as defined below).

Regulatory requirements in Pakistan

59. Pursuant to section 123A(2) and Regulation 19A(3) of the Companies Regulations 2018 of Pakistan³, KEL is periodically required to file details of its beneficial ownership with the Pakistan Securities and Exchange Commission. This information is required on a Form 44.
60. On 19 October 2022, the SECP wrote to KEL seeking various information about the Transaction, ownership structure and ultimate beneficial ownership of KESP and IGCFF GP.
61. On 28 October 2022, Mr Mark Skelton (“**Mr Skelton**”), the Chairman of the Board of Directors of KESP, circulated a proposed response to the Board of KESP. On 29 October 2022, Mr Ashary replied stating that he would provide comments relating to the response. No comments were ever provided.
62. On 8 November 2022, Mr Skelton replied to the SECP’s request with detailed responses regarding the information sought on 26 October 2022. On 10 November 2022, Mr Mustafa Farooki (“**Mr Farooki**”), a director of KESP nominated by the Original Shareholders (as an alternate director for Abdul Aziz Al Jomaih), asserted (without

³ These Regulations form part of the Companies Act (2017).

cause or justification) by email that Mr Skelton's reply of 8 November was "*detrimental to the interest of KESP and KE*".

63. On 21 December 2022, the SECP sought the following information in relation to the Transaction, to be provided by 11 January 2023:
 - i. A 'Form 44' to disclose any change in the previously submitted Form 43 relating to Ultimate Beneficial Ownership; or
 - ii. Confirmation that there was no change required in the previously submitted 'Form 43'.
64. On 19 January 2023, a draft Form 44 was sent on behalf of KESP to KEL with a view to finalising the submission to the SECP. On 20 January 2023, Mr Ashary sent an email to Mr Schwarzmiller and Mr Skelton stating that any information provided to outside parties about KESP should be first approved by the Board of KESP and that the draft Form 44 "*has errors and / or omissions*". KEL did not forward the Form 44 to the SECP due to Mr Ashary's comments.
65. In or around 30 January 2023, the Petitioner engaged RS Law in Pakistan to provide advice in relation to the submission of the Form 44 to the SECP. Formal advice was received from RS Law and shared with the KESP Board prior to the Board meeting held on 13 February 2023. During the Board meeting, certain directors nominated by the Original Shareholders objected to hearing the RS legal opinion and have refused to engage on the issue since that meeting.
66. Between 21 February and 3 March 2023, Mr Schwarzmiller, Mr Skelton and Mr Farooki exchanged emails in relation to the issue of submitting the Form 44 to the SECP but Mr Farooki made it clear that no agreed response could be submitted.
67. The failure by the Original Shareholders to co-operate with (and indeed instead to block) steps to ensure that KEL and KESP comply with their regulatory obligations as set out above causing damage to KEL and KESP (and, through them, the Petitioner) is part of a wider failure by the Original Shareholders and their representatives and, in particular, Mr Ashary, to comply with their regulatory obligations in relation to KESP and KEL.

Potential conflict connected to the SECP

68. Mr Mehmood Mandviwalla is currently the legal representative of the Original Shareholders in the Pakistan Proceedings. He is also the Chairman of the SECP Policy Board which appears to create a conflict of interest which has, to the Petitioner's knowledge, not been addressed or resolved. The inference that falls to be drawn is that Mr Mehmood Mandviwalla (consistent with the duties he owes to the Original Shareholders) is seeking to advance the interests of the Original Shareholders through his role as Chairman of the SECP Policy Board. Accordingly, and for the reasons set out above in relation to the acts of the SECP and the Original Shareholders' response to the same, this is a further instance of the Original Shareholders acting against the interests of KEL, KESP and, through them, the Petitioner.

Meeting and communication with the governmental and regulatory bodies in Pakistan

69. The Original Shareholders have been meeting and communicating with the government of Pakistan and government and regulatory entities with a view to causing those bodies to take steps to prevent the Petitioner appointing its nominees to the Board of KEL and/or to take steps to frustrate the Transaction.

