



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

CAUSE NO: FSD OF 2023 ()

BETWEEN

- (1) SHAN-E-ABBAS ASHARY**
- (2) AL JOMAIH POWER LIMITED**
(a company incorporated under the laws of the Cayman Islands)
- (3) DENHAM INVESTMENT LTD.**
(a company incorporated under the laws of the Cayman Islands)

Plaintiffs

-AND-

- (1) KES POWER LIMITED**
(a company incorporated under the laws of the Cayman Islands)
- (2) IGCF SPV 21 LIMITED**
(a company incorporated under the laws of the Cayman Islands)
- (3) KP CORPORATE DIRECTOR LTD**
(a company incorporated under the laws of the Cayman Islands)
- (4) MARK SKELTON**
- (5) SHAHERYAR ARSHAD CHISHTY**
- (6) SAMEER ARSHAD CHISHTY**
- (7) DARIN DANIEL BAUR**
- (8) ADEEB AHMAD**

Defendants

WRIT OF SUMMONS

TO:

- (1) KES Power Limited** c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman.
- (2) IGCF SPV 21 Limited** c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman.

0951060.0001/3480605v1

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM was FILED by **BEDELL CRISTIN** of 18 Forum Lane, Suite 5305, 3rd Floor, Camana Bay, P.O. Box 1990, Grand Cayman KY1-1104, Cayman Islands, Attorneys-at-law for and on behalf of the Plaintiffs whose address for service is that of its said Attorneys-at-law.

- (3) **KP Corporate Director Ltd** of Cayman Corporate Centre, 27 Hospital Road, George Town, Grand Cayman KY1-9008, Cayman Islands.
- (4) **Mark Skelton**, c/o Alvarez & Marsal, Park House, 16-18 Finsbury Circus, London, United Kingdom, EC2M 7EB and c/o IGCF General Partner Limited, PO Box 309, Uglund House, Grand Cayman, KY1-1104, Cayman Islands.
- (5) **Shaheryar Arshad Chishty** of House No. B-40, Naval Housing Scheme, Zamzama, Clifton, Karachi, Pakistan.
- (6) **Sameer Arshad Chishty** of House No. B-40, Naval Housing Scheme, Zamzama, Clifton, Karachi, Pakistan.
- (7) **Darin Daniel Baur** of Flat A, 26th Floor, Harbour One, 458 Des Voeux Road West, Sai Ying Pun, Hong Kong.
- (8) **Adeeb Ahmad** of Apartment 502, Tower 1, Boulevard Central, Downtown, Dubai, United Arab Emirates.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the next page.

Within 28 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, P.O. 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 31st 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.

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GENERAL INDORSEMENT

The First Plaintiff is a director of the First Defendant. The Second and Third Plaintiffs are minority shareholders of the First Defendant.

A dispute has arisen as to whether the board of the First Defendant has properly appointed lawyers to represent and defend it in proceedings in the Commercial Court in England.

The Plaintiffs' primary case is that the board of the First Defendant passed a valid board resolution at a board meeting on 19 June 2023 authorising the appointment of such lawyers by the First Defendant and the Plaintiffs seek declaratory relief to confirm the position in this regard (including declarations that the purported exercise by the Second Defendant of its power (as majority shareholder of the First Defendant) to replace the Third Defendant with the Eighth Defendant on the board of the First Defendant was void).

Alternatively, the Plaintiffs seek orders to facilitate a further meeting of the board of the First Defendant to enable the First Defendant to appoint lawyers to represent it, including orders setting aside the changes to the board of the First Defendant (if, contrary to the Plaintiffs' primary case, they were voidable rather than void) and injunctive relief to prevent the Second and Fourth to Eighth Defendants from improperly seeking to prevent the First Defendant from appointing lawyers to represent it. To the extent that such relief involves the enforcement of duties owed by the Fourth to Eighth Defendants to the First Defendant as directors of the First Defendant, that relief is sought by the Second and Third Plaintiff on a derivative basis.

AND THE PLAINTIFFS claim:

- (1) Declarations that:
 - (a) The 19 June Meeting was a valid and effective board meeting of the board of KES Power Limited.
 - (b) KP Corporate Director Ltd is a director of KES Power Limited and its purported removal as a director of KES Power Limited on 18 June 2023 was void and ineffective.
 - (c) Adeeb Ahmad is not a director of KES Power Limited and his purported appointment as a director of KES Power Limited on 18 June 2023 was void and ineffective.
 - (d) Fieldfisher LLP has been validly appointed by KES Power Limited to advise and represent KES Power Limited in relation to the English Proceedings and that a sub-committee of the board of KES Power Limited comprising Shan-E-Abbas Ashary,

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Abdul Aziz Al Jomaih and Saad Al Saad (or their duly appointed alternates) has been validly formed for the purpose of giving instructions to Fieldfisher LLP.

- (2) Alternatively, the following Orders:
- (a) An Order setting aside the removal of KP Corporate Director Ltd as a director of KES Power Limited.
 - (b) An order setting aside the appointment of Adeeb Ahmad as a director of KES Power Limited.
 - (c) Mark Skelton shall convene a meeting of the board of KES Power Limited, in accordance with Article 104 of KES Power Limited's Amended and Restated Articles of Association dated 5 January 2021, on a date to be appointed by the court ("**the Further Board Meeting**").
 - (d) The agenda for the Further Board Meeting shall include resolutions ("**the English Proceedings Resolutions**") for (i) the appointment of Fieldfisher LLP to advise and represent KES Power Limited in relation to the English Proceedings, (ii) the formation of a sub-committee of the board with power to deal with all matters on behalf of KES Power Limited relating to the English Proceedings whose members shall be Shan-E-Abbas Ashary, Abdul Aziz Al Jomaih and Saad Al Saad (or their duly appointed alternates).
 - (e) The Fourth to Eighth Defendants (and any alternate director of the Fourth to Eighth Defendants) be restrained from voting against the English Proceedings Resolutions at the Further Board Meeting, or from taking any steps thereafter until after the final determination of the English Proceedings (including any appeal) to (i) prevent KES Power Ltd from retaining Fieldfisher LLP to advise and represent it in the English Proceedings, (ii) change the membership of the Sub-Committee, or (iii) reduce or interfere with the powers of the Sub-Committee.
 - (f) The Second Defendant be restrained from appointing any director of KES Power Limited until after the final determination of the English Proceedings (including any appeal) unless the proposed new director has first given an undertaking to the court in the same terms as paragraph (c) above.
- (3) Such further or other relief as the court considers just.
- (4) Costs.

