



GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2025 ()

BETWEEN

- (1) AL JOMAIH POWER LIMITED
- (2) DENHAM INVESTMENT LTD.

Plaintiffs

-AND-

- (1) IGCf SPV 21 LIMITED
- (2) KES POWER LIMITED

Defendants

WRIT OF SUMMONS

TO:

- (1) **IGCF SPV 21 Limited** c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands.
- (2) **KES Power Limited** c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands.

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 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, P.O. Box 495, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

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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.

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 25th day of February 2025

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.

DATED this 25th day of February 2025



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 2025 ()

BETWEEN

(3) AL JOMAIH POWER LIMITED
(4) DENHAM INVESTMENT LTD.

Plaintiffs

-AND-

(3) IGCF SPV 21 LIMITED
(4) KES POWER LIMITED

Defendants

STATEMENT OF CLAIM

A. The Parties

1. The Plaintiffs are each companies registered in the Cayman Islands and currently hold 46.2% of the share capital of the Second Defendant, KES Power Limited (“KESP”).
2. The First Defendant (“IGCF SPV 21”) is incorporated in the Cayman Islands and currently holds the remaining 53.8% of the share capital of KESP. IGCF SPV 21 is owned by IGCF SPV 26 Limited (“IGCF SPV 26”) (now K Power Holdings Limited (“K Power”) (70.59%), Abraaj SPV 108 Limited (“Abraaj SPV 108”) (19.06%), Abraaj SPV 127 Limited (“Abraaj SPV 127”) (9.88%), Abraaj SPV 109 Limited (“Abraaj SPV 109”) (0.47%), and Breeze SPV Limited (“Breeze SPV”) (a single share). A structure is attached as Appendix 1 to these Particulars of Claim.

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B. KEL

3. K-Electric Limited (“**KEL**”) is incorporated in the Islamic Republic of Pakistan (“**Pakistan**”). KEL was formerly known as Karachi Electric Supply Corporation Limited and generates, distributes and sells the electricity supply for the city of Karachi and surrounding area.
4. The Government of Pakistan (“**GoP**”) considers KEL a strategically important company and takes a close interest in its ownership.

C. KEL – The 2005 SPA

5. By a Share Purchase Agreement dated 11 November 2005 (the “**2005 SPA**”) KESP, which was then wholly owned by the Plaintiffs purchased 73% of the share capital of KEL from the GoP.
6. Prior to KESP acquiring its interest in KEL, the Plaintiffs were subject to extensive regulatory and government scrutiny including being required to obtain clearances (including with respect to national security) and/or approvals from the Privatisation Commission and the Securities and Exchange Commission of Pakistan (the “**SECP**”). In that context, the 2005 SPA imposed restrictions on the subsequent sale or transfer of any interest in KESP.
7. Clause 5.2 of the 2005 SPA provides that KESP as the purchaser was precluded from selling or transferring any of its shares in KESP to a person prohibited by the Laws of Pakistan and that any transfer in breach was void.
8. Clause 5.3 of the 2005 SPA provides the following exceptions to the restrictions in cl. 5.2:
 - 8.1. where the transfer is subject to the national security interests of Pakistan (as determined in the sole discretion of the Government of Pakistan); is to an Affiliate (as defined in cl. 1.1) of the Purchaser; and complies with the detailed requirements in cl. 5.3(c) of the 2005 SPA (cl. 5.3(a)(i)); and

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8.2. where, assuming sufficient time has elapsed following the Closing Date (as defined in cl. 2.4), prior to the transfer the Purchaser obtains the Government of Pakistan's certification stating that the proposed transfer / transaction does not affect the national security interests of Pakistan (cl. 5.3(b)).

D. The Infrastructure & Growth Capital Fund

9. Until put into provisional liquidation in June 2018, a group of companies under the overall ownership of the Cayman Islands company Abraaj Holdings Limited ("**Abraaj Holdings**") raised, promoted and/or managed private equity funds. Those funds typically took the form of exempted limited partnerships established under the Exempted Limited Partnership Act (the "**ELP Act**").

10. Abraaj Investment Management Limited ("**AIML**"), a Cayman Islands company wholly owned by Abraaj Holdings, was responsible for managing the majority of those funds.

11. One of the funds promoted or managed by the Abraaj Group¹ was the Infrastructure & Growth Capital Fund L.P. ("**IGCF**" or the "**Fund**"), an exempted limited partnership established on 12 July 2006 under the ELP Act in the Cayman Islands.