The Cayman Anti-Suit Proceedings

70. In response to the Pakistan Proceedings, on 24 November 2022 the Petitioner issued proceedings in this Honourable Court seeking injunctive and associated relief against the Original Shareholders pursuant to their breach of clause 25.2 of the SHA ("**the Cayman Anti-Suit Proceedings**").
71. On 1 February 2023, the Grand Court (Segal J) made an order granting interlocutory injunctive relief in favour of SPV 21 ("**the Judgment**") and directing that a hearing take place at which an application for permanent injunctive relief could be considered. That hearing took place on 31 March and 3 April 2023 and a decision is awaited from the Grand Court of Cayman. As a consequence of the order of 1 February 2023, the Original Shareholders have been unable to take any further steps in the Pakistan Proceedings.

72. On 20 February 2023, Dillon Eustace, the Petitioner's attorneys, wrote to Bedell Cristin, the attorneys acting for the Original Shareholders, opining that the Judgment was unequivocal and represents a clear signal by the Court to the Original Shareholders that their arguments are futile and bound to fail and calling upon the Original Shareholders to, *inter alia*, withdraw the Pakistan Proceedings.

The AIML/SVGL proceedings against KESP

73. By Claim Form issued in the High Court of England and Wales on 21 March 2023 December 2023 AIML and SVGL have brought a claim against KESP ("**the AIML Proceedings**") in the sum of US\$41,446,114.00 which it is claimed is owed to AIML in respect of services that AIML provided to KESP, and expenses that AIML incurred on KESP's behalf ("**the KESP Payable**").
74. As part of the Transaction, AIML:
- a. Sold absolute title in the KESP Payable excluding the amount of US\$1,139,526 which AIML is liable to reimburse to the Fund; and
 - b. Received an assignment of the part of the KESP Payable which had been sold to SVGL and all causes of action in relation to it, as part of the security granted by Sage for the consideration payable by Sage.
75. AIML brings the AIML Proceedings as creditor in law. In the strict alternative, each of AIML and Sage claim payment of the parts of the KESP Payable due to them and/or damages for breach of contract and/or restitution according to their respective entitlements as assignor and assignees as applicable.
76. Pursuant to clause 6.2 of the SHA, it was agreed that the shareholders of KESP would procure that, on or before completion, KEL or KESP would enter into a services contract with the Petitioner, AIML or another member of the Abraaj Group, which would provide for the payment of a service fee of USD\$10 million per-annum to the Petitioner, AIML or another member of the Abraaj Group. It was agreed that the fee would be payable each year, except where KEL or KESP (as applicable) did not have sufficient funds available from cash operating profits to make such payment, in which case US\$5 million would be deferred, with any deferred amounts to be payable no later

than the date of complete exit by Abraaj or the date of the termination or expiry of the services contract or its assignment.

77. Against that background, on 18 May 2009, AIML and KESP entered into a written contract (the Consultancy Services Agreement, “CSA”), with a retrospective effective date of 1 January 2008. The KESP Payable and the AIML Proceedings arise out of and relate to the CSA.
78. KESP has repeatedly acknowledged its indebtedness in relation to the KESP Payable and there is no good defence to the AIML Proceedings. Notwithstanding this, and notwithstanding it being in the interests of KESP to either pay the KESP Payable or enter into a negotiated settlement in respect of the same, the Original Shareholders have taken steps to prevent KESP from either paying the KESP Payable or entering into a settlement in respect of the same. Further particulars in this regard are set out below.