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DATED this 31st day of August 2023



**BEDELL CRISTIN
ATTORNEYS-AT-LAW FOR THE
PLAINTIFFS**

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IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD [] OF 2023

BETWEEN:

(1) SHAN-E-ABBAS ASHARY
 (2) AL JOMAIH POWER LIMITED
 (a company incorporated under the laws of the Cayman Islands)
 (3) DENHAM INVESTMENT LTD.
 (a company incorporated under the laws of the Cayman Islands)

Plaintiffs

AND

(1) KES POWER LIMITED
 (a company incorporated under the laws of the Cayman Islands)
 (2) IGC SPV 21 LIMITED
 (a company incorporated under the laws of the Cayman Islands)
 (3) KP CORPORATE DIRECTOR LTD
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 (4) MARK SKELTON
 (5) SHAHERYAR ARSHAD CHISHTY
 (6) SAMEER ARSHAD CHISHTY
 (7) DARIN DANIEL BAUR
 (8) ADEEB AHMAD

Defendants

STATEMENT OF CLAIM

A. Parties

1. This claim concerns the internal management of the First Defendant (“KESP”). KESP is joined as a nominal defendant to these proceedings so that it is bound by any relief granted in these proceedings.
2. KESP owns approximately 66.4% of the ordinary shares in K-Electric Limited (“K-Electric”). K-Electric is a major Pakistani energy supply company. It is responsible for the exclusive

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supply of electricity to the 22 million residents of Pakistan's largest city, Karachi, and surrounding areas. K-Electric is regarded by the Government of Pakistan as a national security asset.

3. The First Plaintiff is a director of KESP. The First Plaintiff is one of 3 directors on the board of KESP who were appointed by Al-Jomaih Power Limited ("**Al Jomaih**") (the Second Plaintiff), a minority shareholder of KESP. The Third Plaintiff, Denham Investment Ltd ("**Denham**"), is also a minority shareholder in KESP, and has nominated two directors to the board of KESP. Collectively, the Second and Third Plaintiffs are sometimes referred to as the 'Original Shareholders'.
4. The Second Defendant ("**SPV 21**") is the majority shareholder of KESP:
 - 4.1. 100% of the preferred shares in SPV 21 are owned by Abraaj SPV 108 Limited, Abraaj SPV 127 Limited, IGCF SPV 26 Limited and Breeze SPV Limited, each of which are incorporated in the Cayman Islands.
 - 4.2. The sole voting share in SPV 21 is owned by Abraaj Investment Management Limited ("**AIML**"). As appears below there is a dispute concerning the purported sale of, *inter alia*, the voting share in SPV 21 by AIML to Sage Venture Group Limited ("**Sage**"). Sage is a company incorporated in the British Virgin Islands which the Plaintiffs believe is ultimately owned and controlled by the Fifth Defendant.
5. The Fourth to Seventh Defendants are all directors of KESP. They were each appointed by SPV 21. The Fourth Defendant ("**Mr Skelton**") is also the chairman of the board of KESP.
6. As appears below, there is a dispute as to whether the Third Defendant ("**KP Corporate**") remains a director of KESP and as to whether the Eighth Defendant ("**Mr Ahmad**") has been appointed as a director of KESP.
7. KP Corporate has been joined as a defendant so that it is bound by any relief granted in these proceedings, but no relief is sought against it.

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B. Summary of the Plaintiffs' claim

8. There is an on-going dispute (defined below as the Sage Dispute) between the Original Shareholders and SPV 21 concerning the validity of a purported transaction pursuant to which Sage seeks to take control of SPV 21 and to appoint its nominees as directors of KESP and K-Electric.
9. In an attempt to force Al Jomaih and Denham to settle the Sage Dispute on terms proposed by SPV 21 (and thereby to secure an ulterior advantage as against Al Jomaih and Denham in relation to the Sage Dispute):
 - 9.1. AIML (together with Sage) has commenced a claim in the Commercial Court in the English High Court (defined below as the English Proceedings), in respect of a debt allegedly owed by KESP (defined below as the Alleged KESP Receivable).
 - 9.2. SPV 21 has attempted to use its powers as a shareholder of KESP to engineer a situation in which KESP is unable to appoint lawyers to represent it in order to defend the English Proceedings by purporting to replace KP Corporate with Mr Ahmad as a director of KESP so that Mr Ahmad could vote against the appointment of such lawyers at a KESP board meeting.
 - 9.3. The Fourth to Seventh Defendants (and if his purported appointment as a director of KESP was valid, the Eighth Defendant) have breached their fiduciary duties as directors of KESP by voting against the appointment of lawyers to defend the English Proceedings at a KESP board meeting on 19 June 2023 (defined below as the 19 June Meeting).
10. SPV 21's actions, together with the actions of the Fourth to Eighth Defendants, have resulted in a dispute (defined below as the Representation Dispute) as to whether KESP has validly appointed Fieldfisher LLP to represent it in defending the English Proceedings.
11. As a consequence of the Representation Dispute, KESP is presently unable to defend the English Proceedings.

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12. By these proceedings, the Plaintiffs seek declaratory relief to confirm that KESP has validly appointed Fieldfisher LLP to represent it in defending the English Proceedings.
 13. Alternatively, the Plaintiffs seek orders to facilitate a further board meeting of KESP to appoint Fieldfisher LLP (or another firm) to represent it in defending the English Proceedings, together with injunctive relief against SPV 21 and the Fourth to Eighth Defendants to restrain them from taking steps to prevent KESP from defending the English Proceedings.
- C. The ownership structure of K-Electric, KESP, and SPV 21 prior to the collapse of the Abraaj Group**
14. By a share purchase agreement dated 14 November 2005 (“**the 2005 SPA**”), KESP acquired 73% of the issued share capital in K-Electric from the Government of Pakistan. KESP presently owns approximately 66.4% of the ordinary shares in K-Electric, whilst the remaining shares are held by the Government of Pakistan and in excess of 20,000 other minor investors via K-Electric’s listing on the Karachi Stock Exchange.
 15. As K-Electric is regarded by the Government of Pakistan as a national security asset, the 2005 SPA contains restrictions (at clauses 5.2 and 5.3) on the direct or indirect transfer of KESP’s shares in K-Electric. Pursuant to clause 5.3 of the 2005 SPA, such direct or indirect transfers require the Government of Pakistan’s prior certification that the transaction does not affect the national security interest of Pakistan.
 16. At the time of the 2005 SPA, Al Jomaih and Denham were the only shareholders of KESP.
 17. In 2008, KESP obtained further investment from Abraaj Holdings Limited (“**Abraaj Holdings**”) and a Cayman Islands exempted limited partnership managed by AIML and known as the Infrastructure & Growth Capital Fund LP (“**the Fund**”). The general partner of the Fund is IGCF General Partner Limited (“**the Fund GP**”).