12. The Fund is composed of:

12.1. the sole general partner, IGCF General Partner Limited (the "**IGCF GP**"), a Cayman Islands exempted limited company, which holds the assets of the Fund on trust for all limited partners; and

12.2. the limited partners, being the sophisticated investors in the Fund.

¹ For the purposes of this claim, "*Abraaj Group*" has the meaning as defined in Schedule 9 of the KESP SHA (defined below).

13. Pursuant to cl. 5.1(a) of the Deed of Limited Partnership for the Fund (the “**Partnership Deed**”), the management of the Fund and control over the business and affairs of the Fund are the exclusive responsibility of the IGCF GP.
14. Pursuant to cl. 5.1(b) of the Partnership Deed, the IGCF GP entered into the Investment Management Agreement dated 30 September 2007 (the “**Management Agreement**”) with AIML (then named Abraaj Capital (Cayman) Limited).
15. By the Management Agreement, *inter alia*:
 - 15.1. the IGCF GP appointed and engaged AIML to act as its agent in managing the Fund (cl. 3.2);
 - 15.2. the IGCF GP granted AIML complete and unlimited investment and trading authority with respect to the Fund, including in AIML’s discretion (acting in good faith) to deal with the assets of the Fund on IGCF’s behalf without obtaining the consent of, or consulting with, the IGCF GP or any other person (cl. 3.4);
 - 15.3. AIML was subjected to a general duty to perform all fiduciary, investment and asset management (including administrative) activities for and on behalf of the IGCF GP (cl. 3.3.1);
 - 15.4. AIML was subjected to a duty to use its best judgment, efforts and facilities and at all times and in all respects well and faithfully serve the interests of the IGCF GP (cl. 3.6(a)); and
 - 15.5. the activities of AIML in managing the Fund were at all times subject to the control of and review by the Board of the IGCF GP (cl. 4.1).
16. The definition of “Manager” in cl.1.1 of the Partnership Deed provided that in the event that no Manager has been appointed or is then acting for the Fund, such rights, authorities and obligations as had been given to the Manager shall be exercised or performed by the ICGF GP.

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E. The establishment of the joint venture and the KESP SHA

17. By a Subscription Agreement dated 15 October 2008, IGCF SPV 21 agreed to subscribe for shares in KESP.
18. By a Shareholders' Agreement dated 15 October 2008, as subsequently amended on 30 April 2009 and 5 January 2021 (the "**KESP SHA**"), and to which the Plaintiffs will refer for its full terms and effect, the Plaintiffs and the First Defendant (defined as "Abraaj" in the KESP SHA) agreed to regulate their shareholding in KESP.
19. In particular, by the KESP SHA the Plaintiffs and the Defendants agreed:
 - 19.1. Under cl. 5.7, that IGCF SPV 21 would have the right to appoint five directors to the board of KEL, and the Plaintiffs, four.
 - 19.2. Under cl. 3, that proceedings of KESP would be conducted in such a way as to maximise shareholder value, and under cl. 17.1, they would exercise rights available to them (including as directors) to give effect to the provisions of the KESP SHA.
 - 19.3. That the solvent liquidation, winding-up or dissolution of KESP was a 'Reserved Matter' that could not be done without the consent of both the Plaintiffs and IGCF SPV 21.
 - 19.4. Under paragraph 5 of schedule 5, that in certain circumstances if IGCF SPV 21 sold its stake in KESP or shares in IGCF SPV 21 were sold, the Plaintiffs would have "tag" rights to sell a like proportion of their shares in KESP on the same terms.
 - 19.5. Under cl. 11 to make various provisions for an "Exit".
20. In connection with and prior to the execution of the Subscription Agreement dated 15 October 2008 and the KESP SHA, the Plaintiffs and IGCF SPV 21 were subject to extensive regulatory and government scrutiny in Pakistan.

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21. Consistent with the fact that the GoP considered KEL to be a strategically important company, and the provisions of the 2005 SPA, the Plaintiffs and the Abraaj Group / IGCF SPV 21 sought and obtained an Irrevocable Waiver and Consent dated 27 November 2008 from the GoP (the “**Waiver and Consent**”). Pursuant to the Waiver and Consent the GoP consented to IGCF SPV 21 becoming a shareholder in KESP. The Waiver and Consent provided expressly in cl.7 that, save as expressly provided in the Waiver and Consent, all terms of the 2005 SPA continued in full force and effect.