Disruption to the functional operation of KESP and KEL

79. On 2 November 2022, Mr Moonis Alvi, a director and CEO of KEL, sent an email to Mr Skelton and Mr Ashary with the subject line of ‘*KE First*’ in which he highlighted the importance for the shareholders of KESP to resolve the ongoing issues and focus on KEL operational issues.
80. On 7 November 2022, Mr Schwarzmiller sent an email to all Board members requesting that they attend at an unofficial meeting on 10 November 2022 to discuss ongoing issues at KESP. Mr Ashary replied stating that he would not attend, without providing an explanation. On 10 November 2022, no directors nominated by the Original Shareholders formally attended the meeting with the exception of Mr Farooki who attended only “*as an observer*”.
81. On 3 February 2023, Mr Schwarzmiller gave notice of a Board meeting to be held on 13 February with the following agenda items to be discussed.
- SECP – KESP Form 44 / Regulatory Submissions - Rashid Sadiq Presentation
 - KESP Governance – Chairman casting vote
 - Payable to AIML – Current Standstill Agreement – KESP Reply to AIML
 - Change of Banking Mandate Signatures

The following supporting materials were also sent to the KESP Board:

- Form 43 2020 and accompany exhibits
- KESP Ownership chart Pre and Post SVGL
- KESP Chairman Vote – KC Arden Exchange
- Banking Mandate

On 13 February 2023, the meeting took place.

82. On 25 May 2023, Mr Schwarzmiller gave notice of a board meeting to be held on 12 June 2023⁴ with the following agenda items to be discussed:

- KESP Mandate re SEP Negotiation
- IGCF Fund Update
- KESP Payable to AIML
- Committee Formation
- KESP Winding Up

83. On 25 May 2023, Mr Ashary emailed Mr Skelton, copying the directors of KESP, stating *inter alia* that he was “*extremely concerned*” about:

- i. Mr Skelton’s contact with SEP on behalf of KESP relating to the previously proposed transaction to acquire KESP’s shareholding in KEL;
- ii. Mr Skelton’s contact with third parties;
- iii. Alleged conflicts of interest; and
- iv. The need for KESP to appoint new legal counsel in relation to the AIML Proceedings and for an ad-hoc committee to be created to consult such counsel which consists solely of directors nominated by the Original Shareholders due to alleged conflicts of interest.

84. On 6 June 2023, Mr Farooki emailed Mr Schwarzmiller, copying the directors, stating, *inter alia*, that the agenda circulated for the meeting on 12 June 2023 was unclear and

⁴ The notice also contained an offer for the meeting to be held on 1 June 2023 if short notice was accepted by the Directors, which it was not.

seeking various information “at least 5 business days in advance of the Board meeting”.

85. On 6 June 2023, Mr Habib Ullah Khan (“**Mr Khan**”), another director of KESP nominated by the Original Shareholders, emailed Mr Schwarzmiller, requesting “copies of all correspondence that you have had with AIML and / or Sage [SVGL] concerning the potential claim by AIML and / or Sage against KESP”. Mr Khan further stated that the “correspondence should include any correspondence from AIML pursuant to which it has provided copies of the draft particulars of claim” and should be provided as a matter of urgency. He also expressed his agreement that new counsel should be hired.

86. On 6 June 2023, Mr Abdul Aziz Hamad Al-Jomaih (“**Mr Al Jomaih**”), another director of KESP nominated by the Original Shareholders, emailed the directors of KESP stating:

“We need to engage Fieldfisher as soon as possible and directors appointed by OS should instruct Fieldfisher to look into this matter urgently”

87. On 7 June 2023, Mr Skelton sent an email to Mr Ashary, copying the directors, rejecting the various allegations made by Mr Ashary in his emails of 25 May and 4 June 2023 and expressing his belief that as a result of the actions of the Original Shareholders, KESP was no longer functional as a viable entity and it would be in the best interests of its stakeholders to wind up the affairs of the Company and distribute its assets to its shareholders.

88. On 9 June 2023, in light of the various objections to the agenda items raised by the directors nominated by the Original Shareholders, Mr Skelton, as Chairman of the Board of Directors, cancelled the meeting scheduled for 12 June 2023, as suggested by Mr Farooki.