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18. SPV 21 is a special purpose vehicle through which (prior to the collapse of Abraaj Holdings in 2018, as pleaded below) Abraaj Holdings and the Fund acquired and held shares in KESP pursuant to their investment.
19. As at the date hereof:
 - 19.1. Al Jomaih owns approximately 27.7% of the shares of KESP;
 - 19.2. Denham owns approximately 18.5% of the shares of KESP; and
 - 19.3. SPV 21 owns approximately 53.8% of the shares of KESP.
20. Immediately following a restructuring of the ownership of SPV 21 in or around January 2014, the ownership of SPV 21 was structured as follows:
 - 20.1. The sole voting share in SPV 21 was owned by AIML.
 - 20.2. Approximately 70.5% of the preferred (non-voting) shares in SPV 21 were owned by the Fund through a special purpose vehicle, IGCF SPV 26 Limited.
 - 20.3. Approximately 29.5% of the preferred (non-voting) shares in SPV 21 were owned by Abraaj Holdings through Abraaj SPV 108 Limited, Abraaj SPV 109 Limited, Abraaj SPV 127 Limited and Breeze SPV Limited.
21. Abraaj Holdings obtained finance from Mashreqbank PSC (“**Mashreq**”) and provided security to Mashreq as follows:
 - 21.1. On 28 January 2014, Abraaj Holdings entered into a facility agreement with Mashreq. As part of that arrangement, Abraaj Holdings provided security, including an equitable mortgage in favour of Mashreq over Abraaj Holdings’ shareholding in Abraaj SPV 108 Limited. Abraaj SPV 108 Limited in turn provided an equitable mortgage in favour of Mashreq over its shares in SPV 21.
 - 21.2. On 10 November 2016, Abraaj Holdings entered into a further facility arrangement with Mashreq. As part of that transaction, all but one of the shares held by Breeze SPV Limited were transferred to Abraaj SPV 127 Limited and

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Mashreq took security over Abraaj SPV 127 Limited's shareholding in SPV 21. That facility agreement was amended and restated on 30 November 2016.

- 21.3. On 23 July 2017, Mashreq entered into a further agreement with Abraaj Holdings and AIML, extending the maturity date of the 2016 facility agreement. Pursuant to these arrangements, Abraaj Holdings was required to assign its rights in the Alleged KESP Receivable (as defined below) to Mashreq. That assignment was affected by an agreement dated 23 July 2017 ("**the 2017 Assignment**").

D. The SHA and the Articles

22. The relationship between the shareholders of KESP is regulated by a Shareholders' Agreement dated 15 October 2008 (as subsequently amended on 30 April 2009 and 5 January 2021) ("**the SHA**").
23. The SHA contains the following provisions relating to the appointment of directors of KESP and the conduct of the business of the company and board meetings:

"3. Business of the Company

Subject as otherwise required by law or by the terms of this agreement, proceedings of the Company shall be conducted in such a way as to maximise shareholder value.

...

5.2 The Board

The Board shall be comprised of ten directors who shall be nominated and appointed in accordance with the terms of this agreement. The Original Shareholders shall procure that, other than to the extent nominated pursuant to subclauses 5.3 or 5.4 below, the existing directors of [KESP] as set out in schedule 2 shall resign with effect from Completion.

5.3 Abraaj Directors

[SPV 21] may appoint up to five persons as directors of [KESP] and remove from office any such director and, if desired, appoint another in his place. Directors so appointed shall be Abraaj Directors.

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5.4 Original Shareholder Directors

Al Jomaih may appoint up to three persons as directors of [KESP] and remove from office any such director and, if desired, appoint another in his place. Denham may appoint up to two persons as directors of [KESP] and remove from office any such director and, if desired, appoint another in his place. Directors so appointed shall be Original Shareholder Directors.

5.5 Removal of Directors

*Each of Abraaj and the Original Shareholders agrees that, at any time that it is entitled to vote for the election or removal of directors, it will not vote in favour of the removal of any of the Abraaj Directors or the Original Shareholder Directors as the case may be. A shareholder shall have the right to request another Shareholder to remove a director appointed by that Shareholder for Cause. For the purposes of this clause 5.5, **Cause** shall mean (a) such director's conviction of a crime constituting a felony (b) gross negligence, wilful misconduct or fraud on the part of a director's conduct in connection with the performance of his duties, or (c) disqualification of such director to serve as a director of a company incorporated under the laws of the Cayman Islands.*

...

5.10 Board Meetings

- (a) The Board shall meet at times specified by the chairman of the Board, provided that such meetings shall be held no less frequently than four times per year and provided further that any director shall have the right to require the chairman to convene a meeting of the Board.*
- (b) At least ten Business Days notice of each meeting of the Board shall be given to the directors.*
- (c) An agenda and copies of any appropriate supporting papers shall be sent to each director not later than five Business Days prior to the date of each Board meeting.*
- (d) Meetings of the Board will be held at the place set out in the relevant meeting notice and conducted in English, provided that any one or more directors may participate in and vote at a directors' meeting by telephone or through video conferencing facilities (provided that each director who participates is able to hear each of the other participating directors addressing the meeting and, if he so wishes, to address all other participating*

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directors simultaneously), and in any such case shall be part of the quorum at that meeting.