F. Clause 9.4 of the KESP SHA (“cl. 9.4”)

22. IGCF SPV 21 and the Plaintiffs agreed not to permit or take any action that would result in a change of Control of each, and in particular agreed:

- 22.1. Under cl. 9.4 that:

*“[IGCF SPV 21] undertakes and agrees that save for an Exit in accordance with clause 11 hereof, **it shall not permit nor take action that would result in a change of Control of [IGCF SPV 21]**, provided that [IGCF SPV 21] shall be deemed not to be in contravention of this clause in circumstances where (notwithstanding a change of Control of [IGCF SPV 21]), [IGCF SPV 21] remains managed by a member of the Abraaj Group.”*
(emphasis added in **bold**)

- 22.2. That for the purposes of the KESP SHA the “*Abraaj Group*” meant, pursuant to Schedule 9 of the KESP SHA:

“[IGCF SPV 21] and any person (including special purpose vehicles and funds) Controlled and/or managed by [AIML], provided that the management of such person has not arisen as a result of or in connection with a transfer of the shares in [IGCF SPV 21] to that person”

- 22.3. That for the purposes of the KESP SHA “*Control*” meant, pursuant to Schedule 9 of the KESP SHA:

*“with respect to any person, the possession, directly or indirectly, of **the power to direct, or cause the direction of, the management of that person, whether through ownership of shares, voting securities,***

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*partnership or other ownership interests, agreement or otherwise, provided that if one person owns, directly or indirectly, fifty per cent. (50%) or more of the share capital, voting, securities, partnership or other ownership interests of another person, such person shall be deemed to Control such other person and Controlled and under common Control with shall be construed accordingly” (emphasis added in **bold**)*

23. References to the word control or controlled or controlling with an uppercase ‘C’ in this pleading have the meaning described in the above definition *mutatis mutandis*.
24. The background facts known to the parties at the time the KESP SHA was made and relevant to its interpretation include the following:
 - 24.1. The 2005 SPA and the requirements imposed on KESP by it.
 - 24.2. The introduction of IGCF SPV 21, IGCF and the Abraaj Group to KESP in 2008 as a potential joint venture partner was explicitly consented to by the GoP.
 - 24.3. The Abraaj Group (especially the then CEO, Arif Naqvi) acting through IGCF SPV 21 was known to the GoP and passed the security clearances imposed thereby.
 - 24.4. IGCF is a private equity fund. The nature of private equity investing is that funds have a specific and limited life. IGCF had a limited fund life, and aimed to invest and generate returns (by exiting investments) within its fund life. Pursuant to the Restated Deed of Limited Partnership dated 17 November 2006, the term of IGCF was from 31 December 2006 for a period of ten years, with an option for extending for a maximum of two further years. Therefore, IGCF aimed to exit its investments and generate returns by the end of 2018.
 - 24.5. The operational challenges facing KEL, the challenging social and political environment in Pakistan and Karachi at the time and the fact that the Abraaj Group and IGCF SPV21 had passed the security clearance and the personal trust of and confidence between the natural persons behind the joint venture partners was critical to the Plaintiffs’ willingness to accept and work with IGCF SPV 21 as a joint venture partner.

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24.6. A change in Control of either the Plaintiffs or IGCF SPV 21 risked placing KESP in breach of the 2005 SPA or, even if it did not, risked angering the Government of Pakistan in a way that would likely be detrimental to KESP.

G. Termination of the Management Agreement

25. Further by virtue of the express or implied terms of the Management Agreement, AIML owed IGCF GP fiduciary duties of honesty, integrity, loyalty and good faith and an obligation at all times to act exclusively in its best interests and a duty to be actively involved in any decisions.

26. The Management Agreement was terminated in or around May 2020 but AIML continued to owe the above-mentioned fiduciary duties in respect of property and rights of IGCF GP still held by AIML, because it continued to hold the sole voting share (defined below) in IGCF SPV 21 in its capacity as an agent of the IGCF GP, and such rights attaching to the sole voting share were only to be exercised by AIML in accordance with the continuing contractual and fiduciary duties of the IGCF GP to the limited partners in IGCF.

27. Until the Sage 2022 Arrangements (as defined below) AIML was the majority owner of IGCF GP, and the owner of the sole voting share (defined below) in IGCF SPV 21.