89. On 9 June 2023, Mr Farooki sent an email to Mr Schwarzmiller stating:

“I do not agree to the cancellation of the scheduled meeting. As noted in my e-mail the appropriate course is that the Board Meeting scheduled for Monday proceed but for the limited purpose of considering and approving the appointment of legal

counsel. This is the only matter that the Board has adequate information to consider. It is also urgent and requires immediate consideration – the deferral of that decision risks the company suffering substantial prejudice. The balance of the items can be deferred until the appropriate documents and materials have been circulated and/or the agenda clarified. Please re-instate the calendar invitation. Alternatively, we can schedule a separate invitation.”

90. On 9 June 2023, Mr Skelton replied to Mr Farooki, copying the Board of directors, stating, *inter alia*:

“As Chairman of KESP, I convened the Board meeting on the 12 June 2023 and I requested the cancellation. I deem this meeting has been cancelled. Should you wish to request a Board meeting, please send a formal request with agenda. We will add our agenda items.”

91. On 9 June 2023, Mr Casey McDonald (“**Mr McDonald**”), the sole director of the Petitioner, wrote to Mr Skelton, in his role as Chairman of the Board of Directors of KESP, stating, *inter alia*, that:

- i. The Original Shareholders were in continuing breach of the SHA which was causing prejudice and damage to the interests of KESP;
- ii. The Petitioner did not support the proposal by the directors of the Original Shareholders for “*independent counsel*” to be engaged by KESP or for an ad-hoc committee to be created to consult such counsel which consists solely of directors nominated by the Original Shareholders;
- iii. He was disappointed that there had been an outright rejection of a proposal made to Mr Ashary by Mr Skelton to address all matters including ongoing issues with the Board of Directors of KESP; and
- iv. Given the breakdown in the relationship between the Petitioner and the Original Shareholders, the only logical path forward would be for the shareholders of KESP to resolve to put the company into liquidation in order to allow a liquidator to independently deal with the company’s affairs going forward.

92. On 10, 11 and 12 June 2023, Mr Farooki sent further emails to Mr Skelton, copying the Board of KESP, stating that the 12 June cancelled meeting should proceed and defending the position of his fellow directors nominated by the Original Shareholders.
93. On 12 June 2023, despite the valid cancellation of the meeting by the Chairman of the Board, the directors nominated by the Original Shareholders held a meeting without any attendance by the Chairman of the Board. Subsequently, by email dated 12 June 2023, Mr Farooki sent an email to the Board of KESP stating:

“I write further to the Board meeting that was scheduled for 1pm today. I confirm that the call was opened at 1pm (UK). Those members of the Board that attended held a discussion for approximately 45 minutes. However, the quorum requirements were not met because the Chairman did not attend. Accordingly, the meeting is adjourned until 1pm on 19 June 2023. I will circulate a calendar invite shortly to the entire Board. The agenda for that call will be the same as previously communicated by the Chairman and Secretary albeit that, pending receipt of the documents and information requested it appears likely that only items 3 and 4 are capable of a vote (i.e., the appointment of Fieldfisher as UK counsel to KESP to advise on claims by AIML / Sage and formation of an unconflicted committee to oversee KESP response to claims by AIML / Sage).”

94. On 17 June 2023, Mr Skelton sent an email to Mr Farooki, copying the Board of KESP, stating the following:

“It is wholly unclear on what basis that you as a director are purporting to convene meetings of the Board of Directors of KESP. I refer you to Article 104 (a) of the company’s Articles of Association which states clearly that it is only the Chairman who is to convene meetings of the Board of Directors. It is open to a director to request that the Chairman schedules a meeting but no such request has been received – agreeing an agenda is not a requisition. I refer you also to Article 115 which states unequivocally that the Chairman can only be someone nominated by SPV 21. For the avoidance of doubt, the meeting of 12 June was cancelled by me as Chairman by virtue of my powers to do so at common law. Therefore, your unilateral decision to arrange a call on 12 June seemingly attended by only directors nominated by the Original Shareholders did not constitute a validly convened meeting under the company’s articles. Furthermore, the purported ‘adjournment’ of the meeting until 19 June is not valid given the 12 June meeting was not properly convened following my valid cancellation. In order to progress matters pragmatically, I, as Chairman, am

prepared treat the call on 19 June 2023 at 1pm as a newly-called meeting all directors attend and agree to an abridged notice period. This shall be clearly reflected in the minutes. As is the norm, the Company Secretary of KESP shall circulate a new dial-in for 1pm on Monday and this meeting will be recorded.'