- (e) A resolution, in writing, signed by all the directors shall be valid and effectual. Such resolution may be contained in one document or in several documents in like form each signed by one or more such directors.*
- (f) Minutes of each Board meeting written in English shall be circulated to each director no later than 10 Business Days after the relevant meeting.*
- (g) The quorum necessary for the transaction of meetings of the Board shall be five directors, including one director appointed by Abraaj, one director appointed by each of the Original Shareholders and the chairman of the Board. If a quorum of directors is not present within 30 minutes of the allotted commencement time for a meeting of the Board, the meeting shall be adjourned until the same time on the fifth Business Day after the initial meeting at which time the quorum for the meeting of the Board shall consist of any five directors.*
- (h) The Chairman shall have a casting vote."*

24. Clause 9.4 of the SHA contains a restriction on changes of control of SPV 21 in the following terms:

"[SPV 21] undertakes and agrees that...it shall not permit nor take any action that would result in a Change of Control of [SPV 21], provided that [SPV 21] shall be deemed not to be in contravention of this clause in circumstances where (notwithstanding a change of Control of [SPV 21], [SPV 21] remains managed by a member of the Abraaj Group."

25. The Amended and Restated Memorandum and Articles of Association of KESP dated 18 May 2009 ("**the Articles**") contain the following provisions relating to the appointment of directors of KESP and the conduct of board meetings:

"DIRECTORS

83. *The Board of Directors shall be comprised of up to ten Directors.*

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84. *[SPV 21] may appoint up to five Abraaj Directors and remove from office any Abraaj Director and appoint another in his place.*
85. *Al Jomaih may appoint up to three Al Jomaih Directors and remove from office any Al Jomaih Director and appoint another in his place.*
86. *Denham may appoint up to two Denham Directors and remove from office any Denham Director and appoint another in his place.*
87. *At any time that [SPV 21], Al Jomaih and Denham are entitled to vote for the election or removal of any of the Abraaj, Al Jomaih or Denham Directors, they will not vote in favour of the removal of any of the Abraaj, Al Jomaih, or Denham Directors as the case may be.*

...

ALTERNATE DIRECTOR

91. *Any Director may in writing appoint another person to be his alternate to act in his place at any meeting of the Directors at which he is unable to be present. Every such alternate shall be entitled to notice of meetings of the Directors and to attend and vote thereat as a Director when the person appointing him is not personally present and where he is a Director to have a separate vote on behalf of the Director he is representing in addition to his own vote. A Director may at any time in writing revoke the appointment of an alternate appointed by him. Such alternative shall not be an officer of the Company and shall be deemed to be the agent of the Director appointing him. The remuneration of such alternate shall be payable out of the remuneration of the Director appointing him and the proportion thereof shall be agreed between them.*
92. *Any Director may appoint any person, whether or not a Director, to be the proxy of that Director to attend and vote on his behalf, in accordance with instructions given by that Director, or in the absence of such instructions at the discretion of the proxy, at a meeting or meetings of the Directors which that Director is unable to attend personally. The instrument appointing the proxy shall be writing under the hand of the appointing Director and shall be in any usual or common form or such other form as the Directors may approve and must be lodged with the Chairman or the meeting of the Directors at which such proxy is to be used, of first used, prior to the commencement of the meeting.*

...

POWERS AND DUTIES OF DIRECTOR

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93. *Subject to the provisions of the Act, these Articles and to any resolutions made in general meeting, the business of [KESP] shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company any may exercise all powers of the Company subject to any delegation of powers to service providers as contemplated un Article 152; **provided that**, the Directors shall not be entitled to act in relation to any Reserved Matter unless previously approved by Abraaj, Al Jomaih and Denham.*

...

96. *The Directors may delegate any of their powers to committee consisting of such member or members of their body as they think fit; any committee so formed shall n the exercise of the powers to delegated conform to any regulations that may be imposed on it by the Directors.*

...

PROCEEDINGS OF DIRECTORS

104.

- (a) *The Directors may meet together (either within or without the Cayman Islands) for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit. Any Director shall have the right to require the Chairman to convene a meeting of the Board. Notwithstanding the foregoing, at least 4 meetings shall take place annually. Questions arising at any meeting shall be decided by a majority of votes. A Director may, and a Secretary or Assistant Secretary on the requisition of a Director shall require the Chairman to convene a meeting of the Directors.*
- (b) *At least ten Business days notice of each meeting of the Board shall be given to the Directors.*
- (c) *An agenda and copies of any appropriate supporting papers shall be sent to each Director not later than five Business days prior to the date of each board meeting.*

105. *A Director or Directors may participate in any meeting of the Board of Directors, or of any committee appointed by the Board of Directors of which such Director or Directors are members, by means of telephone, video conferencing or similar communication equipment by way of which all persons participating in such meeting can hear each other and if he so wishes, to address all other participating Directors simultaneously and*

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such participation shall be deemed to constitute presence in person at the meeting. All meetings shall be conducted in English.

106. *The quorum necessary for the transaction of meetings of the Board of Directors, including one Director appointed by [SPV 21], one Director appointed by each of Al Jomaih and Denham (but only for so long as such party is a Shareholder) and the chairman of the Board. A Director represented by proxy or by an Alternate Director at any meeting shall be deemed to be present for the purposes of determining whether or not a quorum is present. If a quorum of Directors is not present within 30 minutes of the allotted commencement time for a meeting of the Board, the meeting shall be adjourned until the same time on the fifth Business Day after the Initial Meeting at which time the quorum for the meeting of the Board shall consist of any five Directors."*

26. SPV 21's power to appoint and remove directors of KESP under the SHA and the Articles is subject to a legal restriction and/or an implied term (implied as a matter of law) that the power must be exercised for the benefit of KESP as a whole and not to secure an ulterior advantage for any one shareholder ("**the Ulterior Advantage Restriction**"). Any purported exercise of SPV 21's powers to appoint or remove directors of KESP for purposes contrary to the Ulterior Advantage Restriction is void and ineffective (alternatively, voidable).

E. The duties of the directors of KESP

27. At all material times, the directors of KESP owed the following duties to KESP ("**the Directors' Duties**"):

27.1. A duty to act *bona fide* in the best interests of KESP.

27.2. A duty to exercise their powers for proper purposes and not for improper or collateral purposes.

27.3. A duty not to place themselves in a position of conflict between their duty to KESP and their personal interests or their duty to any other person.

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27.4. A duty to exercise independent judgment in exercising any powers as a director of KESP.

