



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**CAUSE NO. FSD:                      OF 2023 (IKJ)**

**BETWEEN:**

- (1) ABRAAJ SPV 108 LIMITED**
- (2) ABRAAJ SPV 127 LIMITED**

**PLAINTIFFS**

**AND:**

**IGCF SPV 21 LIMITED**

**DEFENDANT**

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**WRIT OF SUMMONS**

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**TO:    IGCF SPV 21 LIMITED** c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman, Cayman Islands.

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiffs in respect of the claim set out on pages 3 to 21.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495, George Town, Grand

Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 18<sup>th</sup> day of August 2023

**NOTE** – This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

**STATEMENT OF CLAIM****Parties**

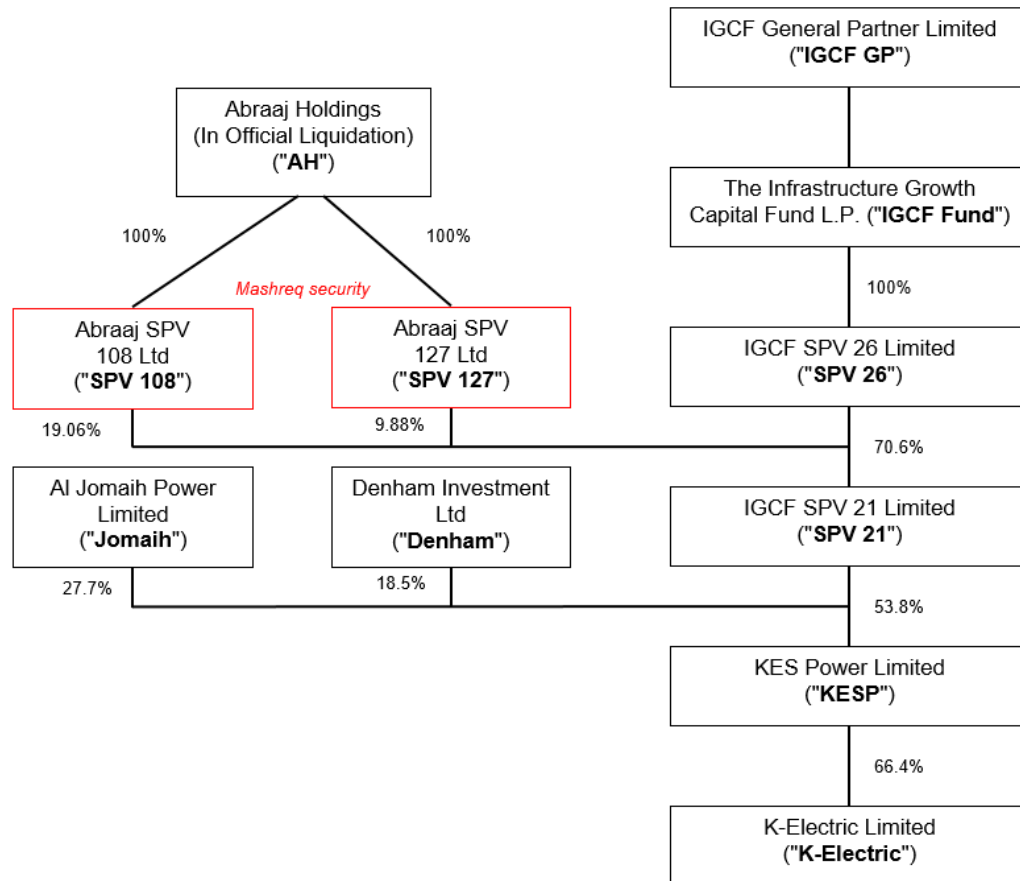
1. The First Plaintiff, Abraaj SPV 108 Limited ("**SPV 108**"), is a company incorporated in the Cayman Islands under company number 283738 with its registered office at Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9008 Cayman Islands.
2. The Second Plaintiff, Abraaj SPV 127 Limited ("**SPV 127**", and together with SPV 108, the "**AH Parties**"), is a company incorporated in the Cayman Islands under company number 313469 with its registered office at Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9008 Cayman Islands.
3. On 12 November 2019, pursuant to a Deed of Appointment entered into with Mashreqbank PSC (the "**Bank**"), Keiran Hutchison and Hani Bishara in their capacities as joint receivers (the "**Joint Receivers**") were appointed over the issued share capital of each of the AH Parties (the "**Appointment**").
4. The Defendant, IGC SPV 21 Limited ("**SPV 21**"), is a company incorporated in the Cayman Islands under company number 205619 with its registered office at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands.
5. Since 29 March 2019, at all material times, the sole director of SPV 21 has been ADV 2 Limited ("**ADV 2**"). At all material times, the sole director of ADV 2 has been Casey McDonald.
6. Until October 2022, the shareholders in SPV 21 were:
  - (a) the AH Parties, as two subsidiary companies of Abraaj Holdings Ltd (now in liquidation) ("**AH**"), hold 28.94% of SPV 21's shares, with SPV 108