95. A meeting invite was subsequently circulated by Mr Jonathan Richardson (“**Mr Richardson**”), a colleague of Mr Skelton to the Board of KESP to be held at 1 p.m. (GMT) on 19 June 2023.

96. On 18 June 2023, Mr Farooki wrote to Mr Skelton stating:

“I disagree with the characterisation of events contained in your e-mail below and your conclusions.

The mechanism for calling Board meetings is provided in the Articles of Association of the Company. As a director, I have the right to require the Chairman to convene the meeting of the Board. The Chairman validly called a meeting for 1pm on 12 June 2023. Once validly called, I required it to proceed in accordance with the Articles of Association. Regardless, the Articles of Association do not provide for the cancellation of any meetings. Your e-mail below accepts implicitly that there is no such right under the Articles of Association and, instead, contains a vague reference to your “powers to do so at Common Law”. I have sought my own legal advice and understand that there is no other legal basis that would permit you to cancel the meeting unilaterally (whether “at Common Law” or otherwise). The rights and obligations of the company and its directors with respect to meetings are contained in the Articles of Association. Those Articles have been agreed by the shareholders and replace entirely the default provisions that would otherwise be provided for by law. They do not include any “power” for you to unilaterally cancel a meeting validly called in circumstances where other directors wish for it to proceed. Instead, you have the right not to attend in which case the quorum requirements will not be met and the provisions of Article 106 apply.

In any event, the meeting did proceed at 1pm on 12 June 2023. The requisite quorum did not exist at that time solely because you as Chairman did not attend. In accordance with Article 106 of the Articles of Association, those that did attend waited the requisite period before adjourning the meeting to the same time the following week. The meeting scheduled for tomorrow occurs because it is required by Article 106 not because I am “purporting to convene” such a meeting nor am I taking a “unilateral” decision to convene the meeting.

The adjourned meeting will, therefore, proceed at 1pm on 19 June 2023 using the Zoom link included in the calendar invite that I circulated earlier. At that meeting we will consider the appointment of Fieldfisher as legal counsel to KESP and the mechanism by which their fees will be paid. All directors have received the invitation that I sent and can join.

Your e-mail below purports to call a new meeting on less than 48 hours’ notice. I do not consent to the abridged notice and, quite frankly, I find it bizarre that you would

circulate an alternative invitation for a parallel meeting of the Board. Should you wish to call a new meeting, then you are required to comply fully with Article 104.”

97. On 18 June 2023, the Petitioner formally replaced KP Corporate Director Ltd (who had habitually been represented by Mr Keiran Hutchinson) as one of its nominated directors on the Board of KESP with Mr Adeeb Ahmad in accordance with clause 5.3 of the SHA (as amended). Further, each of the four directors nominated by the Petitioner signed a proxy form authorising Mr Skelton to act on their behalf at any meetings held by the Board of KESP on 19 June 2023.
98. On 19 June 2023, shortly before the meetings, Mr Al Jomaih wrote directly to Mr Skelton making various serious allegations about alleged breaches of Mr Skelton’s fiduciary duties to KESP and calling upon him to resign.
99. On 19 June 2023, the Chairman opened the meeting at 1 p.m. (GMT) in accordance with the invitation sent by Mr Richardson. No directors nominated by the Original Shareholders attended on the call. At the same time, the Chairman dialled into the meeting which had been circulated by the Original Shareholders. On that call, the following occurred:
- (a) Mr Skelton clarified that he did not recognise the meeting as an official Board meeting and that he held proxies from the four directors nominated by the Petitioner, namely Shaheryar Chishty, Darin Baur, Samir Chishty and Mr Ahmad;
 - (b) The directors nominated by the Original Shareholders challenged the authenticity of the proxies and Mr Ahmad’s appointment;
 - (c) Mr Farooki repeatedly attempted to dictate the agenda of the meeting and only wanted to cover items 3 and 4, namely the alleged conflicts of interest of directors nominated by the Petitioner and the purported need to engage new legal counsel;
 - (d) Mr Skelton went through the original agenda that was proposed, as follows:

SEPC Update

- Mr Ashary and Mr Skelton both gave updates on any prior correspondence they had had with SEPC.
- Mr Khan stated that he did not want to incur any future costs on the SEPC transaction.