H. Control of IGCF SPV 21 prior to the Sage 2022 Arrangements

28. At the time of the KESP SHA:

28.1. The authorised share capital of IGCF SPV 21 consisted of 50,000 shares of a par value of US\$1.00 each.

28.2. All of those shares in IGCF SPV 21 were held by IGCF SPV 26.

28.3. IGCF SPV 26 was in turn owned and controlled by the IGCF GP.

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- 28.4. Pursuant to the Partnership Deed and Management Agreement, and AIML's majority ownership of the IGCF GP, AIML Controlled IGCF SPV 21. Paragraphs 10 to 16 and 25 to 27 above are repeated.
29. In early 2014, Abraaj Holdings entered into financing arrangements with Mashreq Bank PSC ("**Mashreq**"). The Plaintiffs understand that in the context of those financing arrangements, the Abraaj Group reorganised its shareholding in IGCF SPV 21 and security was granted to Mashreq over various assets. That security included an equitable mortgage over Abraaj Holdings' shareholding in Abraaj SPV 108, which in turn gave an equitable mortgage over its shares in IGCF SPV 21.
30. The reorganisation of the Abraaj Group's shareholding in IGCF SPV 21 (the "**2014 Reorganisation**") altered the position at paragraphs 28.1 and 28.2 above such that the shares in IGCF SPV 21 were:
- 30.1. Non-voting participating Preferred Shares (70.6%) held by IGCF SPV 26.
- 30.2. Non-voting participating Preferred Shares (29.4%) held by four companies under the ownership or control of Abraaj Holdings, being Abraaj SPV 108, Abraaj SPV 127, Abraaj SPV 109 and Breeze SPV.
- 30.3. One voting non-participating share ("the **Voting Share**") which was created then as a new share class and issued to and held by AIML.
31. It is to be inferred that the 2014 Reorganisation was at least in part implemented to avoid the financing arrangements with Mashreq, referred to at paragraph 29 above, potentially altering the Control of the Abraaj Group over IGCF SPV 21. In the result:
- 31.1. AIML held the Voting Share and exercised the rights attaching and subject to the duties and obligations imposed on AIML as Manager of the Fund by the Partnership Deed and Management Agreement. The Voting Share otherwise had no value and therefore no other purpose. Paragraph 15 above is repeated.

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- 31.2. From about the inception of the Fund until in or around May 2020, AIML Controlled IGCF GP and IGCF SPV 21 and Qa obliged to exercise that control subject to the contractual and fiduciary duties they owed to the limited partners in the Fund.
- 31.3. From in or around May 2020 when the Management Agreement was terminated, management of the Fund reverted to the IGCF GP pursuant to the Partnership Deed. Paragraphs 13, 16 and 26 are repeated.
- 31.4. From in or around May 2020, notwithstanding termination of the Management Agreement there was no change of Control. AIML continued to hold the Voting Share as agent of IGCF GP and such rights attaching thereto could, or as a matter of fact would, be exercised by AIML.

I. Sage and the Sage 2022 Arrangements

32. Sage Venture Group Limited (“**Sage**”) is a company ultimately beneficially owned by Shaheryar Chishty through AsiaPak Investments Limited (“**AsiaPak**”). Sage is not part of the Abraaj Group for the purposes of the KESP SHA or at all.
33. The Plaintiffs do not know when Sage and/or Shaheryar Chishty first began discussions with AIML and/or the IGCF GP; however, from at least mid-2022, Sage has (with the apparent assistance of the directors of the IGCF GP and of IGCF SPV 21, and without opposition from, and/or with the assistance of, IGCF SPV 21 and its director) sought to obtain control of the IGCF GP, IGCF SPV 21 and KESP. In particular:
- 33.1. From 5 July 2022, Sage apparently made offers to certain limited partners in the Fund (having been introduced to them by the IGCF GP) to acquire up to 50% of the limited partner stakes in the Fund, subject to obtaining control of the IGCF GP; and

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33.2. On 29 June 2022, Mark Skelton (Director, IGCF GP and KESP) sent an e-mail to Casey McDonald (Director, IGCF SPV 21) regarding the proposed transaction with Sage. In that e-mail, Mr. Skelton explained *inter alia* to Mr. McDonald that acquisition of control of IGCF SPV 21 was critical to Sage as part of the proposed transaction:

“There are two implications of Sage buying AIML stakes. AIML has two types of stakes ie control positions (GP and SPV 21) and economic positions (KESP Receivable). The control position is needed and is key for them. Both AIML (and potentially Ithmaar if they accept the offer) are not long term managers. Sage are seeking to own long term. Their option was to put in a 3rd party manager (that has a cost) or owne the GP themselves. Ownership was the course of action they took.”