holding 19.06% of SPV 21's shares and SPV 127 holding 9.88% of SPV 21's shares; and

- (b) as to the majority interest (70.6%), IGCF SPV 26 Ltd ("**SPV 26**") a Cayman SPV in which Abraaj Investment Management Ltd ("**AIML**") (also now in liquidation) had a majority derivative interest via its 75.5% interest in IGCF General Partner Ltd (the ultimate holding company of SPV 26) ("**IGCF GP**").
7. In the circumstances pleaded in paragraph 32 below, AIML's derivative interest in SPV 21 was transferred to Sage Venture Group Limited ("**Sage**") in late 2022.

#### **The KESP Structure**

8. The Appointment of the Joint Receivers took place when the Bank enforced its security it held in connection with various financing arrangements with the Abraaj Group. The AH Parties are companies which were wholly owned subsidiaries of AH, and were (and are) positioned within a corporate structure (the "**KESP Structure**") which held at all material times and holds a 66.4% interest in K-Electric Limited ("**K-Electric**"), an energy supply company in Karachi, Pakistan which owns a power plant which supplies electrical power to customers in and around Karachi. The KESP Structure (at all material times) is summarised as follows:



9. Jomaih and Denham (together, the "**Original Shareholders**"), together with SPV 21, were joint venture partners in relation to the ownership and operation of K-Electric (via KESP).
10. At all material times KESP has been a Cayman Islands exempted company with registered number 152644. As indicated by the structure chart above, the shareholders in KESP were and have been at all material times:
  - (a) SPV 21 as to 53.8%; and
  - (b) the Original Shareholders as to the balance of 46.2%.

**The KESP M&A**

11. KESP's Memorandum and Articles of Association (adopted by special resolution dated 18 May 2009 and most recently amended by special resolution dated 5 January 2021) (the "**KESP M&A**") provides, and provided at the material times, that the KESP Board shall be comprised of up to ten directors.
12. At all material times, Regulation 84 of the KESP M&A ("**Reg 84**") provided that:

*"Abraaj may appoint up to five Abraaj Directors and remove from office any Abraaj Director and appoint another in his place."*
13. The term "Abraaj Directors" was and is defined in the KESP M&A as:

*"such five persons (or less) as have been appointed in writing by Abraaj to act as Abraaj Directors"*
14. The term "Abraaj" was and is defined in the KESP M&A as meaning SPV 21.
15. The Original Shareholders enjoyed a similar power (under Regulations 85 and 86 of the KESP M&A) together to appoint up to five directors of KESP, and to remove from office any such director and appoint another in his place.

**Replacement of Abraaj Directors following collapse of Abraaj Group**

16. Following the collapse of the Abraaj Group, the representatives from Abraaj who previously acted as the "Abraaj Directors" of KESP were removed and replaced by individuals representing the interests of various stakeholders and/or creditors of the Abraaj Group.