IGCF Fund update

- Mr Skelton chose to skip this agenda item as it was only included as a courtesy and there were more pressing matters to deal with.

KESP Payable

- Mr Skelton requested that the directors nominated by the Original Shareholders declare any conflicts they had in relation to this issue. In response, the directors nominated by the Original Shareholders repeatedly stated that only the directors nominated by the Petitioner were conflicted and should abstain / not be allowed to vote.
- The Original Shareholders called a vote for new legal counsel to be appointed. The five directors nominated by the Original Shareholders voted in favour of appointing counsel and Mr Skelton voted against the resolution for himself and the four proxies he held. Accordingly, the purported motion did not carry.
- Mr Mubasher H Sheikh stated that the directors nominated by the Original Shareholders were “*very disappointed*” and would be taking legal advice and proceed to appoint new counsel if that advice provides that the directors nominated by the Petitioner were conflicted.
- Mr Farooki further stated that they would fund the appointment without recourse to KESP.

At the conclusion of the meeting, Mr Skelton asked Mr Farooki to send him the transcript as Mr Farooki had earlier confirmed that the meeting was being recorded. Mr Farooki agreed and asked for “*supporting documents of the resignation and appointment*” of a new director nominated by the Petitioner. As of the date of this Petition, no transcript was ever provided by Mr Farooki. As a result, the Chairman has prepared his own transcript based on a recording taken of the meeting.

100. On 21 June 2023, Mr McDonald wrote to Mr Al Jomaih on behalf of the Petitioner stating, *inter alia*, that:
- i. any future correspondence in respect of Mr Skelton’s role as a KESP director be addressed to the Petitioner;
 - ii. the allegations against Mr Skelton as a director nominated to the Board of KESP by the Petitioner in accordance with the SHA were rejected;
 - iii. the letter constituted a further unwarranted personal attack on Mr Skelton which was seemingly part of a malicious campaign of disruption and intimidation by Al Jomaih and its affiliates against the Petitioner and its directors on the KESP Board;
 - iv. the Original Shareholders had not constructively engaged with the open offer made by the Petitioner to the Board of KESP on 9 June 2023; and
 - v. the Petitioner was concerned about potential breaches by Mr Ashary of Section 452 of the Companies Act (2017) of Pakistan through his failure to make certain disclosures regarding shareholdings and directorships in certain foreign companies based outside Pakistan to the SECP.
97. On 29 June 2023, Mr Farooki circulated a document purporting to be the ‘minutes’ of the meeting on 19 June 2023 despite having no authority to do so.
98. On 5 July 2023, Campbells Corporate Services Ltd sent a copy of the updated Register of Directors of KESP to the KESP Board of directors to reflect the appointment of Mr Ahmad on 18 June together with copies of the appointment and removal documents.
99. On 6 July 2023, Mr Skelton, as Chairman of the KESP Board, circulated Summary Notes of the Conference Call held on 19 June 2023 to the KESP Board.