33.3. IGCF SPV 21 has refused to provide information or the transaction documents to the Plaintiffs but the Plaintiffs are aware that on or about 3 August 2022 AIML’s liquidators and Sage agreed to a transaction (the **“Sage 2022 Arrangements”**).

34. As part of the Sage 2022 Arrangements, to the best of the Plaintiffs’ knowledge and belief:

34.1. AIML agreed to sell, assign or transfer to Sage 75.5% of the shares in the IGCF GP; and

34.2. AIML agreed to assign a debt of approximately \$41 million alleged to be owed to AIML by KESP pursuant to the terms of a Consultancy Services Agreement (the **“CSA”**) between KESP and AIML dated 18 May 2009 and two side letters thereto dated 18 May 2009 and 15 July 2015; and

34.3. AIML reached some arrangements or understandings with Sage as to the Voting Share although the true nature and details of those arrangements or understandings remain opaque to the Plaintiffs.

35. The Plaintiffs understand that Sage acquired the remaining 24.5% stake in the IGCF GP from Ithmaar Holdings BSC such that Sage holds 100% of the issued share capital in the IGCF GP.

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36. On 14 October 2022, the Grand Court of the Cayman Islands gave AIML’s liquidators limited (i.e. conditional) permission to enter the Sage 2022 Arrangements. Neither the Plaintiffs nor IGCF SPV 21 were party to those proceedings or have access to the court file, but it is to be inferred from the conditions imposed by the Grand Court that the Court recognised a risk that the Sage 2022 Arrangements might lead to a breach by IGCF SPV 21 of cl. 9.4 of the KESP SHA which, if correct, the Court would and could not sanction.
37. Unbeknown to the Plaintiffs, on 14 October 2022 and presumably after the hearing before the Grand Court, the Sage, AsiaPak and the JOLs entered into a side letter which vary the Sage 2022 Arrangements insofar as they concerned the voting share (the “**Second Side Letter**”). The Second Side Letter provided that to the extent the sole voting share could not be transferred to Sage, the JOLs of AIML would only exercise the rights attached to it in accordance with Sage’s written instructions:

“to the extent that legal title to the sole voting share in SPV 21 cannot be transferred by the [AIML] to [Sage]: [...] (iii) [AIML] agrees to hold the sole voting share for [Sage] as its nominee and to exercise any rights attaching to that share, and to generally deal with the sole voting share, in accordance with [Sage’s] written instructions”.

38. On 21 March 2024, the Amended and Restated Articles of IGCF SPV 26 were amended to change the name of IGCF SPV 26 to K Power Holdings Limited (“**K Power Holdings**”) and to amend its shareholding. As a result of those amendments, Sage was issued the sole ‘A Share’ in K Power Holdings, which included voting rights equal to the entirety of all issued B Shares (i.e., effectively 50% of all voting rights). The B Shares were purportedly issued to the limited partners of the Fund in proportion to the size of their stakes in the Fund. Therefore, Sage effectively acquired majority control of K Power Holdings, because it held the A share and significant minority of B Shares (as an existing limited partner of the Fund).

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J. Breach of cl. 9.4 of the KESP SHA