**The Deed**

17. Following their Appointment, the Joint Receivers entered into discussions with SPV 21 regarding the possibility of a representative of the AH Parties being

appointed to the KESP Board. SPV 21 required that the AH Parties provide funding to SPV 21 and KESP to cover operational expenses and in exchange SPV 21 would appoint a nominee of the AH Parties to the KESP Board. Accordingly, on 30 September 2020, a payment deed (the "**Deed**") was entered into between the AH Parties, SPV 21, SPV 26 and IGCF GP (collectively, the "**Deed Parties**"). Pursuant to and under the terms of the Deed:

- (a) SPV 21 agreed (as explained further below) to and did appoint as one of the five Abraaj Directors a company nominated by the Joint Receivers, namely KP Corporate Director Ltd ("**KP Corporate Director**"). At all material times KP Corporate Director has been and is a Cayman Islands company of which the Joint Receivers were and are sole directors. That appointment was made on 12 October 2020.
- (b) As set out at paragraphs 19 to 25 and 27 below, the AH Parties agreed to and have made substantial loans to SPV 21 to enable both SPV 21 and KESP to meet operational expenses. The total of the loans so advanced is US\$1,291,258.08.

18. The AH Parties will rely on the terms of the Deed for its full terms and legal effect.

#### **Relevant terms of the Deed**

19. By Clause 1 (Payment Obligations) of the Deed, the AH Parties agreed to provide a substantial shareholder loan to SPV 21 for the purposes of enabling SPV 21 and KESP to meet certain operational costs in the following terms:

##### **1. PAYMENT OBLIGATIONS**

1.1 *The AH Parties hereby agree to advance by way of shareholder loan to SPV 21 the following sums in order to enable SPV 21 and KESP to meet certain operational expenses:*

1.1.1 *an aggregate amount of US\$509,760 in respect of the AH Parties' share of operational costs for 2019, such costs*

having already been paid by IGCF (the "**2019 Operational Costs**");

1.1.2 an aggregate first tranche payment of US\$316,324 in respect of the AH Parties' share of known and estimated operational costs for the period between January and May 2020 (the "**H1 2020 Operational Costs**").

1.1.3 an aggregate second tranche payment in respect of the AH Parties' share of operational costs for 1 June 2020 to 31 December 2020 based on the 2020 Budget for KESP to be approved at a KESP board meeting, to the maximum capped amount of US\$150,000 (the "**Capped H2 2020 Operational Costs**").

(together, the "**Advanced Sums**").

1.2 The AH Parties shall be liable to reimburse IGCF for the AH Parties' pro rata share of certain costs incurred by SPV 21 and paid by IGCF, including director fees for the board of directors of KESP and SPV 21 respectively, IT costs, and filing fees (the "**SPV 21 2019 / H1 2020 Costs**"). The Parties hereby acknowledge that the SPV 21 2019 Costs shall for the period 1 January 2019 to 31 May 2020 form part of the 2019 Operational Costs and the H1 2020 Operational Costs collectively, and the AH Parties will not be liable to advance sums in excess of the amounts advanced pursuant to clauses 1.1.1 and 1.1.2 above to cover the SPV 21 2019 / H1 2020 Costs.

1.3 To the extent that certain operational costs are incurred by SPV 21 for the period between 1 June 2020 and 31 December 2020 (the "**SPV 21 H2 2020 Costs**"), the AH Parties' pro rata share of such costs shall be included within the Capped H2 2020 Operational Costs and the AH Parties will not be liable to advance sums in excess of the Capped H2 2020 Operational Costs to cover the SPV 21 H2 2020 Costs.

1.4 For the avoidance of doubt, the Advanced Sums shall be capped at a total sum of US\$976,084 (the "**Payment Cap**") and the AH Parties shall not be liable to pay any sums to SPV 21 in excess of the Payment Cap.

20. Clause 2 (Repayment Obligations) of the Deed provides that the sums advanced to SPV 21 by the AH Parties under the Deed shall be treated as a liability of SPV 21 and shall be repaid following receipt by SPV 21 of any proceeds arising from the sale of K-Electric or otherwise.