Other conduct leading to a breakdown in trust and confidence

99. The Petitioner suspects that separate to the Pakistan Proceedings and the Cayman Anti-Suit Proceedings, the Original Shareholders, through WCL, have recently commenced a campaign to elicit information from the IGCF GP to aid them in those proceedings and possible future litigation in a bid to disrupt the Transaction and the orderly running of KESP.
100. On 26 May 2023, WCL wrote to IGCF GP pursuant to Clause 9.1 of the Deed of Limited Partnership seeking to inspect the books and records of IGCF GP at its registered office in the Cayman Islands. Further correspondence has since been exchanged between IGCF GP and WCL regarding the nature and purpose of this request together with related requests for further documentation and information pursuant to the Exempted Limited Partnership Act (2021) (“**the ELPA**”).
101. The Petitioner is aware that IGCF GP is concerned about the underlying motives of WCL’s request for access to the books and records of the Partnership given the clear links between that entity and Al Jomaih. In this regard, the following should be noted:
- i. The Al Jomaih Group has previously informed other limited partners of the GP that it holds an interest as a limited partner through WCL;
 - ii. The author of the letters from WCL is also an employee of Al Jomaih;
 - iii. The WCL correspondence is being sent from an Al Jomaih email address; and
 - iv. The representative who attended at the registered office of the Partnership is Ms Laura Hatfield of the Bedell Cristin, the same legal representative Al Jomaih has engaged in the Cayman Anti-Suit Proceedings.
102. On 21 June 2023, IGCF GP was served with a Request for Arbitration by lawyers engaged by WCL, purportedly in accordance with clause 11.8 of the Deed of Limited Partnership. The Request seeks various reliefs including an order for specific performance of clause 9.1 by IGCF GP and relief under the EPLA.
103. WCL has also issued proceedings in the Grand Court of the Cayman Islands (FSD 178 of 2023) seeking equivalent relief and an Originating Summons was served on its behalf on IGCF GP on 23 June 2023.

104. The General Partner is deeply concerned that the request by WCL is not “*for a purpose reasonably related to the Limited Partner’s interest as a Limited Partner of the Partnership*” as prescribed by Clause 9.1 and is likely in fact to be an improper and collateral attempt to gain and use confidential partnership information to aid Al Jomaih, either alone or with Denham, in proceedings against the Petitioner and/or in pursuing the serious (but misconceived) allegations set out in the AJ 5 July 2023 Letter. Given the economic interest held by the IGCF GP in the Petitioner, this would clearly be against the interests of Partnership.

Grounds for winding up KESP

105. In the premises, the Petitioner seeks a winding up order for KESP on the basis that it is just and equitable to wind it up on one or more or all of the following grounds.

Ground 1: Breach of legitimate expectations

106. The Petitioner had a legitimate expectation that KESP would be managed and administered in accordance with its objects and the terms of the SHA and in order to promote the success of KESP and KEL. By reason of the foregoing, that legitimate expectation has been frustrated and breached. In particular,

- a. The Board of KESP is no longer functional (as to which see further Ground 2 below) rendering KESP incapable of pursuing its objects.
- b. The Original Shareholders have acted and continue to act in repeated breach of the terms of the SHA including, in particular, by
 - (a) Blocking the Petitioner’s nominated appointments to the Board of KEL;
 - (b) Issuing and maintaining the Pakistan Proceedings; and
 - (c) Resisting the Cayman Anti-Suit Proceedings.
- c. The Original Shareholders have acted so as to block the efficient administration and management of KESP’s affairs.
- d. By reason of the acts of the Original Shareholders, KESP is itself in breach of its obligation to appoint directors to the Board of KEL.

e. The Original Shareholders are acting against the interests of KESP and KEL.

Ground 2: Functional deadlock

107. By reason of the foregoing, the Board of KESP is effectively deadlocked with the result that the management and operation of KESP itself is in functional deadlock, preventing it from pursuing its objects. This is effectively admitted (and indeed asserted, albeit on erroneous grounds) in the AJ 5 July 2023 Letter.

Ground 3: Breach of legal bargain

108. By reason of the foregoing, there has been a breach or breaches of the legal bargain pursuant to which the Petitioner and the Original Shareholders became shareholders in KESP.

Ground 4: Breakdown of quasi-partnership

109. KESP amounted to a quasi-partnership between the Original Shareholders and the Petitioner (and through it, the Fund). By reason of the conduct of the Original Shareholders, the relationship of trust and confidence between the shareholders has broken down irretrievably. As a result, it is now impractical for KESP to be managed and administered effectively or at all in pursuit of its objects.