39. By reason of the matters set out above at paragraphs 32 to 38, there has been a change of Control in IGCF SPV 21 in breach of cl. 9.4. Sage and/or Shaheryar Chishty now Control IGCF SPV 21.
40. In particular, and by way of illustration of the change of Control of IGCF SPV 21 in breach of cl. 9.4 and without limitation:
- 40.1. On or about 18 October 2022, IGCF SPV 21 appointed Shaheryar Chishty, Sameer Chishty and Darin Baur to KESP's board. Sameer Chishty is the brother of Shaheryar Chishty and Darin Baur is a close business associate of Shaheryar Chishty and director of the IGCF GP.
- 40.2. On 18 October 2022, IGCF GP wrote to KEL to indicate that *"Following the acquisition of IGCF GP shareholding [by Sage], the IGCF GP has decided to update certain directorships as it relates to K-Electric. The new IGCF directors to the KE board will include Shaheryar Chishty"*.
- 40.3. On or about 31 October 2022, IGCF SPV 21 authorised Shaheryar Chishty to act on its behalf in and to control proceedings in Pakistan brought by the Plaintiffs against IGCF SPV 21.
- 40.4. On 25 January 2023, IGCF SPV 21 allowed itself to be used by Sage to apply for an anti-suit injunction against the Plaintiffs before the Grand Court of the Cayman Islands in Cause No. FSD 0269 of 2022 and IGCF SPV 21 has allowed Sage (directly or via its agents, including Messrs. Chishty and Baur) to run that litigation and instruct solicitors and foreign law experts.
- 40.5. On or about 18 June 2023, IGCF SPV 21 accepted instructions from and/or the Control of and/or conspired or cooperated with Sage to implement a plan whereby Adeeb Ahmed was appointed as a director of KESP in place of KP Corporate Director Ltd (represented by Mr Kieran Hutchinson). This was in order

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to wrongfully prevent KESP from taking advice on or defending a claim brought by *inter alia* Sage and for Sage's benefit before the Commercial Court in London (as set out at paragraphs 45.2 to 46 below).

40.6. On 11 July 2023, IGCF SPV 21 allowed its name to be used by Sage to present the winding up petition detailed below in paragraph 45.1 below.

41. Further to there being a change of Control as a matter of fact, Shaheryar Chishty has held himself out as owning and Controlling the Fund and KEL and, by implication, IGCF SPV 21. By way of example, media articles have reported Shaheryar Chishty as stating "*I didn't buy [KEL] itself, I bought the Fund. The [Fund] had other things in it and [KEL] was one of those assets*".

42. In the premises, IGCF SPV 21 by its director or otherwise has permitted and/or taken action that has resulted in a change of Control of IGCF SPV 21 in breach of cl. 9.4.

K. Transfer of the Voting Share

43. So far as the Plaintiffs can presently determine, the arrangements or understandings referred to at paragraph 34.3 above in respect of the Voting Share has not led to a transfer of the Voting Share being registered in the books and records of IGCF SPV 21 and AIML apparently remains the "holder" of the Voting Share.

44. Registration of any transfer of the Voting Share from AIML to Sage (or any connected person or persons) would amount to IGCF SPV 21 (by its director or otherwise) permitting and/or taking action that would result in a change of Control of IGCF SPV 21, in further breach of cl. 9.4. In particular, registering any such transfer would also be permitting and/or taking action to that effect because pursuant to cl. 9.1 of the Amended and Restated Memorandum and Articles of Association of IGCF SPV 21 dated 22 January 2014 (which is the only version of this document presently available to the Plaintiffs) (the "**IGCF SPV 21 Articles**"), the directors of IGCF SPV 21 have the power to decline to register any

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transfer of shares in IGCF SPV 21 in their absolute discretion and without giving any reason.

L. Collateral actions in breach of contract

45. Sage and/or Shaheryar Chishty have undertaken, or caused to be undertaken, a series of actions which include the following.

45.1. By a Petition presented by IGCF SPV 21 in the Grand Court of the Cayman Islands in July 2023 in Cause No. FSD 2023-0193 (the “**Cayman Petition**”), under the instruction or in co-operation with Sage, IGCF SPV 21 has sought the solvent winding up of KESP on (alleged) just and equitable grounds pursuant to Section 92(e) of the Companies Act (2023 Revision) of the Cayman Islands (“**Cayman Companies Act**”). The Petition is a further illustration of the Control of IGCF SPV 21 by Sage and/or Shaheryar Chishty.

45.2. By a Claim Form dated 21 March 2023, AIML and Sage commenced Commercial Court Claim No. CL-2023-000160 against KESP, alleging KESP owed AIML (and/or Sage as AIML’s assignee under the Sage 2022 Arrangements) over US\$ 41 million under the CSA (the “**CSA Claim**”).

45.2.1. On 15 June 2023, the CSA Claim was personally served on KESP’s registered office in the Cayman Islands. As a result, unless KESP acknowledged service on or before 16 July 2023, Sage would be at liberty to enter judgment in default and, in due course, to seek to wind up KESP.