F. The collapse of the Abraaj Group and the Sage Dispute

28. In the course of 2018, Abraaj Holdings and AIML collapsed.
29. Consequently, Stuart Sybersma and David Soden (“**the Joint Liquidators**”) were appointed as provisional liquidators of AIML on 18 June 2018, and subsequently as Official Liquidators on 11 September 2019.
30. The Joint Liquidators, through their control of AIML, were in turn able to control SPV 21 and accordingly to appoint up to 5 directors of KESP.
31. On 30 March 2019, Mr Skelton was appointed as a director of KESP by SPV 21. Mr Skelton is also a director of the Fund GP.
32. On 12 November 2019, Mashreq exercised its rights as a secured creditor of the Abraaj Group to appoint Keiran Hutchison and Hani Bishara (“**the Mashreq Receivers**”) as joint receivers of various assets of Abraaj Holdings including the issued share capital of Abraaj SPV 108 Limited and Abraaj SPV 127 Limited (i.e. the entities which held the Abraaj Holdings’ shares in SPV 21).
33. SPV 21 agreed to the appointment of a designated nominee of Abraaj SPV 108 Limited and Abraaj SPV 127 Limited as a director of KESP (“**the Mashreq Nominee**”).
34. Accordingly, on 12 October 2020 KP Corporate was appointed by SPV 21 as the Mashreq Nominee director on the board of KESP. Mr Hutchison is a director and representative of KP Corporate.
35. On 3 August 2022, AIML (under the control of the Joint Liquidators) apparently entered into a share purchase agreement with Sage (“**the Sage SPA**”) pursuant to which, *inter alia*, AIML purported to:
- 35.1. Transfer the sole voting share in SPV 21 from AIML to Sage.

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- 35.2. Assign the Alleged KESP Receivable (as defined below) from AIML to Sage.
36. The Plaintiffs do not have a copy of the Sage SPA despite making numerous requests for a copy of that document from SPV 21 and Mr Skelton. The Plaintiffs reserve the right to provide further particulars of the Sage SPA and, to the extent necessary, to plead further as to its validity and effect following disclosure.
37. On 14 October 2022, the Grand Court made an order authorising the Joint Liquidators to cause AIML to enter into the Sage SPA subject to certain conditions.
38. On or about 18 October 2022, SPV 21 appointed the Fifth to Seventh Defendants ("**the Sage Directors**") as directors of KESP and purported to appoint the Fifth and Seventh Defendants to the board of K-Electric.
39. On 8 November 2022, the Securities and Exchange Commission of Pakistan ("**SECP**") issued an order to K-Electric pursuant to Section 125(d) of the Securities Act 2015 mandating that *"the composition of the current board of directors of [K-Electric] shall not be changed, whatsoever, till further orders of the [SECP]."*
40. Al Jomaih and Denham objected (and object) to the transfer of control of SPV 21 to Sage including because they consider that this purported transfer (and the subsequent actions taken by SPV 21 in attempting to change the boards of KESP and K-Electric) constitute breaches of the SHA (including clause 9.4) and risks jeopardising KESP's investment in K-Electric by breaching clauses 5.2 and 5.3 of the 2005 SPA.
41. The objections of Al Jomaih and Denham to the transfer of control of SPV 21 to Sage has resulted in a dispute between Al Jomaih and Denham and AIML and Sage ("**the Sage Dispute**").
42. As appears below, SPV 21 has sought to use a claim against KESP in respect of the Alleged KESP Receivable as a means of forcing Al Jomaih and Denham to concede the Sage Dispute on the terms it has proposed.

G. The Alleged KESP Receivable and the commencement of the English Proceedings

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43. Following SPV 21's investment in KESP, by a Consultancy Services Agreement dated 18 May 2009 between AIML and KESP ("**the CSA**"), AIML agreed to provide certain services to KESP. The CSA was subsequently retrospectively extended on revised terms by a further agreement dated 15 July 2015.
44. Clause 22 of the CSA prohibits AIML from assigning any of its rights under the CSA without the consent of KESP.
45. By a statutory demand dated 30 November 2022, AIML demanded from KESP sums totalling in excess of US\$41 million said to be owed to it by KESP under the terms of the CSA for fees and expenses ("**the Alleged KESP Receivable**").
46. The Plaintiffs believe that KESP has a *bona fide* defence to any claim to the Alleged KESP Receivable by AIML.
47. On 23 December 2022, AIML, Sage, KESP, the Fund GP, and the Joint Liquidators entered into a standstill agreement for a period of 90 days in respect of the claims of AIML and Sage to the Alleged KESP Receivable during which AIML and Sage agreed not to present any winding up petition against KESP.
48. On 21 March 2023, AIML and Sage issued a claim against KESP in the Commercial Court in England in respect of the Alleged KESP Receivable with claim number CL-2023-000160 ("**the English Proceedings**").
49. The claim in the English Proceedings was reportedly served on KESP at its registered office on 15 June 2023.

H. Events leading to the 19 June Meeting and the Representation Dispute

50. On 25 May 2023, the First Plaintiff wrote to Mr Skelton expressing his concerns about Mr Skelton's conduct in respect of a number of matters, including the English Proceedings. In particular, the First Plaintiff stated that it was critical for KESP to appoint its own legal counsel immediately in order to protect KESP's interests and that such lawyers should be instructed by the directors of KESP nominated by the Original Shareholders to avoid any

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conflict of interest given the apparent collaboration between the Fourth, Fifth and Sixth Defendants with AIML and Sage.

51. Also, on 25 May 2023, Mr Nicholas Schwarzmiller (the company secretary of KESP) sent an email to the KESP board in the following terms:

“Dear KESP Board,

Your attendance is requested for a KESP board meeting. The meeting is proposed to be held on Thursday the 1st of June at 1pm UK, should the Director’s consent to short notice.

If consent to short notice is not granted it will be held on the 12th June at 1pm UK. This notice is per para 104 of the KESP articles.

Please confirm your attendance and consent to short notice.

I will circulate an agenda and supporting materials in advance of the meeting along with the Teams dial in details.”