Ground 5: Loss of substratum

110. KESP has lost its substratum by reason of the fact that the main objects for which it was formed, namely the object of owning and exercising rights in KEL have been frustrated, are incapable now of being fulfilled effectively and are now impractical.

THE PETITIONER THEREFORE HUMBLY PRAYS THAT:-

- (1) KESP be wound up in accordance with section 92(e) of the Companies Act.
- (2) Mr John Royle and Margot MacInnis of Grant Thornton Cayman be appointed as Joint Official Liquidators of KESP (the “**Joint Official Liquidators**”) and be granted the power to act jointly and severally.
- (3) The Joint Official Liquidators shall not be required to give security for their appointment.

- (4) The Joint Official Liquidators shall be authorised to take any such action as may be necessary or desirable to obtain recognition of the Joint Official Liquidators and/or their appointment in any other relevant jurisdiction and to make application to the courts of such jurisdiction for that purpose.
- (5) The Joint Official Liquidators be authorised to take such steps as may be necessary or expedient for the protection of KESP's assets and, for that purpose, may exercise any power conferred on them by section 110 and Part I, paragraphs 10 (power to engage staff) and 11 (power to engage attorneys and other professionally qualified persons) and Part II of the Third Schedule of the Companies Act without further sanction or intervention of the Court and, for the avoidance of doubt, may exercise those powers within or outside the Cayman Islands.
- (6) The Joint Official Liquidators' remuneration and expenses be paid out of the assets of KESP in accordance with the Insolvency Practitioners' Regulations 2008 (as amended) and the Companies Winding Up Rules, 2008 (as amended) (the "CWR").
- (7) No disposition of KESP's property by or with the authority of the Joint Official Liquidators in carrying out their duties and functions and the exercise of their powers under the order appointing them shall be voided by virtue of section 99 of the Companies Act.
- (8) No suit, action or other proceeding shall be commenced or proceeded with against KESP except with the leave of the Court and subject to such terms as the Court may impose.
- (9) The Joint Official Liquidators shall have the authority and are directed to take possession of, collect and get in any property of KESP and for that purpose to take any proceedings in any jurisdiction that they consider necessary.
- (11) The Joint Official Liquidators have authority the power to make capital calls to pay liabilities of KESP (including the KESP Payable) as they see fit.
- (12) The Joint Official Liquidators be at liberty to appoint counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit and to remunerate them out of the assets of KESP in accordance with CWR Order 25.

- (13) The Joint Official Liquidators shall be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of KESP as an expense of the liquidation.
- (14) The Joint Official Liquidators shall be at liberty to apply generally to the Court to make such orders for regulating the future conduct of the affairs of KESP as the Court shall see fit.
- (15) The Joint Official Liquidators shall be at liberty to apply generally.
- (16) The cost of and incidental to the Petition shall be paid forthwith out of the assets of KESP as an expense of the liquidation.
- (17) Such further order or relief be granted as the Court deems appropriate.

AND your Petitioner will ever pray etc.

Dated the 7th day of July 2023

Filed the day of July 2023



Dillon Eustace Cayman
Attorneys-at-Law for the Petitioner

NOTE:

This Petition is intended to be served on:

- The Company of c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010 Cayman Islands;
- Al-Jomaih Power Limited, a Cayman-registered entity, of 89 Nexus Way, Camana Bay, P.O. Box 31106, Grand Cayman, KY1-1205, Cayman Islands; and
- Denham Investment Ltd, a Cayman-registered entity, of (through its duly authorised representative) PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands

THIS PETITION was filed by Dillon Eustace Cayman, the Attorneys-at-Law for the Petitioner of Landmark Square, West Bay Road, Grand Cayman.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts,
George Town, Grand Cayman, on 2023 at 10.00 a.m.

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, telephone +1 (345) 949 4296.

THIS PETITION was filed by Dillon Eustace Cayman, the Attorneys-at-Law for the
Petitioner of Landmark Square, West Bay Road, Grand Cayman.