21. Clause 3 (Future Funding of Operational Costs) of the Deed provides as follows:

**3. FUTURE FUNDING OF OPERATIONAL COSTS**

3.1.1 *Subject to the AH Parties first having provided their approval in writing (such approval being at the sole and absolute discretion of the AH Parties), the AH Parties shall pay their pro rata share of operational costs for 2021 and subsequent years in accordance with the relevant budget approved by the KESP board of directors or the SPV 21 board of directors as the case may be (the "**Future Funding Costs**").*

3.1.2 *Upon receipt of the written approval of the AH Parties of any Future Funding Costs, the AH Parties shall pay such sums to an account specified by SPV 21 within 10 business days of receipt of a written demand from SPV 21.*

3.1.3 *Subject to the terms of clauses 3.1 and 3.2 and without prejudice to the AH Parties' right to withhold their approval as regards the payment of any Future Funding Costs, to the extent actual costs incurred for a period differ from the budgeted costs, the Parties hereby acknowledge that the difference will be carried forward as either a credit or debit (as the case may be) against any future funding request. Noting the Parties' expectations that actual costs should not exceed budgeted costs, the Parties shall provide written notice of such differences to each Party to this Deed as soon as such differences have been identified.*

22. By Clause 4 (KESP Directorship Obligations) of the Deed, in return for the shareholder loans advanced under the Deed, SPV 21 agreed to the appointment of a designated nominee of the AH Parties as a director of KESP (the "**AH Director**"), in the following terms:

#### 4. KESP DIRECTORSHIP OBLIGATIONS

- 4.1 *The payment obligations of the AH Parties as set out in clause 1 of this Deed are conditional on:*
- 4.1.1 *the resignation of Adeeb Ahmad as a director of KESP;*
  - 4.1.2 *the appointment of a designated nominee of the AH Parties as a director of KESP (the "AH Director"); and*
  - 4.1.3 *the AH Parties having been provided with a stamped copy of the updated register of directors of KESP confirming the resignation of Adeeb Ahmad and the appointment of the AH Director to the board of directors of KESP,*  
  
*(together, the "Conditions").*
- 4.2 *If all the Conditions are not satisfied on or before the date falling 30 days after the date hereof then, except for clause 6.1 (governing law and jurisdiction) all the provisions of this Deed shall terminate and cease to have effect.*
- 4.3 *Immediately following the execution of this Deed, the AH Parties shall submit all necessary "know your client" and related documentation in relation to the AH Director to Campbells Corporate Services Limited in its capacity as the registered office provider for KESP.*
- 4.4 *The AH Parties shall ensure that the AH Director, which may be a corporate entity, is and remains at all relevant times a person or entity of good standing with the appropriate skills and experience to hold a position as director of KESP. If the AH Director is a corporate entity, the director of the corporate entity must also be and remain at all relevant times a person of good standing with the appropriate skills and experience to hold a position as director of KESP.*
- 4.5 *The AH Parties shall procure that the AH Director shall exercise his fiduciary duties in accordance with Cayman Islands law.*
- 4.6 *IGCF acknowledges the parties to this Deed have a common interest in the operations of K-Electric and the status and progress of the prospective sale of KESP's stake therein to Shanghai Electric Power Limited. SPV 21 agrees to use its rights and powers as*

*shareholder, so far as reasonable, to ensure that the AH Director has access to information in relation to the matters referred to in the preceding sentence consistent with the AH Director's position as a director of KESP. The Parties acknowledge that, in accordance with the Articles of Association of KESP, SPV 21 has discretion in relation to the appointment and removal of the Abraaj Directors as defined in the Articles of Association of KESP."*

23. Recital (H) of the Deed further provides that "*In return for the funding of the Advanced Sums (as defined below), SPV 21 has agreed to the appointment of the AH Director to the Board of KESP*".
24. Clause 6 (Governing Law and Jurisdiction) of the Deed provides that it is governed by Cayman Islands law.
25. The Deed does not contain an entire agreement clause.