52. At the time of that email, the members of the KESP board were as follows:

Directors nominated by Al Jomaih and Denham

Name	Nominated alternate director
Shan-e-Abbas Ashary (the First Plaintiff)	N/A
Abdulaziz Al Jomaih	Mustafa Farooki
Sulaiman Al Dalali	Mubasher Hussain Sheikh
Saad Al Saad	Riyadh Edrees
M. Habib Ullah Khan	N/A

Directors nominated by SPV 21

Name	Nominated alternate director
Mark Skelton (the Fourth Defendant)	N/A

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KP Corporate (the Third Defendant)	N/A
Shaheryar Arshad Chishty (the Fifth Defendant)	N/A
Sameer Arshad Chishty (the Sixth Defendant)	N/A
Darin Daniel Baur (the Seventh Defendant)	N/A

53. The directors did not consent to short notice and accordingly a KESP board meeting was called for 12 June 2023.
54. On 5 June 2023, Mr Schwarzmiller sent an email to the KESP board attaching a draft Particulars of Claim in relation to the English Proceedings and setting out an agenda for the board meeting due to take place on 12 June 2023 in the following terms:

“Dear KESP Board,

Please see attached a draft particulars of claim, AIML have requested to be provided for the sole purpose of articulating settlement proposals.

The Agenda for the KESP board meeting shall be the following:

- 1. KESP Mandate re. SEP Negotiations*
- 2. IGCF Fund Update*
- 3. KESP Payable to AIML*
- 4. Committee Formation*
- 5. KESP Winding Up”*

55. Mr Farooki responded to Mr Schwarzmiller’s email on 6 June 2023 indicating that the agenda was unclear and requesting clarification of the various agenda items. In respect of the third item of the agenda, Mr Farooki indicated that Fieldfisher LLP had confirmed that it did not have any conflicts and was available to act. Mr Farooki therefore proposed a board resolution in the following terms (“**the Fieldfisher Resolution**”):

“for KESP to engage Fieldfisher and that a sub-committee be established consisting of the directors appointed by the Original Shareholders to instruct Fieldfisher”

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56. In response to Mr Farooki's email, Mr Schwarzmiller replied on 7 June 2023 stating that:

"Dear all

We note your comments. We are prepared to cancel the KESP Board Meeting on 12 June 2023, as suggested by Mustafa.

In relation to the KESP Board Committee, I understand SPV 21 will be sending a letter to address this issue and wider Shareholder issues."

57. Mr Farooki responded in turn on 9 June 2013 stating that:

"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."

58. Mr Skelton responded on the same day purporting to cancel the board meeting on 12 June 2023. It is averred that Mr Skelton had no power to cancel the board meeting on 12 June 2023 and that his assertion that he had done so was ineffective.

59. Also on 9 June 2023, SPV 21 sent a letter to the Original Shareholders headed "*Open letter to resolve the ongoing Shareholder disputes at KESP Without Prejudice and Subject to Contract*" ("**the Open Offer**"). The terms of the Open Offer proposed, *inter alia*, that:

59.1. Al Jomaih and Denham should consent to transfer of the voting share in SPV 21 to Sage and take other measures to cooperate with the transfer of control of SPV 21 to Sage.

59.2. In return, Sage would procure the withdrawal of attempts to enforce the claim to the Alleged KESP Receivable.

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60. Accordingly, the terms of the Open Offer make it clear that the true purpose of the English Proceedings is to use the Alleged KESP Receivable to force Al Jomaih and Denham to effectively concede the Sage Dispute.
61. On 12 June 2023, the directors nominated by Al Jomaih and Denham and KP Corporate attended the KESP board meeting. However, pursuant to Article 106 of the Articles, the meeting was inquorate because Mr Skelton (as chairman) did not attend. Accordingly, the meeting was adjourned until the same time on 19 June 2023.
62. At the inquorate meeting on 12 June 2023, Mr Hutchison (on behalf of KP Corporate) indicated that he agreed with the directors nominated by Al Jomaih and Denham that it was necessary and in the interests of KESP for counsel to be engaged by KESP to defend the English Proceedings.
63. Following further email correspondence in relation to the inquorate board meeting on 12 June 2023, Mr Skelton sent an email to Mr Farooki (copied to all members of the KESP board) in the following terms on 17 June 2023:

“Mustafa

I refer to your email below which purports to be an adjourned meeting of the Board of Directors of KESP at 1pm on 19 June.

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.

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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. Any other dial-in is not valid.

The agenda will be set out in the meeting invite – at the meeting you can make any comments you wish on the agenda items in the normal course.

A new dial-in for 1pm on 19 June shall be circulated on my behalf shortly.”

64. If, contrary to the Plaintiffs’ primary case, the board meeting on 12 June 2023 was cancelled by Mr Skelton before it took place then, in any event, by his email of 17 June 2023 Mr Skelton validly convened a further board meeting of KESP for 19 June 2023.
65. Mr Skelton and the directors nominated by Al Jomaih and Denham (represented by the First Plaintiff, Mr Farooki, Mr Edrees, Mr Sheikh, and Mr Khan) attended the KESP board meeting on 19 June 2023 (“**the 19 June Meeting**”).
66. At the outset of the 19 June Meeting, Mr Skelton state that:
- “I think there's been emails back and forth on views on the validity or otherwise of this meeting... everyone has made their thoughts known. Your thoughts are - it is valid. Our view - it is not a valid meeting. However, I am in attendance and I will vote in accordance with my proxies.”*
67. Mr Skelton then stated that he had proxies from the Fifth to Eighth Defendants thereby indicating for the first time that KP Corporate had purportedly been removed as a director of KESP in advance of the 19 June Meeting and that Mr Ahmad had purportedly been appointed as a director. The Plaintiffs’ case is that the purported removal of KP Corporate and appointment of Mr Ahmad were void and ineffective, or alternatively are voidable.

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The purported removal of KP Corporate and appointment of Mr Ahmad are addressed further below in section I.