45.2.2. At a meeting of the board of KESP on 19 June 2023, the directors of KESP appointed by IGCF SPV 21 (ostensibly represented by Mark Skelton) refused to agree to KESP appointing legal representation to advise, respond to and/or defend the CSA Claim. The asserted basis for so doing was that representation would be unnecessary if the Plaintiffs agreed to

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a proposal put forward by IGCF SPV 21 under which (*inter alia*) the Plaintiffs would agree to the change of Control of IGCF SPV 21 and, in exchange, the CSA Claim would be withdrawn.

45.2.3. Since 19 June 2023, the KESP directors appointed by IGCF SPV 21 have continued to seek to prevent KESP from being legally represented in the CSA Claim.

46. The said attempts to prevent KESP from being represented, which are intended to coerce the Plaintiffs by the threat that KESP might be wound up, are breaches by IGCF SPV 21 of cl. 3 and/or 17.1 of the KESP SHA.

M. Claim under cl. 11.2 of the KESP SHA

47. By cl. 11.2 of the KESP SHA, as amended on 30 April 2009, and renumbered as 11.1 by the Deed of Amendment dated 5 January 2021, IGCF SPV 21 agreed to pay the Plaintiffs US\$ 20 million on 31 December 2009:

*“Abraaj shall pay to the Original Shareholders, in the proportions set out in Schedule 1, an amount of US\$20 million (the **Deferred Amount**). Such payment shall be made on 31 December 2009.”*

48. The said sum was not paid and remains due and payable.

49. Further, the Plaintiffs claim interest on the said sum under Section 34 of the Judicature Act (2021 Revision) at the rate prescribed by the Judgment Debts (Rates of Interest) Rules 2021 from 31 December 2009 until payment, amounting to US\$2,116,208.21 to 13 July 2023 and US\$1,298.63 per day thereafter.

N. Injunctions, Loss and Damage

50. If not restrained, IGCF SPV 21 will continue to act in breach of contract to permit and/or take action that results in its Control by Sage and/or Shaheryar Chishty or any person

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other than entirely and only AIML and/or the Abraaj Group through IGCF without the consent of the Plaintiffs.

51. The Plaintiffs accordingly claim injunctions:
- 51.1. Restraining IGCF SPV 21 from implementing and/or acting on the instructions of Sage and/or Shaheryar Chishty, or their agents or associates, or causing or procuring the same to occur.
 - 51.2. Restraining KESP from assisting or procuring the appointment of any persons, etc connected to Sage and/or Shaheryar Chishty and/or any of their agents or associates, to the board of KEL.
 - 51.3. Restraining IGCF SPV 21, by itself and/or by its servants, agents, etc. or any director appointed by it to KESP, from permitting or taking any action that would result in Control by Sage and/or Shaheryar Chishty, whether directly or indirectly.
 - 51.4. Directing IGCF SPV 21 forthwith to cease to permit itself to be Controlled by Sage and/or Shaheryar Chishty, whether directly or indirectly.
 - 51.5. Directing IGCF SPV 21 to withdraw its instructions to the directors of KESP nominated by IGCF SPV 21 to seek to or support the appointment of Shaheryar Chishty and Darin Baur as directors of KEL and not to seek to appoint any other person to whom the Plaintiffs object.
 - 51.6. Restraining IGCF SPV 21 from registering any transfer of the Voting Share without the written agreement of the Plaintiffs.
 - 51.7. Restraining IGCF SPV 21 from, without the consent of the Plaintiffs, in any way permitting and/or taking any action that results in Control of IGCF SPV 21 by Sage and/or Shaheryar Chishty or any person other than entirely and only AIML and/or the Abraaj Group through the IGCF GP.
52. Alternatively, the Plaintiffs claim damages in lieu of or in addition to an injunction.