#### **Obligations of SPV 21 under the Deed**

26. On the true construction of Clause 4.6 of the Deed (alternatively the following falls to be implied into the Deed), the Deed Parties agreed that the discretion afforded to SPV 21 under Reg 84 to remove an Abraaj Director and appoint a replacement:
  - (a) Could not be exercised in respect of the person to be appointed pursuant to the Deed (i.e. KP Corporate Director) unless and until the amounts advanced by the AH Parties had been repaid, or earlier only if there was good cause to do so (e.g. an actual or threatened breach of fiduciary duty by KP Corporate Director);
  - (b) Would not be exercised in the interests of IGCF GP or SPV 26 (unless those interests aligned with those of the AH Parties);
  - (c) Would not be exercised otherwise than *bona fide* and for proper purposes;

- (d) Would not be exercised in an unreasonable, arbitrary, capricious or irrational manner;
- (e) Would only be exercised lawfully, rationally, in good faith and consistently with its contractual purpose;
- (f) Would not take into account irrelevant considerations; and/or
- (g) Would take into account only relevant considerations.

#### **Funding provided under the Deed**

27. As pleaded at paragraphs 17(b) and 19 to 25 above, the AH Parties duly provided the agreed funding under the Deed as set out in the following table:

Date	Amount (US\$) paid by the AH Parties under Clause 1 of the Deed.
22 October 2020	\$826,084.00
21 April 2021	\$58,591.00
11 August 2021	\$225,627.00
1 February 2022	\$85,562.05
10 August 2022	\$95,394.03
<b>Total</b>	<b>US\$1,291,258.08</b>

28. At the date hereof (and at all material times) the loans made by the AH Parties to SPV 21 have not been repaid.

#### **The Appointment of the AH Director**

29. As pleaded at paragraph 17(a) above, the Joint Receivers identified KP Corporate Director as the director to be appointed as the AH Director under Clause 4 (KESP Directorship Obligations) of the Deed, and on 12 October 2020, KP Corporate Director was appointed to the KESP Board as the AH Director.

30. At all material times since KP Corporate Director's appointment to the KESP Board, it (and its representative, Mr Hutchison) has always acted in the best interests of KESP and in accordance with its director's duties under Cayman Islands law. At no material time had there been any allegation against KP Corporate Director otherwise.
31. At no material time had there been any allegation against the AH Parties that they had acted in breach of or repudiated the Deed.

#### **Sale of AIML's interest in the KESP Structure**

32. In August 2022, the Joint Official Liquidators of AIML (the "**AIML JOLs**") entered into an agreement to sell its interests in the KESP Structure to Sage. Sanction for this sale was granted by the Grand Court on 10 October 2022. Since that time, Sage has controlled SPV 26, and through that ownership, it has had control of SPV 21 itself at all material times (the "**Sage Transaction**").

#### **The make-up of the KESP Board after the sale to Sage**

33. The identity of the directors of the KESP Board following the Sage Transaction was as follows:
  - (a) The directors appointed by the Original Shareholders (the "**OS Directors**") comprised:
    - (i) Abdulaziz H.A. Al Jomaih (nominating Mustafa Farooki as the alternate director);
    - (ii) Sulaiman H.M. Al Dalali (nominating Mubasher Hussain Sheikh as the alternate director);
    - (iii) Saad M.A. Al Saad (nominating Riyadh Edrees as the alternate director);

- (iv) Shan A. Ashary;
  - (v) M. Habib Ullah Khan;
- (b) The directors appointed as Abraaj Directors pursuant to Reg 84 were:
- (i) Mr Skelton, who was appointed on 30 March 2019. It is understood that, at all material times, Mr Skelton has been appointed to represent the interests of IGCF, of which Sage is the majority owner;
  - (ii) Sameer Arshad Chishty, who was appointed on 18 October 2022. At all material times Mr Sameer Chisty has been appointed to represent the interests of Sage;
  - (iii) Shaheryar Arshad Chishty, who was appointed on 18 October 2022. At all material times Mr Shaheryar Chishty has been appointed to represent the interests of Sage;
  - (iv) Darin Daniel Baur, who was appointed on 18 October 2022. At all material times Mr Baur has been appointed to represent the interests of Sage; and
  - (v) KP Corporate Director, who was appointed on 12 October 2020 in the circumstances set out above.

#### **Purported Removal of KP Corporate Director**

34. Following the Sage Transaction, a dispute arose between the Original Shareholders and SPV 21 regarding the transfer of control of SPV 21 to Sage (the "**Sage Dispute**").
35. On 9 June 2023, Simmons & Simmons, on behalf of AIML and Sage, served an English Particulars of Claim on KESP claiming US\$ 41,446,114.00 (the "**English**

**Claim**")<sup>1</sup>. A draft of the Particulars of Claim had previously been provided to KESP on or around 5 June 2023.