68. In the light of the terms of Mr Skelton's email of 17 June 2023, Mr Skelton was wrong to assert that the 19 June Meeting was not a valid meeting.
69. Further, by stating that he would vote at that meeting on behalf of himself and his proxies, Mr Skelton thereby ratified the 19 June Meeting as a valid board meeting.
70. Further, and in any event, Mr Skelton thereby unequivocally represented to the directors nominated by Al Jomaih and Denham that he (and his proxies) were agreeing that the 19 June Meeting would progress as a valid board meeting. The directors nominated by Al Jomaih and Denham relied on that representation by continuing to participate in the meeting. Accordingly, Mr Skelton and his proxies are estopped from denying the validity of the 19 June Meeting.
71. Further, SPV 21 has subsequently presented a just and equitable winding up petition against KESP with cause number FSD 193 of 2023 on 11 July 2023 ("**the Petition**"). In the Petition, SPV 21 has affirmed that a valid meeting of the board of KESP was convened on 19 June 2023.
72. At the 19 June Meeting, a vote was held on the Fieldfisher Resolution.
73. The directors nominated by Al Jomaih and Denham all voted in favour of the Fieldfisher Resolution so there were five votes in favour of that resolution.
74. Mr Skelton voted against the Fieldfisher Resolution. In the Petition, SPV 21 has asserted that Mr Skelton voted the proxies he held against the Fieldfisher Resolution. In so far as Mr Skelton relies on having cast the vote of any such proxies against the Fieldfisher Resolution, he is required to prove that all such proxies were validly given to him in advance of the 19 June Meeting and that he validly cast the votes of those proxies against the Fieldfisher Resolution in accordance with the requirements of the Articles.

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75. Since KP Corporate was never validly removed as a director and Mr Ahmad was never validly appointed as a director, there were only ever a maximum of four votes against the Fieldfisher Resolution with the result that the Fieldfisher Resolution was approved by the KESP Board by a majority of five votes to four.
76. In any event, by voting against the Fieldfisher Resolution, the Fourth to Seventh Defendants (and if, contrary to the Plaintiffs' primary case Mr Ahmad was validly appointed as a director, Mr Ahmad) breached their Directors' duties in that:
- 76.1. They failed to act *bona fide* in the best interests of KESP in that it was plainly in KESP's interests to appoint lawyers to advise and represent it in relation to the English Proceedings.
- 76.2. They failed to exercise their powers for proper purposes in that it is to be inferred that it was a causative (alternatively, predominant) purpose of them voting against the Fieldfisher Resolution that they were seeking to: (i) force Al Jomaih and Denham to accept the terms set out in the Open Offer; and (ii) engineer a dispute about the representation of KESP in the English Proceedings as a pretext for the Petition.
- 76.3. They placed themselves in a position of conflict between their duties to KESP and their personal interests or their duties owed to other persons in that they favoured the interests of SPV 21, AIML, and Sage over the interests of KESP.
- 76.4. They failed to exercise independent judgment in that they apparently followed the directions of SPV 21 rather than forming an independent view as to the best interests of KESP.
77. The Plaintiffs are entitled to injunctive relief against the Fourth to Eight Defendants to restrain any further breaches of their Directors' Duties in this regard.

I. The purported replacement of KP Corporate with Mr Ahmad

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78. As pleaded above, KP Corporate (acting by Mr Hutchison) had indicated at the inquorate meeting on 12 June 2023 that it was in favour of KESP appointing counsel to defend the English Proceedings.
79. According to a letter from KP Corporate's Cayman Attorneys, Walkers, dated 18 July 2023:
- 79.1. On 17 June 2023, Mr Casey McDonald (the sole director of SPV 21) wrote to Mr Hutchison (one of two directors of KP Corporate) to arrange "a quick catch up".
- 79.2. On 18 June 2023, Mr McDonald wrote further to Mr Hutchison stating, *inter alia*, the following:
- "The main reason for us speaking is just to make sure I understand how you're approaching the [19 June Meeting] tomorrow. Given everything that is going on with [Al Jomaih and Denham], we really need to make sure the Abraaj/IGCF directors are voting as a block."*
- 79.3. Later, on 18 June 2023 Mr Hutchison received a letter from SPV 21 purporting to remove KP Corporate as a director of KESP. The SPV 21 Letter provided no reason for the purported removal and merely stated that KP Corporate was removed as a director of KESP.
80. In the premises, it is to be inferred that the causative (alternatively, the predominant) purpose of SPV 21 in purporting to remove KP Corporate as a director of KESP and to appoint Mr Ahmad as a director of KESP was to secure an ulterior advantage as against the Original Shareholders in relation to the Sage Dispute, and to improperly "apply pressure" to the Original Shareholders generally, by:
- 80.1. Removing a director (KP Corporate) who SPV 21 believed was likely to vote in favour of the Fieldfisher Resolution.
- 80.2. Appoint another director (Mr Ahmad) who SPV 21 believed would vote against the Fieldfisher Resolution, thereby (as pleaded at 76 above) breaching his Directors' Duties to the extent that he was properly appointed as a director of KESP.

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- 80.3. By purporting to make these changes, to block the Fieldfisher Resolution and thereby prevent KESP from taking any steps to defend itself in the English Proceedings.
- 80.4. To thereby place pressure on the Original Shareholders to accept the Open Offer and concede the Sage Dispute.
- 80.5. To provide a pretext for SPV 21 to justify presenting the Petition against KESP on the basis that the KESP board was deadlocked. The Petition is a further means by which SPV 21 is seeking to force the Original Shareholders to concede the Sage Dispute.
81. Accordingly, SPV 21's purported exercise of its powers to remove KP Corporate as a director of KESP and to appoint Mr Ahmad as a director of KESP contravened the Ulterior Advantage Restriction and that purported exercise of its powers was therefore void and ineffective.
82. Alternatively, if the removal of KP Corporate and the appointment of Mr Ahmad were not void, they are voidable and the Plaintiffs are entitled to an order setting aside the removal of KP Corporate and the appointment of Mr Ahmad.
83. The Plaintiffs are further entitled to injunctive relief to restrain any further purported or actual exercises of SPV 21's powers to appoint or remove directors of KESP in breach of the Ulterior Advantage Restriction.
84. Separately, Abraaj SPV 108 Limited, Abraaj SPV 127 Limited have commenced proceedings against SPV 21 before the Grand Court (FSD 2023 – 0237) seeking *inter alia*: (i) 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; and further or alternatively (ii) a mandatory injunction ordering SPV 21 to take all steps available to appoint KP Corporate Director to the KESP Board and/or damages and interest. That claim is based on an alleged

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breach of a payment deed entered into between Abraaj SPV 108 Limited, Abraaj SPV 127 Limited, SPV 21, IGC SPV 26 Limited and the Fund GP dated 30 September 2020.