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53. Further, IGCF SPV 21 purportedly appointed directors to KESP but at the instigation and Control of Sage and/or Shaheryar Chishty (paragraphs 40.1 and 40.5 above). Those appointments were the consequence of IGCF SPV 21's breach of cl. 9.4 and are therefore either void or voidable.
54. Further or alternatively, as a result of IGCF SPV 21's breaches of contract, the Plaintiffs have suffered and will suffer loss and damage. In particular:
- 54.1. From 2016 to April 2024, KESP had (at least) an agreement in principle to sell its stake in KEL to the Shanghai Electric Power Company Limited ("**Shanghai Electric**") at a substantial profit on KESP's investment. That agreement is no longer active, but the Plaintiffs seek an alternative equivalent sale of KESP's stake in KEL.
- 54.2. The reported purpose of Shaheryar Chishty in seeking indirectly to acquire interests in IGCF SPV 21 is to profit himself and companies in which he is interested by, *inter alia*, causing or encouraging KEL to generate power at a cost greater than currently by buying fuel from coalfields in Pakistan where Shaheryar Chishty has other interests and by altering the business plans of KESP so damaging the value of the Plaintiffs' shares in KESP. Such an intention is necessarily inconsistent with any planned sale of KESP's stake in KEL.
- 54.3. The sale of the shares in KESP to a third party at a substantial economic gain as anticipated by the parties when entering the KESP SHA is unlikely to occur if Sage and/or Shaheryar Chishty is Controlling IGCF SPV 21. The Plaintiffs will therefore suffer a lost chance of significant profit.
55. Further or alternatively, the Plaintiffs seek an assessment of the profits earned by Sage and/or IGCF SPV 21 due to the breach of the KESP SHA and the payment of such sum as damages.

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56. Further, the Plaintiffs have suffered loss and damage by virtue of the breaches of cl. 3 and/or 17.1 of the KESP SHA set out at paragraph 45.1 to 46 above in relation to the CSA Claim, including irrecoverable legal costs incurred by the Plaintiffs in Claim No. FSD 2023-0262 in the Grand Court of the Cayman Islands issued by Shan-E-Abbas Ashary (a director nominated to the Board of KESP by the Plaintiffs).
57. Further, the Plaintiffs claim interest on all sums due to them under Section 34 of the Judicature Act (2021 Revision) at such rate and for such period as the Court thinks fit.

AND THE PLAINTIFFS CLAIM:

- (1) An injunction:
- (A) Restraining IGCF SPV 21 from implementing and/or acting on the direct or indirect instructions of Sage and/or Shaheryar Chishty, or their agents or associates, or causing or procuring the same to occur.
 - (B) Restraining KESP from assisting or procuring the appointment of any persons, etc. any persons connected to Sage and/or Shaheryar Chishty any of their agents or associates, to the board of KEL.
 - (C) Restraining IGCF SPV 21, by itself and/or by its servants, agents, etc. or any director appointed by it to KESP, from permitting or taking any action that would result in Control by Sage and/or Shaheryar Chishty, whether directly or indirectly.
 - (D) Directing IGCF SPV 21 forthwith to cease to permit itself to be Controlled by Sage and/or Shaheryar Chishty, whether directly or indirectly.
 - (E) Directing IGCF SPV 21 to withdraw its instructions to the directors of KESP nominated by IGCF SPV 21 to seek to or support the appointment of Shaheryar Chishty and Darin Baur as directors of KEL and not to seek to appoint any other person to whom the Plaintiffs object.

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- (F) Restraining IGCF SPV 21 from registering any transfer of the Voting Share without the written agreement of the Plaintiffs.
 - (G) Restraining IGCF SPV 21 from, without the consent of the Plaintiffs, in any way permitting and/or taking any action that results in Control of IGCF SPV 21 by Sage and/or Shaheryar Chishty or any person other than entirely and only AIML and/or the Abraaj Group through the IGCF GP.
- (2) An Order that the appointments made by IGCF SPV 21 to the Board of KESP on or about 18 October 2022 and on or about 18 June 2023 were void or voidable and are if necessary hereby avoided.
 - (3) US\$ 20,000,000.
 - (4) Damages in lieu of or in addition to an injunction.
 - (5) Interest.
 - (6) Costs.
 - (7) Further or other relief.

DATED the 25TH day of February 2025



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 2025 ()

BETWEEN

- (1) AL JOMAIH POWER LIMITED
- (2) DENHAM INVESTMENT LTD.

Plaintiffs

-AND-

- (1) IGCF SPV 21 LIMITED
- (2) KES POWER LIMITED

Defendants

APPENDIX 1

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 2025 ()

BETWEEN

(5) AL JOMAIH POWER LIMITED
(6) DENHAM INVESTMENT LTD.

Plaintiffs

-AND-

(5) IGCF SPV 21 LIMITED
(6) KES POWER LIMITED

Defendants

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.

-
9. 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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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.

Bedell Cristin
18 Forum Lane
Suite 5305
3rd Floor
Camana Bay
PO Box 1990
Grand Cayman KY1-1104
Cayman Islands
REF: LAH/0950106.0001

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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