36. The OS Directors of KESP disputed the validity of the claim and wished for KESP to instruct English lawyers to defend the English Claim and provide advice regarding the same.
37. KP Corporate Director indicated on 12 June 2023 (of which more below) that it considered that KESP should instruct English lawyers to act for it in relation to the English Claim.
38. As set out in paragraph 33(b) above, the other Abraaj Directors (namely, Mr Skelton, Messrs Chishty and Mr Baur) represented the interests of Sage (the "**Sage Directors**"). Sage was a claimant in the English Claim bringing proceedings against KESP. It was accordingly in the interests of Sage that:
  - (a) KESP did not instruct English lawyers to act for it in relation to the English Claim,
  - (b) that the English Claim not be defended by KESP, and
  - (c) AIML and Sage obtain an early judgment against KESP.
39. A meeting of the KESP Board was called for 12 June 2023 (the "**12 June Board Meeting**").
40. On 9 June 2023, Mr Skelton, as Chairman of the KESP Board, sought to cancel the 12 June Board Meeting.
41. In response, one of the OS Directors, Mr Farooki, emailed the KESP Board, stating *inter alia*:

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<sup>1</sup> The Bank believes that it is the rightful owner of any claim for payment of the sum the subject of the English Claim.

*"I do not agree to the cancellation of the scheduled meeting. As noted in my e-mail **the appropriate course is that the [12 June] 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."* (emphases added)

42. The reference to "the appointment of legal counsel" was to the appointment of lawyers to act for KESP in relation to the English Claim.
43. On 12 June 2023, the OS Directors and KP Corporate Director attended the 12 June Board Meeting by telephone, and each indicated that they were of the view that it was necessary and in the best interests of KESP that independent lawyers be appointed in relation to the English Claim.
44. Mr Skelton was the Chairman of the KESP Board, but he did not attend the 12 June Board Meeting. Mr Skelton's non-attendance at the meeting rendered it inquorate under Regulation 106 of the KESP M&A<sup>2</sup>.
45. A KESP Board meeting was then convened for 19 June 2023 (whether as an adjourned meeting of the 12 June Board Meeting or a newly constituted meeting of the KESP Board) (the "**19 June Board Meeting**"). The primary agenda item for

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<sup>2</sup> "The quorum necessary for the transaction of meeting of the [KESP Board] shall be five Directors, including one Director appointed by Abraaj, one Director appointed by each of Al Jomaih and Denham ... and the chairman of the [KESP] Board. ...."

the 19 June Board Meeting was to consider and appoint legal counsel to defend the English Claim (the "**Proposed Resolution**").

46. As pleaded above, the OS Directors and KP Corporate Director had already indicated at the 12 June Board Meeting that the appointment by KESP of independent lawyers was necessary and in the best interests of KESP.
47. Prior to the 19 June Board Meeting, the following correspondence was exchanged between Mr Skelton and/or Mr McDonald (on behalf of SPV 21), on the one hand, and Mr Hutchison (on behalf of KP Corporate Director), on the other hand:
  - (a) During 16 and 17 June 2023, Mr Skelton and Mr Hutchison held a number of brief telephone conversations, during which, Mr Hutchison encouraged Mr Skelton to pursue settlement discussions with the Original Shareholders in relation to the Sage Dispute. During these discussions, Mr Skelton indicated that he did not believe that the Original Shareholders would seek to settle any differences, in particular, the Sage Dispute, and that he felt that maximum pressure needed to be applied to the Original Shareholders.
  - (b) On 17 June 2023, Mr McDonald emailed Mr Hutchison to arrange "*a quick catch up*". Mr McDonald did not provide any indication of what the "catch up" was in relation to.
  - (c) In response to Mr McDonald's email, Mr Hutchison wrote to Mr McDonald on the same day confirming that they could speak and that he would be available later that afternoon to do so. Mr McDonald and Mr Hutchison exchanged two further emails later that same day about a time to speak, with Mr Hutchison confirming that he could no longer speak on 17 June 2023, stating "*let's aim to touch base tomorrow*".