J. Conduct of the English Proceedings

85. Pursuant to the Fieldfisher Resolution, the directors nominated by Al Jomaih and Denham were authorised by KESP to (and did) instruct Fieldfisher LLP to act for KESP in the English Proceedings.
86. On 29 June 2023, Fieldfisher LLP filed an acknowledgement of service on behalf of KESP in the English Proceedings.
87. Thereafter, in correspondence, English solicitors acting for both SPV 21 and for AIML and Sage (the Claimants in the English Proceedings) asserted that KESP had not authorised the instruction of Fieldfisher on the basis that the 19 June Meeting was not a valid board meeting of KESP and that the Fieldfisher Resolution had not been validly passed.
88. The directors nominated by Al Jomaih and Denham (through Fieldfisher LLP) proposed to SPV 21 that the position should be regularised by a further resolution of the KESP board to confirm the appointment of Fieldfisher LLP, but that proposal was rejected and accordingly a dispute has arisen as to whether Fieldfisher LLP is entitled to represent KESP in the English Proceedings (“**the Representation Dispute**”).
89. The directors nominated by Al Jomaih and Denham (through Fieldfisher LLP) also proposed to SPV 21 and the Claimants in the English Proceedings (AIML and Sage) that the English Proceedings should be stayed pending the determination of the Representation Dispute by this Court. However, that proposal was not accepted. Accordingly, the First Plaintiff applied to the Commercial Court in England on 31 July 2023 for a stay of the English Proceedings pending the determination of the Representation Dispute by this Court in these proceedings.

K. Relief sought

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90. In the premises, the Plaintiffs seeks declaratory relief in the terms set out in paragraph (1) of the prayer below.
91. Alternatively, if contrary to the Plaintiffs' primary case the Court finds that Fieldfisher LLP has not been validly appointed to advise and represent KESP in relation to the English Proceedings, the Plaintiffs seeks Orders in the terms set out in paragraph (2) of the prayer below.
92. To the extent that it is necessary to do so, the First Plaintiff hereby requires Mr Skelton to convene a board meeting of KESP pursuant to Article 104(a) of the Articles for this purpose.
93. To the extent that the relief sought involves the enforcement of the Directors' Duties owed by the Fourth to Eighth Defendants to KESP, the Original Shareholders seek that relief on a derivative basis.

AND THE PLAINTIFFS CLAIM:

- (1) Declarations that:
 - (a) The 19 June Meeting was a valid and effective board meeting of the board of KES Power Limited.
 - (b) KP Corporate Director Ltd is a director of KES Power Limited and its purported removal as a director of KES Power Limited on 18 June 2023 was void and ineffective.
 - (c) Adeeb Ahmad is not a director of KES Power Limited and his purported appointment as a director of KES Power Limited on 18 June 2023 was void and ineffective.

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- (d) Fieldfisher LLP has been validly appointed by KES Power Limited to advise and represent KES Power Limited in relation to the English Proceedings and that a sub-committee of the board of KES Power Limited comprising Shan-E-Abbas Ashary, Abdul Aziz Al Jomaih and Saad Al Saad (or their duly appointed alternates) has been validly formed for the purpose of giving instructions to Fieldfisher LLP.
- (2) Alternatively, the following Orders:
- (a) An order setting aside the removal of KP Corporate Director Ltd as a director of KES Power Limited.
- (b) An order setting aside the appointment of Adeeb Ahmad as a director of KES Power Limited.
- (c) Mark Skelton shall convene a meeting of the board of KES Power Limited, in accordance with Article 104 of the Amended Articles, on a date to be appointed by the court (“**the Further Board Meeting**”).
- (d) The agenda for the Further Board Meeting shall include resolutions (“**the English Proceedings Resolutions**”) for (i) the appointment of Fieldfisher LLP to advise and represent KES Power Limited in relation to the English Proceedings, (ii) the formation of a sub-committee of the board with power to deal with all matters on behalf of KES Power Limited relating to the English Proceedings whose members shall be Shan-E-Abbas Ashary, Abdul Aziz Al Jomaih and Saad Al Saad, (or their duly appointed alternates).

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- (e) The Fourth to Eighth Defendants (and any alternate director of the Fourth to Eighth Defendants) be restrained from voting against the English Proceedings Resolutions at the Further Board Meeting, or from taking any steps thereafter until after the final determination of the English Proceedings (including any appeal) to (i) prevent KES Power Ltd from retaining Fieldfisher LLP to advise and represent it in the English Proceedings, (ii) change the membership of the Sub-Committee, or (iii) reduce or interfere with the powers of the Sub-Committee.
- (f) The Second Defendant be restrained from appointing any director of KES Power Limited until after the final determination of the English Proceedings (including any appeal) unless the proposed new director has first given an undertaking to the court in the same terms as paragraph (c) above.
- (3) Such further or other relief as the court considers just.
- (4) Costs.

DATED the 31st day of August 2023



BEVELL CRISTIN
ATTORNEYS AT LAW FOR THE PLAINTIFF

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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.
After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495, George Town, Grand Cayman.

2. 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).
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.
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.
If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. 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.

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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 Courts 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 Courts Office.

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IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2023 ()

BETWEEN

- (1) SHAN-E-ABBAS ASHARY
- (2) AL JOMAIH POWER LIMITED
(a company incorporated under the laws of the Cayman Islands)
- (3) DENHAM INVESTMENT LTD.
(a company incorporated under the laws of the Cayman Islands)

Plaintiffs

-AND-

- (1) KES POWER LIMITED
(a company incorporated under the laws of the Cayman Islands)
- (2) IGCF SPV 21 LIMITED
(a company incorporated under the laws of the Cayman Islands)
- (3) KP CORPORATE DIRECTOR LTD
(a company incorporated under the laws of the Cayman Islands)
- (4) MARK SKELTON
- (5) SHAHERYAR ARSHAD CHISHTY
- (6) SAMEER ARSHAD CHISHTY
- (7) DARIN DANIEL BAUR
- (8) ADEEB AHMAD

Defendants

ACKNOWLEDGMENT OF
SERVICE OF WRIT OF SUMMONS

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

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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.

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

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

Yes No

11. 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

Service of the Writ is acknowledged accordingly,

(Signed).....

Attorney for

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

<p>Bedell Cristin 18 Forum Lane Suite 5305 3rd Floor Camana Bay PO Box 1990 Grand Cayman KY1-1104 Cayman Islands REF: LAH/0951060.0001</p>
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Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

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