- (d) On 18 June 2023, Mr McDonald wrote to Mr Hutchison, in response to Mr Hutchison's confirmation that they could speak on 18 June 2023, stating, *inter alia*, the following:

*"I have a call with [Mr Skelton] and the ICGF board at 10 this morning. Happy to speak before or after that. The main reason for us speaking is just to make sure I understand how you're approaching the [19 June Board Meeting] tomorrow. Given everything that is going on with the OS, **we really need to make sure the Abraaj/IGCF directors are voting as a block.**"*  
(emphasis added)

- (e) Following Mr McDonald's email, Mr Hutchison and Mr McDonald spoke by telephone on 18 June 2023, during which Mr McDonald stated that he had spoken with Mr Skelton and Mr Skelton was of the view that the Abraaj Directors needed to continue to apply pressure to the Original Shareholders (primarily in relation to the Sage Dispute) and that voting as a block against the engagement of lawyers on behalf of KESP in relation to the English Claim was an avenue to achieve this. Mr Hutchison expressed his view that voting against a resolution that KESP appoint independent lawyers to act in relation to the English Claim was inappropriate in all of the circumstances.

48. In the premises, Mr McDonald (with Mr Skelton's encouragement or at his direction):
- (a) Wanted to make sure that Mr Hutchison caused KP Corporate Director to vote against the Proposed Resolution.
- (b) In the knowledge that Mr Hutchison believed that voting against the Proposed Resolution was inappropriate, sought to pressure KP Corporate

Director to vote inappropriately and thereby breach its fiduciary duty to KESP.

- (c) Sought to procure KP Corporate Director to vote against the Proposed Resolution not because they believed such a vote would be in the best interests of KESP, but in order to “apply pressure” on the Original Shareholders.
- (d) Improperly sought to use KP Corporate Director as a pawn in the disputes between Sage and the Original Shareholders.

The aforementioned knowledge, intention and actions of Mr McDonald are to be attributed to SPV 21.

49. Following the telephone conversation between Mr McDonald and Mr Hutchison, on the same day SPV 21 sent a letter to the Board of KESP (the "**SPV 21 Letter**") signed by Mr McDonald stating that:

*"In accordance with the provisions of article 103(e) of the [KESP Articles] [SPV 21] hereby:*

- (i) *removes KP Corporate Director Ltd, as Director of [KESP] with immediate effect; and*
- (ii) *instructs KESP to update its register of directors and officers of the to reflect the removal of KP Corporate Director Ltd. as Director of [KESP].",*

(the "**Purported Removal**").

50. The SPV 21 Letter provided no reason for the Purported Removal. It merely asserted that KP Corporate Director was "hereby" removed as a director of the KESP Board. It made no reference to any wrongful act or omission of KP Corporate

Director which was said to justify such removal (because there was no such act or omission) nor did it make any mention of the Deed.

51. In the premises of paragraphs 38 and 46 to 48 herein, it is to be inferred that SPV 21's true purpose of the Purported Removal was (wrongfully):
- (a) To prevent KP Corporate Director from voting with the OS Directors in favour of the Proposed Resolution;
  - (b) To replace KP Corporate Director with a person who would vote against the Proposed Resolution, and/or would prefer the interests of Sage to those of KESP;
  - (c) To create a situation where the KESP Board was deadlocked at the 19 June Board Meeting, in an attempt to prevent the Proposed Resolution from being passed; and/or
  - (d) To enable Sage to obtain a tactical advantage in its disputes with the Original Shareholders.
52. In the premises of paragraphs 30, 31 and 51 herein, SPV 21 did not have power to remove KP Corporate Director at the time of the Purported Removal (or at all), alternatively the purported exercise by SPV 21 of its discretion to remove KP Corporate Director:
- (a) was not made for a proper purpose; it was made in furtherance of the interests of IGCF GP, SPV 26 and/or Sage, and not in the interests of the AH Parties or SPV 21;
  - (b) was objectively unreasonable, arbitrary, capricious and/or irrational;
  - (c) was not exercised lawfully, rationally, in good faith or consistently with the contractual purpose of the discretion;

- (d) took into account irrelevant considerations, namely the interests and wishes of IGCF GP, SPV 26 and/or Sage; and/or
- (e) failed to take into account relevant considerations, namely:
  - (i) what was in the best interests of KESP;
  - (ii) what was in the best interests of SPV 21 (and not just one of its shareholders);
  - (iii) that KP Corporate Director would vote at the resolution at the Board Meeting in accordance with the proper performance of its fiduciary duties, and not otherwise.

53. Accordingly, the Purported Removal was a breach of the Deed, and/or is void or voidable and should be set aside.

**AND THE PLAINTIFFS CLAIM:**

1. A declaration that the purported removal of KP Corporate Director from the KESP Board was void, or voidable and an order that it be set aside;
2. Further or alternatively, a mandatory injunction ordering SPV 21 to take all steps available to it to appoint KP Corporate Director to the KESP Board and/or damages and interest;
3. Such further or other relief as the Court shall think fit; and
4. Costs.

**DATED** 18<sup>th</sup> August 2023

*Walkers (Cayman) LLP*

**WALKERS (CAYMAN ) LLP**  
Attorneys-at-Law for the Plaintiffs

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF  
WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgment of Service* should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.
2. After completion it must be delivered or sent by post to the Courts Office, PO Box 495GT, George Town, Grand Cayman.
3. A Defendant who states in his *Acknowledgment of Service* that he intends to contest the proceedings *must also serve a defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).
4. If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.
5. If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.
6. If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.
7. A *Stay of Execution* against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the *Acknowledgment of Service*, that he intends to apply for a stay, execution will be stayed for 14 days after his *Acknowledgment*, but he must, within that time, *issue a Summons* for a stay of execution, supported by an affidavit of his means. The

affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

**See over for notes for guidance**

**Please complete overleaf**

**Notes for Guidance**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Court's office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (*the name stated on the Writ of Summons*)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Court's office.

**THIS WRIT** was issued by Walkers (Cayman) LLP, Attorneys at Law, of 190 Elgin Avenue, George Town, Grand Cayman, KY1-9001, Cayman Islands for the Plaintiffs whose address for service is care of its Attorneys-at-Law.

16202948.1.M3095.D07657

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD: OF 2023

BETWEEN:

(1) ABRAAJ SPV 108 LIMITED

(2) ABRAAJ SPV 127 LIMITED

PLAINTIFFS

AND:

IGCF SPV 21 LIMITED

DEFENDANT

**ACKNOWLEDGEMENT OF SERVICE  
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form **IMMEDIATELY**.

**Important.** Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED. Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

**THIS WRIT** was issued by Walkers (Cayman) LLP, Attorneys at Law, of 190 Elgin Avenue, George Town, Grand Cayman, KY1-9001, Cayman Islands for the Plaintiffs whose address for service is care of its Attorneys-at-Law.

16202948.1.M3095.D07657

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

yes

no

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3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*)

yes

no

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Service of the Writ is acknowledged accordingly

(Signed) \_\_\_\_\_

[Attorney] for

[Defendant in person]

Address for service:

**Please complete overleaf**

**THIS WRIT** was issued by Walkers (Cayman) LLP, Attorneys at Law, of 190 Elgin Avenue, George Town, Grand Cayman, KY1-9001, Cayman Islands for the Plaintiffs whose address for service is care of its Attorneys-at-Law.

16202948.1.M3095.D07657

**Notes on address for Service**

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiffs' Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Walkers (Cayman) LLP  
Attorneys at Law  
190 Elgin Avenue  
George Town, Grand Cayman, KY1-9001  
  
FAO Blake Egelton  
  
Blake.egelton@walkersglobal.com

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

This Writ of Summons is filed by Walkers (Cayman) LLP, Attorneys at Law, 190 Elgin Avenue, George Town, Grand Cayman, Cayman Islands for the Plaintiff whose address for service is care of said Attorneys at Law.  
16202948.1.M3095.D07657